

Civil society contributions to the EU Ombudsman inquiry regarding fundamental rights compliance of EU fund

Contribution from the women's sector in Northern Ireland (as part of the UK)

Contact: [REDACTED], Women's Sector Lobbyist [REDACTED]

In particular we have serious concerns about the maladministration of the European Social Fund in Northern Ireland which is managed by the Department for Employment and Learning (DEL) and feel that ultimate responsibility for this lies with the Commission itself. We also feel other fundamental rights set out in the charter are being infringed and that these are also the responsibility of the Commission.

This year when the new ESF round opened in Northern Ireland, community and voluntary groups, who rely on this fund to run programmes in their communities that enable those who are unable to access higher and further education programmes, were faced with new criteria for eligibility. In particular women's centres and groups, who apply for funding under ESF to run courses for women who have perhaps dropped out of school young due to pregnancy and provide a safe and local learning environment, childcare and in some cases even meals, found that they were not eligible under this new criteria, which I have set out below.

The main concerns under the administration of ESF in Northern Ireland are as follows:

1. Level of Programmes:

As stated by DEL "The aim of the Northern Ireland European Social Fund Programme is to combat poverty and enhance social inclusion by reducing economic inactivity" – however, this year the level of qualification that can be gained through ESF programmes was limited to Level 1 only (level one is equivalent to grades D-G and with the exception of grade D, this is not deemed as a pass by employers across the UK. This restriction meant that women's groups and organisations offering quality programmes at level 2 and above, that would improve access to the labour market, were unable to apply for funding for such programmes. After some amount of lobbying by the community and voluntary sector, DEL made a concession for those applying to fund programmes aimed at people with disabilities, recognising that this created unnecessary barriers, since access to further and higher education establishments, such as colleges, could be difficult for those with disabilities. DEL approved an amendment that would allow those applying for programmes for people with disabilities to run programmes that were above level 1.

- a. No such concession was made for those applying to work specifically with women, despite the many barriers faced by women trying to access further and higher education establishments. Namely women are the bearers of childcare responsibilities and with childcare places in Northern Ireland being insufficient already; this in itself is a barrier. Another barrier for women is that they may not have access to transport to and from colleges and that colleges do not offer childcare places where women's groups and centres do. The very fact that the purpose of ESF is to reduce economic inactivity suggests that those participating in courses are economically inactive, which raises another barrier for women, poverty. Childcare is expensive, transport to and from colleges is expensive. These barriers mean that women's centres who have run quality and successful programmes under ESF in the past are no longer able to offer them to the women in their communities.

2. Tutor Qualifications

DEL issued guidelines on the qualifications tutors for programmes that were eligible needed to have in order to deliver a programme under ESF. Initially DEL specified one particular qualification that needed to be gained from one particular university in Northern Ireland. This meant that community and voluntary organisations who had staff that had been delivering quality programmes for a number of years would have to find the funding to put them through a university level course. DEL had allowed a 3 year time frame for this to happen. However, after lobbying by the Community and

Voluntary sector, DEL changed this and provided a list of similar qualifications that would be acceptable for tutors on ESF course to have. However, this list was still pitched at an extremely high level, bearing in mind that the level of programme has been limited to level 1 only. As it stands tutors delivering level 1 programmes are expected to have qualifications listed in the guidance here: <http://www.delni.gov.uk/qualifications-required-to-teach-in-further-education-institutions.pdf>

Despite a long process of lobbying and complaint DEL officials stated that there was sufficient support available in mainstream provision for people to overcome barriers such as childcare and transport costs. We disagreed with this and suggest it does not show an understanding of the issues faced by the people voluntary and community organisations worked with.

It is now the case that many women's sector organisations who were eligible to apply after meeting the very strict criteria, have been issued with rejection letters on the basis of not submitting documentation required, in many cases this is not true, in cases where it is true we attribute this to the unnecessarily difficult application process which asked organisations to submit many documents, was confusing in its wording and asked organisations to submit a financial feasibility statement, before being confirmed as a successful applicant. As a sector we continue to lobby and appeal decisions made, but we feel that this constitutes an infringement of a number of articles under the Charter of International Human Rights and that ultimate responsibility for these infringements lies with the Commission.

1. Under article 21 – non-discrimination
2. Under Article 23 – Equality between women and men
3. Under Article 43 – Maladministration by the commission in Member States' delivery of European Structural and Investment Funds – we feel that there should be a better monitoring process of how member states are handling and managing ESI funds.

Contribution from ILGA-Europe

- 1. What are the main problems related to the respect of fundamental rights that occur in the implementation of the cohesion policy? What do you think are the causes of these problems?**

Main problem: lack of consultation of LGBTI civil society organisations in the negotiation and implementation of the cohesion policy

The struggle against discrimination based on sexual orientation is among the key goals of the European Union (Art. 10 and Art. 19 TFEU; Art. 21 Charter of Fundamental Rights). This principle also appears in Art. 7 of and Art. 96(7) of regulation 1303/2013/EU. Despite these obligations, there are EU Member States in which the needs of sexual and gender minorities are not addressed during the consultations on the draft of the Operational Programme, in setting investment priorities, or proposing specific measures, not even in measures proposed to address equal opportunities as a horizontal principle.

We will describe the Hungarian situation as a point in case. In Hungary, research has found that LGBT people are currently one of the most rejected social groups: their rejection is even higher than that of Roma people¹. Even though recital 4 of regulation (EU) 1303/2013 specifies the need to pay specific attention to the most vulnerable and marginalised communities in the partnership organisation, LGBTI civil society organisations have not been included in any targeted form in the development of the Human Resources Development Operational Programme of Hungary (2014-2020). They have not been invited to the strategic planning meetings, to expert workshops, nor to the

¹ ELTE Faculty of Social Science: *Kiktől félünk, kiket utasítunk el, kiket diszkriminálunk Magyarországon 2011-ben?* [Who are we afraid of, whom do we reject, whom do we discriminate in Hungary in 2011?] Available at: http://tatk.elte.hu/component/docman/doc_download/2012-eltetatkutatasisajelentes

partnership consultation during the summer of 2013. The Operational Programme has not been put on the agenda of the consultation mechanisms working with the participation of LGBT civil society organisations (PROGRESS National Anti-Discrimination Working Group, Human Rights Roundtable). The only opportunity to comment on the Operational Programme was the internet forum open to anyone to submit their opinion. This consultation method, however, cannot replace the targeted inclusion of a social group in such an important consultation process.

In general, it can be agreed that the priorities of the Human Resources Development Operational Programme of Hungary (2014-2020) are in line with the general aims of the Programme to develop human capital and improve the social environment. However, while the 318 pages long Programme claims to promote equal opportunities on the ground of sexual orientation, among others, there is not a single reference to LGBTI people in the document, not even in the exemplarily detailed list of disadvantaged groups in the chapter on equal opportunities. In addition, two general objectives might contradict the aim of promoting equal opportunities:

- Increasing the role of churches: recognizing the valuable contribution of churches in the field of social, educational and health care provision, it is important to note that the majority of churches in Hungary are hostile towards the social inclusion of LGBTI people; they play an active role in hindering the legal equality of same-sex couples and their families. It is particularly church-run schools and religious education classes organized by churches in public schools that promote prejudice towards LGBTI people.
- Strengthening the social role of families: not questioning the importance of family as a social institution, the recent phenomenon of using the “protection of families” as a pretext for giving preference to a certain form of family (family based on marriage between a woman and a man), and devaluing and discriminating against all other forms of family cannot be left unnoticed.

Cause: lack of a proactive approach by the European Commission

Considering that the ills mentioned above are not confined to Hungary alone, we ask that the European Commission proactively monitors the compliance by Member States with regulation (EU) 1303/2013 on partnership and anti-discrimination and requires strict implementation of the European code of conduct on partnership by all Member States concerned.

2. Have you ever reported such problems to the EC?

- a) If yes, was the outcome satisfactory? Please explain if this was not the case
- b) If no, why not (problem solved at national level, lack of information, etc.)

The Hungarian LGBT Alliance, the umbrella organization bringing together lesbian, gay, bisexual and transgender civil society organizations in Hungary, has submitted a detailed opinion about the draft of Hungary's Human Resources Development Operational Programme (2014-2020) to the European Commission. Their opinion was communicated to the Ministry of Human Resources responsible for drafting the Programme on 24 November 2014 and to Mr. Jiri Svarc, Head of Unit EMPL.E.5 from DG employment, Social Affairs and Inclusion.

Mr. Jiri Svarc replied that “the OP text is not restrictive to any disadvantaged groups (...). Therefore the LGBT community is not restricted from the access to the ESIF Funds.” He added that “in view of the partnership requirements mentioned, as well as to respect the principle of equal opportunities, the Commission recommends that during the implementation of the OP through the relevant Monitoring Committee the follow up of your request is monitored regularly also at the level of call for proposals. It is encouraged that you convey your opinion and concerns through the members of the Monitoring Committee which include representatives of various stakeholders including social and economic

partners. The Managing Authority should provide access to information for all stakeholder groups which are interested to get involved in the monitoring process of programmes”.

Please see enclosed the detailed opinion of the Hungarian LGBT Alliance and the reply by Mr. Jiri Svarc.

ILGA-Europe considers that the lack of mention of LGBTI people in the Human Resources Development Operational Programme of Hungary (2014-2020), as well as the exclusionary way in which the consultation was organised imperils the use of ESI Funds in full agreement with EU legislation. We therefore ask that the European Commission requires strict implementation of EU legislation in the preparation and implementation of the EU Cohesion Policy.

Contribution from an activist (anonymous)

1. What are the main problems related to the respect of fundamental rights that occur in the implementation of the cohesion policy? What do you think are the causes of these problems?

