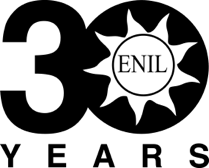
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**Reimagining EU Funds: Recommendations for the European Commission to promote independent living**

**December 2024**

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# **Introduction**

European Union (EU) structural funds have the potential to support the right to live independently for disabled people, through the promotion of community-based services and support, and the design and implementation of deinstitutionalisation strategies. The [Common Provisions Regulations 2021-2027](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R1060) includes the implementation of the [United Nations Convention on the Rights of Persons with Disabilities](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities) (UNCRPD) as a horizontal enabling condition, and the [Regulation establishing the European Social Fund Plus](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R1057) (ESF+) establishes the promotion of the transition from institutional care to community living as an objective.

However, in the past the European Network on Independent Living (ENIL) has identified investments from structural funds into institutions.[[1]](#footnote-1) When introducing complaints to the European Commission about these investments, we have witnessed an insufficient response. While shared management funds are designed and implemented by the managing authorities in the Member States, the European Commission has the task of supervising and monitoring these funds. Nevertheless, the previous UN Special Rapporteur on the Rights of Persons with Disabilities affirmed in his visit to the European Union in 2022 that “it appears that the relevant authorities in the Directorate-General for Regional and Urban Policy do not believe that segregating persons with disabilities into institutions amounts to discrimination”.[[2]](#footnote-2)

In addition, as the UN Special Rapporteur remarked in his visit, internal legal services of the European Commission have adopted the view that institutions can be financed in certain cases, considering that the UNCRPD does not prohibit such investments. However, the interpretation of the UNCRPD Committee clearly opposes this view.

Therefore, this document will propose the essential elements for a revision of the European Commission’s internal legal guidance that is in line with the UNRCPD and its General Comments and Guidelines.

# **Integrating the UNCRPD Committee’s interpretation**

The UNCRPD Committee is the authority when it comes to the interpretation of the UNCRPD. Therefore, the Committee’s General Comments and Guidelines must be included in the text, with explicit references, and ensuring that all of the recommendations are in line with the Committee’s.

[General comment No. 5](https://undocs.org/Home/Mobile?FinalSymbol=CRPD%2FC%2FGC%2F5&Language=E&DeviceType=Desktop&LangRequested=False) (2017) on living independently and being included in the community assists State Parties to implement article 19 of the UNCRPD and fulfill their obligations under the Convention. The Committee’s interpretation in this General Comment should guide internal legal guidance of the European Commission. Notably, the notions of choice and control, as “to choose and decide how, where and with whom to live is the central idea of the right to live independently and be included in the community”[[3]](#footnote-3), and the core elements defined in the General Comment. The General Comment also notes the obligation to not build new institutions, renovate them, extend them, allow new residents to enter, or establish living arrangements akin to institutions.

Other relevant General Comments that are to be considered are [General Comment No. 4](https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-4-article-24-right-inclusive) on Article 24: Right to inclusive education; [General Comment No. 6](https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no6-equality-and-non-discrimination) on Article 5: Equality and non-discrimination; and [General Comment No. 8](https://www.ohchr.org/en/documents/general-comments-and-recommendations/crpdcgc8-general-comment-no-8-2022-right-persons) on Article 27: Work and Employment. It is important that relevant staff at the European Commission is familiar with the UNCRPD Committee’s work, beyond the staff working on disability.

Additionally, the Committee adopted in 2022 their [Guidelines on deinstitutionalisation, including in emergencies](https://www.ohchr.org/en/documents/legal-standards-and-guidelines/crpdc5-guidelines-deinstitutionalization-including) (hereafter “the Guidelines”). These Guidelines provide further details on developing, implementing and monitoring the deinstitutionalisation process, and they should be the cornerstone of the implementation of EU funds in this regard. In the same line as General Comment No. 5, the Guidelines explicitly mention the prohibition to invest in institutions, and to reallocate the funding towards supporting disabled people to live independently.[[4]](#footnote-4) Internal legal guidance of the European Commission should integrate the Guidelines fully and ensure that all relevant staff is well aware of their content.

