



# **Update to the Shadow report on the implementation of the UN Convention on the Rights of Persons with Disabilities in the European Union**

Submitted by the European Network on Independent Living for the combined second and third review of the European Union by the Committee on the Rights of Persons with Disabilities

24 February 2024

## **I. Introduction**

The European Network on Independent Living - ENIL submitted its [Shadow report on implementation of the UN Convention on the Rights of Persons with Disabilities in the European Union](#) (INT\_CRPD\_ICS\_EUR\_47874\_E) for the combined second and third review of the European Union (List of Issues Prior to Reporting) on 14 February 2022. The present update aims to complement the information provided in that Shadow report, taking into consideration developments in the three years between February 2022 and February 2025, as well as the information provided to the Committee on the Rights of Persons with Disabilities (CRPD Committee) by the European Union in its official [Combined second and third reports](#) (dated 18 April 2023.)

The Update to the Shadow report begins with an insight into the lived experience of the right to live independently and being included in the community by disabled people<sup>1</sup> from the European Union and then continues with references to the claims stated by the European Union in the official report, where ENIL holds complementary information. For each section covered, ENIL proposes recommendations for the European Union, to be included by the CRPD Committee in the Concluding Observations.

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<sup>1</sup> ENIL uses the term “disabled people” as a political choice that reflects the social model of disability.

This Update to the Shadow report does not aim to be exhaustive, but to provide additional information in key areas of ENIL's work.

## II. Implementation of Article 19 in the European Union: lived experience of disabled people

In 2024, ENIL conducted a comprehensive survey to assess disabled people's perceptions of their [access to the right to Independent Living](#) (IL), as set out in Article 19 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), in their countries. The survey was based on the [pillars of Independent Living](#)<sup>2</sup>.

The findings reveal significant dissatisfaction among disabled people living in the European Union with access to these pillars. Disabled people reported many challenges with communication support, access to the built environment, peer support, and accessible information. In these areas, rights are generally minimally guaranteed. While some legal or policy frameworks exist, their implementation is weak, enforcement is inconsistent, and barriers remain widespread.

Across all the other pillars - such as personal assistance, housing, supported decision making, social protection and benefits, education, and employment - none of the rights are fully recognized or promoted. Most countries fall short of providing consistent frameworks for these rights, leaving disabled people in a precarious situation where only some can exercise their rights, while many face systemic barriers. The survey also revealed significant regional disparities and differences based on the type of impairment in many areas of life.

Within the EU, the country where disabled people reported highest barriers was France, with a total score of 1.3 out of 5, followed by Spain, with 1.5, and Greece, with 1.8. Instead, the EU countries that scored higher were Sweden, with a score of 2.9, Malta, with 2.85, and Luxembourg with 2.5.

The survey findings reveal a concerning picture of what the state of independent living across the EU looks for disabled people, showing that even in countries with relatively higher scores, significant gaps persist in the protection and implementation of crucial rights. It is evident that systemic issues need to be addressed, such as a lack of awareness of the UNCRPD, insufficient co-production, and weak deinstitutionalisation efforts.

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<sup>2</sup> These are: communication support; personal assistance; social, political and judicial participation; access to the built environment; inclusive education and lifelong learning; accessible transport; advocacy; accessible housing; social protection and benefits; legal capacity and supported decision-making; information; peer support; employment; accessible and inclusive healthcare; and assistive technologies.

In this respect, the [Eurofound report on independent living](#), published in 2024, found that the number of children in residential institutions increased in 11 Member States. Taken together *“across the 25 Member States where comparison over time is possible, the number of children in residential care is estimated to have increased by 14%”*. With regard to adults, the number of people in residential institutions increased in 13 Member States, and the overall number across 24 Member States increased by 29%. A majority of Member States (19 out of 27) have more older people in residential care than in the past, while the same number report a reduction in the number of people with mental health conditions in hospital care.

The Eurofound report acknowledges that the concept of a residential institution is not well defined or uniform across countries, or even within the countries over time. ENIL is therefore concerned that the countries that report decreases in the number of children or adults in institutions - particularly Bulgaria, Lithuania, Romania, Greece, Poland, Portugal, Slovenia, Hungary, Estonia, Czechia, Slovakia, Latvia, Spain and Croatia - have mostly replaced large institutions with other types of segregated settings. Europe, and the EU, remains a continent with the highest number of disabled children and adults in institutional settings.

Further to these findings, the European Court of Auditors published a [special report](#) in 2023, in order to assess whether the *“Commission had taken effective action to support persons with disabilities”*. Some of the key problems it found, and which are highlighted in this shadow report, include: *“The criteria for disability status differ across the member states and the statistical data are not comparable, which may undermine mutual recognition. The 2021-2030 Strategy sets objectives, but some issues remain unresolved and the monitoring system in place does not show how EU funding helps improving the lives of persons with disabilities.”*

### III. ENIL’s response to the information provided by the European Union

#### 3.1. Purpose and general obligations (arts. 1–4)

- **Reply to issues raised in paragraph 1b of the list of issues**

*The European Union states that “disability mainstreaming takes place during legislative revisions and when preparing new legislative proposals”.*

While ENIL welcomes any efforts to mainstream disability within the EU, we are concerned that the silo approach remains. Within the European Commission, Directorate-General for Employment, Social Affairs and Inclusion (DG EMPL) is mainly responsible for the [rights of persons with disabilities](#) and the relevant law and policy. However, in

practice, other directorates-general (DGs) work on legislation affecting persons with disabilities too. The [Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of adults](#) (COM/2023/280 final) and the so-called [General Block Exemption Regulation \(Regulation \(EU\) No 651/2014\)](#) are two examples of insufficient coordination. Both regulations will be discussed later in this document (see section 3.2.3). Even within DG EMPL, the work on long-term care does not take fully into account UNCRPD requirements - as is evident from the [European Care Strategy](#). This lack of coordination results in serious misalignments with the CRPD.

During his [visit to the European Union](#) (21 - 31 March 2022), the former Special Rapporteur on the Rights of Persons with Disabilities Gerard Quinn noted that despite the existence of coordination mechanisms, these do not translate into disability mainstreaming across departments. Therefore, there needs to be strengthened coordination among relevant DGs in the European Commission on disability, including DG EMPL, DG Regional and Urban Policy (DG REGIO) on Cohesion policy, DG Justice and Consumers (DG JUST) on fundamental rights, DG Agriculture and Rural Development (DG AGRI) on the European Agricultural Fund for Rural Development (EAFRD) - which has been the subject of ENIL's [complaints](#) for being used to fund institutions for persons with disabilities in Austria - DG European Neighbourhood and Enlargement Negotiations (DG NEAR), DG International Partnerships (DG INTPA), and DG European Civil Protection and Humanitarian Aid Operations (DG ECHO) regarding neighborhood and external action. Coordination must also be reinforced between the Commission and the other institutions, namely the European Parliament and the Council.

The importance of disability mainstreaming is highlighted by ENIL's experience whilst working on EU funds. For years, ENIL has experienced hostile attitudes when asking questions about the misuse of EU funds, especially from DG REGIO. Most recently, in a meeting of the [Group of experts on the funds established by Regulation \(EU\) No 2021/1060](#), of which we are members, ENIL was told that we were not "in touch with reality" of disabled people in the EU by one of the DG REGIO Directors (currently the Director-General of another DG). The implication was that the Commission was better able to represent interests of disabled people, despite ENIL being a user-led organisation with members in most countries in Europe. This incident was reported to the Commission, but there was no follow up from the unit in question.

#### ***ENIL's proposal:***

<p><b>The Committee urges the EU to move the coordination of the UNCRPD implementation from DG EMPL to DG JUST or the Secretariat General, to ensure that all new legislation is screened and follows disability inclusion guidelines. The</b></p>
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**EU must put in place a monitoring mechanism for implementation of the UNCRPD with an oversight of all EU actions and with the full involvement of disabled people's organisations. This would lead to better coordination between the different DGs in the European Commission and between the Commission, the European Parliament and the Council, and ensure that the UNCRPD is mainstreamed in all matters of EU competence.**

- **Reply to issues raised in paragraph 1c of the list of issues**

*The European Union states that “The rules governing the EU cohesion policy funds contain specific provisions for persons with disabilities. They refer to the UNCRPD in their enabling conditions and require accessibility to be taken into account throughout the preparation and implementation of programmes.”*

The European Commission is responsible for monitoring the EU cohesion policy funds, and therefore the Commission must ascertain if the Member States fulfill horizontal and thematic enabling conditions. Importantly, the enabling conditions must remain fulfilled throughout the programming period (currently 2021 - 2027).

