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VALIDITY

20 December 2022 – *By email only*

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Dear Messrs. Lemaître, Calleja Crespo, Monfret and Spina,

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

I am writing to you on behalf of the Validity Foundation – Mental Disability Advocacy Centre (“**Validity**”), to inform you about the ongoing call EFOP 2.2.25-22 for proposals on “Developing transition to community-based services – Creation of supported housing, development of basic social services” (the “**Call**”) published by the Hungarian government in September 2022.

It is Validity’s position that the deinstitutionalization-related conditions of the Call don’t meet Hungary’s obligations under Article 19 of the UN Convention on the Rights of Persons with Disabilities (“**CRPD**”),<sup>1</sup> General Comment No. 5 of the CRPD Committee,<sup>2</sup> the CRPD Committee’s Inquiry Report on Hungary,<sup>3</sup> and the Guidelines on deinstitutionalization, including in emergencies.<sup>4</sup> As the Call is co-financed by the European Regional Development Fund, we urge the European Commission (the “**Commission**”) to investigate the situation, and to exercise its full monitoring and control powers in order to ensure the Call is brought into full compliance with these obligations.

### **1. Factual background: Call EFOP 2.2.25-22**

In September 2022, the Hungarian Managing Authority published EFOP-2.2.25-22, a public procurement call on “Developing transition to community-based services – Creation of supported housing, development of basic social services”.<sup>5</sup> The aim of the Call is to improve access to supported housing for persons with disabilities and/or psychiatric patients, and promote independent living through project investments, including the (i) development, expansion and

<sup>1</sup> 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>.

<sup>2</sup> 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>.

<sup>3</sup> 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](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FHUN%2FIR%2F1&Lang=en).

<sup>4</sup> 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](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/5).

<sup>5</sup> The Call can be accessed only in Hungarian at: <https://www.palyazat.gov.hu/node/75491>.



modernisation of housing services and, where necessary, (ii) the development and capacity expansion of a ring of core services that are attached to supported housing services.<sup>6</sup>

More specifically, the Call 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.<sup>7</sup> The housing services are to be limited to the less developed regions of Hungary, namely West Transdanubia, South Transdanubia, Central Transdanubia, North Hungary, South Great Plain and North Great Plain regions.<sup>8</sup> In addition, the Call foresees “optional activities” such as (i) the development of basic social services providing a service ring, (ii) home help and/or community care and/or support services and/or day-care for persons with intellectual or psychosocial disabilities and psychiatric patients.<sup>9</sup>

The indicative budget available for this call for proposals is HUF 15,000,000,000 (EUR 3,633,553.50). The Government undertakes 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 that meet the conditions of the Call, up to the amount of the funds available. This call is co-financed by the European Regional Development Fund.<sup>10</sup>

The deadline for proposals was the end of November 2022, but to this date, the Hungarian government has not yet published which bids were approved, what amount of funds will be allocated to each proposal, and where the money will be spent. The winners of the Call will have a very short time to fulfil their obligations - they have until 31st December 2023 to finish all constructions.<sup>11</sup>

Given the short deadline for the fulfilment of the Call, we consider this an issue of pressing urgency.

## 2. EFOP 2.2.25-22 breaches the CPRD

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”.<sup>12</sup>

However, this is not the case.

As you know, **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 live in a particular living arrangement.*” (emphasis added).

In addition, the CRPD Committee made the following clear 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*

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<sup>6</sup> Chapter 1.1. of the Call.

<sup>7</sup> Chapter 3.1.1.1.1. of the Call.

<sup>8</sup> Chapter 3.6.1. of the Call.

<sup>9</sup> Chapter 3.1.1.2.2. of the Call.

<sup>10</sup> Chapter 1.2. of the Call.

<sup>11</sup> Chapter 3.5.2. of the Call.

<sup>12</sup> Chapter 1.1. of the Call.

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*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 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.”<sup>13</sup> (emphasis added).*

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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 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”.<sup>14</sup>

The Committee stressed that the persistence of a culture of institutionalisation, including what is referred to as ‘supported housing’ in Hungary, is not consistent with the right to live independently and to be included in the community under the Convention.<sup>15</sup>

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.”<sup>16</sup>

The **Guidelines on deinstitutionalization, including in emergencies**, recently adopted by the CRPD Committee, 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 community-based centres, half-way homes, group homes, family-type homes for children,*

<sup>13</sup> General Comment No. 5, para. 16(c).

<sup>14</sup> CRPD/C/HUN/IR/1, para. 68.

<sup>15</sup> Ibid. para. 73.

<sup>16</sup> Ibid. para. 114.

*sheltered or protected living homes, forensic psychiatric settings, transit homes, albinism hostels, leprosy colonies and other congregated settings.*<sup>17</sup> (emphasis added)

Whereas the Call purports to impose deinstitutionalisation-related conditions, the models of congregate housing clearly retain features of institutionalization that prohibited with reference to the jurisprudence of the CRPD Committee, notably those specified under paragraph 16(c) of CRPD Committee General Comment No. 5. on Article 19.