There are rare and mostly accidental occurrences that EU funded projects manage to reach and produce a sustainable beneficial effect in the life of the poorest of the poor. The absorption rates of EU Structural Funds focused on reducing abject poverty are practically the lowest and the effects of the few projects are at best debatable. The economic crisis has had a devastating effect in the situation of the poorest and increased discrimination and exclusion faced by the most disadvantaged and ethnic minorities in special the case of Roma. A serious problem comes also from the increase in the numbers of children affected by poverty and the inability of EU funding to address the problems at the grassroots and not just in reports and conferences. Explosion of slums in capitals all over Europe indicate that the cohesion policy is very far from realistic.

The main causes of the above mentioned problems is the poor prioritization of funding grassroots initiatives within the poorest communities correlated with lack of interest and hands on expertise at the level of the European Commission, Governments, national capitals and Brussels based civil society in the issues. All these and result in poor design and even poorer implementation of the way European Funds are used to alleviate the worst type of poverty. Stimulating effective work at the grassroots in the poorest communities through European Funds remains a huge challenge all over Europe.

2. Have you ever reported such problems to the European Commission?

a. If yes, was the outcome satisfactory? Please explain if this was not the case.

Many times in the past I made clear to the highest levels of the European Commission (Commissioners, Directors General) the problems outlined here. The European Voice published a number of my articles underlying the growing discrepancy between rhetoric and acts. Changing the way the system works at this moment requires painful reform and there is very little incentive for this at this moment. Due to exaggerated reporting and a diplomatic jargon that renders any failure in a relative success change continues to be very hard to come about.

Critical voices are not appreciated as they threaten a very comfortable status quo that sees same people being recycled in decision positions within the EU structures, governments and the Brussels based civil society (strongly dependent on EU funds and lip-service)

3. Does the new legislative framework of the cohesion policy contribute to addressing these problems?

The problems are not with the legislation but with the inbuilt incentives for exaggerated reporting, trainings and paper production and the lack of real expertise within the European Commission and Governments.

- a. Are the national means of redress foreseen in the legislative framework sufficient?

Again is not about the legislation but rather the way the mechanisms were designed that are outdated and do not fit the ways governments work in the new EU countries. Incentives for corruption and lies are a lot bigger in Eastern Europe than in the Western Europe (for which those mechanisms were initially designed)

- b. What role do you think the Commission can play in supporting national authorities to implement well-functioning redress systems?

The Commissions needs first to improve itself by including people with real hands on expertise capable to bring sense in the way funding is correlated with the existing cohesion policies. Such people can then require that their governmental counterparts to be also experts in the issues discussed. At this moment there are many times when discussions about the way EU Funds should be used to implement the Cohesion policy takes place between people that have very little if any real expertise on the issues they need to discuss.

- c. Has the Commission's ability to supervise the Member States improved?

No as the Commission struggles itself with expertise inside and depended on Member States approval of their budgets.

4. Are the measures mentioned in the Commission's reply appropriate to deal with possible problems?

- a. Please consider, in particular, the Commission's approach to the establishment of "*effective arrangements for the examination of complaints*" and the role it sees for itself in that context.

No – as long as expertise continue to be based on desk research and one in a blue moon field visits the results will continue to be poor.

- b. If the answer to this question is negative, please explain which other measures the Commission could consider under the existing legal framework.

The Commission needs to review the way it employees expertise and the way it organizes relevant consultations in order to ensure that it creates frameworks that makes sense not only in the offices in Brussels but also at the grassroots where it matters the most.

Contribution from the European Roma Rights Centre

Contact: [REDACTED], Advocacy Coordinator, [REDACTED]

1. ***What are the main problems related to the respect of fundamental rights that occur in the implementation of the cohesion policy? What do you think are the causes of these problems?***

The Cupa Perillo (Italy) case:

In replying to a request for information from the European Ombudsman concerning the respect for fundamental rights within the framework of the EU cohesion policy, our organisations – Associazione 21 luglio and the European Roma Rights Centre (ERRC) – focus on a specific case of misuse of EU funds in the Municipality of Naples, Italy.

Around 800 Roma (among them some 300 children), mostly originally from the former Yugoslavia, have been living in the informal settlements Cupa Perillo in Scampia, Naples, for about twenty years. In 2013², the Municipality of Naples started to plan the construction of a segregated Roma-only

² Naples Municipality, Delibera della giunta comunale N 174, 21 Marzo 2013.

temporary settlement (called by the Municipality “socio-assistance facilities”) near the current location of the Cupa Perillo informal settlements. The Municipality planned to fund this project making use of approximately €7,000,000 from the European Regional Development Fund (ERDF) 2007 – 2013. The Municipality plans to evict the inhabitants of Cupa Perillo, and subsequently relocate approximately 400 out of the 800 Roma to the new segregated settlement. It failed to clarify what will happen to the remaining ca. 400 people after the current camp is dismantled. Beside its segregating nature, the new settlement will not meet the minimum standards of social housing, is of a temporary nature, and will be located next to a motorway. The Municipality adopted new housing standards exclusively for this project. These standards openly contravene the minimum requirements established by the national regulations on housing and building. They will also prevent future residents from obtaining housing suitability certification which is required when applying for a number of documents (from family reunion visas to several kinds of residence permits), and thereby seriously undermine their chances for integration. The Municipality does not provide any further information on the adequacy of the planned housing modules or on what the “temporary nature” of the settlement actually means. Neither does it indicate if any additional concrete integration measures are planned, or what those measures might be.

Based on our analysis, we are convinced that this project of the Municipality of Naples is not in line with the objectives of the ERDF, the European Commission’s “Guidance Note on the Implementation of Integrated Housing Interventions in Favour of Marginalised Communities Under the ERDF”, or international standards and national policies aimed at Roma inclusion (National Roma Integration Strategy). It is our view that the Charter of Fundamental Rights of the European Union is applicable to this matter (since EU funds are being used in the project). The Charter prohibits discrimination based on race and ethnic origin. Additionally, building and maintaining segregated housing based on ethnicity can constitute a breach of the EU’s Racial Equality Directive (2000/43/EC), which prohibits racial discrimination in access to housing. Therefore, if the project of the Municipality is implemented with the use of ERDF funds, this would amount to a European Union-subsidised breach of EU law. This possible breach has also been confirmed by the European Commission (see below).

2. *Have you ever reported such problems to the European Commission?*

The organisations, in coalition with other local NGOs (OsservAzione and Chi Rom e...Chi No), sent a letter of concern to the European Commission on 25 June 2014, addressed to DG Regio and DG Justice of the European Commission, with copies sent to local and regional authorities. In its response, received on 21 November 2014 (but initially sent in August 2014), DG Regio stated that “the project – as described - would not seem in line with the objectives of the ERDF”. The response went on to cite EU regulations prescribing that when EU funds are used, “the physical location of the housing has to ensure spatial integration of these communities into mainstream society and not contribute to segregation, isolation and exclusion” and also that “housing investments have to be implemented as part of an integrated approach, taking place together with other types of interventions including, among others, interventions in the areas of education, health, social inclusion and employment”. The letter concludes by noting that “on the basis of our preliminary assessment, these two basic principles do not seem to be respected.” At the end of the letter there is a commitment that DG Regio would reply to the organisations regarding the “outcome of this assessment once it is finalized”.

Sometime after the coalition of NGOs received the letter from DG Regio (and presumably after the regional and local authorities also received this letter), on 8 January 2015 Roberta Gaeta, Town Councillor for Social Policies, released a public statement confirming that the Council has maintained its plan to build a segregated, Roma-only formal settlement in Scampia.² She also confirmed that the project enjoys the support of the Municipality of Naples. According to this statement, it is still planned to finance the settlement with EU funds, since – according to the local authority – they did not receive any official warning from the Commission not to use the ERDF for this purpose.

Following the release of this statement by the Town Councillor, the coalition of NGOs – including the undersigning organisations – sent another letter to DG Regio and DG Justice on 29 January 2015 reiterating their concerns regarding the still unaltered intent of the Municipality to build a new Roma-only formal settlement in Scampia³. The latest city council resolution on the planned project (Delibera

³ Naples Municipality Press Release, Assessore Gaeta: nessun mistero sui fondi per i Rom, approvata delibera in Giunta il 30 dicembre, 8 January 2015, available at:

di Giunta del 29 dicembre 2014 – which was sent to the Commission) clearly shows the intentions of the local authorities to build the segregated settlement using approximately €7,000,000 from the ERDF. The organisations called once again for the intervention of the European Commission in this matter, and asked to receive updates about the actions undertaken by the Commission concerning the case.

a. If yes, was the outcome satisfactory? Please explain if this was not the case.

As described in the previous paragraphs, there is no definite outcome in this case yet, but the procedure to date cannot be deemed fully satisfactory. On the one hand we consider it to be a positive outcome that DG Regio established as a preliminary assessment that if the camp is built as planned by the Municipality this would be a violation of EU regulations on the use of funds and could also breach other EU standards. However, we encountered some problems in the process, in particular regarding the lack of decisive and transparent action and communication from the European Commission.

We believe there it is necessary to introduce a more transparent procedure and a suitable online platform for reporting cases of this kind to the Commission. It is not sufficiently clear to which EU body such complaints and reports should be addressed and in what manner. The lack of such an easily accessible complaints mechanism on the EU and on the national level could lessen the chances that local NGOs or communities report these cases to the EU.

