



EUROPEAN UNION

Permanent Delegation to the United Nations Office
and other international organisations in Geneva

The Ambassador

Geneva, 13 August 2020

Subject: Situation of persons with disabilities

Dear Ms Devandas-Aguilar,
Dear Mr Rajagopal,

I have the pleasure to forward a letter from European Commission Director-General Joost Korte, Directorate-General for Employment, Social Affairs and Inclusion (DG EMPL) regarding the situation of persons with disabilities and the protection of their rights.

Yours sincerely,

Walter STEVENS
(signed)

Ms Catalina Devandas-Aguilar - UN Special Rapporteur on the rights of persons with disabilities

Mail: sr.disability@ohchr.org

Mr Balakrishnan Rajagopal - UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

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EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR EMPLOYMENT, SOCIAL AFFAIRS AND INCLUSION

The Director-General

Brussels
EMPL.C.3/

Dear Ms Devandas-Aguilar,
Dear Mr Rajagopal,

Thank you for your letter of 18 May.

The European Commission attaches great importance to the situation of persons with disabilities in all Member States of the European Union (EU) and is committed to uphold and protect their rights.

The Charter of Fundamental Rights of the EU enshrines the right of people with disabilities to live in dignity and independence (Article 26). The EU and Member States have ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The European Pillar of Social Rights¹ includes principles 15 and 17 referring to the right to independent living for people with disabilities and older people.

The Commission supports Member States' efforts to ensure the transition from institutional to community-based care, individualised support and adequate housing, notably through the European Structural and Investment Funds (ESI Funds) and in close cooperation with the organisations active in the field of disability. To this end, the Commission works closely with the 'European Expert Group on the Transition from Institutional to Community-based Care'².

Member States are responsible for the design and implementation of dedicated strategies and programmes pursuing the ultimate goal of independent living and inclusion in the community for persons with disabilities. The selection of the projects to be funded by the ESI funds falls under the competence of Member States.

¹ https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en

² <https://deinstitutionalisation.com/>

Ms Catalina Devandas-Aguilar
UN Special Rapporteur on the rights of persons with disabilities

Mr Balakrishnan Rajagopal
UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

The coronavirus crisis has affected the Member States in a sudden and dramatic manner, with a major impact on people in vulnerable situations. The COVID-19 has had a disproportionate impact on older people and persons with disabilities, particularly and as you say on those living in institutions. As an immediate and short-term response to the crisis, the Commission's Corona Response Investment Initiatives³ introduce extraordinary flexibility to allow that all non-utilised support from the European Structural and Investment Funds can be mobilised to the fullest. In this context, the Commission urged Member States to make sure that social distancing and confinement measures would not affect the continuity of services for all beneficiaries, including those living in institutions.

A number of EU funded programmes for the 2014-2020 period are under revision to allocate more resources to support healthcare systems and other COVID-19 related actions. The Commission is regularly publishing a state of play on the measures it has taken, also in accessible formats including easy-to-read format⁴.

The above aims to provide you with additional information and comments regarding your general observations, as requested by you in **question 1** [*Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations*]. As regards your further questions, I would like to point out the following.

Question 2 [*Please provide information on the steps taken by the European Commission to protect the rights of persons with disabilities and older persons and to address the deeply ingrained discrimination, social exclusion and segregation experienced by these groups.*]

The European Disability Strategy 2010-2020 is the main tool and framework at EU level to promote the rights of persons with disability, including through the implementation of the UNCRPD. As the Strategy is soon reaching its end, it is important to underline first some of its main achievements, such as the adoption of the European Accessibility Act⁵ the Web Accessibility Directive⁶, the strengthening of passenger rights in all transport modes⁷ or the Cross-Border Healthcare Directive⁸, which allows easier access for people with disabilities to quality medical care across EU countries. A full evaluation of the Strategy, assessing its various actions and results, is about to be finalised and shall be made publicly available by the end of this year.

