



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
REGIONAL AND URBAN POLICY

The Director-General

Brussels  
REGIO/E.3/GK/kt (2023)1142327

**Subject: Reply to Call EFOP 2.2.25-22**

Dear Mr Allen,

I would like to thank you for your letter of 20 December 2022 (Ref: Ares(2023)21639) in which you provided us with a detailed analysis about the ongoing call for proposals ‘EFOP 2.2.25-22’ on ‘Developing transition to community-based services – Creation of supported housing, development of basic social services’ (the Call) published by the Hungarian government on 28 October 2022.

In your letter, you explained that in your view the Call does not meet Hungary’s obligations under Article 19 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), General Comment No. 5 of the CRPD Committee, the CRPD Committee’s Inquiry Report on Hungary, and the Guidelines on deinstitutionalization, including in emergencies. You also asked the Commission to investigate the situation and suspend the Call until it is brought into full compliance with these abovementioned obligations.

As you point out, the call for proposals ‘EFOP 2.2.5-17’ on ‘Development of *Transition* from *Institutional* to Community-based Care’ was withdrawn in 2018, and the preparation of a new call started, which takes into account the eligibility period for operations financed during the 2014-2020 programming period (which ends on 31 December 2023).

The recently published call EFOP 2.2.25-22 states in Chapter 1.1. (last paragraph on page 6) that the overarching objective is to comply with Article 19 of the UNCRPD on living independently and being included in the community, and with Act XXVI of 1998 on the rights of persons with disabilities and their equal opportunities, as well as with the Government decision 1295/2019 (V. 27.) on the long-term concept regarding deinstitutionalisation of persons with disabilities for 2019-2036. Beyond the compliance with Article 19 of the UNCRPD, the Call clearly states in Chapter 1.1. (second paragraph on page 7) that operations should be in line with the General Comment No. 5 of the CRPD Committee and with the CRPD Committee’s Inquiry Report on Hungary.

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Furthermore, it reflects the findings of the inquiry report and responds to the needs of the people with disabilities<sup>1</sup>.

Article 51(1) of the Charter of Fundamental Rights of the European Union (the Charter) provides that the Charter is addressed to Member States only when they are implementing EU law. The Charter thus applies to the competent authorities in Member States when they are implementing the ESIF programmes, including by preparing and launching calls, establishing selection criteria, selecting projects, signing grant agreements etc.

The Commission considers de-institutionalisation to have an important role to play in implementing the social inclusion priorities of cohesion policy. In line with the ex-ante conditionalities established in the Common Provisions Regulation on ESI Funds for the 2014-20 programming period<sup>2</sup> (Recital 21, Article 19 and Annex I) and the horizontal principles referred to in its Articles 5, 7 and 8, the Commission pursues the objective of, *inter alia*, preventing any discrimination against people with disabilities. Moreover, in order to ensure the effective and efficient use of Union support granted by the Funds, Member States are required to have in place, *inter alia*, a national strategic policy framework, with a view to promoting social inclusion, combating poverty and any discrimination as well as to ensure administrative capacity for the implementation and application of the UNCRPD in the field of ESI Funds in accordance with Council Decision 2010/48/EC<sup>2</sup>. For the 2021-27 programming period, in line with the horizontal principles, established in the Common Provisions Regulation on Funds<sup>3</sup> (Recital 6 and Article 9) as well as the relevant Horizontal Enabling Condition<sup>4</sup> (Article 15 and Annex III), the investments/operations under the cohesion policy are to be implemented consistently with and contribute to the deinstitutionalisation strategy and relevant EU policy and legal frameworks for upholding human rights obligations, namely the UNCRPD and General Comment No 5 thereto, while taking into account, among others, the principles of the European Pillar of Social Rights. Furthermore, the recent European Ombudsman's inquiry<sup>5</sup> on how the Commission monitors that Member States use Funds to promote deinstitutionalisation, calls on to provide a clearer guidance to Member States and to its own staff. It suggests (under point iv(b)) that the guidance should instruct Member States to "*see to it that the 'partnership agreements' and operational programmes they submit to the Commission for approval are sufficiently detailed so that there is no scope therein to cover the building of institutions for persons with disabilities and older persons*". The Commission aims to pursue this suggestion and, to this end, co-operation and joint work on this matter with a wide range of stakeholders including NGOs, are fundamental during both the 2014-20 and the 2021-27 programming periods.

In line with the principles of shared management, it is for the Member State to select and implement projects. The drafting and publishing of the Call, as for any other call, falls within the competence of the Member States. The Commission considers that at the present time there is no evidence to claim that the projects to be implemented would be

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<sup>1</sup> E.g. finding related to the development of a social services ring (6, para 70), selection of the location (5, para 63), individualized support through e.g. employment of rehabilitation engineer (6, para 69)

<sup>2</sup> Regulation 2013/1303 <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32013R1303>

<sup>3</sup> Regulation 2021/1060 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R1060>

<sup>4</sup> Implementation and application of the United Nations Convention on the rights of persons with disabilities (UNCRPD) in accordance with Council Decision 2010/48/EC

<sup>5</sup> <https://www.ombudsman.europa.eu/en/decision/en/155353>

incompatible with the UNCRPD. The Hungarian Managing Authority has to publish the results of the evaluation. As far as the Commission is aware, the evaluation process is still ongoing and the results will be released on their website in the near future.

Nevertheless, the 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.

Last but not least, I would add that the Commission puts considerable effort in ensuring the respect of the partnership principle by national authorities. According to the Partnership Agreement between the European Commission and Hungary on funding under the Common Provisions Regulation (EU) 2021/1060, relevant bodies representing civil society, including non-governmental organisations, and bodies responsible for promoting social inclusion, gender equality and non-discrimination, independent fundamental rights bodies should be involved in all the stages of the cycle: programming, implementing, monitoring, evaluating investments in social and health care infrastructure to ensure the respect of the principles of independent living, non-segregation and non-discrimination in line with the UNCRPD and the Charter.

Yours sincerely,



Normunds Popens  
Director-General (Acting)