It also seems to us that while the European Commission responded in a timely manner to our letter of concern by indicating that the project planned by the Municipality of Naples could be in breach of EU regulations and thus should not be founded from the ERDF, they failed to take decisive actions, as the Municipality of Naples were still unequivocally insisting on executing their original plan of building the segregated settlement from ERDF resources in December last year. DG Regio also stated in its response letter to the undersigned NGOs that it was carrying out its own assessment of the situation. However, we did not receive any information about the findings or conclusions of that assessment, or about the subsequent steps DG Regio intended to take vis-à-vis the local and regional authorities. We understand that it is not possible to disclose every detail of such assessment by the Commission. However, we consider that it is important for DG Regio to officially inform those who initially drew attention to this case about their final findings.

b. If no, why not (problem solved at national level, lack of information, etc.)

3. Does the new legislative framework of the cohesion policy contribute to addressing these problems?

- a. Are the national means of redress foreseen in the legislative framework sufficient?*
- b. What role do you think the Commission can play in supporting national authorities to implement well-functioning redress systems? Has the Commission's ability to supervise the Member States improved?*

As reported in response to questions No. 1 and 2, according to resolution No. 1000 of 29 December 2014, the Municipality of Naples is planning to spend about €7,000,000 of the 2007/2013 Campania Regional Operation Program, co-financed with ERDF funds, to build a segregated formal camp in Scampia, Naples.

The Associazione 21 Luglio and the ERRC together with other Italian NGOs twice communicated our concerns about this situation to the European Commission and asked the Commission to review whether the funds were being used properly, and to urge authorities not to build segregated settlement, even without using EU resources.

The enhancement of control mechanisms provided for by Regulation 1303/2013 and the focus of these control mechanisms needs to be examined, in order to understand whether the new legislative framework can contribute to avoiding situations such as the one outlined above in the future.

Concerning the first aspect (control mechanisms), the Commission underlined that with Regulation 1303/2013 a certain number of improvements have been introduced. It makes reference, in particular, to mechanisms such as those described in article 15 (Content of the Partnership Agreement), article 19 (*Ex ante* conditionalities), article 29 (Procedure for the adoption of programmes) and article 74 (Responsibilities of Member States). The establishment of *ex ante* conditionalities in the area of anti-discrimination (see Article 19 and Part II Annex XI) can be beneficial regarding safeguarding fundamental rights protected by the Charter, especially with regard to Roma communities, who are particularly exposed to discrimination. Section 3 of Article 19, in particular, provides that the Commission shall assess the consistency and the adequacy of information provided from Member States on the applicability of *ex ante* conditionalities. Furthermore, section 5 specifies that the Commission may decide, when adopting the programme, to suspend all or part of interim payments where necessary to avoid significant prejudice to the effectiveness and efficiency of the achievement of the objectives of the priority concerned.

The monitoring of compliance with *ex ante* conditionalities from the outset of the projects may result in a more effective response to discrimination or violations of fundamental rights.

Moreover, pursuant to Article 29, outlining the procedure for the adoption of programmes

The Commission shall assess the consistency of programmes with this Regulation and with the Fund-specific rules, their effective contribution to the selected thematic objectives and to the Union priorities specific to each ESI Fund, and also the consistency with the Partnership Agreement, taking account of the relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU and relevant Council recommendations adopted in accordance with Article 148(4) TFEU as well as of the ex ante evaluation. The assessment shall address, in particular, the adequacy of the programme strategy, the corresponding objectives, indicators, targets and the allocation of budgetary resources.

This assessment can also contribute to preventing and/or addressing difficulties that may arise during the implementation of programmes financed by ESI funds.

With regard to responsibilities of Member States, article 74 provides that Member States shall:

- ensure that effective arrangements for the examination of complaints concerning the ESI funds are in place;
- upon request by the Commission, examine complaints submitted to the Commission falling within the scope of their arrangements; and
- inform the Commission, upon request, of the results of those examinations.

As pointed out by the Commission in its answer to question No.4, “*the failure of a Member States to establish a complaints handling procedure could constitute a serious deficiency which could provide the basis for suspension of payments*” or ultimately lead to a financial correction.

This latter point seems to be particularly important in the case of Cupa Perillo because of the unfortunately well-known deficiencies of the Italian legal and judiciary system, such as the lack of sufficient human and economic resources, and the resulting lengthy procedures etc. Moreover, lack of transparency and/or reluctance of the Italian Administration to provide information of public interest may in some cases represent a real obstacle in finding out how ESI funds are used.

These deficiencies prove that the current national means of redress foreseen in the legislative framework are not sufficient and that the establishment of a specific procedure for the examination of complaints concerning the ESI funds is suitable to ensure a quick, easily accessible and transparent procedure aiming to prevent any misspending.

(2) With regard to the second point (focus of these control mechanisms), the European Ombudsman already pointed out that in Regulation No. 1303/2013 there is no reference to the general applicability of the Charter of Fundamental Rights. Article 6 of the regulation in object “limits” itself to a more general demand of compliance with Union and national law:

“Operations supported by the ESI funds shall comply with applicable Union law and the national law relating to its application (“applicable law”).”

As reminded by the Commission, the Charter has the same legal value as the Treaties and it is binding on Member States when they are implementing Union law even without any explicit reference in secondary legislation. Therefore, if from one side there is no need to make an explicit reference to the Charter to expect Member States to comply with it, from the other side its applicability is not automatic because there must be, by using ESI funds, an implementation of European Union law.

Therefore, even the absence of reference to the Charter does not mean Member States can ignore it. However, this silence risks limiting the impact these improvements could have on the proper implementation of ESI funds with respect to of fundamental rights.

A clear reference to the due respect of the Charter in the preparation, evaluation and implementation of programmes to be executed with ESI funds is necessary not only to allow the Commission to carry out a more complete assessment on any mispending of these funds, but also to allow Member States to ensure better compliance in the use of these funds with the Union priorities.

A system of control clearly based on the need to respect fundamental rights can contribute to a more efficient and transparent implementation of the Union priorities. The lack of any explicit requirement in this sense can have the effect of limiting the role of the Commission in supporting and supervising national authorities when using ESI funds.

In conclusion, it seems that the aforementioned measures contribute to addressing some of the difficulties that had been faced during the 2007-2013, in particular thanks to the improvement of the control mechanisms of the whole procedure. However, the lack of any reference to the due respect of fundamental rights inevitably reduces the role that the Commission can play in assisting Member States and eventually addressing problems in the use of ESI funds.

a. Are the national means of redress foreseen in the legislative framework sufficient?

As stated above, the Italian legal and judiciary system faces many problems such as the lack of sufficient human and economic resources, very long procedures and uncertainty of outcomes etc. In particular, an ordinary procedure before an Italian court can last for years and this is in contradiction with the need to provide redress as soon as possible with regard to any misuse of ESI funds. Moreover, lack of transparency and/or reluctance of the Italian Administration to provide information on public interest may in some cases create a real obstacle in assessing in a timely manner how ESI funds are to be used.

Our organisations are of the opinion that there is currently no efficient and sufficient means of redressing discrepancies and violations in the use of ESI funds in the Italian legal framework and that too often remedies are only provided depending on the willingness of authorities to cooperate.

b. What role do you think the Commission can play in supporting national authorities to implement well-functioning redress systems? Has the Commission's ability to supervise the Member States improved?

National and administrative courts are responsible in the first place for ensuring that authorities comply with Union law and fundamental rights. However, the Commission can play an important role in supporting national authorities to develop and operate well-functioning redress systems. For instance, the Commission could provide Member States with recommendations and guidelines concerning means of redress. This would assist Member States in ensuring that effective arrangements for the examination of complaints concerning the ESI funds are in place.

Contribution from Social Platform

Contact: [REDACTED], Policy & Advocacy Adviser, [REDACTED]

3. Does the new legislative framework of the cohesion policy contribute to addressing these problems?

- a. Are the national means of redress foreseen in the legislative framework sufficient?
- b. What role do you think the Commission can play in supporting national authorities to implement well-functioning redress systems? Has the Commission's ability to supervise the Member States improved?

Regulation no. 1303/2013 marks some progress to ensure that fundamental rights are complied with in the implementation of ESI Funds. In particular:

- Art. 5 on the partnership agreements that shall include bodies responsible for promoting social inclusion, gender equality and non-discrimination
- Art. 7 about the promotion of gender equality and non-discrimination in the implementation of ESI Funds
- Art. 15 on the content of partnership agreements, specifically art. 15.1.a.V (application of horizontal principles set out in art. 5, 7 and 8), art. 15.1.b.iii (assessment of the fulfilment of applicable ex-ante conditionalities), art. 15.1.b.V (reinforcement of administrative capacity), art. 15.2.a.iii (integrated approach addressing the specific needs of target groups at highest risk of discrimination or social exclusion)
- Art. 19 on ex-ante conditionalities, including the possibility for the Commission to suspend interim payments.

In its response to the Ombudsman's inquiry, the Commission states that the Charter on fundamental rights is binding on member states even without any explicit reference in secondary legislation. It also argues that art. 4, 6 and 7 of the regulation impose certain obligations on member states, some of which are relevant to certain fundamental rights. It therefore concludes that the Commission is not entitled to require member states additional elements, such as a compliance with the Charter.

Even if this seems to be legally correct, if the Commission had included reference to the Charter in the regulation (in particular, in the provision concerning the content of the partnership agreements, art. 15.1.V; in the provision on content of programmes, art. 27), it would have made the respect of fundamental rights in the implementation of ESI funds much more stringent. Therefore, this is a recommendation to be taken into account in the review of the regulation.

Overall, we consider that the Commission in its response focuses more on repairing measures (complaint systems, suspension of payments) rather than preventive measures (monitoring mechanisms, training, reinforcement of the administrative capacity, technical assistance) to ensure the compliance with fundamental rights.

It seems that the new regulation has laid down the pre-conditions for a good monitoring and evaluation system, which the Commission should take more into account:

- Inclusion of the partners in the Monitoring Committees (art. 48)
- Implementation reports (art. 50)
- Annual review meeting (art. 51)
- Progress reports (art. 52)
- Reporting by the Commission before the European Parliament, Council, EESC and CoR (art. 53)
- Evaluation (art. 54-57).