In order to establish how the European Commission evaluates whether the horizontal enabling conditions have been fulfilled, ENIL submitted an access to documents request to the Commission on 17 October 2023. We subsequently received a response focusing on the horizontal enabling condition (HEC) on the implementation and application of the UNCRPD in accordance with Council Decision 2010/48/EC<sup>3</sup>. Among the documents was a checklist used by the European Commission (see *Annex I*) and the correspondence between the Commission and the Managing Authority in Latvia. The checklist sets out the different criteria used to establish compliance with the enabling condition on the UNCRPD:

1. Objectives with measurable goals, data collection and monitoring mechanisms. Among other, desk officers at EC are expected to “*assess whether there are objectives with measurable goals for all aspects of the UN Convention for example when the MS has a comprehensive strategy and plan and in their reports to the UN they describe these points.*”
2. Arrangements to ensure that the accessibility policy, legislation and standards are properly reflected in the preparation and implementation of the programmes. Among other, the MS is expected to explain “*how the compliance with the*

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<sup>3</sup> It is important to mention that while ENIL also requested information regarding the horizontal enabling condition on the effective application and implementation of the EU Charter of Fundamental Rights, we were told that this was limited to the rule of law. This would mean that the implementation of Article 26 of the Charter (Integration of persons with disabilities), is not a condition for the use of EU funding.

*UNCRPD, anti-discrimination law on the ground of disability and accessibility will be checked at all stages of programming...”*

3. Reporting arrangements for the monitoring committee regarding cases of non-compliance of operations supported by the Funds with the UNCRPD and complaints regarding the UNCRPD submitted in accordance with the arrangements made pursuant to Article 63(6)CPR. Among other, *“MS should explain how, at which frequency, etc. they will report on both cases of non-compliance of operations supported by the Funds with the UN Convention and accessibility complaints. Concluding observations of the UN Committee on the rights of persons with disabilities should be taken into account.”*

Having reviewed the documents received in relation to Latvia, it is clear that the only party consulted by the Commission to establish whether the enabling conditions are being fulfilled is the Managing Authority (i.e. the relevant Ministry). Furthermore, it is enough for the MS to have a strategy in place to fulfill the enabling condition - regardless of the quality of the strategy, the level of compliance with the UNCRPD, or whether and how it is being implemented. We have not seen any evidence of how any potential cases of non-compliance with the UNCRPD are being reviewed or what the role of organisations of disabled people or independent human rights bodies is in this process.

Considering the evidence of continued investments into institutions for disabled people and the lack of accessibility when it comes to projects funded by the EU (see section 3.2.4.), and the fact that all MS are considered as having fulfilled the horizontal enabling condition in relation to the UNCRPD for 2021 - 2027, it is clear that while the intention behind the enabling conditions is positive, they do not work in practice.

In relation to enabling conditions, it is important to note that funds such as the Recovery and Resilience Facility have no similar conditionalities attached. This has enabled significant spending on institutions for disabled people, as will be discussed later in the document (see section 3.2.4.).

***ENIL’s proposal:***

**The Committee recommends that the EU reinforces the rules on implementation of the UNCRPD and the Charter of Fundamental Rights in its cohesion policy and other financial instruments, and ensures that the process of evaluating compliance with such rules is transparent. The EU must involve independent human rights bodies and disabled people’s organisations (DPOs) when establishing compliance with the UNCRPD and the Charter, as a precondition for MS to access EU funds.**

- **Reply to issues raised in paragraph 2a of the list of issues**

*The European Union states that “all Commission services have nominated their disability coordinators, responsible for mainstreaming disability within their departments”.*

Despite progress in appointing disability focal points, which is positive, we lack information on who they are and what they do, which would allow us to report on the outcomes of their work. In addition, the European Commission has drastically reduced contact information available on the EU's [Who is Who website](#). As a result, disabled people's organisations (DPOs) are unable to reach out to disability focal points, nor have we ever been contacted by them. We also lack information over the appointment of these focal points and their expertise on the UNCRPD and the right to independent living.

**ENIL's proposal:**

<p><b>The Committee recommends that the EU increases transparency over the appointment of disability focal points, their roles and tasks, makes their contact information publicly available and ensures meaningful involvement of disabled people and their organisations in their work.</b></p>
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- **Reply to issues raised in paragraph 3 of the list of issues**

*The European Union states that if MS “do not fulfill their obligations under EU law, the Commission acts by opening infringement procedures to guarantee that EU law is complied with.”*

To this date, the European Commission has not launched an infringement procedure on the basis of investments into institutions for disabled people (or the lack of accessibility or monitoring of EU funds, for that matter), despite numerous complaints from ENIL in this regard. On the contrary, in response to our complaints, the Commission has argued that no action can be taken due to the shared management principle.

In response to a [complaint about the funding of institutions in Austria](#) from EU's agricultural funds, the European Commission stated that “*the selection of operations to be funded by EAFRD falls under the competence of Member States, therefore, this is not in the Commission's remit. (...) It has to be underlined that the mere fact that a given infrastructure has been financed by the Union does not mean that the Member State implements Union law within the meaning of Article 51 of the Charter also with regard to the establishment using that infrastructure (3). The question whether the operation of such an establishment constitutes implementation of Union law within the meaning of that provision would have to be assessed separately and on its own merits, in the light of any normative or functional connection between that operation and provisions of Union law.*” (see Annex II for the full response)



ENIL has contested this position in light of the European Commission's 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 that *"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; here, implementation by the national authorities is specifically mentioned, particularly regarding non-discrimination and the integration<sup>4</sup> of disabled people.

**ENIL's proposal:**

**The Committee recommends that the EU makes effective use of the infringement procedure in cases of misuse of EU funds in violation of the UNCRPD and the EU Charter of Fundamental Rights.**

- **Reply to issues raised in paragraph 4 of the list of issues**

*The European Union states that "the budgetary procedure is strictly inter-institutional, with no involvement of external groups. However, persons with disabilities are involved in the preparation and implementation of some programmes." It adds that "the rules governing cohesion funds (e.g. ERDF and ESF+) contain various requirements in support of the rights of persons with disabilities. With regard to external actions, the Commission applies a human rights-based approach and services are usually requested to take the views of civil society organisations (CSOs) into account when preparing programming documents and during implementation."*

ENIL is not aware of any meaningful involvement of disabled people or DPOs in the preparation and - even more so - implementation of the funds, despite our active participation in multiple communities of practice and expert groups on the topic, i.e. the European Community of Practice on Partnership (ECoPP), the ESF+ Community of Practice on Social Inclusion, and the [Group of experts on the funds established by Regulation \(EU\) No 2021/1060](#).

It is clear from the EU's response to the issues raised in paragraph 21 of the list of issues (see section 3.2.4.) that the requirements contained in the rules governing cohesion funds do not prohibit investments in institutions for persons with disabilities. In fact, the EU's official report claims these are compatible with the UNCRPD and the right to independent living.

As noted in our [Shadow report from 2022](#), our [research on the use of EU funds for external action](#) revealed the following views held by DPOs and CSOs on EU's role in

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<sup>4</sup> The Charter refers to 'integration' of disabled people, rather than 'inclusion', which is indicative of the need for further changes to the EU law to ensure compliance with the UNCRPD.



supporting deinstitutionalisation: a) lack of projects on DI funded by the EU; b) DI understood as moving residents from large to small institutions; c) lack of clear criteria for the selection of projects; d) contracts awarded to beneficiaries with lack of expertise on DI; e) lack of sustainability of the newly-developed services; f) difficulty of accessing comprehensive information about the projects funded; and g) lack of involvement of DPOs in the programming, implementation and monitoring of EU funds.

ENIL members in the countries outside the EU have not reported any improvement in the situation since 2022, nor have we been provided with other evidence of progress in this area. What we consider to be a positive development is the adoption by DG EMPL of the [Guidance on independent living and inclusion in the community of persons with disabilities in the context of EU funding](#) in November 2024, which extends to EU funds in external action. However, it is too early to tell what impact this guidance will have on the ground, especially considering that it is a Commission Notice and therefore is not legally binding.

***ENIL's proposal:***

**The Committee asks the EU to ensure there is meaningful involvement disabled people and DPOs in the budgetary procedure, as well as preparation and implementation of the relevant programmes. The EU must ensure that all EU funds, including cohesion funds, development and humanitarian aid, and neighbourhood funds, support programmes that advance independent living in a manner consistent with the UNCRRPD, along with clear prohibitions of investing in institutions and other segregated settings. In order to do this, the European Commission must improve the monitoring of all EU funds, by establishing and financing a platform with all the relevant stakeholders at EU level - focused specifically on monitoring compliance with the UNCRRPD - and by ensuring that MS use the technical assistance funding to establish similar platforms at the national level. Finally, the Commission should collect data on how many MS use technical assistance to build the capacity of disabled people's organisations and other civil society to participate in the preparation, implementation and monitoring of programmes; where MS fail to do this, the Commission should apply sanctions or undertake other actions to ensure compliance.**

- **Reply to the issues raised in paragraph 5 of the list of issues**

*The European Union states that “major EU-level networks of OPDs receive financial support to implement a wide range of activities and strengthen their capacity, as well as that of their national or regional members”.*

ENIL is one of the beneficiaries of this financial support and would like to commend the European Union for supporting our activities and those of other EU-level networks, which

allows us, among other, to undertake different advocacy activities to advance the implementation of UNCRPD. We note that the funds cannot be used for advocacy at the UN level, in Geneva or New York, which hinders our ability to take part in the UNCRPD Committee sessions or the Conference of States Parties to the UNCRPD in New York.

