



Zoltán Balog
Minister of Human Capacities
Ministry of Human Capacities
(EFOP Managing Authority)
Akadémia utca 3
1054 Budapest
Hungary

23 February 2018

Dear Mr Balog,

REQUEST FOR IMMEDIATE SUSPENSION: Human Resources Development Operational Programme 2.2.2 – 17. Conversion of institutional supply to community-based services – replacing institutional places (Grant Scheme EFOP 2.2.2-17)

1. The following organisations submit this request to the Hungarian Government to request immediate suspension the implementation of projects under grant scheme EFOP. 2.2.2-17:
2. The **European Network on Independent Living (“ENIL”)**. ENIL is a user-led, cross-disability rights civil society organisation, with members in 47 countries across Europe. ENIL represents the disability movement for human rights and social inclusion based on solidarity, peer support, deinstitutionalisation, democracy, self-representation, cross-disability and self-determination. For more information please visit: www.enil.eu.
3. The **Hungarian Civil Liberties Union (“HCLU”)**. For over two decades, HCLU has been active in protecting the rights of citizens against undue interference by those in position of public power. The HCLU monitors legislation, pursues strategic litigation, conducts public education and legal empowerment activities and regularly launches awareness raising media campaigns. Their lawyers provide free legal aid in about 2000 cases per year (legal counselling and legal representation) and this number is increasing. The HCLU, with headquarters in Budapest, litigates across the country up to the Hungarian Supreme Court and international human rights forums. The HCLU’s activities cover two major areas: the protection of civil liberties and safeguarding equality for the most disadvantaged groups including persons with disabilities. For more information, please visit www.tasz.hu/en.
4. **Validity Foundation** (formerly known as Mental Disability Advocacy Centre / “MDAC”) is an international human rights organisation which uses the law to secure equality, inclusion and justice for people with mental disabilities worldwide. Validity’s vision is a world of equality where emotional, mental and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realised for all persons without discrimination of any form. Validity Foundation has participatory status at the Council of Europe, and observer status at ECOSOC. For more information, please visit www.validity.ngo.

Background

5. On 26 January 2017, the above-mentioned call for proposals was published, with a planned investment of up to 21.8 billion HUF (approximately € 70.5 million), which was later amended to 23.7 billion HUF (approximately € 77 million). The Call was made within the framework of Hungary's national deinstitutionalisation strategy with financing from the European Regional Development Fund (ERDF). Beneficiaries of the financing scheme were identified as persons with disabilities, "psychiatric patients" and addicts currently living in 'nursing and caring homes' with more than 50 places.
6. On 29 August 2017, it was announced that 29 nursing and care homes had been awarded a total of 22.7 billion HUF (approximately € 73 million) for schemes to "deinstitutionalise" an estimated 2,430 persons with disabilities. Tender applications were, however, only made public (on 19 September 2017) by a disability rights NGO, the Hungarian Association for Persons with Intellectual Disability (ÉFOÉSZ) after lodging applications against the Government in both a civil court and before the National Authority for Data Protection and Freedom of Information.
7. Analysis of the successful bids shows that the approved projects envisage the construction of "group homes" for beneficiaries of the scheme. Each "group home" will in fact be a congregate living setting housing between 8 and 12 individuals in single or double bedrooms. The tender applications envisage that 181 new institutions (see paragraph 13 below) will be constructed. 8 already existing buildings will be renovated and filled as a result of the 29 funded projects. The deadline for completion of projects is set for the end of 2018.