Furthermore, one of the aims of the Call is to invest in the development, expansion and modernisation of housing services.<sup>18</sup> According to Section 75(5)c) of Act III of 1993 on Social Administration and Social Benefits, housing services, in the framework of supported housing, may be provided for persons with disabilities in a group of flats or buildings for a maximum of fifty persons. Such housing arrangements organised on the basis of disability are institutional in nature and contradict legally binding obligations to promote independent living and inclusion in the community under the CRPD as authoritatively interpreted by the CRPD Committee.

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### 3. Prior history of Hungary breaching the CPRD – EFOP 2.2.5

The Commission is aware that this Call is not the first instance in which Hungary has breached its obligations under Art. 19 CPRD. The institutionalisation of persons with disabilities in Hungary has been a long-time concern for the EU and the international community, and international organisations, including the United Nations, have repeatedly raised their concerns.<sup>19</sup>

Recently, the Hungarian Government launched the EFOP 2.2.5 call for proposals, which was also jointly funded and managed by the EU. EFOP 2.2.5 Call for Proposals made HUF 51,958,796,658 (approx. EUR 130,000,000 – December 2022 exchange rate) in European Structural and Investment Funds (ESI Funds) available for the purpose of “Improving the Transition from Institutional Care to Community-Based Services – Replacement of Institutional Accommodation by 2023” in Hungary.

That earlier Call received widespread criticism because the so-called “new housing solutions” operated as “mini-institutions” that continued to violate the fundamental rights of persons with disabilities.<sup>20</sup> Instead of promoting the inclusion of persons with disabilities, call EFOP 2.2.5 promoted their trans-institutionalisation, *i.e.* their transfer from larger to smaller institutional settings.

In response to the criticism from national and international organisations, the Commission contacted the Hungarian authorities to ensure the alignment of the deinstitutionalisation projects with Union policy concerning the protection of persons with disabilities and the CPRD. As a result, in 2018, EFOP 2.2.5 was suspended.

In March 2020, Validity submitted a request to the European Commission for access to documents based on the Transparency Regulation. We asked the European Commission to release all official correspondence between the Commission and the Government of Hungary relating to EFOP 2.2.5. Validity sought this correspondence in an effort to disseminate relevant information to civil society, including organisations of persons with disabilities, in Hungary and to promote their meaningful involvement in the implementation and monitoring of Article 19 of the CRPD. We also wanted to disseminate information to our European-level partner organisations that engage regularly with the Commission and governments on the human rights compliant use of EU funds, so that they are aware of all of the facts. Furthermore, Validity has extensive expertise in disability rights and law, and the requested information would have enabled us to provide concrete input to the Commission on how to improve the process of deinstitutionalisation in the country.

<sup>17</sup> CRPD/C/5, para. 15.

<sup>18</sup> Chapter 1.1. of the draft Call.

<sup>19</sup> See for example: CRPD/C/HUN/CO/1, paras 33-35; CRPD/C/HUN/IR/1, paras. 66-73; CRPD/C/HUN/CO/2-3, paras. 40-41.

<sup>20</sup> See, for example, Hungarian Civil Liberties Union, Validity Foundation and European Network on Independent Living, Joint letter of 23 August 2018 to Zoltán Balog, Minister of Human Capacities, Hungary, para. 17.



We were concerned that the Commission decided not to fully disclose the contents of several crucial pieces of correspondence from the Government of Hungary. As a result, we initiated litigation before the Court of Justice of the European Union to improve transparency and guarantee access to information.

On 19 April 2021, following their previous refusal to release certain information to us, the Commission revised their previous position and released almost all previously redacted information. According to correspondence we received from the Commission, “Hungary has withdrawn from the EFOP 2.2.5 call for proposals” and “the Hungarian authorities agreed with the disclosure of the documents in question.”

After receiving the information from the European Commission concerning Hungary’s withdrawal from EFOP 2.2.5, we could not find any publicly available information concerning this issue.

#### 4. Repeated situation - EFOP 2.2.25-22

It appears to us that the previous unacceptable situation is now being repeated with Call EFOP 2.2.25-22, which clearly fails to meet the requirements of the CPRD.

On 12 September 2022, Validity submitted its comments on the draft Call for proposals 2.2.25-22<sup>21</sup> to the managing authority and explained why the draft Call was in breach with 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 mean institutionalisation. It is also clear that the Hungarian Government’s perspective directly contradicts its obligations under European law and international human rights law.

In light of the above, and with reference 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 suspend Call EFOP 2.2.25-22 until it is brought fully in line with the CRPD and the authoritative interpretations of the CRPD Committee.**

If you need more information, please do not hesitate to contact us. Given the time factor mentioned above, we would appreciate your expedited response to these concerns and the steps you intend to take so as to prevent EU investments being used to violate EU and international law.

Yours sincerely,

**Steven Allen**  
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