We would also like to express our concerns about recent developments at the European Commission, whereby there is an initiative under way to undermine activities of [climate-focused NGOs](#) and their ability to advocate towards EU institutions. The recent [Guidance on funding for activities related to the development, implementation, monitoring and enforcement of Union legislation and policy](#), from the European Commission's Legal Service, establishes that those activities which may damage the EU's reputation should not be funded, which includes statements, reports, lobbying, etc. It suggests that the EU should finance training and capacity building activities instead. According to the Guidance, *“funding agreements requiring beneficiaries to undertake specifically detailed activities directed at EU institutions and some of their representatives may entail a reputational risk for the Union. Such specific activities can include sending letters, organising meetings or providing advocacy material to EU institutions or specific members of an institution; or identifying specific members or officials of an institution to evaluate or describe their positions, or to discuss specific political content or outcome. Work plans submitted by applicants should be carefully assessed to establish whether they could create such reputational risk if incorporated into a grant agreement.”*

We are concerned that this Guidance may negatively affect organisations of disabled people as well, and our ability to undertake advocacy activities directed at EU institutions, with the objective of ensuring full implementation of UNCRPD.

***ENIL's proposal:***

**The Committee recommends that the EU maintains adequate funding for advocacy activities for EU-wide disability networks and DPOs, including lobbying activities to promote full implementation of the UNCRPD, within and outside of the European Union. The EU must review the recent Legal Service guidance and align it with the General Comment 7.**

### 3.1. Specific articles

#### 3.1.1. Equality and non-discrimination (art. 5)

- **Reply to the issues raised in paragraph 6a of the list of issues**

*The European Union states that it “proposed an equal treatment directive to extend the EU anti-discrimination legal framework and ensure equal treatment of persons with*

*disabilities in the areas outside the field of employment (social protection, healthcare, education, and access to goods and services, including housing).... No agreement has been reached yet.”*

ENIL is extremely concerned about the EU's failure to adopt this directive, which was [first proposed in 2008](#). Evidence from the Concluding Observations in respect of all EU countries shows that extensive discrimination is taking place within the EU. While we understand agreement is needed from all Member States for the Directive to be adopted, we have concerns that the provisions in the current proposal are below the necessary minimum to effectively protect disabled people from discrimination. The consultation with civil society organisations, including DPOs, is also missing, putting into question the EU's commitment to ensure meaningful involvement of disabled people.

***ENIL's proposal:***

**The Committee recommends that the EU adopts without delay an ambitious equal treatment directive, to effectively protect disabled people against discrimination in the areas outside the field of employment, including their right to live independently in the community, regardless of their impairment or degree of support needed.**

### 3.1.2. Right to life (art. 10)

- **Reply to the issues raised in paragraph 11 of the list of issues**

*The European Union states that “investigating deaths of persons with disabilities in institutions is not an EU competence. Regional monitoring systems ... aimed at preventing deaths in institutions, fall within the competence of Member States.”*

While it is true that justice is a national competence, there are tools the EU can use to investigate deaths in institutions, particularly those financed by EU funds. In July 2023, ENIL [wrote to the European Commission](#) to express concerns about [horrendous human rights abuses \(including deaths\)](#) against disabled and older people in Romania's privately run, state-funded institutions, located in the community. The institutions were the textbook example of an inadequate deinstitutionalisation process, whereby disabled people were placed into smaller institutions, under the pretext of “community living” and where service providers acted with impunity, motivated entirely by money. Although we could not identify EU funding in the institutions concerned, similar settings have been financed by the EU and have been the subject of a complaint by ENIL ([CHAP\(2019\)3555](#)), which was dismissed by the European Commission. In its response to our complaint, the Commission stated: “... *the Commission supports the need to carefully monitor the operations supported under the call and also to ensure that their future development is compliant with the UNCRPD. The Commission will therefore undertake a number of*

*follow-up actions for monitoring purposes...*". However, despite asking for this information repeatedly, we were never able to establish how this monitoring is taking place and what the results of the monitoring are.

More recently, in September 2024, ENIL was [made aware](#) of a death of a 15-year old boy in a Croatian institution for disabled people, which has been in receipt of EU funds for the process of "transformation". To our knowledge, no investigation has been undertaken by the Commission to establish the circumstances of this case.

We wish to note that the EU does have competences in regard to the rule of law and fundamental rights, when a Member State is failing to investigate deaths or is failing to protect the rights of disabled people<sup>5</sup>. In addition, the European Public Prosecutor's Office is responsible for investigating, prosecuting and bringing to judgment crimes against the financial interests of the EU. As far as ENIL is aware, there has been no case to date involving institutions for disabled people, likely due to the limited scope of the Public Prosecutor's Office's competences or the fact that there is not as much scrutiny over residential care settings for disabled people. In most Member States, institutionalisation of disabled people is still seen as the only option for those that require a lot of support. Equally, disabled people who live in such settings are not protected or offered other alternative options in the community in case they become whistleblowers.

The European Commission can also use political pressure and dialogue to ensure that Member States fulfill their duties, fund remedy mechanisms, and ultimately report the Member State to the Court of Justice of the European Union.

We welcome the fact that the Commission has asked the Fundamental Rights Agency to undertake research on violence, abuse and torture in institutions. This report is instrumental in gathering and publicizing data, as well as raising awareness. However, it cannot be equated to an investigation, which could eventually lead to prosecution and a court judgment, as well as other sanctions against the MS concerned.

#### ***ENIL's proposal:***

**The Committee recommends that the EU uses all tools available, including the suspension of membership rights and funding, dialogue, and reports to the Court of Justice, in order to ensure deaths in institutions are appropriately investigated and that those responsible are brought to justice. Furthermore, the Commission should monitor the respect of victims' rights, due process, and access to justice, including access to remedies. The Committee encourages the European Public**

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<sup>5</sup> Article 7 of the Treaty on European Union allows the EU to suspend membership rights, such as voting rights in the Council, when a Member State is seriously and persistently breaching the principles on which the EU is funded. According to article 2 of the Treaty, these are respect for human dignity, freedom, democracy, equality, the rule of law and respect for fundamental rights, including the rights of persons belonging to minorities.

**Prosecutor's Office to investigate investments into residential care facilities by the Member States, especially in those countries with significant investments into such services.**

### 3.1.3. Equal recognition before the law (art. 12)

- **Reply to issues raised in paragraph 13b of the list of issues**

*The European Union states that it “is preparing a legislative proposal on the protection of vulnerable adults in cross-border situations, notably those with intellectual disabilities, to pave the way for its ratification by all MS.”*

ENIL is concerned that the [Proposal for the Regulation on Jurisdiction, Applicable Law, Recognition and Enforcement of Measures and Cooperation in Matters Relating to the Protection of Adults \(COM \(2023\) 280 final\)](#) will undermine the implementation of articles 12, 19, 14 and 5 of the UNCPRD in the EU. This has been confirmed by expert opinions published by the then UN Special Rapporteur on the Rights of Persons with Disabilities Gerard Quinn and the Independent Expert on the Enjoyment of All Human Rights by Older Persons Claudia Mahler, as well as [disability law scholars](#) Prof. Dr. Theresia Degener and Prof. Dr. Kathrin Römisch.

ENIL is particularly concerned about the following parts of the proposal:

- Article 1 (a) defines the most important subject matter of the proposed legislation, which is to “*determine the Member State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the adult*”.
- Article 2, 1 clarifies the scope: “*This Regulation shall apply in civil matters to the protection in cross-border situations of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests.*”
- Article 3 adds that the matters may include: “*(a) the determination of the incapacity of an adult and the institution of a protective regime, (b) the placing of an adult under the protection of a judicial or administrative authority, (c) guardianship, curatorship and analogous institutions, (d) the designation and functions of any person or body having charge of the adult’s person or property..., (e) decisions concerning the placement of the adult in an establishment or other place where protection can be provided*”.
- Article 21 intends to grant authorities the power to institutionalise disabled people under their control.

- Articles 45, 46, 47 would oblige MS to establish compulsory, interconnected, central protection registers, containing all details of measures taken against a person.

While the new Regulation would largely be procedural, those articles would introduce new substantial rules. The registers foreseen in articles 45, 46, 47 are not only supposed to contain mandatory information on cross-border cases, but all measures of protection and all confirmed powers of representation established over all persons deprived of their legal capacity in a Member State. The registers are supposed to be interconnected and provide central access for authorities within the EU. The European Commission estimates that the register would only be relevant in 2.7% of cross-border situations. Despite that, ENIL is concerned that all adults in need of protection would have to be included and would argue that the gathering and storing highly personal data on the grounds of disability constitutes discrimination and a breach of privacy.

The Proposal for the Regulation was drafted by DG JUST, which has not been open to consider potential breaches of the UNCRPD, nor has there been any meaningful involvement of DPOs in the work on this new legislation.