However, the respect and promotion of fundamental rights as well as compliance with the Charter should deserve specific attention during monitoring and evaluation procedures. The regulation seems providing the structure for adequate monitoring and evaluation, but there is no guarantee that a specific attention will be paid to fundamental rights.

4. Are the measures mentioned in the Commission's reply appropriate to deal with possible problems?

- a. Please consider, in particular, the Commission's approach to the establishment of "effective arrangements for the examination of complaints" and the role it sees for itself in that context.
- b. If the answer to this question is negative, please explain which other measures the Commission could consider under the existing legal framework.

As mentioned above, the Commission in its response could have pointed out more clearly preventive measures to ensure the promotion of fundamental rights that are foreseen in Regulation no. 1303/2013. For example:

- Technical assistance at the initiative of the Commission (art. 58): in particular support for administrative capacity-building for the effective management of ESI Funds, studies linked with the Commission's reporting, measures related to the monitoring and information exchange and implementation of the funds, as well as measures relating to the implementation of control systems and administrative assistance, dissemination of good practices to assist member states to strengthen the capacity of the partners
- Technical assistance at the initiative of the member states (art. 59): support actions for monitoring and evaluation, complaint resolution, control and audit; actions to reinforce the administrative capacity of member states authorities and beneficiaries; actions to reinforce the capacity of partners.
- Monitoring (see art. 48, 50-57).

The conclusion is that it seems that the new regulation provides the mechanisms to ensure a better implementation of the ESI Funds. However, as compliance with the Charter is not an element explicitly required in the partnership agreements and in the programmes, it is left more to the good will of member states and public authorities. In the revision of the regulation compliance with the Charter should be made compulsory.

As the member states have recently completed the operational programmes, it would be useful to make an assessment of the implementation after approximately two years. We look forward to continue exchanges and cooperation with the Ombudsman on this matter.

Submitted: 27 February 2015



EDF Position on 6th Cohesion Policy Report

November 2014



EDF POSITION ON 6TH COHESION POLICY REPORT: IMPACT OF STRUCTURAL FUNDS ON PERSONS WITH DISABILITIES

The European Disability Forum (EDF)

EDF is the European umbrella organisation representing the interests of 80 million persons with disabilities in Europe. The mission of EDF is to ensure that persons with disabilities have full access to fundamental and human rights through their active involvement in policy development and implementation in Europe. EDF is a member of the International Disability Alliance and works closely with the European institutions, the Council of Europe and the United Nations.

Introduction

In July 2014, the European Commission published the 6th Cohesion Policy report based on the use of the Structural Funds for the period 2007-2012. EDF welcomes the link of the reporting exercise with the changing political and financial context due to the economic crisis and the Europe 2020 Strategy.

Cohesion Policy has been identified as one of the most effective instrument to financially support the Europe 2020 strategy. Its effects in supporting countries during the crisis have been proven positive. Traditionally, in particular the European social fund, promoted employment and training opportunities for persons with disabilities. Article 16 of the General Regulation of Structural Funds 1083/2006 was a major achievement ensuring the use of the funds to promote non-discrimination and ensuring accessibility for persons with disabilities. However, during the period 2007-2013, there were cases of misuse of structural funds and access to the funds was extremely complex for organisations of persons with disabilities. In particular, funds were used towards building residential institutions with the consequences of locking people away from the society and cutting their possibility of being fully integrated. This is in direct contradiction with the Europe 2020 and its headline objective of fighting against social exclusion.

The ratification by the EU of the UN Convention on the Rights of Persons with Disabilities on 22nd December 2010 has a direct impact on the future Cohesion Policy, considering that structural funds are included in the declaration of EU competence for the implementation of the UNCRPD. Hence, the UN Convention represents now a legal obligation for all EU institutions and the whole policy making of the European Union, including the Cohesion Policy.

The new Structural and Investment Funds regulations, at least on paper, are much better and have been designed to serve the objectives of Europe 2020. They are positive in the sense that they address accessibility of social and health infrastructures in order to promote transition from institutional to community based care, accessibility for persons



with disabilities is an overarching principle and is taken into account in all phases, partnership with civil society is compulsory and a general principle as well. If we want to reach Europe 2020 targets by using the ESI Funds, these provisions must be implemented in an effective way and with full participation of persons with disabilities.

Use of Structural Funds in 2007- 2013

Horizontal Principles

Structural Funds is the most important financial instrument at EU level for social and economic development from 2007 to 2013. In many European regions it represents the most important source of public funding. The Structural Funds constitute over 35% of EU budget and 43 billion Euros annually.

The money spent should contribute to the social inclusion of persons with disabilities and no project co-funded with European money can ignore the principle of full accessibility for persons with disabilities. Furthermore, based on the related regulations, Member States must provide for the participation of civil society organizations in the monitoring committees and they are obliged to report on the actions taken to promote the inclusion of persons with disabilities in society.

EDF welcomes the Sixth Cohesion Policy report and its focus on linking the Cohesion Policy with the objectives of Europe 2020. At EU level, it is important that Europe 2020 and Cohesion Policy share a common approach to the target goals fixed by Europe 2020 strategy. Both policies should be linked by general principles based on EU treaties and on the UN Convention on the Rights of Persons with disabilities.

At member state level, the link between Europe 2020 Strategy and the cohesion policy should be done through a close link between National Reform Programmes and National Strategic reference Frameworks for the Structural Funds. In particular, the target objectives of Europe 2020 should enlighten the concrete activities foreseen under the Operational Programmes.

Accessibility and non-discrimination

The General Regulation (EC 1083/2006) that rules the structural funds from the programming period 2007-2013 highlights in Article 16 that “the member States and the Commission shall take appropriate steps to prevent any discrimination based on ... disability during the various stages of implementation of the funds and, in particular in the access to them. In particular accessibility for disabled persons shall be one of the criteria to be observed in defining operations co-financed by the funds and to be taken into account during the various stages of implementation”.

The Regulation defines therefore non discrimination and accessibility for persons with disabilities as principles to be taken into consideration horizontally in the design (definition of programmes), implementation (all funding must be accessible to disabled people), monitoring and evaluation of all OPs. Member States and the European Commission must



also take preventive measures to ensure that persons with disabilities (either themselves or through their representative organizations) have full access to the funds.

However, despite the regulation, the implementation of this principle varied greatly from region to region and was often dependent on the degree of involvement of organizations of persons with disabilities in the process.

It is also difficult to have good information on the implementation of this principle as implementation reports submitted by governments rarely mention measures for accessibility when using Structural Funds. EDF relies on feedback from its members, which seems to suggest that very few EDF national councils have been involved in the process.

The regulation on the European Social Fund mentions that ESF has an important role in “promoting pathways to integration and re-entry into employment of disadvantaged people such as persons with disabilities” (Article 3.1.c. (i)) Annual implementation reports on ESF have measures for persons with disabilities who participated in programmes targeting the help of disadvantaged groups into the labor market. However, the quantitative measures used in the reports and the different definitions of disability used in the national legislation do not provide enough understanding of the results of the recent period. Comprehensive reports must be made in order to focus on the results of the recent ESF programming period from this perspective.

If we consider the use of ESF, in some case such as UK, we assisted at a decrease of number of persons with disabilities involved in the actions.¹

However, since the indicators used to evaluate the trainings were just the number of participants, we are not able to establish the reason why the participation decreased. Whether it was for lack of accessibility of training venue, material, information, or for budget cuts for aids to mobility of persons with disabilities is not known due to the lack of adequate indicators.

Involvement of organisations of persons with disabilities

Partnership with civil society organisations including representatives of persons with disabilities should be based on further improvement of democracy and its consultation methods.

¹ UK Annual Implementation Report ESF In 2012, the proportion of participants recorded with a disability or health condition, at 14%, is the lowest since 2007.



The implementation of the partnership principle should be monitored by joint efforts of the European Commission, the Member States and the organised civil society.

Legal clarity is needed in terms of local and regional stakeholders' involvement in the use of the Funds. Guidelines and minimum requirements for their participation should be incorporated in the General Regulation and be therefore applicable to all Structural Funds. In this context, the role of NGOs should be enhanced.

EDF recommends to ensure that the implementation of article 16 is on the agenda of the monitoring committees on a regular basis; Member States should publish a list of NGOs that participate in monitoring committees; Organizations of Persons with Disabilities (DPOs) must receive voting rights as their participation contributes effectively to the implementation of the Article 16 of the General Regulations.

National Strategic Reference Frameworks and Operational Programmes are the basis for the programmes of the whole programming period of 2007-2013. DPOs should be invited to consult these strategic documents but based on the answers of DPOs throughout Europe it seems that between 2007 and 2013 only a small minority of them were involved. However, in those countries where such cooperation happened, it proved to be successful for both parties, as it was reported by organisations in Spain and in Greece. Some countries such as Bulgaria, Cyprus, Estonia, Greece and Hungary have included important specific actions tackling persons with disabilities within the framework of bigger Operational Programmes. It is important to note that these results derive from very proactive involvement of national councils from those countries.

Based on the Article 11 of the general regulation, Member States have to organise partnership with "other bodies representing civil society (...), non-governmental organizations." Responsibility of engaging partners lies with Member States. Even though there are good practices for cooperation between disabled people organisations and Managing Authorities in Greece or in Spain, in most of the member states they are not invited and not included to such cooperation. Throughout the phases of the Funds' intervention (preparation, implementation, monitoring and evaluation) in most Member States, DPOs are only participating in the monitoring phase.