Furthermore, the EU should consider the individual inquiry concerning Hungary from the UNCRPD Committee, where the Committee affirmed that there was a violation of article 19 regarding “public funds, including funding from the European structural and investment funds, continue to be invested in building, renovating and expanding large- and small-scale institutions, thus removing resources for support for independent living and the development of accessible, community-based services that foster inclusion”(para. 101)[[5]](#footnote-5). The Committee recommended the reallocation of these funds towards the development of in-home and community services. Although these recommendations were addressed to the Hungarian authorities, they are relevant for the European Commission and all managing authorities.

Finally, the EU will be reviewed for the first time in 2025. If the legal services were to update their guidance after the review process, all recommendations from the UNCRPD Committee regarding deinstitutionalisation and independent living in EU funds must be carefully considered and integrated in the document.

# **Clearly prohibiting all forms of institutionalisation**

Under the Guidelines on Deinstitutionalisation, including in emergencies, the UNCRPD Committee has clarified that there is an immediate obligation for State Parties to abolish all forms of institutionalisation, which includes refraining from investing in institutions. Investments into institutions are to be prohibited and should be directed instead towards the release of residents and the provision of support. Public funds shall not be used to build or renovate institutions, and this funding must be reallocated towards inclusive community support systems and mainstream services.

Internal legal guidances should align with this obligation by establishing a clear prohibition to invest EU funds into any form of institutionalisation. No exceptions can be considered, including local circumstances. Even if the institutions provide decent conditions for the residents, the segregation of disabled people remains a violation of the UNCRPD; therefore, ensuring the health and wellbeing of residents is insufficient to consider an investment as compliant. Improving the conditions of existing institutions still perpetuates institutionalisation and should also be forbidden. The prohibition must include all forms of segregation, including institutions (whether large or small), group homes, special schools, sheltered workshops, etc.

It is important to note that the idea that investments into institutions can be considered as long as there are simultaneous investments in social services is not based on the UNCRPD Committee’s interpretation or any other interpretation of human rights law. Human rights violations are not exonerated by positive action.

Segregating disabled people into institutions is a form of discrimination. Therefore, the European Court of Justice’s jurisprudence regarding non-discrimination must apply. Despite the lack of regulations regarding discrimination based on disability, it is enshrined in article 21 of the [EU Charter of Fundamental Rights](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012P%2FTXT), and the European Court of Justice has repeatedly addressed non-discrimination under the principle that "similar situations shall not be treated differently unless differentiation is objectively justified".[[6]](#footnote-6)

To this day, the European Court of Justice has mostly addressed discrimination in employment in regards to disability,[[7]](#footnote-7) on the basis of Article1 Directive 2000/78, and with the maximum that “the Directive 2000/78 must, as far as possible, be interpreted in a manner consistent with the United Nations Convention on the Rights of Persons with Disabilities”.[[8]](#footnote-8) The question remains open as to whether the Court could follow international legal opinions and consider institutions being financed under EU monies as a form of discrimination and a violation of the EU Charter.

# **Providing a clear definition of institution**

The Guidelines include a definition of institution. Referring to this definition helps understand what constitutes an institution in light of the UNCRPD, and therefore which investments should not be allowed under EU funds.

According to the UNCRPD Committee, institutionalisation is any detention based on disability, which typically occurs in institutions. ‘Detention based on disability’ means that someone is put into a facility (a social care home, a psychiatric hospital etc.) just because they are disabled or perceived to be disabled.

Institutions share at least one of these defining elements:

* Obligatory sharing of assistants with others and no or limited influence as to who provides the assistance;
* Isolation and segregation from independent life in the community;
* Lack of control over day-to-day decisions, such as what to wear or eat;
* Lack of choice for the individuals concerned over with whom they live;
* Rigidity of routine irrespective of personal will and preferences, including having to go to bed and wake up at a certain time;
* Identical activities in the same place for a group of individuals under a certain authority;
* A paternalistic approach in service provision, making decisions for the persons thinking they know what is best for them;
* Supervision of living arrangements;
* A disproportionate number of persons with disabilities in the same environment.

When it comes to children, an institution is anything other than a family.