***ENIL's proposal:***

**The Committee recommends that the EU makes significant changes to the proposal for the Regulation [on Jurisdiction, Applicable Law, Recognition and Enforcement of Measures and Cooperation in Matters Relating to the Protection of Adults](#) . All terms and concepts pertaining to the deprivation of legal capacity must be removed from the regulation and replaced by supported decision-making. References to enforcement, as well as articles 21 (on institutionalisation), 45, 46 and 47 must be removed completely. If this is not possible, the proposal must be withdrawn.**

### 3.1.4. Liberty of movement and nationality (art. 18)

- **Reply to issues raised in paragraph 20a of the list of issues**

*The European Union states it is “working on a legislative proposal for a European Disability Card. The aim is to promote the free movement of persons with disabilities by ensuring that disability status is mutually recognised across the EU.”*

ENIL welcomes the adoption of the European Disability Card and the European Parking Card in 2024. It is a positive development, which will facilitate free movement of disabled people within the EU and allow holders to access to special conditions or preferential treatments offered by private or public providers.



ENIL regrets that the new European Disability Card will not eliminate all barriers to the freedom of movement for disabled people, especially those who would like to move to another EU country for longer periods of time - to take up work, join family members or for other reasons.

The remaining barriers to the freedom of movement include:

- The lack of full mutual recognition of disability status and the lack of recognition of entitlements to disability specific social services, such as personal assistance

When moving between Member States, disabled people have to pass the national disability assessment of the new country. In addition, personal assistance or personal budget eligibility tests have to be completed, if those schemes are available at all. Going through such assessments can take years and for disabled people who require support on an everyday basis, waiting for support for years is not an option. In practice, some Member States take confirmed disability status from countries they deem “reliable” into account when deciding about granting a disability status according to their national rules, but this is very inconsistent.

On the contrary, when it comes to non-disability specific social services, like unemployment benefits, health insurance claims or pension entitlements, [Regulation 883/2004](#) obliges Member States to recognise access to EU citizens without any additional assessments.

- The uneven access to self-directed support across the EU

At the moment, some Member States have personal assistance and/or personal budget schemes and some do not. The uneven state of self-directed support in the EU constitutes a further barrier to the freedom of movement of disabled people, including disabled workers<sup>6</sup>.

The EU should take more steps to ensure all Member States introduce personal budgets and/or personal assistance schemes, allowing disabled people to take up employment within their own and other Member States. The EU has competence to develop additional legal instruments based on Articles 151 and 153 of TFEU, which states, respectively, that EU social policy has the objective to promote “*employment, improved living and working conditions, so as to make possible their harmonisation*” and allow the EU to “*support and complement the activities of the Member States*” in the areas of social security and social protection of workers.

### ***ENIL's proposal:***

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<sup>6</sup> According to article 45 of the Treaty on the Functioning of the EU (TFEU), all workers are free to move between Member States.



**The Committee recommends that the EU adopts legislation establishing the full and automatic recognition of disability status and entitlements to disability specific services such as allowances, personal budgets or personal assistance schemes within the EU. The EU should promote the introduction of personal budgets, as means of ensuring adequate level of personal assistance as a key tool for independent living, and user-led Centers for Independent Living in all Member States. In this respect, the Commission should consider adopting a directive on joint standards for personal budgets for disabled people.**

### 3.2.4. Living independently and being included in the community (art. 19)

- **Reply to issues raised in paragraph 21a of the list of issues**

*The European Union states that “the Commission plans to issue guidance for MS on the use of EU Funds to improve independent living and inclusion in the community of persons with disabilities... In 2024, the Commission will also present a framework for Social Services of Excellence for Persons with Disabilities.”*

ENIL [welcomes the adoption](#) of the [Guidance on independent living for persons with disabilities to live independently and to be included in the community](#) by the European Commission in November 2024. We also welcome the meaningful involvement of DPOs, including ENIL, in the work on this document, which should be replicated for all Commission initiatives. Thanks to the consultative nature of the process, the final version contains many positive elements and references throughout to the UNCRPD, the General Comment 5 and the Guidelines on deinstitutionalisation, including in Emergencies.

We find it particularly important that the Guidance does not foresee the option of transitional or any other spending on institutions and advises MS that funds should be not used for this purpose. The Guidance also warns against replacing large institutions with smaller settings, which are still institutions (such as group homes). It also does not suggest MS should build day care centres, but encourages them to invest in inclusive education.

As the Guidance has only been published two months ago, we cannot comment on the impact it has on the use of EU funds. We are concerned, however, that the non binding nature of the Guidance is emphasised throughout the document. There is also nothing to say that the Guidance replaces internal legal notices issued by the Commission services on the topic of ‘transition from institutional to community-based care’, and which allow institutions to be funded by the EU. For the Guidance to be implemented, the EC must ensure that all EC services, as well as the Managing Authorities in the MS, but also civil society and other stakeholders understand the content and that the use of EU funds is conditional on following the Guidance.

We also note that the good practices that will accompany the Guidance have still not been published by the Commission, therefore we cannot comment on this document.

Regarding the framework for Social Services of Excellence for Persons with Disabilities, ENIL has submitted its [proposal to the Commission](#) in December 2023 and has taken part in consultations, but we have not seen a draft of the document, which has been delayed. It would be important that the framework is aligned with the Guidance on independent living, to ensure a consistent approach by the Commission and the MS to the development of services (both specialised and mainstream).

***ENIL's proposal:***

**The Committee recommends that the EU applies the Guidance on independent living for persons with disabilities to live independently and to be included in the community as a useful tool to promote UNCRPD compliance when assessing and monitoring EU funds. The Guidance must be used consistently across all the Commission services and by the Managing Authorities, and it should also be promoted among civil society and other stakeholders. The Committee calls on the EU to involve disabled people's organisations in finalising the Framework for Social Services of Excellence for Persons with Disabilities, and to ensure that the text is compliant with the UNCRPD, following the example of the Guidance on independent living.**

- **Reply to the issues raised in paragraph 21b of the list of issues**

*The European Union states that it “supports MS in making progress towards deinstitutionalisation and steering investments towards family and community-based solutions”. It adds that the “national authorities can in some cases use EU funding for residential facilities, since investments in institutions are not prohibited by the applicable legal framework”. In such cases, the EU claims that “the programming documents comprise specific safeguards. These safeguards require to ensure compliance with the UN CRPD, including general comment No. 5 and the concluding observations, the national deinstitutionalisation strategy, the EU Charter, and the strategy.”*

ENIL remains deeply concerned about the EU's misinterpretation of the obligations stemming from the UNCRPD, despite the fact that investments in institutions are clearly prohibited, as set out in Article 19 of the UNCRPD and explained in the General Comment 5, the Guidelines on deinstitutionalisation, including in Emergencies and the CRPD Committee's jurisprudence. The right to independent living is incompatible with any form of institutionalisation, which amounts to discrimination.

We strongly disagree with the claim that there is no legal framework to prevent investments in institutions, with the EU and all MS being party to the UNCRPD. In fact, the enabling condition on the UNCRPD - which the EU official report refers to in many

places as a guarantee of compliance with the Convention - should indeed act as a prohibition, but to our knowledge, the enabling condition on the UNCRPD is not applied in practice. The reality shows that investments of EU funds into institutions are commonplace and are deemed acceptable (and necessary) by the Commission.

A number of Operational Programmes (OPs) for 2021 - 2027, which lay down how MS plan to spend the EU funds and which are approved by the European Commission, contain plans for investments in institutions (for example, Czech Republic, Slovakia, Poland and Portugal). When it comes to Portugal, for example, ENIL's analysis of the Operational Programme shows what justification is used for such investments. In [Madeira](#), despite the clear objectives set out in the OP on inclusion and the commitments to not reverse deinstitutionalisation efforts, a clause allows exceptions to this when negotiated with the European Commission.<sup>7</sup> We expect that, as the internal Legal services note (see *section 3.2.4.*) allows for investments in institutions in exceptional cases due to local circumstances - which may include islands - these investments will be approved. Needless to say, the notion of exceptionality based on local circumstances such as geography is not compliant with the UNCRPD.

In order to get a better understanding of the projects funded by the EU with the objective of “deinstitutionalisation”, ENIL carried out an extensive analysis of the Commission's [Kohesio platform](#) during 2024. In total, we examined 287 “deinstitutionalisation” projects in 11 countries financed by EU funds as part of the 2014 - 2020 programming period and found numerous examples of investments into segregated settings. There were many projects consisting of the transformation of large institutions into small group homes; for instance, an example was found in Hungary of replacing an institution for 72 persons with psycho-social disabilities with a new structure, consisting of 6 apartments with 12 persons each. In addition, we found examples of investments into large institutions, small group homes and segregated day care centers; several of these were specifically targeted at disabled children or older persons.<sup>8</sup> More details are available in our [briefing](#), finalised in December 2024, as well as our [2020 study](#) on the use of EU funds during 2014 - 2020 and the impact on independent living.

