



## Subsidising segregation: Mainstreaming the UN CRPD into EU State Aid legislation

***Briefing by the European Network on Independent Living, November 2024***

### Introduction

The European Network on Independent Living has [produced a case study](#) which showed that public subsidies play an important role in the financing of institutions in the EU. There is evidence that regional and local authorities subsidise disability services which are highly segregating with substantial financial resources.

The ENIL case study presented several concrete cases. The private, non-profit providers of social services in the northern German state of Lower Saxony receive EUR 20 million per year from the budget of the regional government. Those service providers run many institutions and sheltered workshops for disabled people. In 2011, authorities in the Land of Rheinland-Pfalz paid EUR 5,5 million to a private provider to convert an abandoned hospital into an institution. In 2009, authorities in northern Portugal financed the construction of a long-term mental health unit with a contribution of EUR 2 million. It can be assumed that such practices are common in all EU member states.

The EU and all Member States are state parties to the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD). The UN CRPD obliges state parties to stop the financing of institutions. EU Member States have an obligation to ensure that all disabled people can live independently in the community. In addition, the right to work in the regular labour market must be promoted.

The chapter of the Treaty on the Functioning of the EU (TFEU) on state aid allows to regulate the way national, regional and local authorities subsidise for-profit and non-profit undertakings, including providers of social services.

- Could those competences be used to change the way disability services are financed?

- Could reforms of the EU state aid regulations restrict the subsidies flowing into services which segregate, increase the resources available for person-centred services and the integration of disabled people into the regular labour market?

The UN CRPD emphasises the importance of mainstreaming disability issues and obliges state parties to refrain from engaging in any act or practice that is inconsistent with the Convention.’

The present briefing will add additional evidence on the practice of subsidizing segregating services, by presenting further cases. The cases are mostly from Germany, some are from Spain. It will then review the relevant provisions of the UN CRPD. Next, it will outline key provisions of EU State Aid legislation and discuss possible changes that might help redirect funding towards community-based services.

## Cases of subsidisation of segregating services

### 1. Germany

- [The government of Saxony](#) is subsidising the construction of a sheltered workshop for 160 disabled people with EUR 6,8 million. The non-profit organisation Lebenshilfe Rheichenbach will be running the workshop.
- [The government of Bavaria](#) is subsidising the construction of a sheltered workshop with EUR 1,2 million. The non-profit Caritas Augsburg will be running the workshop.
- [The government of Bavaria](#) is subsidising the construction of a sheltered workshop for 36 disabled people with EUR 5,5 million. The workshop will be run by the company Werkstätten GmbH Kaufbeuren in Schwaben.
- [The government of Bavaria](#) is subsidising the construction of a sheltered workshop for 240 disabled people with EUR 10,6 million. The non-profit Lebenshilfe Deggendorf will be running the workshop.
- [The government of Bavaria](#) is subsidising the construction of a sheltered workshop for 28 disabled people with EUR 655 000. The non-profit Förderstätte Schweinspoint will be running the workshop.
- [The government of Bavaria](#) is subsidising the construction of a sheltered workshop for 20 disabled people with EUR 2 million. The non-profit Eggenfeldener workshops St. Rupert will be running the workshop.
- [The government of Bavaria](#) is subsidising the renovation of the Moritzberg workshop in Laut-Schönberg with EUR 761 500.
- [The government of Hessen and the City of Kassel](#) are financing the construction and renovation of a sheltered workshop for 140 disabled people with EUR 2,9 million.

## 2. Spain

- [The government of Navarra](#) is financing institutions with a budget of EUR 16,2 million. Places for 132 disabled people will be created. The organisation Aspace Navarra will be running the facility.
- [The government of Andalucia](#) is financing the construction of an institutions with EUR 3,9 million. Places for 30 disabled people will be created. The organisation Asprogrades will be running the facility.

Desk research and information provided by ENIL members has made it possible to trace the subsidisation of services for disabled people which are segregating and discriminatory. Regional and local authorities are spending EUR 50,5 million on the projects listed above.

### The UN CRPD and the end of segregating services

The UN CRPD and the General Comments oblige state parties to discontinue sheltered workshops and institutions.

Article 27 of the UN CRPD states that “State Parties recognise the right of persons with disabilities to work, on an equal basis with others”. General Comment No 8 on employment clarified that “segregated employment for persons with disabilities, such as sheltered workshops, is not to be considered as a measure of progressive realisation of the right to work, which is evidenced only in employment that is freely chosen or accepted and performed in an open and inclusive labour market”. State parties should “facilitate the transition away from segregated work environments for persons with disabilities and support their engagement in the open labour market”.

The General Comment outlined the following defining criteria of sheltered workshops:

- Persons with disabilities are segregated, away from open, inclusive and accessible employment;
- Employment is organised around certain specific activities that persons with disabilities are deemed to be able to carry out;
- The medical and rehabilitation approaches to disability are focused on and emphasised;
- Transition to the open labour market is not effectively promoted;
- Persons with disabilities do not receive equal remuneration for work of equal value;
- Persons with disabilities are not remunerated for their work on an equal basis with others;
- Persons with disabilities do not usually have regular employment contracts and are therefore not covered by social security systems.

Article 19 of the UN CRPD establishes the obligation of state parties to recognise the right of disabled people to live independently. General Comment No 5 clarified that support services must not be provided in institutions but through person-centred services. No new institutions shall be built and existing institutions must not be renovated. Financial resources need to be redirected from institutions to community-based services.

