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Daniel Calleja Crespo, Director-General
Alessandro Spina, Member of INST Team (S.J.F)
Caroline Ehrbar, Member of the Legal Service
Stefan Ciubotaru, Member of the Legal Service
Legal Service
European Commission
1049 Bruxelles/Brussel
Belgium

25 January 2024 – *By email only*

Subject: EFOP 2.2.25-22 on “Developing transition to community-based services – Creation of supported housing, development of basic social services” in Hungary

Dear Messrs. Christophidou, Calleja Crespo, Monfret, Spina, Ehrbar and Ciubotaru,

I am writing to you on behalf of the Validity Foundation – Mental Disability Advocacy Centre (“**Validity**”) to follow up on our letter of 20 December 2022 (Ref: Ares(2023)21639) and to inform you about the implementation of projects selected under grant scheme EFOP 2.2.25-22 on “Developing transition to community-based services – Creation of supported housing, development of basic social services” and to request information on the view of the European Commission (“**Commission**”) concerning the implementation of the scheme in view of your letter of 21 March 2023 (Ref: Ares(2023)2027575) to us, in which you highlighted that:

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“Commission services will closely monitor the selection and implementation in this case, in order to ensure the compliance with the UNCRPD, and is committed to examining the situation in case of alleged violation. In this work, the Commission counts on the contribution of NGOs’ monitoring activities to signal any such cases to the Managing Authority and the Commission. NGOs are also encouraged to pursue contacts with the Managing Authority and the Commission to share expertise on how the compliance of projects with the UNCRPD during project implementation can be ensured.”

Validity wishes to recall, as we previously signaled in our letter of 20 December 2022 (Ref: Ares(2023)21639), that EFOP 2.2.25–22 does not meet Hungary’s obligations under Article 19 of the UN Convention on the Rights of Persons with Disabilities (“**CRPD**”),¹ General Comment No. 5 of the CRPD Committee,² the CRPD Committee’s Inquiry Report on Hungary,³ and the Guidelines on deinstitutionalization, including in emergencies.⁴ Now, we can add that EFOP 2.2.25–22 and its implementation were criticised by the CRPD Committee in its recently published Follow-up Report concerning the Inquiry on Hungary:⁵

The Committee is concerned that during the assessment period, the State party continued to implement measures in the context of its replacement programme that are incompatible with the Convention and that reinforce discrimination against persons with disabilities. In

¹ UN General Assembly, Convention on the Rights of Persons with Disabilities, A/RES/61/106 (2006), Annex I. Available at: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>.

² UN CRPD Committee, General Comment No. 5 on living independently and being included in the community, CRPD/C/GC/5 (2017). Available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no5-article-19-right-live>.

³ UN CRPD Committee, Inquiry concerning Hungary under article 6 of the Optional Protocol to the Convention, CRPD/C/HUN/IR/1 (2020). Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FHUN%2FIR%2F1&Lang=en.

⁴ UN CRPD Committee, Guidelines on deinstitutionalization, including in emergencies, CRPD/C/5 (2022). Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/5.

⁵ UN CRPD Committee, Report on follow-up to the inquiry concerning Hungary, CRPD/C/29/2 (2023), Annex IV. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2F29%2F2&Lang=en.

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particular, the Committee is concerned that large-scale institutions still exist and that the State party has actively pursued the establishment of small-scale institutions as part of its revised concept. Nonetheless, this is contrary to the Convention as explained by the Committee in its guidelines on deinstitutionalization, including during emergencies, adopted in 2022. The adverse conditions prevailing in both types of institution for persons with disabilities pose risks to their health, safety and dignity.

As EFOP 2.2.25-22 is co-financed by the European Regional Development Fund, we urge the Commission to investigate the situation and exercise its full monitoring and control powers to ensure the implementation and evaluation of the projects under the scheme are brought into full compliance with Hungary's and the EU's obligations under the CRPD.

1. Call EFOP 2.2.25-2

In our letter of 20 December 2022 (Ref: Ares(2023)21639), we informed the Commission about the factual background of the Call EFOP 2.2.25-2 (the "**Call**"), and emphasised that it foresees the creation of two types of "housing services": (i) an apartment or house for up to six persons, and (ii) an apartment or house for seven to twelve persons.⁶ The indicative budget available for this Call was HUF 15,000,000,000 (EUR 3,633,553.50). The Government undertook to provide non-refundable grants of between HUF 100,000,000 (EUR 241,718.81) and HUF 1,250,000,000 (EUR 3,021,485.11) for projects meeting the conditions of the Call, up to the amount of the funds available. The projects under the scheme are co-financed by the European Regional Development Fund.⁷

The deadline for proposals was the end of November 2022. The winners of the Call are obliged to finish all constructions by 31 December 2023.⁸

⁶ Chapter 3.1.1.1.1. of the Call.

