

## EDF Response to European Ombudsman

**Subject of case:** Strategic inquiry SI/2/2021/MMO into how the European Commission monitors EU Funds used to promote the right of persons with disabilities and older persons to independent living

The Ombudsman has decided to consult organisations active in this area on the Commission's reply. In particular, we would like to know your views on the following:

1. The 'conditionality', set out in the regulations on the Cohesion Funds for the programming period 2021-27, that the funds be used to support the transition from institutional to community and family-based services and how best to implement it in practice.

The enabling conditions for the use of Cohesion Funds are quite clear about the need to invest in the transition from institutional to community-based care. The final texts of the Regulations are in line with what EDF has been pushing for. The difficulty comes from how this conditionality is interpreted at the national level and particularly by the National Managing Authorities overseeing how Cohesion Funds are used. We see ongoing cases of money going towards institutional settings, which should have been turned down by authorities in the Member States, or at the very least contested by the European Commission. These even include cases of very large and secluded residential centres for persons with disabilities which are institutions even in the most traditional sense. We risk seeing more cases of institutions being built or refurbished using EU funds during the ongoing funding period unless the European Commission comes up with very clear and ambitious guidelines on de-institutionalisation for the Member States with the input of organisations of persons with disabilities. These guidelines are planned for 2023 as part of the EU Disability Rights Strategy, offering a unique opportunity for the Commission to reduce the occurrence of misuse of funds for de-institutionalisation if done correctly.

2. The Commission's monitoring role as regards the use of Cohesion Funds and the tools it has at its disposal to ensure the funds are used to support deinstitutionalisation.

The European Commission appears to be over-stretched when it comes to monitoring the quality of the investments it makes in the transition from institutional to community-based care using Cohesion Funds. There is also an over-reliance on local and national civil society organisations to report back on misuse of funds. This raises a number of issues, firstly linked to the limited capacity civil society often has to conduct such in-depth and intensive work. Secondly, since it is difficult for national and local organisations to obtain details of the planned actions to be funded using Cohesion Funds, observations of EU funds going into institutional settings can often only be done once the building or refurbishment of the institutions is already underway, making it too late to contest.

3. The involvement of relevant stakeholders in the design and implementation of Cohesion Policy programmes at national level, including what role they should play with regard to the national monitoring committees.

The involvement of organisations of person with disabilities in the design of programmes and their role in the national monitoring committees is inconsistent. While some National

Disability Councils in the Member States, who are members of EDF, are actively involved, it is not the case across all 27 Member States.

EDF stresses the importance of consistently involving disability organisations in the selection and monitoring of EU-funded actions, particularly regarding investments in the area of de-institutionalisation. National Disability Councils should be a natural first point of call for all of these processes, as is outlined by the Common Provisions Regulation. This should naturally not exclude extending consultation to organisations of persons with disabilities that operate on a more local lever, or indeed that focus on specific disabilities or issues faced by persons with disabilities, who will be in a position to give detailed and useful input.

4. How deinstitutionalisation is taken into account in and impacted by the funds supporting Member States to recover after the COVID-19 pandemic, such as the Recovery and Resilience Facility and REACT-EU, and the Member States' flexibility in this respect, in particular in view of a possible lack of conditionality.

It is hard to gauge accurately from the National Recovery and Resilience Plans (NRRPs) exactly how closely investments into de-institutionalisation will respect Article 19 of the United Nations Convention on the Rights of Persons with Disabilities. There is a real risk that the fatalities seen in institutional care settings during the pandemic will result in Member States believing the answer is to reinforce the strength and resilience of institutional care settings, which would severely undermine the de-institutionalisation movement.

We see evidence, when observing the differences between the first drafts of some NRRPs and those finally approved by the European Commission, that the Commission pushed back on a number of investment proposals that overtly proposed to strengthen institutions. This shows a commitment by the Commission to respect its obligations as State Party to the UN CRPD. However, the risk is that the national authorities have changed the proposals in the NRRPs in writing only, and that the actual investment outcomes will nevertheless reinforce institutional care. This will result in an even further dominance of institutional care for persons with disabilities in the EU, and will bolster its presence for decades to come.

Given the greater flexibility offered to Member States in the spending of the Recovery and Resilience Facility, when compared to Cohesion spending, we would urge the European Commission to drastically step up its own monitoring activities, as well as to offer financial assistance to and build the capacity of civil society actors who could assist in monitoring.