The Guidelines list different types of institutions, but there might be more places that are not on this list. The names will also vary in different languages. The examples listed are social care institutions, psychiatric institutions, long-stay hospitals, nursing homes, secure dementia wards, special boarding schools, rehabilitation centres other than community-based, half-way homes, group homes, family-type homes for children, sheltered or protected living homes, forensic psychiatric settings, transit homes, albinism hostels and leprosy colonies.

# **Establishing the applicability of the EU Charter on Fundamental Rights**

The EU Charter on Fundamental Rights is recognized by article 6(1) of the Treaty of the European Union as having the same legal value as the Treaties. The Charter prohibits discrimination, including on the grounds of disability or age, in its article 21, and the integration of persons with disabilities, or their right to “benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community” in article 26.

Nevertheless, regarding ENIL’s complaints, the European Commission has questioned the applicability of the Charter in cases involving shared management funds. To this regard, the Commission has considered in the past that the implementation of ESI funds is indeed an implementation of EU law under the scope of the Charter, under the Commission notice: Guidance on ensuring the respect for the Charter of Fundamental Rights of the European Union when implementing ESIF, C/2016/4384. This notice states: “in the context of the implementation of the ESIF, all the Member States' actions undertaken for the implementation of the applicable regulations fall within the scope of EU law.” The notice further explains which specific situations fit the conditions of article 51 of the Charter, in which implementation by the national authorities is specifically mentioned, particularly regarding non-discrimination and the integration of disabled people.

Therefore, any internal guidance on deinstitutionalisation should follow this previous document regarding applicability of the Charter, and explicitly mention that investments from EU funds into services for disabled people fall under the scope of the Charter.

# **Encouraging investments that promote independent living**

The establishment of support services is an essential element of the right to independent living. Having access to the support a disabled person needs and wants ultimately enables the person to make their own decisions about their lives and access mainstream services, employment, education, etc. According to the Guidelines, support services for living independently should be available, accessible, acceptable, affordable and adaptable. Some examples of support services are personal assistance, peer support, or the provision of assistive technology.

The financing of personal assistance by EU structural funds is now limited to some pilot projects. The EU could play a pivotal role in financing these services, which are a pillar of independent living. It is necessary to examine that, when personal assistance is being financed, it respects some minimum criteria to be in line with the UNCRPD, so that it is different from care services in institutions. General Comment No. 5 provides some key elements:

* Funding must be provided on the basis of personalized criteria, and the funding is to be allocated to and controlled by the user.
* The service must be controlled by the user, who can decide who, when, how and where the service is provided.
* Personal assistance is a one-to-one relationship, so personal assistants should not be shared without the full and free consent of the user.
* The service is managed by the user, and even if the externalize some of the responsibilities as employers, they remain at the center of any decision.[[9]](#footnote-9)

To empower disabled people, EU funds can fund them as service providers, supporting the work of Centers for Independent Living and Personal Assistance Cooperatives. As they are often small actors, they struggle to access EU funding, but their work is essential to implement the right to live independently and to put in place independent living services, such as personal assistance and peer support.

Other aspects that EU funds can support are the improvement of accessibility of the built environment and public transport, access to healthcare and rehabilitation services, in-home support, telemedicine, access to mainstream employment, inclusive education, etc.

Additionally, EU structural funds could further support the development of deinstitutionalisation strategies and plans, and individual planning for people that are leaving institutions or that at a high risk of being institutionalized. Those most at risk of institutionalisation need to be prioritized in any planning.

Technical assistance can also be used to reinforce capacity of Disabled People’s Organisations (DPOs) at national, regional and local levels, and to develop deinstitutionalisation strategies and plans that are in line with the UNCRPD. The expertise of DPOs and survivors of institutionalisation is to be valued, and survivors of deinstitutionalisation must not only participate, but be leaders of the deinstitutionalisation process.

It is important, however, that any investments that aim to support independent living are not part of projects where there are investments in institutions. For instance, funding a physical therapy service in an institution perpetuates institutionalisation, as it may remain the only option available to access the services.