⁷ Chapter 1.2. of the Call.

⁸ Chapter 3.5.2. of the Call.

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2. EFOP 2.2.25–22 breaches the CRPD

The Call states that “[p]rojects should be in line with Article 19 of the CRPD, the General Comment No. 5 and should comply with the deinstitutionalization-related recommendations of the Inquiry Report on Hungary that was performed under Article 6 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities”.⁹

However, this is not the case.

Article 19 of the CRPD states that States Parties:

“recognize the equal rights of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community(...) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular life in a particular living arrangement.” (Emphasis added).

The CRPD Committee gave the following authoritative interpretation in its **General Comment No. 5**:

“Neither large-scale institutions with more than a hundred residents nor smaller group homes with five to eight individuals, nor even individual homes can be called independent living arrangements if they have other defining elements of institutions or institutionalization. Although institutionalized settings can differ in size, name and set-up, there are certain defining elements, such as obligatory sharing of assistants with others and no or limited influence over whom one has to accept assistance from; isolation and segregation from independent life within the community; lack of control over day-to-day decisions; lack of choice over whom to live with; rigidity of routine

⁹ Chapter 1.1. of the Call.

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irrespective of personal will and preferences; identical activities in the same place for a group of persons under a certain authority; a paternalistic approach in service provision; supervision of living arrangements; and usually also a disproportion in the number of persons with disabilities living in the same environment. Institutional settings may offer persons with disabilities a certain degree of choice and control; however, these choices are limited to specific areas of life and do not change the segregating character of institutions. Policies of deinstitutionalization therefore require implementation of structural reforms which go beyond the closure of institutional settings. Large or small group homes are especially dangerous for children, for whom there is no substitute for the need to grow up with a family. “Family-like” institutions are still institutions and are no substitute for care by a family.”¹⁰ (Emphasis added).

In April 2020, the UN CRPD Committee found Hungary responsible for “grave and systematic” violations of the human rights of persons with disabilities in the country. In the **Inquiry Report**, the CRPD Committee found Hungary in breach of international law for placing people with disabilities in institutions, aided by the European Union which has provided extensive funding to maintain this institutionalised system.

In its report, the CRPD Committee drew attention to the lack of choice and limited autonomy in “supported housing” in Hungary. For example, the Committee pointed out that:

“The lack of self-determination and restrictions on private life are a common feature in so-called ‘supported housing’. The design of the houses and the provision of basic furniture are matters decided by the institution. Persons with disabilities have no say in the choice of house to which they move. They are required to share their rooms, although some margin is reported with respect to choosing their room-mates. Houses are governed by internal rules not decided by persons with

¹⁰ UN CRPD Committee, General Comment No. 5 on living independently and being included in the community, CRPD/C/GC/5 (2017), para. 16(c).

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disabilities. For matters ranging from inviting guests and engaging in outside activities to owning a pet, they require prior authorization. Alcoholic beverages are prohibited. Couples, when allowed to move together, have limited possibilities for intimacy. Although persons with disabilities may leave supported housing, they have no real options to resettle as many of them have severed ties with their families or communities. Supported housing thereby becomes their new permanent living arrangement".¹¹

The Committee stressed that the persistence of a culture of institutionalisation, including what is referred to as 'supported housing' in Hungary, is inconsistent with the right to live independently and be included in the community under the Convention.¹²

The CRPD Committee recommended that the State party, "guided by general comment No. 5:

- (a) Prevent any further placement of persons with disabilities in any institutional settings by halting programmes that develop institutions including supported housing, and provide reparations for persons with disabilities seeking redress for their institutionalization;
- (b) amend the current strategy of moving persons with disabilities from large-scale institutions into small-scale institutions (supported housing) by removing all elements of institutionalization."¹³

The **Guidelines on deinstitutionalization, including in emergencies**, adopted by the CRPD Committee in 2022, highlights that:

"Disability-specific detention typically occurs in institutions that include, but are not limited to, *social care institutions, psychiatric institutions*, long-stay hospitals, nursing homes, secure dementia wards, special boarding schools, rehabilitation centres other than

¹¹ UN CRPD Committee, Inquiry concerning Hungary under article 6 of the Optional Protocol to the Convention, CRPD/C/HUN/IR/1 (2020), para. 68.