The missed opportunity of involving DPOs from the preparation of the National Strategic Reference Frameworks results in programmes which rarely take into account persons with disabilities or even more: they are supporting projects that build barrier between disabled people and society. As the report of European Coalition of Community Living² highlights, only the instant and strong national and international NGO-reaction could prevent national governments to build new institutions (segregating residential institutions for disabled people) or to create further barriers in the built environment, transport and services. The overall picture shows us that cooperation among DPOs and Managing Authorities is

² <http://community-living.info/>



exceptional. Moreover, managing authorities lack expertise to implement article 16 of the regulations, and to ensure mainstreaming of disability in the funds.

The system of Structural Funds, including different type of funds available, regulations, managing European and national bodies, programmes, is so complex, that DPO-s and other NGOs can hardly follow the decision making process. The complexity of Structural Funds requires such high and specified qualification from experts that cannot be expected to be gained by DPOs without appropriate support. Increased funding for technical assistance should also be considered. The most important step would be to simplify the procedures in the whole process: less reporting, fewer indicators, simplified grants would all help DPOs to have a greater understanding of the system.

Furthermore it is important that DPOs have access to information on the use of the funds and not only through European websites but also in their own language, including sign languages, in simplified way. Trainings and toolkits must be developed In order to ensure greater involvement of persons with disabilities in the process.

Evaluation of programmes

In addition to the regulation, annual and final implementation reports for the European Social Fund must focus “on actions to strengthen integration in employment and social inclusion of other disadvantaged groups, including persons with disabilities”. Still, the national reports show that the inclusion of persons with disabilities varies: there are certain good practices but the overall picture is not clear as clear measures and earmarking are not used.

A successful result-oriented policy lies mainly on the right approach. The interrelation between the Community Strategic Guidelines, the National Strategic Reference Frameworks and the Operational Programmes should be governed by relevant specific targets and useful output and result indicators, which can make interventions measurable and comparable at EU level. These indicators should allow for a final assessment to measure progress made and impact on specific target groups such as persons with disabilities. At the same time, OPs should incorporate a result-oriented logic. Intermediate and impact evaluations are necessary to measure ongoing performance and results. Moreover, enhancing the partnership principle can help leverage additional resources from other public and private sources, thereby contributing to a more efficient implementation of the EU funds.

Lack of definition of practical tools such as checklists for accessibility of the projects (or non-discrimination principles) attached to grant proposals and to project monitoring schemes have led to a lack of implementation of these principles. If checklists are binding for beneficiaries, they can be an important tool for implementing disability related provisions.

So far annual implementation reports submitted by governments give limited information on disability related measures, and just to mention projects that also target persons with



disabilities as good practices. Reports on the use of European Social Funds often discourse the number and percentage of persons with disabilities participating in certain programmes. However this data is not sufficient enough to determine the effectiveness of the programmes.

When independent evaluators started to research the field of deinstitutionalization and the use of Structural Funds, many dysfunctional practices were disclosed. There were cases, where, despite present regulations, Managing Authorities and Member states agreed on refurbishing of institutions. Evaluations about the implementation of Structural Funds in the disability context should be delivered covering many different areas: access to employment, social inclusion, accessibility etc.

BEST PRACTICES PROMOTING THE RIGHTS OF PERSONS WITH DISABILITIES IN TARGETED AND MAINSTREAM ACTIONS

Promoting the labor market and social inclusion of persons with disabilities

Promoting the labor market and social inclusion of persons with disabilities is a priority on which to invest. Several countries across Europe, already, used the funds of the current programming period 2007-2013 to support actions at this end in different ways. Actions were funded in support to: Pathways to work for persons with disabilities: socialization, training, and counseling, insertion into employment, teleworking, and self-employment; Education and training: social and language skills development, purchase of special tools and assistive devices and equipment, fight against early school leaving addressing learners with disabilities in primary and secondary education.

Example: Austria – Computer training for the deaf or hard of hearing³

An example of a training initiative specifically tailored for persons with disabilities was carried out by the Styrian Association of the Deaf (Steirische Landesverband der Gehörlosenvereine), which developed and delivered computer training for the deaf or hard of hearing. The aim of the initiative was to improve job skills through the project 'Get it'. The training courses enabled the deaf and hard of hearing to achieve the European Computer Driving Licence (EC DL). The programme was targeted at deaf people and people with hearing impairment employed in low skilled occupations, who had difficulty accessing suitable training opportunities with training in data processing to improve their labour market skills. The course helped the participants to increase their self- confidence as well as their interest in education and training. The positive outcomes included improved positions within their company and keeping or gaining a job. The project also

³ Extract from the study "The European Social Fund and Disability"

<http://www.google.it/url?sa=t&rct=j&q=the%20european%20social%20fund%20and%20disability&source=web&cd=1&ved=0CFkQFjAA&url=http%3A%2F%2Fec.europa.eu%2Fesf%2FblobServlet%3FdocId%3D182%26langId%3Den&ei=KHQSUOqjJ86YhQfc94DoBw&usq=AFQjCNEI126QeuSHk2phwctIAJ-upKy29Q>



helped to overcome misunderstandings and prejudices against people with a hearing impairment.

Promoting Accessibility for persons with disabilities

Example 1: Sweden – Action Support Accessibility

Action Support Accessibility helps projects within the European Social Fund to work with accessibility for people with functional disabilities. Action Support Accessibility provides flexible support to apply design your project proposal and implements it once granted.

The support system includes:

- Helpdesk where accessibility consultants give telephone support or e-mail support.
- Regional coaches located around the country ready to support a particular ESF project. In direct consultation, they can read your draft application and make suggestions for improvements.
- A cost-free sounding-board offering information meetings and target group-designed training for project managers and for participants.
- Network of consultants in the area of accessibility

The task of those working with Action Support Accessibility is to increase the level of knowledge about ESF projects regarding accessibility for people with functional disabilities. The goal is to ensure that the demands to take accessibility into account shall be understandable and manageable.


Action Support Accessibility is available throughout the whole country in Sweden. The project is being run from 2009 – 2011 by Handisam (The Swedish Agency for Disability Policy Coordination) and the Swedish Disability Federation (43 Swedish disability organisations in co-operation). It is financed by the European Social Fund.⁴

Example 2: Hungary – “Providing accessibility to public services maintained by municipalities”

All regional operational programmes in Hungary include a measure “Providing accessibility to public services maintained by municipalities” specifically aimed at supporting the fulfilment of the provisions of the law. In the framework of the call local governments could apply for a grant of up to EUR 100,000 with the objective to make the buildings with locally maintained public services (schools, healthcare and social institutions, offices) accessible for all groups of persons with disabilities – comprising those impaired in movement, hearing, sight, etc.

Eligible costs included:

⁴ More information in English is available <http://www.tillgangligtprojekt.se/Processtod/About-us/> contact [REDACTED], project leader, [REDACTED]

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- construction works (parking spaces for the persons with disabilities, ramps, elevators, induction loops, symbol icons necessary for the accessibility of the entrance, the route to the client area and a restroom)
 - service of specialised engineers verifying the accordance of design plans.

Up to date ca. 900 projects improving accessibility were financed with a total grant amount of EUR 40 million (average project size EUR 50,000).

In addition to this, we must underline that in all SF projects in the field of development of public services the beneficiaries were obliged to apply the provisions of the Act 26/1998 on accessibility while elaborating the design plans of their construction works. This implies that over 1,300 further projects contributed to the improvement of accessibility of public services for the persons with disabilities.

Mainstream participation of persons with disabilities in supported actions

Persons with disabilities participated in a wide range of mainstream education and training interventions as well as mainstream labour market measures funded by the European Social Fund under the programming period 2007-2013, Among these supported actions it could be listed:

- Basic vocational training for early school leavers to access the labor market, access to training in ICT skills
- Measures to increase participation of persons with disabilities in mainstream education including funding for equipment and support services
- Job creation in SMEs, support for self-employment

Example: Ireland – Third level Access

In Ireland, one measure aimed to facilitate and improve access to the labour market by promoting the participation of students with disabilities, students from disadvantaged backgrounds and mature 'second chance' students to further and higher education. A fund was established to:

- Meet the specific needs of students with disabilities, in terms of equipment and additional support services;
- Provide additional financial support to disadvantaged students;
- Promote and assist outreach initiatives, together with post-primary schools in disadvantaged areas;
- Expand the provision of counselling and mentoring services to meet the needs of nontraditional students.

115,983 learners were recorded as participating in this measure, of whom 55,445 (47.8%) were persons with disabilities. The ratio between women and men was 73% and 27% respectively. 7,131 students benefited from the special fund for students with disabilities,



with 35,918 of them from the top up grant and 12,396 from the Millennium Fund for assistive devices.

Involvement and partnership with organisations of persons with disabilities

In the present structure, in most countries there are representatives of civil society in the Monitoring Committees of Operational Programmes. Even though the participation of these organizations allows a certain level of information about the implementation of operational programmes, it does not always mean an effective monitoring.

In Monitoring Committees, NGOs participate in the formal approval of the reports, but without being able to influence them. Often, organisations of persons with disabilities do not have voting rights which reduces their participation to observation. In other cases, especially for the operational programmes funded under the ERDF, they are not invited at all. Furthermore, the amount of effort, expertise and time to participate in Monitoring Committees implies a strong investment that often organisations of persons with disabilities are not able to make.

Nevertheless, good practices exist. DPOs in Spain and in Greece have a good experience about cooperation with Managing Authorities in Monitoring Committees, in other countries such as Greece, Denmark, Hungary, Sweden, Austria and Portugal, DPOs are participating in relevant Monitoring Committees.

Good Practice: Monitoring committee - Greece

The disability movement in Greece is very well organised and duly recognised by the public authorities. In fact, the National Confederation of Disabled People - NCDP has been recognised by law as social partner to be consulted and involved in all disability related affairs.