ENIL, in cooperation with our members, has submitted complaints to the Commission about investments in institutions using its system for [reporting a breach of EU law by an EU country](#). We have complained about violations of the UNCRPD and EU Fundamental Rights Charter in relation to disabled adults and children in Bulgaria, Poland, Hungary,

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<sup>7</sup> Madeira Regional Programme 2021-2027, available at [Texto\\_integral\\_sfc2021-PRG-2021PT16FFPR001-1.2\\_PRMADEIRA.pdf](#) (portugal2030.pt)

<sup>8</sup> ENIL (2024). *Analysis of support to 'transition from institutional to community-based care' in the framework of the European Union's Cohesion Policy*, available at [https://enil.eu/wp-content/uploads/2025/01/ENIL-Briefing-on-EU-Funds\\_with-Annex.pdf](https://enil.eu/wp-content/uploads/2025/01/ENIL-Briefing-on-EU-Funds_with-Annex.pdf)

Portugal, Romania and [Austria](#) (multiple complaints). All our complaints, which we made public on our [website](#), were dismissed by the Commission.

When it comes to accessibility of infrastructure projects funded by the EU - which is also part of the enabling condition on the UNCRPD - [research by organisations](#) in Hungary, Slovakia and the Czech Republic from 2022 revealed that: *“All three countries reported a noticeable gap between written law and how it is implemented and enforced by authorities. Regulations are often breached in EU-funded infrastructural investments as well, for example when authorities build new or refurbish old buildings.”* ENIL is concerned that the same is true for other countries using EU funds, but due to the lack of independent monitoring, a comprehensive MS or EU overview would be extremely challenging to achieve.

It is worth noting that information about projects funded from the 2021 - 2027 programming period is not yet available from the Commission, therefore it is impossible to complete a similar analysis as for the previous period. This is indicative of the lack of transparency in relation to the use of EU funds by the MS and makes it much more challenging to file complaints.

***ENIL's proposal:***

**The Committee asks the EU to ensure that the enabling condition on the compliance with the UNCRPD and the EU Charter on Fundamental Rights remains in the next budgetary period, but that adequate processes are put in place to ensure this is applied in practice, rather than remaining a box ticking exercise. The Committee recommends that the EU puts in place a clear prohibition of investments in institutions, small-group homes, special schools, and other segregated settings for disabled people, along with strong safeguards to prevent and sanction such investments. The Committee calls on the EU to significantly improve transparency of EU funds, making information about projects available to the public before they are completed - thus allowing for prevention of poor investments - and that it ensures its complaints mechanism is fit for purpose.**

- **Reply to the issues raised in paragraph 21c of the list of issues**

*The European Union states that “the Legal Service does not revise its notes, which are delivered upon request from the Commission services.”*

Having submitted a [complaint to the European Ombudsman](#) about the Legal Service note in 2019, we can confirm that it has been impossible to get the Commission to discuss it, let alone revise it.

The Committee should be aware of another internal document, from January 2022, by DG EMPL, DG REGIO and the Cabinet of Equality Commissioner Dalli<sup>9</sup>, entitled “Deinstitutionalisation and financial support from the EU Budget for residential care facilities”. This undated document, which covers the 2021 - 2027 Cohesion framework and REACT-EU funding contains many arguments why the Commission should invest in residential care facilities. Among other, it states that residential care facilities are needed for persons with support needs “*who choose such setting (e.g. who have disabilities or pathologies that make independent living very complicated, dangerous or impossible and who do not feel safe anymore to live alone, especially in cases where families cannot take care of them or they have no family.)*”

Following the adoption by the Commission of the [Guidance on independent living and inclusion in the community of persons with disabilities in the context of EU funding](#) (C(2024)7897 final), which states that MS should not use EU funds for institutions, there is a question of what status the Legal Service note and other internal documents (such as the one from January 2022) have, and to what extent MS will be allowed to use them. It is clear from our examination of funding and of Operational Programmes that the internal guidance on residential care encouraged the approval of investments into institutions. It is also clear that these documents are issued ‘internally’ (in secret), without any involvement of disabled people’s organisations.

Considering the non-binding nature of the Commission’s Guidance on independent living from 2024 and the impact of the legal service note on allowing investments into institutions, ENIL has been calling for new internal legal guidance, compliant with the UNCRPD standards, and therefore including a clear prohibition of investments into any kind of segregation, from institutions to small group homes. Positive investments into community-based services cannot serve to justify investments in institutions.

We suggest that a new legal note should, similarly to the Commission’s Guidance on independent living, be developed with the meaningful involvement of disabled people and their organisations. It should refer to the UNCRPD, the General Comment 5, and the Guidelines on deinstitutionalisation, including in Emergencies, in terms of what investments EU funds must promote. These should include personal assistance, accessible housing, user-led Centers for Independent Living, accessibility of the built environment and mainstream services, or the development of deinstitutionalisation strategies and plans. The note should also include paths of action for the EU in case of violations. This can be done through supporting the establishment of mechanisms for

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<sup>9</sup> This document is available from ENIL upon request.

reparations, the use of the infringement procedure, and political pressure towards Member States when investments into institutions are planned.<sup>10</sup>

***ENIL's proposal:***

**The Committee asks the European Commission's legal service to review their guidance on investments in institutions funded by the EU in a manner that is aligned with the UNCRPD, with a clear prohibition of investing in institutions and pathways for sanctions in case there are violations. The Committee calls on the new Commissioners to ensure that any internal documents on the topic of funding residential care settings funded by the EU are fully compliant with the UNCRPD, thus making investments into residential care for disabled people ineligible.**

*The European Union also states that “the RRF also supports investments in residential care infrastructure and related services that are compliant with certain conditions, including the principles of independent living”.*

ENIL notes that the General Comment 5 states, in para 16c that “*Both independent living and being included in the community refer to life settings outside residential institutions of all kinds.*” Institutions cannot, therefore, be compliant with the principles of independent living.

We are, however, in agreement with the EU statement that the RRF has been used to fund institutions in the MS. The RRF does not include any conditions linked to the UNCRPD or the EU Charter on Fundamental Rights. Notably, the [European Court of Auditors](#) has raised the alarm about the lack of transparency in the investments.<sup>11</sup>

Despite this lack of transparency and the difficulties in monitoring how RRF is used, we have been alerted by a number of ENIL members about specific investments into institutions, which they mostly learn from local news. As an example, an [investment of almost 16 million euros](#) was approved for the building of 15 institutions and day-care centers for older and for disabled people in the Spanish region of Malaga. In Bulgaria, RRF will be used to fund 250 new long-term care facilities - 125 for residential care and 125 for day care, for disabled people; the renovation of 82 existing facilities for residential care for older people; energy efficiency renovations of 840 facilities for social services; all by 30 June 2026. This is described as “modernisation of long-term care” by the

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<sup>10</sup> For further reading, see ENIL (2024). *Reimagining EU Funds: Recommendations for the European Commission to promote independent living*. Available at <https://enil.eu/wp-content/uploads/2025/01/Reimagining-EU-Funds-December-2024.docx>

<sup>11</sup> European Court of Auditors (2023). *Special report 26/2023: The Recovery and Resilience Facility's performance monitoring framework – Measuring implementation progress but not sufficient to capture performance*, available at [Special report 26/2023: The Recovery and Resilience Facility's performance monitoring framework | European Court of Auditors \(europa.eu\)](#)



[Commission](#). In [Croatia](#), 8 new institutions for older people will be funded through RRF, with an amount of 49 mil Euros.

***ENIL's proposal:***

**The Committee recommends that the European Union puts conditions in place, as well as adequate monitoring systems, to ensure that any funding, including the Recovery and Resilience Facility, is compliant with the UNCRPD. Regardless of the urgency or temporary nature of funding, the rights of disabled people and other groups must not be violated using EU funds.**

- **Reply to the issues raised in paragraph 21d of the list of issues**

*The European Union states that “The partnership principle is embedded in the cohesion policy regulations. The Code of Conduct on Partnership aims to enhance the possibility for diverse stakeholders to be involved in the preparation, implementation, and evaluation of programmes, including by participating in monitoring committees (...). As an example, the Commission set up the European Community of Practice on Partnership 2021–2027, where persons with disabilities are represented by the European Network on Independent Living and the Romanian Federation of Organisations of Persons with Disabilities.”*

ENIL welcomes the Commission's reference to our participation in the [European Community of Practice on Partnership](#) (ECoPP) to demonstrate the involvement of disabled people as partners in EU funds. While ENIL is an active member in ECoPP and has led a taskforce in 2024, membership of ECoPP cannot equate to active participation of disabled people and their organisations in Monitoring Committees at national level. It is worth noting that ECoPP does not have as its mandate the preparation, implementation or evaluation of Member States' programmes, or specific investments. Its role is:

- to facilitate exchange of experience with regard to partnership;
- to stimulate capacity building;
- to disseminate relevant outcomes, in particular good practice and innovative approaches;
- to review the application and functioning of the European Code of Conduct and prepare proposals for its possible update - although this is now in hiatus.

At the national level, Monitoring Committees should oversee the implementation of EU funds and the [European Code of Conduct on Partnership](#) (Regulation (EU) No 240/2014) requires inclusion of those most excluded, such as disabled people. However, our members and allies report that it is extremely challenging to participate in these Committees due to their lack of capacity, resources and information. Those that are part of the Committees have informed us that they perceive their participation as tokenistic: they do not receive sufficient information about ongoing or planned investments, they are



not properly consulted, and when they express disagreement their complaints are dismissed.