Relevant legal standards

8. The European Regional Development Fund (ERDF) is one of the five main funds distributed by the European Union (EU) to Member States under the EU's cohesion policy 2014-2020, collectively known as European Structural and Investment Funds (ESI Funds). The funds are regulated by common provisions set down in EU Regulation No. 1303/2013, adopted on 17.03.2013. Accordingly, funds are distributed to Member States on the basis of Partnership Agreements between the European Commission and Member States. To benefit from this financing, Member States must comply with *ex ante* conditionalities set down in regulations which lay down specific policy objectives.¹ Of particular relevance are conditionalities related to promoting social inclusion, combating poverty and any discrimination; anti-discrimination; and disability. Further guidance on the contribution of ESI Funds to deinstitutionalisation can be found in the Common European Guidelines on the Transition from Institutional to Community-based Care, published by the European Expert Group on the Transition from Institutional to Community-based Care in November 2012 and endorsed by the European Commission, and in the Guidance on *ex ante* conditionalities for the European Structural and Investment Funds Part II, adopted by the European Commission in February 2014.
9. The Charter of Fundamental Rights of the European Union also guarantees the protection of fundamental rights for citizens and residents of EU Member States, including respect for human dignity (Article 1), private and family life (Article 7), equality (Article 20), non-discrimination (Article 21), and the integration of persons with disabilities (Article 26).
10. Hungary is a State party to the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD), which it ratified in 2007. As a regional integration organisation, the EU also became a party to the treaty by way of confirmation in 2010. Ratification or confirmation of the treaty creates binding obligations under international law on parties to promote, protect and fulfil the human rights of all persons with disabilities, including the right to independent living and inclusion in the

¹ Article 19 and Annex XI, Part 1 (Thematic ex-ante conditionalities) of the Regulation (EU) No 1303/2013 of the European Parliament and of the Council.

community (Article 19), the right to equal recognition before the law (Article 12) and the right to the equal protection and equal benefit of the law without discrimination (Article 5).

11. Hungarian Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities prohibits discrimination on the basis of protected characteristics, including disability. In addition, equal protection for people with disabilities is also enshrined in Act XXVI of 1998 on the Rights and Equal Opportunities of Persons with Disabilities. Act XXVI of 1998 also specifies that the deinstitutionalisation of large-scale social care institutions needs to take place in a manner that is compliant with Article 19 of the CRPD.
12. In the submitting organisations' view, the projects approved for funding under grant scheme EFOP. 2.2.2-17 do not comply with these binding national and international standards due to the following reasons.

Specific issues with EFOP-2.2.2-17

13. According to information contained in the professional programs submitted by the institutions and approved for funding under grant scheme EFOP. 2.2.2-17, a significant proportion of the new "group homes" will be built in the vicinity of small cities or isolated villages, such as Bodonhely (population: 287), Tormásliget (population: 292), Sopronnémeti (population: 297), Fülöpösdaróc (population: 320) and Und (population: 322).² In some cases, this means that affected individuals will be moved to villages which are even more isolated than the ones near which they currently reside. This will undoubtedly have a negative impact on community inclusion, the maintenance of any existing family and personal connections and any existing access to general services in the community. For example, residents of an institution in Búcsúszentlászló – a town more than 200 kilometres away from Budapest – will move to smaller institutions in five surrounding towns. Three out of the five towns – Felsőrajk, Vaspör and Esztergályhorváti – are smaller than Búcsúszentlászló (populations: 745; 354 and 417 respectively). The institution provides care for people with disabilities whose home town is Budapest and yet, instead of returning there, they will continue to be institutionalised far from their home, on the periphery of the country. This violates the principle of inclusion in the community which is core to Article 19 of the CRPD and also enshrined in Article 26 of the Charter of Fundamental Rights of the European Union.
14. Further, many sites chosen for the construction of the new institutions are isolated plots within the urban zoning of villages. Besides, a significant proportion of the planned developments are to be located in the immediate environs of existing large institutions (e.g. Táplánszentkereszt, Vésztő, Drávatamási, Kálmáncs, Szabás, Szombathely). This will create blocks of institutions providing both accommodation and services for people with disabilities. Moreover, as pointed out by ÉFOÉSZ, some of the planned sites are highly problematic in terms of quality or geographic location. One of the selected sites is embedded in an industrial area (in Barcs), while other plots can be found next to a wastewater lift station (in Kéthely, Honvéd street), in areas of wetlands, reeds, and marshes (in Somogyvár, Petőfi street), as well as in flood-prone areas (in Táplánszentkereszt).
15. A core element of the approved plans, which represents a fundamental denial of the right to live in the community, is the complete failure to shift the focus of investment away from institutionalisation and towards the development of genuine community-based supports: the focus of all projects still remains on the creation of congregate housing stock and concomitant social services. In several of the projects, the Directorate-General for Social Affairs and Child Protection (SZGYF) plans to create

² As to the size of the settlements where the new institutions will be built, 15 settlements have less than 500 inhabitants, 18 settlements have inhabitants between 500 and 1000, 31 settlements have inhabitants between 1000 and 5000 and only 10 settlements have more than 5000 inhabitants.