Consistently with this legal framework, the Ministry of Economy and Finance, responsible for the use of structural funds in the programming period 2007-2013, invited NCDP to contribute to the design and implementation of the National Strategic Reference Framework and its operational programmes. The consultation took place from June 2004 - October 2006. During the consultation period the NCDP participated in all Developmental Conferences and thematic meetings. The NCDP and the Ministry of Economy and Finance co - organized a conference on the 8th of February 2007 on "The NSRF 2007 - 2013 as a tool for the promotion of equal opportunities and the inclusion of persons with disabilities into the Greek society". Furthermore, the NCDP also contributed to the national Information Day on how to use the Funds for the promotion of equal opportunities and the inclusion of persons with disabilities into the Greek society – with a position paper about the way to ensure both the horizontal inclusion of the principle of non-discrimination and



the criterion of accessibility in the operational programs of the programmatic period 2007 – 2013.⁵

The NCDP representatives participate as full members (with voting right) in the Monitoring Committees of: 1) Sectorial Operational Programmes such as Environment - Sustainable Development, Accessibility Improvement, Competitiveness and Entrepreneurship, Digital Convergence, Human Resource Development, Education and Lifelong Learning, Public Administration Reform, Technical Support for Implementation, National Contingency Reserve. 2) Five inter- regional Operational Programmes in the area of culture, health and welfare in all prefectures of Greece. The NCDP also participates with voting right in the Conference of Committee Chairmen (Chairs of the monitoring committees of the above mentioned Operational Programmes), and in the Monitoring Committees of the above mentioned Operational Programmes (The green coloured sentence is a repetition – Please see the red coloured sentence in the beginning of this paragraph). Moreover, NCDP participates as observer (without voting right) in the Monitoring Committees on European Territorial Cooperation Programmes. NCDP included the principle of non-discrimination based on disability and accessibility as ON – OFF criteria in all Sectorial and Inter-Regional Operational Programmes. Finally, NCDP, as a member with voting right in the Monitoring Committees, continues to examine the correct implementation of accessibility criteria in all notices and call for tenders. For instance, in the Operational Programme “Digital Convergence”, NCDP intervened quite often to denounce the lack of accessibility which was not included as legally binding criteria in the applications. A close cooperation with the responsible staff of the Management Authority of the Operational Programme “Digital Convergence” allowed the creation of a standard form which could be included in all call for projects and applications.

Good Practice: Operational Programme – Spain

Since 2000, Fundación ONCE manages the Operational Programme (OP) “Fight against Discrimination”, co-financed by of the European Social Fund, in the period 2007-2013. In this framework, many activities have been implemented to promote the employability of persons with disabilities, considering education and training as a key factor in order to obtain better jobs. The Operational Programme Fight against Discrimination, Programa Xtalento (For Talent Programme), is the programme that the ONCE Foundation is managing during the period 2007-2013, with co-financing from the European Social Fund (ESF) and with the participation in some of the planned actions as beneficiary of the same, of the Association for the Employment and Training of People with Disabilities, FSC Inserta. The appointment of the ONCE Foundation as one of the managers of said Programme, is under the auspices of the Ministry of Labour and Immigration in its role as Managing Authority of the European Social Fund in Spain.

⁵ The essay was sent by the NCPD to all responsible units for the designation of the NSRF Operational Programmes. This essay was also delivered to the Deputy - President of the Greek Parliament on the 8th of December 2006



LESSONS LEARNT AND FUTURE CHALLENGES

The overall approach of implementing Cohesion Policy in correlation with the Europe 2020 Strategy should include transversal elements such as non-discrimination and accessibility for disabled people, but should not undermine the need for specific measures, under the Cohesion Policy, for specific groups such as persons with disabilities. Specific operational programmes tackling the needs of vulnerable groups should be adopted at National level. General indicators at EU level, to be translated into national indicators by Member states, are deemed necessary in an attempt to enhance OPs' successful implementation and contribution to the EU2020 objectives.

At sub-national level indicators should reflect specific regional needs (for instance in terms of human resources), specific and global impacts (linked to overall objectives); results (reflecting immediate effect on beneficiaries); and outputs (that refer to activity, and are connected with the operational objectives). These should be much wider than the GDP criterion and easy to measure.

It is of outmost importance to maintain and enhance the pluri-regional programmes that generate strong partnerships and tackle intraregional disparities while guaranteeing sustainable interventions across the territory. Reinforcing horizontal as well as vertical coordination of Managing Authorities with different stakeholders will contribute to increase effectiveness of Cohesion Policy and better achieve EU2020 objectives.

Conditionality provisions creating incentives for reforms should include areas such as the reduction of social exclusion, which should be cross-cutting to all thematic priorities in all EU regions. Compliance with these rules should be monitored by the evaluation process and checked in payment claims. Conditionality should be also considered as a link to respect legal obligations of the European Union. The respect to the UN Convention on the Rights of Persons with disabilities should be a pre-condition in the development of the Cohesion Policy. Any action against the articles of the UN Convention should not be permitted under the development of the Cohesion Policy.

When it comes to the financial sanctions and incentives linked to the Stability and Growth Pact, more clarity is needed as regards the impact on end beneficiaries. The European Commission must clarify how potential suspensions or cancellations of EU funds to Member States would not compromise the funding certainty of EU projects. Intensifying the coordination of EU Funds at national and European level will surely increase effectiveness of Cohesion Policy, facilitate an integrated approach of actions and achieve greater impact.

The process of transposition of the general and specific regulations of the European Structural and Investment Funds (ESIF) has brought some initial conclusions that have to be considered as the process is far from being finalised as it is expected that the European Commission will still take almost all 2015 to finalise the total package of Operational Programmes in all EU member states.



Transition from Institutional to community-based care

Structural Funds had a huge potential in promoting inclusion of persons with disabilities and in funding social and health services' infrastructure. However different studies show how article 16 was not adequately implemented and how Funds were misused. The ECCL in its report on the use of structural funds described the way European regulations were neglected and European Social Fund contributed to the survival of social systems which are burden to the social inclusion of persons with disabilities⁶. In parallel the members of ECCL have been instrumental in raising awareness of the European Commission of this fact, as well as of the violations of human rights persons with disabilities were exposed to, as a result.

Further also to reports on situation of disabled people in institutions in Bulgaria, the European Commission convinced the government to set up an action plan financed by Structural Funds for the reform of the service system of residential services in the country.

In addition the European Commission established an ad hoc expert group on transition from institutional to community based care. This group evolved in a larger partnership the European Expert group⁷ to produce guidelines on deinstitutionalisation and toolkit⁸ on the use of EU funds to promote this process. The Expert group worked efficiently together with the European Commission both to monitor the use of the funds for the programming period 2007-2013 and in the negotiation of the regulations for the following period 2014-2020.

2014-2020 Negotiation and mainstreaming disability

The European Commission and the Member States are currently negotiating partnership agreements and operational programmes. EDF and its members have been involved at different levels and three main actions have paid off in the last months to ensure better transposition of the ESI Funds into national priorities:

EDF has facilitated meetings with the European Commission desk-officers in Brussels. This has demonstrated in cases such as Belgium and France to be useful for the inclusion of priorities in the area of disability and to ensure better involvement. Thanks to the European Expert Group on transition to Community Based Services, contacts between European Commission desk officers and the national umbrellas were possible in order to enhance de-institutionalisation through ESIF in countries such as Lithuania, Czech Republic, Slovakia, Romania and Slovenia. EDF has been selected to take part in the

⁶ Wasted Time, Wasted Money, Wasted Lives ... A Wasted Opportunity? - A Focus Report on how the current use of Structural Funds perpetuates the social exclusion of disabled people in Central and Eastern Europe by failing to support the transition from institutional care to community-based services. ECCL, London, 2010. <http://www.community-living.info/?page=268>

⁷ Members of the European Expert Group: EDF together with some of its European NGO members, such as Mental Health Europe, Inclusion Europe, ENIL and COFACE, representatives of service providers such as Feantsa and EASPD, local authorities represented by the European Social Network, children organisations such as LUMOS and Eurochild and UN bodies such as UNICEF and the UN Office of the High Commissioner for Human Rights

⁸ <http://deinstitutionalisationguide.eu/>



Structured Dialogue experts group at EU level in order to monitor the implementation of the ESIF from a global European perspective. The European Economic and Social Committee, that has created an AD Hoc group on disability, and counts on EDF as strategic advisor, has included the ESIF evaluation in a recent Hearing. The same has been done by the Disability High Level Group. In both the cases the European Commission has encouraged EDF members at national level to be vocal on their advocacy.

In a first analysis and contacts with a number of EDF members on the experience that they are facing with the adoption of the National Partnerships and the OPs:

Mainstreaming: There is a difficulty to implement articles 96 and 27 of the Common Provision Regulation⁹ in order to ensure mainstreaming of disability in all OPs. It is clear the national authorities continue confining disability just in employment and social OPs without correct inclusion of disability in the rest of European Social Fund (ESF) funded strategies, with clear difficulty to be integrated in the European Regional Development Fund (ERDF) programmes.

Involvement: Organisations of persons with disabilities are scarcely invited to take part in the monitoring committees (article 5) In the case they are invited, they are exclusively confined to the social/employment OPs. There is also scarce participation at regional level. One country also found a way to exclude EDF member through the interpretation of general ex-ante conditionality 3 as a way in which disability umbrella organisations can be replaced by the state disability councils.

Capacity Building: There are no clear programmes presented by the state authorities in order to ensure capacity building of DPOs in the implementation of the ESIFs (article 6 ESF)

Indicators: The regulations establish clear needs of evaluation and reporting. There is no clear intention from the State authorities to establish a clear set of indicators to measure the impact of the funds in the social inclusion of persons with disabilities and the implementation of the accessibility criteria. Just one country has reported in this regard some initial discussions.