Article 4, paragraph a of the UN CRPD obliges state parties to “undertake all appropriate legislative, administrative measures for the implementation of the rights recognised in the present convention”. Paragraph d adds that countries shall “refrain from engaging in any act or practice that is inconsistent with the present Convention”.

The European Strategy on the Rights of Persons with Disabilities strives to mainstream disability throughout all policy area. Employment is one of the priorities of the Strategy: “More needs to be done to ensure better labour market outcomes for persons with disabilities”.

## EU State Aid legislation and the reform of subsidisation

Subsidies granted by national, regional or local authorities to individual undertakings might affect the internal market. Thus, Articles 107 to 109 of the Treaty on the Functioning of the EU grant the Union the competence to review, abolish or alter financial aid provided, if it meets certain criteria.

Europe’s Social Service Providers [have been arguing](#) for a long time that competition rules must not be the only criterion to decide whether financial support to an undertaking is permissible, if such aid is given to social services. Free markets are unable to ensure social services are offered at a price that is affordable for everyone throughout the entire EU. This stance deserves unequivocal support.

The European Union has, to a certain extent, accepted this argumentation.

At this point, it is important to recall Article 26 of the [Charter of Fundamental Rights of the European Union](#) which states that “[t]he 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.” Article 21 of the Charter prohibits discrimination on any ground, including disability.<sup>1</sup> EU State Aid competences are stemming from primary law. However, the Charter of Fundamental Rights has the status of primary law too.

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<sup>1</sup> Charter of Fundamental Rights of the European Union (2012), available at

## **Services of General Economic Interest**

The [decision of the European Commission](#) of 20 December 2011 outlines under which conditions financial aid in the form of public service compensations granted to services of general economic interest is permissible. Social services can be regarded as services of general economic interest if they offer “clearly identified services, meeting social needs as regards health and long-term care, childcare, access to and reintegration into the labour market, social housing and the care and inclusion of vulnerable groups”.

This rule deserves support, as long as it does not contradict legal obligations stemming from other laws and conventions, like the UN CRPD. Services which are not in line with the UN CRPD should not be regarded as services of general economic interest.

## **The General Block Exemption Regulation (GBER)**

The [regulation of the European Commission No 651 of 17 June 2014](#) declared certain categories of aid compatible with the internal market.

Section 6 “Aid for disadvantaged workers and for workers with disabilities” allows authorities to financially support undertakings which employ disabled people. Expenditures for wages, additional costs of employment or costs of assistance can be subsidised. This rule is supportive of the UN CRPD objective to ensure access to the regular labour market.

However, article 34, paragraph 2, section f, states: “The eligible costs shall be the following: ...where the beneficiary provides sheltered employment, the costs of constructing, installing or modernising the production units of the undertaking concerned, and any costs of administration and transport, provided that such costs result directly from the employment of workers with disabilities”.

Thus article 34, 2, f allows authorities to financially support sheltered workshops, which is not aligned with the UN CRPD.

## **Potential for reform**

According to the article 59 of the GBER, the regulation will apply until 31 December 2026. A renewed regulation will have to be drafted until then.

The removal of article 34, 2, f should make it more difficult for authorities to finance sheltered workshops and make more financial resources available to integrate disabled people into the regular labour market. The following amendment is proposed:

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### Section 6

#### Aid for disadvantaged workers and for workers with disabilities

#### Article 34

#### Aid for compensation the additional costs of employing workers with disabilities

<p><b>1. Aid for compensating the additional costs of employing workers with disabilities shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled</b></p> <p><b>2. The eligible costs shall be the following:</b></p> <p><b>(a) costs of adapting the premises;</b></p> <p><b>(b) costs of employing staff solely for time spent on the assistance of the workers with disabilities and of training such staff to assist workers with disabilities;</b></p> <p><b>(c) costs of adapting or acquiring equipment, or acquiring and validating software for use by workers</b></p>	<p>1. Aid for compensating the additional costs of employing workers with disabilities shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled</p> <p>2. The eligible costs shall be the following:</p> <p>(a) costs of adapting the premises;</p> <p>(b) costs of employing staff solely for time spent on the assistance of the workers with disabilities and of training such staff to assist workers with disabilities;</p> <p>(c) costs of adapting or acquiring equipment, or acquiring and validating soft-</p>
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<p><b>with disabilities, including adapted or assistive technology facilities, which are additional to those which the beneficiary would have incurred had it employed workers who are not workers with disabilities;</b></p> <p><b>(d) costs directly linked to transport of workers with disabilities to the working place and for work related activities;</b></p> <p><b>(e) wage costs for the hours spent by a worker with disabilities on rehabilitation</b></p> <p><del>(f) where the beneficiary provides sheltered employment, the costs of constructing, installing or modernising the production units of the undertaking concerned, and any costs of administration and transport, provided that such costs result directly from the employment of workers with disabilities.</del></p>	<p>ware for use by workers with disabilities, including adapted or assistive technology facilities, which are additional to those which the beneficiary would have incurred had it employed workers who are not workers with disabilities;</p> <p>(d) costs directly linked to transport of workers with disabilities to the working place and for work related activities;</p> <p>(e) wage costs for the hours spent by a worker with disabilities on rehabilitation</p>
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## Conclusion

The present briefing advances a concrete proposal for reform, a first step to bring EU State Aid legislation into line with the UN CRPD. Of course, there are more regulations which constitute the relevant acquis. However, the date for the review of the General Block Exemption Regulation is the closest to the present date. Proposals for the reform of other State Aid Regulations should be advanced, once those legislations are up for review.

## 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 organisations 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, deinstitutionalisation, democracy, self-representation, cross disability and self-determination. For more information, see: [www.enil.eu](http://www.enil.eu)



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