¹² Ibid. para. 73.

¹³ Ibid. para. 114.

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community-based centres, *half-way homes*, *group homes*, *family-type homes for children*, *sheltered or protected living homes*, forensic psychiatric settings, transit homes, albinism hostels, leprosy colonies and other congregated settings.”¹⁴ (emphasis added)

In its recently adopted **Report on follow-up to the inquiry concerning Hungary**, the CRPD Committee emphasised that:

“Information available to the Committee indicates large-scale transinstitutionalization in the State party.”¹⁵

“The Committee is concerned that during the assessment period, the State party continued to implement measures in the context of its replacement programme that are incompatible with the Convention and that reinforce discrimination against persons with disabilities. In particular, the Committee is concerned that large-scale institutions still exist and that the State party has actively pursued the establishment of small-scale institutions as part of its revised concept. Nonetheless, this is contrary to the Convention as explained by the Committee in its guidelines on deinstitutionalization, including during emergencies, adopted in 2022. The adverse conditions prevailing in both types of institution for persons with disabilities pose risks to their health, safety and dignity.”¹⁶

The EFOP 2.2.25-22 Call and its implementation are clear violations of the CRPD since the creation of so-called “supported housing” in apartments for up to twelve persons is transinstitutionalisation, and the modernisation of existing segregated settings constitutes institutionalisation and discrimination on the basis of disability.

3. Implementation of EFOP 2.2.25-22

¹⁴ UN CRPD Committee, Guidelines on deinstitutionalization, including in emergencies, CRPD/C/5 (2022), para. 15.

¹⁵ UN CRPD Committee, Report on follow-up to the inquiry concerning Hungary, CRPD/C/29/2 (2023), Annex IV, para 34.

¹⁶ Ibid, para 36.

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In our letter of 4 July 2023 to the General Court regarding case C-51/23 P,¹⁷ we informed the Court of Justice of the European Union that:

“In March and April 2023, Hungary approved thirty-five projects to create group homes for 6 and 12 people. This includes projects that will create specialized daycare centers for persons with disabilities, in violation of Hungary’s obligations under Article 19 of the CRPD, General Comment No. 5 of the CRPD Committee, the CRPD Committee’s Inquiry Report on Hungary, and the Guidelines on deinstitutionalization, including in emergencies. If the projects go ahead, the rights of dozens of persons with disabilities and/or psychiatric patients will be violated.”

The Commission was aware of the faulty implementation of EFOP 2.2.25–22.

4. Requesting immediate investigation

On 12 September 2022, Validity submitted its comments on the draft Call for proposals 2.2.25–22 to the Managing Authority and explained why the draft Call was in breach of the CRPD and the jurisprudence of the CRPD Committee. In its response, the Ministry of Interior said that:

“The aim of the call is to **improve the infrastructure of supported housing services provided for in the Social Act and modernisation of existing places** and, where necessary, the development of the basic service providing a service ring, contributing to the prevention of institutionalisation and the avoidance of institutional hospitalisation” (emphasis added).

It is clear that, for the Hungarian Government, placement of persons with disabilities in group homes (‘supported housing’) does not constitute institutionalisation. It is also clear that the Hungarian Government’s

¹⁷ Appeal brought on 1 February 2023 by Validity Foundation — Mental Disability Advocacy Centre against the order of the General Court (Seventh Chamber) delivered on 22 November 2022 in Case T-640/20, Validity v Commission. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62023CN0051>.

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perspective directly contradicts its obligations under European law and international human rights law.

In light of the above, and with reference to the Commission's powers and responsibilities to monitor and control the use of EU funds, as well as being guardian of the Treaties and the Charter of Fundamental Rights, Validity requests the Commission to **immediately investigate the situation and send a 'letter of formal notice' to Hungary in order to receive its observations on this matter.** Further, we remind the Commission of its obligations to protect the budget of the European Union, and to prevent misuse of funds through suspending and recovering funds that have been used by Hungary and any other Member State in violation of EU and international law.

If you need more information, please do not hesitate to contact us. We also ask you to inform us about the steps you take hereon. As you are aware, Validity is concerned that this situation may also be repeated elsewhere, and it is critically important that the Commission fully exercises its duties to prevent misuse of EU funds to finance human rights violations.

Yours sincerely,



Steven Allen

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