“service centres” in the “deinstitutionalised institutions”, on the grounds of existing large institutions or new “group homes”, or adjacent to them. These centres will provide day care, meals, employment and other activities for residents of the new “group homes”. In the majority of cases, residents will be transported to the large institution by minibuses to access day care services provided in the exact same manner as before. In Táplánszentkereszt, for example, part of the services offered by the service centre – the provision of daily meals – is planned to be provided in a common area on the first floor of a castle, which is currently a large-scale institution. It will be located in rooms directly adjacent to the bedrooms of residents who are not part of the “deinstitutionalisation” process who will continue to be detained in the castle. People with disabilities will therefore continue to live and access services based in an “institutional bubble”, isolated from the community. As has been emphasised by the UN Committee on the Rights of Persons with Disabilities (CRPD Committee), “all support services must be designed to support living within the community, preventing isolation and segregation from others, [...] therefore, any institutional form of support services which segregates and limits personal autonomy is not permitted by article 19 (b).”³ Article 19 not only requires states to ensure that people with disabilities have access to support services enabling them to be fully included and participate in all spheres of social life, but to all services offered to the public. The failure to develop new service structures or to improve the existing disability-specific and general services that are embedded in the community violates both the second and the third limbs of Article 19.

16. We are of the view that the approved projects are not based on the will and preferences of the individuals involved, including those with high support needs. As ÉFOÉSZ has pointed out in its analyses of the grant applications, all the projects include remarkably similar plans concerning the involvement of the residents in the transfers, raising concerns that they are based on pre-prepared template answers that are not indicative of the specific supports required for different residents in each institution. While it is clear that there is no opportunity for individuals to make decisions about the location or nature of the services offered under these projects, none of the plans include a process by which affected individuals may take other decisions concerning their transfer or how supports for decision-making in this regard will be identified and provided. It is one of the core elements of Article 19 to ensure the right to decide where, with whom and how to live for all people with disabilities, irrespective of impairment.
17. While the institutions are referred to in the project plans as “group homes” and will house between 8 and 12 individuals in single or double bedrooms, in reality they contain numerous characteristics of an institution, as set out in paragraph 16(c) of CRPD Committee General Comment No. 5. on Article 19. Key among these is the lack of choice on the part of those individuals being forcibly removed to these new residences. All projects are underpinned by an assumption that the new institutions are a place of permanent residence for the affected individuals and there is no provision or planning for rehabilitation, habilitation or other necessary measures to ensure choice of residence or development of independent living skills in the future for the people concerned. Moreover, the new settings will retain a number of institutional care characteristics, among others including obligatory sharing of assistants and no or limited influence over assistance received, lack of control over day-to-day decisions, a disproportion in the number of persons with disabilities living in the same environment and isolation and segregation from independent life in the community.
18. It can be concluded that the grant programs are not directed at the elimination of large institutions and mass forms of care, but rather at the further maintenance of them. The programs fail to advance the inclusion of people with disabilities in their communities and instead of contributing to a shift from institutional to community-based care, they will result in the trans-institutionalisation of residents. Should these programs proceed, we believe that the combination of errors would amount to retrogressive steps in respect of the rights of direct beneficiaries of such schemes, as well as persons

³ Committee on the Rights of Persons with Disabilities, General Comment No. 5 (2017) on living independently and being included in the community, CRPD/C/GC/5, 27 October 2017, para 30.

with disabilities in general.⁴ They also breach the *ex ante* conditionalities set down in respect of this financing.

Requests to the Government

19. We urge the Hungarian Government to immediately suspend the current deinstitutionalisation process, in particular the 29 individual deinstitutionalisation projects which have been approved for funding by the Government under grant scheme EFOP 2.2.2 – 17.
20. We further urge the Government to immediately establish a genuine and effective process for engagement with civil society organisations, people with disabilities and their representative organisations to plan, implement and monitor a CRPD-compliant deinstitutionalisation process that actively takes into account their views and recommendations at every stage.

Yours sincerely,



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⁴ The current de-institutionalisation process in fact violates the principle of non-retrogression by increasing State interference with the right to choose where and with whom to live, by increasing the number of institutions in the country and by disregarding the expressed will and preferences of current residents.