National authorities do not strictly implement the earmarking of 20% from the ESF for Social inclusion and fight poverty as they include expenses (such as salaries of civil servants) that are not directly related to those purposes.

There is no connection with National important initiatives at national level (such as Disability strategies, social inclusion policies, etc) that have been affected by the economic crisis. In this regard, the ESIFs are losing its capacity to find synergies with existing policies in Education, ICT, Accessibility, and so on

⁹ Regulation (EU) No 1303/2013



Best Practice: Development of Partnership Agreement and Operational Programmes in Greece

The potential impact of Cohesion Policy in countries like Greece, that are recipients of great amount of money, cannot be lost. The phases of developing ambitious Partnership Agreements and Operational Programmes are crucial to ensure long-term benefits in the use of the Funds. The Regulations for the programming period 2014-2020 introduce new elements and new obligations for Member States, managing authorities, monitoring committees as well as civil society. Adequate information and training of all actors involved are needed to raise awareness and also to ensure mainstream of disability across the actions funded. This is what the National Confederation of Disabled People – NCDP did in a great effort and with good results.

Partnership Principle. As a first step, NCDP participated fully in all consultation processes for the preparation of the partnership agreement between Greece and the European Commission, in which it has been explicitly mentioned several times. Moreover, NCDP participated in all consultation processes for the preparation and design not only of the Sectorial and Regional Operational Programs but also the European Territorial Cooperation ones. As next step, NCDP requested the Minister of Development to establish a working group with the participation of representatives from all managing authorities of the following Funds: Cohesion Fund, European Social Fund, European Agricultural Fund for Rural Development, and European Regional Development Fund. The working group was set up with allowing NCDP to undertake the screening of all operational programs to make sure they adequately included the principle of non-discrimination based on disability and accessibility. NCDP wrote comments and proposals papers of more than 10 pages each for 20 operational programs regarding: a) the horizontal application of the principle of non-discrimination based on disability and the accessibility for persons with disabilities b) the inclusion in the Operational Programs' texts actions targeted to persons with disabilities and their families.

In order to adequately contribute to the work of the monitoring committees across the Greek territory, NCDP carried out training of its own members, nominated to take part in the committees. Two events have been organised. On 30th of May NCDP held a conference in Thessaloniki in which representatives from the Managing Authorities of the Regional Operational Programs of Northern Greece, representative from the Greek Authority responsible for the horizontal implementation of ESF actions (ESF Actions Coordination and Monitoring Authority - EYSEKT) in Operational Programs 2014 – 2020 and NCDP representatives participated. During this meeting extensive discussions took place regarding the incorporation of the principle of non-discrimination based on disability and accessibility for persons with disabilities into the Operational Programs 2014 – 2020. A second event took place on 22nd of September 2014 in Athens for the NCDP Executives which will participate in the monitoring committees of the Regional Operation Programs 2014 – 2020 with a voting right. The title of the seminar was the following: *«Regional Operational Programs: horizontal incorporation of the principle of non-*



discrimination based on disability and implementation of targeted to people with disabilities and their families actions». During the seminar were presented all the provisions for persons with disabilities which have been included in the regulation of ESI Funds, the new architecture of the Partnership Agreement 2014 – 2020 and the first conclusions from the scanning of the texts of the Regional Operational Programs 2014 – 2020.

Ex-ante Conditionality/NCDP requested that managing authorities were trained on the elements of the general ex-ante conditionality 3 on Disability. On October 8-9, they co-organised a seminar. More than 100 representatives from all managing authorities all over the country took part in that 2-day seminar. They were trained on the UN Convention on the Rights of Persons with Disabilities, and other disability related issues, including accessibility, built environment, transport, E-accessibility and also on how to mainstream disability and accessibility issues in all thematic objectives, in all programs, etc.

Capacity building. Article 6 of the regulation of the European Social Fund for 2014-2020¹⁰ foresees that an appropriate amount of ESF resources is allocated to capacity building activities for non-governmental organisations. NCDP ensured that this provision was implemented in the national operational programme investing in human resources

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Should you have any problems in accessing the documentation, please contact the EDF Secretariat. (Tel: +32 (0) 2 282 46 00, Email: ██████████).

¹⁰ Regulation (EU) No 1304/2013



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European Commission

Dear Sir,

The Hungarian LGBT Alliance, the umbrella organization bringing together lesbian, gay, bisexual and transgender civil society organizations in Hungary, has prepared a detailed opinion about the draft of Hungary's Human Resources Development Operational Programme (2014-2020) submitted for formal consultation to the European Commission. Our opinion was communicated to the Ministry of Human Resources responsible for drafting the Programme on 24 November, 2014.

It is our deep conviction, that it is primarily the duty of the Member States and not the European Commission to organize public consultation on such policy documents and to ensure that the opinion of all stakeholders, including civil society organizations representing minorities groups are given due attention. However, in the current political situation in Hungary, when discriminatory laws are being adopted and openly homophobic comments have become everyday practice among leading government officials, we see no guarantee that the Hungarian authorities will take our recommendations seriously.

The ignorance of Hungarian public authorities towards the concerns and needs of sexual and gender minorities is apparent from the way in which the consultation on the Programme was organized, and in the content of the draft Programme as well. While the 318 pages long Programme claims to promote equal opportunities – among others – on the ground of sexual orientation, there is not a single reference to LGBT people in the document, not even in the exemplarily detailed list of disadvantaged groups in the chapter on equal opportunities.

Regulation 1303/2013/EU clearly states that it is the duty of Members States to pay specific attention to the needs of all discriminated groups – including explicitly groups discriminated based on their sex and sexual orientation – during the preparation and design of operational programmes.

We ask the Commission to take notice of the exclusionary way the consultation was organized and the disregard for the concerns and needs of LGBT persons in the Programme, and urge the Hungarian Government to give proper attention to this issue when revising the Operational Programme.

Please find attached the English and Hungarian versions of our detailed opinion.

Looking forward to hearing from you on the steps taken.

Yours sincerely,

[Redacted signature]
[Redacted name]
board member
Hungarian LGBT Alliance



EUROPEAN COMMISSION
Employment, Social Affairs and Inclusion DG

Social Market Economy in Member States I : ESF
Hungary, Finland, Lithuania, Estonia, Latvia

Brussels,
EMPL/E/5/JS/ZB/bd

[REDACTED]
Board member
Hungarian LGBT Alliance
Csanády u. 4/B
Budapest - 1132
Hungary

Subject: Your letter received on 6 January 2015

Dear Mr [REDACTED]

Thank you for your letter sent by e-mail to the European Commission on 6 January 2015, where you express concerns about the public consultation process and target groups of the Human Resources Development Operational Programme of Hungary (2014-2020 - HRDOP).

The Commission is committed to ensure together with Member States that the partnership principle as a horizontal principle is respected during the preparation and implementation of European Structural and Investment programmes. This principle provides for a comprehensive and early stage involvement of all stakeholders into the planning, implementation, monitoring and evaluation of EU funds' investments.

In order to facilitate the implementation of this principle, the European Commission's Cohesion Policy legislation for 2014-2020¹ introduced in its Article 5(3) an innovative legislative element called "European Code of Conduct on Partnership" (ECCP)². The ECCP gives clear guidance to Member States and promotes best practices in the field of partnership for ESIF programmes. It is a binding legal document for the Member States, setting minimum standards. Therefore, from the set-up of Monitoring Committee, through the selection processes and the reporting and monitoring of projects, the Member State should follow the mentioned rules (Regulation (EU) 1303/2013 and ECCP).

¹ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund repealing Regulation (EC) No 1083/2006, and in particular Article 5(3)

² Commission delegated Regulation (EU) of 7.1.2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds

Concerning your comments with regards to HRDOP in particular, the Commission takes note of your concerns. At this stage of the OP negotiations, it can be confirmed that the OP text is not restrictive to any disadvantaged groups with respect to the issues you raise in your letter. Therefore the LGBT community is not restricted from the access to the ESIF funds.

However, in view of the partnership requirements mentioned, as well as to respect the principle of equal opportunities, the Commission recommends that during the implementation of the OP through the relevant Monitoring Committee the follow up of your request is monitored regularly also at the level of call for proposals. It is encouraged that you convey your opinion and concerns through the members of the Monitoring Committee which include representatives of various stakeholders including social and economic partners. The Managing Authority should provide access to information for all stakeholder groups which are interested to get involved in the monitoring process of programmes.

In view of the above, in case you have further questions or comments, please do not hesitate to get in contact directly with the Managing Authority responsible for the HRDOP. For this purpose the following contact details can be used:

Human Resources Development Operational Programme - Managing Authority

[REDACTED]

Deputy State Secretary for EU Development and Strategy

Ministry of Human Capacities

H-1054 Budapest, Akademia u. 3.

[REDACTED]

Yours sincerely,

[REDACTED]

Jiří Švarc
Head of Unit

**OPINION OF THE HUNGARIAN LGBT ALLIANCE ON
THE DRAFT OF THE HUMAN RESOURCES
DEVELOPMENT OPERATIONAL PROGRAMME
(2014-2020) TO BE SUBMITTED FOR FORMAL
CONSULTATION TO THE EUROPEAN COMMISSION**

November 24, 2014



Basic documents of the European Union consider the struggle against discrimination based on sexual orientation among the key goals of the European Union. According to Article 10 of the Treaty on the Functioning of the European Union: “In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.” Based on Article 19 the EU may take appropriate action to combat discrimination based on – among other grounds – sexual orientation. Article 21 of the Charter of Fundamental Rights specifically forbids discrimination based on sexual orientation.