**ENIL's proposal:**

**The Committee recommends that the EU reinforces the implementation of the partnership principle in the next budgetary period, ensuring meaningful participation of disabled people and their representative organisations in national Monitoring Committees.**

- **Reply to the issues raised in paragraph 21e of the list of issues**

*The European Union states that “ensuring effective administrative or judicial procedures and access to justice is primarily the responsibility of MS.” It also states that the 2021 - 2027 framework for cohesion policy funds “includes a horizontal enabling condition on the effective application and implementation of the Charter.”*

While it is true that effective administrative or judicial procedures are the responsibility of Member States, there are actions that the European Commission is failing to take in its responsibility to monitor EU funding.

As stated earlier in the document, there is a procedure to [report breaches of EU law](#) by an EU country to the Commission, which can be used for cases of misuse of EU funds. ENIL has made use of this procedure on a number of occasions to challenge investments in institutions - including for children - but the Commission has not found any violations of the Charter or the UNCRPD. Mostly, the European Commission has referred to the shared management principle to avoid responsibility, and has admitted that they consider investments into institutions acceptable: *“in the Commission’s view, promoting the transition from institutional to community-based services might require in some cases transitory solutions aiming at securing healthy and secure living conditions all along this process without undermining the overall aim of Article 19 UNCRPD” (see Annex II).* This view is not substantiated by any provisions of the UNCRPD, General Comment 5 or the Guidelines on deinstitutionalisation, including in Emergencies.

In examining ENIL’s complaints, the Commission has given priority to the self-assessment of the Managing Authorities (on whether they violate the UNCRPD/EU law or not) and has dismissed evidence by independent human rights institutions and disabled people’s organisations.

The challenge of disabled people accessing justice is also demonstrated by the [case](#) which ENIL, the Centre for Independent Living Sofia and the Validity Foundation took to the European Court of Justice in 2019, challenging the use of EU funds for building small-group homes in Bulgaria. The Court found that ENIL and others had no standing, as the claimants should be the people directly affected. This is despite the fact that most of the

people directly affected have been deprived of legal capacity and therefore cannot bring a claim themselves to a court of justice.<sup>12</sup>

With regard to the Charter, which the EU report notes is an enabling condition, the Commission has questioned the applicability of the Charter in ENIL's complaints against investments of EU funds into institutions, stating that: *"the mere fact that a given infrastructure has been financed by the Union does not mean that the Member State implements Union law"*.

**ENIL's proposal:**

**The Committee recommends that the EU puts in place a procedure for complaints that is impartial and independent of the Managing Authority influence, and that it takes appropriate action in cases of misuse of EU funds in violation of the UNCRRPD, including but not limited to the infringement procedure.**

### 3.2.5. Respect for the home and the family (art. 23)

- **Reply to the issues raised in paragraph 25a of the list of issues**

*The European Union states that "The European Care Strategy aims for quality, affordable, and accessible care services across the EU as well as for improving the situation for both care receivers and the people caring for them."*

In 2022, the EU adopted the European Care Strategy<sup>13</sup>. The objective was to improve long-term care for older and disabled people. Throughout the discussions on the Care Strategy, ENIL highlighted that the term 'care' has been rejected by the UNCRRPD and its General Comments in favour of 'support'.

Regrettably, the Commission has failed to ensure compliance of the Care Strategy with the UNCRRPD and its own Strategy on the Rights of Persons with Disabilities 2021 - 2030. As a result, the Care Strategy, which is equally concerned with the rights of 'care providers' and 'care receivers' does not sufficiently encourage Member States to provide those in need of support with self-directed services in their own home, in the community. Nor does it do enough to ensure involvement of disabled (and older people) in the development of all policies and initiatives which concern them. It merely states Member States should increase *"the offer and mix of professional long-term care services*

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<sup>12</sup> Case T-613/19: Order of the General Court of 2 September 2020 — ENIL Brussels Office and Others v Commission, available at [EUR-Lex - 62019TB0613 - EN - EUR-Lex](#)

<sup>13</sup> COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on the European care strategy. COM/2022/440 final. Available at [EUR-Lex - 52022DC0440 - EN - EUR-Lex](#)

*(homecare, community-based care and residential care) ... and ensure that long-term care services and facilities are accessible to people with disabilities”.*

The European Care Strategy, which ENIL believes might lead to further investments into residential care for disabled people and indefinitely delay deinstitutionalisation efforts in the EU, is indicative of the lack of coordination between different departments in the Commission and the failure to mainstream UNCRPD across all policy areas.

**ENIL’s proposal:**

**The Committee recommends that the EU revises its long-term care strategy in order to align it with the UNCRPD and to empower disabled people as rights holders, in charge of their own lives and the support they receive, and not as recipients of care, in consultation with disabled people and DPOs.**

### 3.2.6. Work and employment (art. 27)

An area that has not been addressed in the list of issues or the European Union’s report is the use of state aid to finance sheltered employment. So far, state aid legislation has not been taken into account by the Commission as an area which requires reform to ensure UNCRPD compliance. However, exceptions and absence of regulation has led to widespread financing of sheltered workshops. [Research](#) by the European Association of Service Providers for Persons with Disabilities (EASPD) found that sheltered employment is widely used throughout the EU.

According to the General Comment 8 on the rights of persons with disabilities to work and employment, sheltered employment cannot be considered a measure for the progressive realisation of the right to work. Yet, there is a body of EU law that supports the maintenance and growth of the sheltered employment sector.

- Articles 107 - 109 TFEU grant the Union the competence to review, abolish or alter financial aid provided by national authorities to undertakings, if it meets certain criteria. EU state aid legislation regards any entity that sells goods and services as an undertaking, with their legal status being irrelevant.
- The [decision of the European Commission](#) of 20 December 2011 “*on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest*” outlines under which conditions financial aid in the form of public service compensations granted to services of general economic interest is permissible<sup>14</sup>.

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<sup>14</sup> 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”.

There is no reservation for the awarding of state aid to providers of institutions or sheltered employment.

- [Directive 2014/23/EU\[2\] on the award of concession contracts](#) and [Directive 2014/24/EU\[3\] on public procurement](#) regulate public procurement in various areas, including social services. There is no reservation for the awarding of procurement contracts to providers of institutions or sheltered employment.
- [Regulation of the European Commission No 651 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty](#) - also called the General Block Exemption Regulation - grants national authorities permission to financially support undertakings which employ disabled people. 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*”.

[ENIL's research](#), carried out in 2023 - 2024, discovered 12 cases in which Member States subsidised sheltered employment with EUR 550,43 million. For example, in Sweden, the government is subsidising the provider of sheltered employment Samhall Aktiebolag with EUR 500 million per year. Samhall is employing 19,135 disabled people. In Germany, the government of Bavaria is subsidising the construction of a sheltered workshop for 240 disabled people with EUR 10,6 million.

***ENIL's proposal:***

**The Committee recommends that the EU reforms its rules on services of general economic interest and introduces reservations against state aid being granted to institutions and sheltered employment for disabled people. Specifically, the EU should amend Directives 2014/23/EU and 2014/24/EU, removing the possibility of awarding public procurement contracts to institutions and sheltered employment facilities. The EU should also amend the General Block Exemption by removing the article 34,2,f, thus introducing a prohibition of using state aid to finance sheltered employment.**

### 3.2.7. International cooperation (art. 32)

- **Reply to the issues raised in paragraph 33a of the list of issues**

*The European Union states that “The EU’s work towards the implementation of the UNCRPD globally is guided by external action policy documents, notably the 2017 European Consensus on Development, the EU Action Plan on Human Rights and*

*Democracy 2020–2024, the EU Human Rights Guidelines on Non-Discrimination in External Action, and the EU Guidelines on EU Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.”*

ENIL notes that the EU does not address the Committee’s question of developing a specific disability strategy for its international cooperation. The [EU Strategy on the Rights of Persons with Disabilities 2021-2030](#) includes a section on international cooperation, with five specific initiatives, but these aim to strengthen existing actions instead of creating new objectives and goals. The actions lacked defined timeframes, allocated budget and indicators.<sup>15</sup> As the largest donor of Official Development Assistance globally, this is not sufficient to guide disability-inclusive development aid. Disabled people, DPOs and Centers for Independent Living globally struggle to access external EU funding, due to the inaccessibility of the calls and the difficulty to access funding as small organisations.

In the European Union Guidance Note on "Leaving no one behind - Disability Inclusion in EU External Action", which guides EU’s staff and partners working in external action, the EU recognises the need for its staff and delegations around the world to further work on the implementation of the UNCRPD. The EU has further committed to use of the Organisation for Economic Cooperation and Development’s Development Assistance Committee (OECD-DAC) disability marker to screen 100% of its Official Development Assistance.

We welcome this initiative as an example of the EU’s increasing efforts to promote disability-inclusive development among its staff and partners, but a specific disability inclusion strategy with clear goals and priorities remains missing.

In addition, the main financing instrument for international development, the Neighbourhood, Development and International Cooperation Instrument - Global Europe (NDICI), merging several former financing instruments, lacks specific goals to advance the UNCRPD, only mentioning disabled people along other marginalised groups. Currently, none of the existing plans, strategies and programmes prioritise the right to independent living and being included in the community.