# **Recognising the past and providing reparations**

The UN Guidelines consider that survivors of institutionalization are entitled to reparations. Some of the reparations suggested by the Guidelines include the recognition of institutionalisation as a violation of the UNCRPD, access to justice for people seeking reparation, and the establishment of a mechanism for formal apologies and compensation. All these reparations should be done in consultation and with the involvement of disabled people, in particular of survivors of institutionalization.

The EU, as a State Party to the UNCRPD, should collaborate with Member States to provide remedies to survivors when EU monies have been spent towards institutions. This can be done through technical assistance and EU funding to establish mechanisms to obtain reparation; through the prohibition in EU structural funds of investments into institutions; and through the use of the infringement procedure when managing authorities make unplanned investments into institutions.

ENIL has complained in multiple occasions to the European Commisssion about investments into institutions.[[10]](#footnote-10) A recognition of these investments and prevention mechanisms to ensure they do not happen again in the future are also reparations that must be undertaken. Part of the prevention would be ensuring that all of the Commission staff working on EU funds and deinstitutionalisation becomes familiar with the UN Guidelines.

# **Conclusion**

With the next Multiannual Financial Framework coming up after 2027, it is time to rethink EU funds for deinstitutionalisation. Aside from integrating human rights into the regulations, the European Commission must be clear in their conversations with managing authorities about the prohibition to invest in institutions, and take action when this is ignored. Internal legal guidance at the European Commission must align with international human rights standards, reflected in this document, to ensure that EU funds effectively promote independent living instead of segregation.

**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, Human Rights Officer

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1. Further information available at [Funding - ENIL](https://enil.eu/funding/) [↑](#footnote-ref-1)
2. A/HRC/52/32/Add.1: Visit to the European Union - Report of the Special Rapporteur on the rights of persons with disabilities, available at [A/HRC/52/32/Add.1: Visit to the European Union - Report of the Special Rapporteur on the rights of persons with disabilities | OHCHR](https://www.ohchr.org/en/documents/country-reports/ahrc5232add1-visit-european-union-report-special-rapporteur-rights) [↑](#footnote-ref-2)
3. Paragraph 24 [↑](#footnote-ref-3)
4. Further information available at [Explainer\_DI\_October23-ENIL](https://enil.eu/wp-content/uploads/2023/10/Explainer_DI_October23-ENIL.pdf) [↑](#footnote-ref-4)
5. Committee on the Rights of Persons with Disabilities (2020). *Inquiry concerning Hungary under article 6 of the Optional Protocol to the Convention*, available at [Inquiry concerning Hungary under article 6 of the Optional Protocol to the Convention :](https://digitallibrary.un.org/record/3884297?v=pdf) [↑](#footnote-ref-5)
6. Ruckdeschel & Co. and Hansa-Lagehaus Stroh & Co. V Hauptzollamt Hamburg-St. Annen [1977] ECR 1753 at para. 16-17 [↑](#footnote-ref-6)
7. Fundamental Rights Agency (2018). *Handbook on European Non Discrimination Law*, available at [Handbook on European non-discrimination law – 2018 edition | European Union Agency for Fundamental Rights](https://fra.europa.eu/en/publication/2018/handbook-european-non-discrimination-law-2018-edition) [↑](#footnote-ref-7)
8. HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C‑335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S [2013] (C‑337/11) para. 29 [↑](#footnote-ref-8)
9. To learn more about personal assistance, read our joint report with the International Labour Organisation (2024) available at [Towards Dignity and Autonomy: A Comprehensive Look at Personal Assistance Policies for Persons with Disabilities Worldwide](https://enil.eu/wp-content/uploads/2024/03/ILO_ENIL_Towards-Dignity-and-autonomy_-A-Comprehensive-Look-at-Personal-Assistance-Policies-for-Persons-with-Disabilities-Worldwide.pdf), and our Personal Assistance Checklist (2019) available at [Mladenov\_Pokern\_Bulic-PA\_Checklist.pdf](https://enil.eu/wp-content/uploads/2022/03/Mladenov_Pokern_Bulic-PA_Checklist.pdf) [↑](#footnote-ref-9)
10. Further information available at [Funding - ENIL](https://enil.eu/funding/) [↑](#footnote-ref-10)