The principle of non-discrimination also appears in the detailed rules of the regulation providing the funding for the Operational Programme (1303/2013/EU): Article 7 requires taking appropriate steps to prevent any discrimination, and Article 96(7) b) requires that Member States pay due attention to the needs of discriminated groups – among them groups discriminated because of their sexual orientation – during the preparation, design and implementation of the operational programme.

Despite these obligations, the needs of sexual and gender minorities (lesbian, gay, bisexual and transgender (LGBT) people) have not been addressed during the consultations on the draft of the Operational Programme, in setting investment priorities, or proposing specific measures, not even in measures proposed to address equal opportunities as a horizontal principle.

RESEARCH DATA

According to research data, LGBT people are currently one of the most rejected social groups in Hungary, their rejection is even higher than that of Roma people.¹ According to the 2012 research of the European Union Agency of Fundamental Rights (FRA)² 45% of LGBT respondents have experienced discrimination or harassment based on their sexual orientation or gender identity in the past 12 months; within the past five years 28% of them have been subjected to violence or serious threats.

As a result of the hostile social environment, mental health problems are particularly prevalent among them: a 2010 research by the Institute of Sociology of the Hungarian Academy of Sciences (MTA) and Háttér Society³ found that 42% of LGBT respondents had seriously considered suicide, and every seventh respondent had already attempted it. Tobacco, alcohol and drug use is significantly higher among them. In the past five years the number of newly screened HIV infections has doubled;⁴ according to experts a radical increase in the number of new HIV infections is expected in the coming years.

¹ ELTE Faculty of Social Science: *Kiktől félünk, kiket utasítunk el, kiket diszkriminálunk Magyarországon 2011-ben?* [Who are we afraid of, whom do we reject, whom do we discriminate in Hungary in 2011?] Available at: http://tatk.elte.hu/component/docman/doc_download/2012-eltetatkutatasijelentes

² Európai Unió Alapjogi Ügynöksége (FRA): *European Union lesbian, gay, bisexual and transgender survey 2012*. Detailed data available at: <http://fra.europa.eu/DVS/DVT/lgbt.php>. Subsequently referred to as: FRA 2012

³ Institute of Sociology of the Hungarian Academy of Sciences – Háttér Society: *A leszbikus, meleg, biszexuális és transznemű emberek társadalmi kirekesztettsége Magyarországon 2010* [The social exclusion of lesbian, gay, bisexual and transgender people in Hungary 2010]. Detailed data available at: <http://www.hatter.hu/programjaink/kutatasok/lmbt-kutatas-2010>. Subsequently referred to as: MTA-Háttér 2010

⁴ National Centre for Epidemiology: *Epinfo*, 2014 Issue No. 39. Available at: <http://www.oek.hu/oekfile.pl?fid=5778>

The FRA research quoted above⁵ found that a high number of Hungarian LGBT youth is subjected to discrimination in schools (24%), among the highest rate in the surveyed European Union countries; 60% of them had experienced negative comments about sexual orientation or gender identity in the school environment. The MTA-Háttér research quoted above⁶ found that 39% of those subjected to school discrimination and bullying had reported skipping school to temporarily avoid bullying and/or the homophobic/transphobic school environment, which – as many international research have found⁷ – often leads to early school dropout.

According to the FRA research quoted above⁸ 16% of LGBT respondents experienced discrimination when applying for a job, this figure is significantly higher (31%) for transgender persons. This is also reflected in unemployment rates: according to the MTA-Háttér research⁹ 62% of transgender respondents reported having been unemployed for longer than three months during their lifetime.

The same research¹⁰ found that leaving the countryside to settle in the capital is significantly more common than in the overall population, 77% of respondents reported that it mattered to them how open they can be about their sexual orientation or gender identity when choosing a place to live.

Research conducted among public officials, law enforcement, educational and health care personnel¹¹ found that questions concerning LGBT people do not receive proper attention in the basic training of these professionals, and there is a scarcity of available further training on such issues.

LACK OF CONSULTATION

LGBT civil society organizations have not been included in any targeted form in the development of the Operational Programme: they have not been invited to the strategic planning meetings, to expert workshops, nor to the partnership consultation during the summer of 2013, or the expert forums organized in fall 2013. The Operational Programme has not been put on the agenda of the consultation mechanisms working with the participation of LGBT civil society organizations (PROGRESS National Anti-Discrimination Working Group, Human Rights Roundtable). The only opportunity to comment on the Operational Programme was the internet forum open to anyone to submit their opinion. This consultation method, however, cannot replace the targeted inclusion of an often discriminated social group in such an important consultation process.

⁵ FRA 2012

⁶ MTA-Háttér 2010

⁷ UNESCO: *Education Sector Responses to Homophobic Bullying*, p20. Available at: <http://unesdoc.unesco.org/images/0021/002164/216493e.pdf>

⁸ FRA 2012

⁹ MTA-Háttér 2010

¹⁰ FRA 2012

¹¹ European Union Agency for Fundamental Rights (FRA): *Social fieldwork research: Surveying LGBT people and authorities: qualitative component of public authorities' research*. Publication pending.

GENERAL EVALUATION OF THE PROGRAMME

In general it can be noted that the priorities of the Programme are in line with the general aims of the Programme to develop human capital and improve the social environment, however, the following two general objectives might contradict the aim of promoting equal opportunities.

Increasing the role of churches. Recognizing the valuable contribution of churches in the field of social, educational and health care provision, it is important to note that the majority of churches in Hungary are hostile towards the social inclusion of LGBT people; they play an active role in hindering the legal equality of same-sex couples and their families. It is particularly church-run schools and religious education classes organized by churches in public schools that promote prejudices towards LGBT people. Freedom of religion and consciousness cannot serve as a justification for inciting hatred towards minorities. To counter these tendencies a special attention should be paid to avoid discrimination based on sexual orientation and gender identity. The recent Hungarian practice of restricting access to certain forms of EU funding to church-run institutions or to give preference to such institutions when evaluating proposals is unacceptable.

Strengthening the social role of families. Not questioning the importance of family as a social institution, the recent phenomenon of using the “protection of families” as a pretext for giving preference to a certain forms of family (tradition family based on marriage between a woman and a man), and devaluing and discriminating against all other forms of family (most notably families of same-sex couples and their children) cannot be left unnoticed. This is clear from the adoption of an exclusionary notion of family in the Family Protection Act adopted at the end of 2012, which was later found unconstitutional by the Constitutional Court. In recent years various representatives of the Hungarian government made diverging statements on whether Hungarian law treats registered same-sex partners or cohabiting or registered same-sex partners raising children as family. There has been a case in recent years where a project proposal for a call to promote family values and raising children was turned down by arguing that the proposal to promote having children among same-sex couples “is hardly in line” with the aims of the call. It has to be explicitly noted already in the Operational Programme that calls for projects to promote founding a family and to offer support services to families shall respect the diversity of family forms and be available to all couples and families including same-sex couples and their families.

CONCRETE SUGGESTIONS

Employability of transgender persons. Transgender people should be included besides Roma and less able persons among those at risk of being permanently excluded from the labour market (p40, 45) as they are also at high risk of long-term unemployment.

Support for local LGBT communities. The availability of local LGBT community infrastructure (social events, support services) is crucial to prevent the migration of LGBT youth from the countryside to Budapest or abroad. Funding for local youth communities (p47) should give preference to programmes that aim to include LGBT youth and promote their civil activism.

LGBT programming in the media. Similarly to supporting the media presence of national minorities, Roma people and people with disabilities (p50), support for media programmes targeting and/or portraying LGBT people should also be supported, including the employment of media personalities open about their sexual orientation and/ or gender identity.

Strengthening LGBT identity. Besides supporting cultural initiatives to strengthen the identity of Roma people, other national minorities and migrants (p50), funding should be provided to

initiatives that deal with the history and culture of LGBT people, and to programmes that aim at providing a space for dialogue between the LGBT community and the majority society.

Victims of hate crimes. In line with the new victims' rights directive (2012/29/EU) and the conclusion of the Council meeting on 6 December 2013, the measure "Preventing victimization and becoming a perpetrator" (p51) should include among the specifically targeted forms of crimes hate crimes including homophobic and transphobic hate crimes besides those already mentioned (partnership violence, child abuse, human trafficking).

Improving the mental health of LGBT people. Programmes that aim at developing and restoring mental health (p75) should treat LGBT people, especially LGBT youth as a specific target group. Specific attention should be given to the needs of LGBT people when setting up and training the staff of the newly established Mental Health Centres.

Substance abuse of LGBT people. Awareness raising programmes aiming at preventing and reducing substance abuse (p76) should treat LGBT people as a specific target group.

HIV-testing. "Targeted testing of the population" (p77) should be extended to testing for HIV; men who have sex with men (MSM) should be treated as a specific target group, and LGBT civil society organizations should be involved in the implementation of such programmes.

Early school dropout of LGBT youth. Problem mapping about early school dropout (p16) should include school discrimination and bullying as a major factor contributing to early dropout, which affects LGBT youth in particular. LGBT youth should appear among the vulnerable groups in education (p128); inclusive educational methods and equal opportunity action plans (p129) should specifically include support for LGBT youth.

Promoting acceptance of LGBT persons. Topics for methodological and content development (p136) should include developing new educational methods and content to promote the social acceptance of minority groups, including LGBT people, besides the issue of environmental education (climate change, conservation and selective waste collection) already included in the Programme.

LGBT people as a disadvantaged group. Based on the research quoted above it is beyond doubt that LGBT people form a disadvantaged social group in Hungary. Thus the group should be included in the list of disadvantaged groups (p302) in the chapter on equal opportunities. It follows from this that national LGBT civil society organisations and/or their umbrella organization should be offered membership in the Horizontal Monitoring Committee.