***ENIL’s proposal:***

**The Committee asks the European Union to develop a strategy on disability inclusion in development aid, with defined timeframes, objectives and indicators, in consultation with disabled people and their representative organisations, including those in low and middle-income countries. This strategy shall include promotion of the UNCRPD globally, and address the right to live independently in**

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<sup>15</sup> COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030. COM/2021/101 final, available at [EUR-Lex - 52021DC0101 - EN - EUR-Lex](#)

**the community, investing in community-based services and support and promoting the development of Centers for Independent Living.**

*The European Union states that “in the context of the EU’s enlargement policy, the Commission reviews the state of play and progress made by partner countries on issues related to the rights of persons with disabilities, including progress towards adopting the EU acquis in its annual Enlargement Package of reports.”.*

ENIL has members in all candidate countries (Albania, Bosnia and Herzegovina, Georgia, Moldova, Montenegro, North Macedonia, Serbia, Türkiye and Ukraine), with whom we collaborate on the topic of enlargement policy. The involvement of disabled people in the process varies from country to country. The focus on deinstitutionalisation and the implementation of the right to independent living during accession, as part of the reforms required by the European Commission, is also highly dependent on the state of the negotiations between the Commission and the national authorities, the priorities for the candidate country, and the staff at the EU delegation in the candidate country.

ENIL members in North Macedonia and Montenegro have reported the use of EU funds to build institutions for disabled people. For instance, in North Macedonia, in December 2019 the EU approved a [project](#) of moving 200 disabled people from the Demir Kapija institution into smaller group homes.

In the case of Ukraine, the European Commission pointed out the need to prioritise deinstitutionalisation in regard to children, but regarding adults, the report on accession states that *“with regard to deinstitutionalisation of adults with disabilities, action and investment are needed to provide proper infrastructure for foster families, social services and healthcare, in particular at local and regional level. This should also include the adoption of measures to support inclusive education and access to employment for persons with disabilities.”*<sup>16</sup> While positive, current deinstitutionalisation efforts are focusing exclusively on children; additionally, the development of foster families for disabled adults is infantilizing and will not guarantee the right to independent living. The same practice has been criticised by the CRPD Committee in relation to Croatia during the 2015 review.

In addition, after granting candidate status to Ukraine, the EU merged the different aid instruments into the Ukraine Facility. The [Regulation \(EU\) 2024/792](#) of the European Parliament and of the Council of 29 February 2024 establishing the Ukraine Facility, however, fails to properly address the need for deinstitutionalisation for disabled children

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<sup>16</sup> COMMISSION STAFF WORKING DOCUMENT Ukraine 2024 Report, accompanying the document COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF REGIONS 2024 Communication on EU enlargement policy, available at [Ukraine Report 2024 - European Commission](#)



and adults, only referring to alignment with the UNCRPD at large, but without specific goals and objectives. The consultation process for this Regulation was not inclusive of disabled people and children's rights groups, which were not allowed to see the draft before being required to provide "feedback".

***ENIL's proposal:***

**The Committee recommends that the European Union integrates deinstitutionalisation for disabled children and adults as an essential element of the accession process, in a manner consistent with the Guidelines on deinstitutionalisation, including in Emergencies. Funds provided to candidate countries or via the Ukraine Facility must not be used to finance institutions or other segregated settings.**

## 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). **Contact person:** Rita Crespo Fernandez, [rita.crespo-fernandez@enil.eu](mailto:rita.crespo-fernandez@enil.eu)



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## IV. Annex I

### **Common understanding of the horizontal enabling condition on the implementation and application of the United Nations Convention on the rights of persons with disabilities (UNCRPD) in accordance with Council Decision 2010/48/EC**

A national framework to ensure implementation of the UNCRPD is in place that includes:

1. Objectives with measurable goals, data collection and monitoring mechanisms.
2. Arrangements to ensure that the accessibility policy, legislation and standards are properly reflected in the preparation and implementation of the programmes.
  - 2a. Reporting arrangements to the monitoring committee regarding cases of non-compliance of operations supported by the Funds with the UNCRPD and complaints regarding the UNCRPD submitted in accordance with the arrangements made pursuant to Article 63(6)CPR.

**This enabling condition is a continuation of the 2014-2020 ex ante conditionality on disability. It will contribute to the implementation of the European Pillar of social Rights and in particular its disability components, including principle (No 17) and other principles where disability is mainstreamed (No 1, 3, 9, 11, 18, 19, 20).**

**The objective of this enabling condition is to ensure that the Funds are implemented in an efficient and effective manner in accordance with the UN Convention. This means that persons with disabilities should derive the same benefits from the use of the funds as any other persons and that their rights are respected.**

**Criterion by criterion (based on the Provisional common understanding reached by the co-legislators):**

#### **1. Objectives with measurable goals, data collection and monitoring mechanisms**

The national framework to ensure the implementation of the UNCRPD should have objectives with measurable goals. The national framework can be one single document, adopted by the national authorities, attached to the self-assessment. It should foresee data collection and monitoring mechanisms, indicators, a timeline, a list of responsible bodies and partners involved. The actions to implement the articles of the UNCRPD should be clearly described. We expect desk officers to assess whether there are objectives with measurable goals for all aspects of the UN Convention for example when the MS has a comprehensive strategy and plan and in their reports to the UN they describe these points. To be noted, the UNCRPD requires that the monitoring mechanism is independent from the focal point<sup>1</sup>.

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<sup>1</sup> The focal point is nominated when ratifying the UNCRPD. Normally is a ministry or a department of the public administration that has the responsibility for implementation.

The national implementation reports and concluding observations of the UN Committee on the rights of persons with disabilities<sup>2</sup> (<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx><sup>3</sup>) should be used as one of the reference documents. The shadow reports from NGOs published in the UNCRPD website together with the State Party reports can also be useful.

There can be only one assessment for all the CPR Funds for this criterion, as it refers to the overarching framework (it is not a programme specific criterion).

#### **Guiding questions:**

- Is there a national framework, adopted by national authorities, in place to implement the UNCRPD in its entirety?
- Does the national framework for the implementation of the UNCRPD include well-defined objectives with measurable goals (i.e. how the objectives will be considered as achieved)?
- Does the national framework explain whether a data collection mechanism is in place, i.e. which data will be collected, who will collect it and how, at which frequency? How will data be used? Data should address policy and legal developments, barriers in the environment for persons with disabilities and the situation of persons with disabilities compared to those without disabilities.
- Does the national framework explain how the UNCRPD implementation will be monitored, i.e. who will be in charge of monitoring it, how often it will be monitored, and how the results of this monitoring will be taken into account?

#### **2. Arrangements to ensure that the accessibility policy, legislation and standards are properly reflected in the preparation and implementation of the programmes**

This criterion is programme-specific. MSs must have arrangements in place for all programmes. However, Member States may decide to set out these arrangements in one or several documents covering the specificities of the CPR Funds and programmes.

The MS should make references to the relevant accessibility policy, legislation and standards (both national and EU) applicable for each programme and describe how these will be reflected in the preparation and implementation of the programme, and how their implementation will be monitored. The accessibility policy, legislation and standards should be in line with the UNCRPD and the national and European anti-discrimination laws on the ground of disability, including in terms of scope, and address barriers encountered by the different disabilities mentioned in Article 1 of the UNCRPD.

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<sup>2</sup> <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>

<sup>3</sup> Documents are available in the menu on the left hand side.

Mandate 473 (EN 17161) provides examples of how an organisation can take accessibility into account and make the results of their actions accessible following a Design for all approach. This document can be requested from DG GROW<sup>4</sup> or the Committee for Standardisation (CEN)<sup>5</sup>.

Concerning product, services and infrastructures, Annex I of Directive 2019/882 contains a list of accessibility requirements. Concerning the Built environment accessibility, the standard from Mandate 420, namely EN 17210 provides guidance on what requirements should be included. Similarly, in relation to ICT accessibility, the standard from Mandate 376 ,namely EN 301549 contains a list of accessibility requirements.

#### **Guiding questions:**

- Does the Member State explain/set out the role and tasks of the different authorities and bodies (i.e. managing authorities, intermediate bodies, coordinating bodies and audit authorities) in ensuring that the accessibility policy, legislation and standards are properly reflected in the preparation and implementation of the programmes? Who is involved and when? Is there a contact point in these authorities (good practice but not mandatory)?
- Are the right partners involved, i.e. fundamental rights/disability/equality bodies and representatives from civil society organisations?
- Does the Member State explain how the compliance with the UNCRPD, anti-discrimination law on the ground of disability and accessibility will be checked at all stages of programming and in particular when:
  - o Establishing the funds intervention strategy and drawing up programming documents, including the preparation of strategic policy frameworks, Partnership Agreements and programmes.
  - o Setting up management, monitoring and control systems, including the working arrangements between them, the set-up of the monitoring committee and the adoption of manuals of procedures.
  - o Implementing programmes, in particular, when drawing up selection criteria and procedures, launching calls for proposals and selecting operations.
- Has the Member State developed appropriate tools to ensure compliance with the UNCRPD, anti-discrimination law for example a checklist or training modules for the persons and authorities involved? Have they identified responsible persons/organisation with adequate skills and competences?

#### **2a. Reporting arrangements to the monitoring committee regarding cases of non-compliance of operations supported by the Funds with the UNCRPD and complaints regarding the UNCRPD submitted in accordance with the arrangements made pursuant to Article 63(6)CPR**

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<sup>4</sup> In DG GROW, the unit responsible for these reports is the unit for standardisation. They can provide all standards free of charge. [GROW-ESO@ec.europa.eu](mailto:GROW-ESO@ec.europa.eu).

<sup>5</sup> <https://www.cencenelec.eu/aboutus/Pages/default.aspx>. These are not publicly available and need to be bought.

This criterion has been added by the co-legislators and is aligned to the criterion under the EU Charter horizontal enabling condition. This criterion is programme-specific, but Member States may decide to have one document covering the specificities of all the CPR Funds programmes. Under this enabling condition, MS should explain how, at which frequency, etc. they will report on both cases of non-compliance of operations supported by the Funds with the UN Convention and accessibility and address complaints. Concluding observations of the UN Committee on the rights of persons with disabilities should be taken into account. Cases of non-compliance are issued by a body that is – in accordance with the institutional and legal framework of the Member States - competent for making an assessment whether the UNCRPD, accessibility, anti-discrimination law on the ground of disability and disability legislation have been complied with. Cases of non-compliance can be identified by article 33 UNCRPD (framework and independent mechanism for monitoring the UNCRPD. Responsible bodies should be involved in the assessment of complaints (i.e. fundamental rights/disability/equality bodies/disabled persons' organisations. Cases of non-compliance identified by the UNCRPD Committee should also be considered. The reporting does not have to go into the details of all cases of non-compliance and complaints, but the monitoring committee should be informed about the number of cases and their scope to draw lessons for the implementation of the programmes and it should be explained what the remedial, follow-up actions have been identified. The reference to Art. 63(6) CPR makes the link with the requirement for Member States to make arrangements for the effective examination of complaints concerning the Funds.

#### **Guiding questions:**

- Does the Member State provide information on the frequency of this reporting to the Monitoring Committee? => This point should be discussed at least once a year.
- Does the Member State describe the scope of information that will be presented to the Monitoring Committee, i.e. number of complaints and cases of non-compliance, their status, which rights are affected, consequences of non-compliance, corrective/preventative/follow-up measures taken/to be taken to avoid this situation repeating in the future?
- Are the competent bodies involved in the assessment of complaints (i.e. fundamental rights/disability/equality bodies/disabled persons' organisations (DPOs)/UNCRPD independent framework (art 33)), in accordance with the institutional and legal framework?
- Does the Member State provide information on who will be responsible for presenting this information to the Monitoring Committee?
- Does the Member State provide information on how this point will be discussed?

## V. Annex II



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT



Brussels  
agri.i.1(2023)1697117  
EA-23-44

**SENSITIVE (\*)**: AGRI.I.1

**Subject: Your complaint concerning a facility for children with disabilities in Carinthia cofinanced under the Austrian RDP 2014-2020**

Ref.: CHAP(2022) 03039

Dear Mrs Feuerstein and Mrs Bulic Cojocariu,

I refer to your letter of 2.11.2022 which has been registered as a complaint under reference number CHAP(2022)03039. Your complaint concerns a residential facility for children with disabilities in Carinthia, a project cofinanced under the Austrian Development Programme 2014-2020 ('RDP') which according to your allegations perpetuate segregation and social exclusion of those persons.

### **Subject of the complaint**

You allege that the approved project breaches Article 26 on integration of persons with disabilities and Article 21 on non-discrimination of the Charter of Fundamental Rights of the European Union ('the Charter'). You consider also that the project at stake breaches the United Nations Convention on the Rights of Persons with Disabilities ('the UNCRPD'), in particular Article 19 on living independently and being included in the community and Article 24 on the right of persons with disabilities to education, as well as the Convention on the Rights of the Child (CRC), in particular Article 2 prohibiting discrimination based on disability.

You also refer to the General Comment No 5 on living independently and being included in the community, adopted by the UN Committee on the Rights of Persons with Disabilities on 31 August 2017 and to the General Comment No 4 of the UNCRPD on the right to inclusive education.

You consider also that the project breaches Regulation (EU) No 1303/2013 ('the CPR') laying down common provisions on the European Structural and Investment Funds (ESI Funds) <sup>(1)</sup>, in particular Articles 4 on implementation of the budget allocated to ESI Funds under shared management, Article 6 on compliance of operations supported under ESI Funds with EU and national law and Article 7 on non-discrimination.

### **Analysis of the complaint**

In general, it should be stressed that in the Commission's view, promoting the transition from institutional to community-based services might require in some cases transitory solutions aiming at securing healthy and secure living conditions all along this process without undermining the overall aim of Article 19 UNCRPD, as long as a transition process from institutional to community-based care has been put in place.

As regards your grievances regarding to the specific breaches of the EU and Austria's obligations under the UNCRPD and the Charter as well as of the provisions of the CPR, please note that under the Treaties on which the European Union is based, the European Commission has no general powers to intervene with the Member States in the area of fundamental rights. It can only do so if an issue of European Union law is involved. This is reflected in the scope of application of the Charter, which, according to its Article 51(1), applies to Member States only when they are implementing Union law.

In accordance with the current ESI funds legislative framework and Regulation (EU) No 1305/2013 ('the Rural Development Regulation') <sup>(2)</sup> and under the principle of shared management, Member States are generally responsible for the design and implementation of national dedicated strategies and operational programmes (in the present case the Austrian RDP). In particular, the selection of operations to be funded by EAFRD falls under the competence of Member States, therefore, this is not in the Commission's remit.

Supporting the facilities in question through the RDP however involves implementing Union law since the Member State in question, as indicated, had to draw up the rural development programme as well as select the above-mentioned operations to be financed under it. Thus, it can be stated that Austria is implementing and acting in the scope of EU law. Nevertheless, -it has to be underlined- that the mere fact that a given infrastructure has been financed by the Union does not mean that the Member State implements Union law within the meaning of Article 51 of the Charter also with regard to the establishment using that infrastructure <sup>(3)</sup>. The question whether the operation of such an establishment

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(1) OJ L 347, 20.12.2013, p. 320.

(2) Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the EAFRD OJ L 347, 20.12.2013.

(3) See, by analogy, case C-117/14, *Nisttahuz Podava*, point 42

constitutes implementation of Union law within the meaning of that provision would have to be assessed separately and on its own merits, in the light of any normative or functional connection between that operation and provisions of Union law.

Therefore, my services asked the Managing Authority of the Austrian RDP to provide additional information as concerns the approved project concerned.

The national authorities stressed that Carinthia is continuously working on the implementation of the UNCRPD, taking into account the national strategy on deinstitutionalisation and the national action plan for persons with disabilities. According to these authorities, the implementation of the strategies should be seen as a process. The aim is to continuously develop services to establish independent living conditions for people with disabilities.

They explained that in the case of the facility in question, which is currently being implemented with a deadline for completion that is set for the end of 2023, this will be done by means of a new building for accessibility, modern fire safety and improvement of the space offered. The housing group of currently 15 inhabitants is divided into smaller groups. In addition, single and double rooms are offered, which was not possible in the existing facility. The project addresses also development gaps and contributes to inclusion in society of the children and young people with disabilities of compulsory school age. In the same spirit of deinstitutionalisation, the right to full participation in the community is being exercised. School attendance and leisure activities take place mostly outside the residence and most children and young people spend weekends and holidays with their families. Depending on the level of knowledge and the individual curriculum, children and young people required to attend school can either attend the Comenius Private School with Public Law or, alternatively, a public school. The facility is opened, according to the national authorities, to the outside world by inviting both the parents and relatives of the inhabitants.

Furthermore, in terms of the implementation of the RDP, the national authorities pointed out that members of disability organisations, specifically the Austrian Disability Council, are represented and have voting rights on the supervisory committee, and are therefore able to actively participate in all discussions and decisions. This also has an impact on the design of the programme and of the selection criteria of the projects.

Finally, it should be recalled that, like any international treaty, the primary responsibility to implement the UNCRPD lies with the State parties. Signing and ratifying the Convention obliges the State parties to ensure that all existing and future legislation, policies and programmes are aligned with its provisions.

## **Conclusion**

As an outcome of the preliminary analysis of your allegations and taking into consideration the additional information received from the competent national authorities, DG AGRI does not consider that there is any breach of the applicable Union law for the Commission to pursue. Since the issues highlighted in your complaint fall under the competence of the Member State at hand, we would like to advise you to seek a solution before the national administrative authorities and/or competent courts.



In the light of the above, I inform you that we intend to close your complaint unless we receive, within four weeks of the date of this letter, by airmail or by e-mail at the following address [AGRI-CHAP@ec.europa.eu](mailto:AGRI-CHAP@ec.europa.eu), documents or new information that could alter our position.

Yours faithfully,