Furthermore, in 2019 the European Commission launched an awareness raising campaign on equal access to employment and non-discrimination based on gender, age, sexual

³https://ec.europa.eu/regional_policy/en/newsroom/news/2020/04/04-02-2020-coronavirus-response-investment-initiative-plus-new-actions-to-mobilise-essential-investments-and-resources;
https://ec.europa.eu/regional_policy/en/newsroom/coronavirus-response/

⁴ https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response_en;

⁵ Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services;
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0882>

⁶ Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies;
<https://eurlex.europa.eu/eli/dir/2016/2102/oj>

⁷ https://europa.eu/youreurope/citizens/travel/transport-disability/reduced-mobility/index_en.htm

⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0024>

orientation, ethnic origin, faith and belief, and disability. A specific part of this campaign has been devoted to non-discrimination based on disability and reasonable accommodation, with a strong focus on the role of employers.

Question 3 [*Please explain the rationale for approving the disbursement of funding through the European Structural and Investment Fund for the replacement of large institutions with smaller institutions for persons with disabilities, and whether any human rights assessments were made prior to taking such decisions*]

ESI funds are implemented in a shared management mode which gives the main responsibility for selection and monitoring of individual projects to Member State designated authorities. This is based on Operational programmes, identifying national priorities that are linked to the challenges underlined in the process of assessment of national policies. The programmes are approved by the Commission and monitored and audited regularly, to ensure the compliance of individual projects to the agreed priorities, the implementing rules and sound financial management principle for spending of the EU budget. Under the shared management mode, it is not in the Commission's competence to select the operations to be supported by the ESI Funds.

The above is valid also for selecting the operations and funding projects related to persons with disabilities (if any). As part of the rules for using EU funds, Member States need to comply with so-called ex-ante conditionalities (see answer to question 4).

In the event of an alleged breach of the Charter of Fundamental Rights or the UNCRPD in relation to an entity which received support from the ESI Funds, the Commission may apply an interruption or suspension of payments or make a financial correction if the irregular expenditure has not been corrected by the Member State. It can be only applied *ex post* if the Commission establishes that there is a breach of applicable legal provisions under Union law and that the breach has an impact on the financing received.

Question 4 [*Please explain how the funding of institutions complies with the European Commission's obligations, in particular those under the Convention on the Rights of Persons with Disabilities.*]

For the implementation of ESI Funds 2014-2020, pursuant to Regulation (EU) No 1303/2013¹², Member States are required to fulfil the applicable ex-ante conditionalities¹³. The ex-ante conditionalities require the existence of administrative capacity for the implementation and application of the UNCRPD in the field of ESI Funds and the existence of a strategic policy framework for poverty reduction. In addition and through the various guidance documents provided to Member States¹⁴, the Commission stresses that irrespective of the size, building or renovating long-stay residential institutions does not constitute a priority under the ESI funds. On the contrary, and while there is no general and absolute prohibition for the ESI funds to support longstay residential institutions under the Regulation (EU) No 1303/2013, Member States are being constantly reminded of the EU obligation and their obligation under the UNCRPD to progress on ensuring independent living arrangements and deliver deinstitutionalisation.

Nevertheless, Member States enjoy discretion in setting up the operations. The process of deinstitutionalisation is a process that requires the development of individualised services, the planned closure of long-stay residential institutions and making general services available to persons with disabilities. Before deinstitutionalisation is achieved, the persons concerned have to be cared for. Promoting the transition from institutional to community-based services might require in some cases transitory solutions aiming at securing healthy and secure living conditions all along this process. Some exceptional investments into long stay residential institutions may serve to achieve some of the thematic objectives in Article 9⁹ of the CPR without undermining the overall aim of Article 19 UNCRPD, as long as a transition process from institutional to community-based care has been put in place.

Question 5 [*Please explain what safeguards are being taken to ensure that funding from the European Commission does no longer support projects that are incompatible with the EU's obligations under international human rights law.*]

The Commission's proposal for the programming period 2021-2027 includes the transition from institutional to community and family-based services under the scope of enabling conditions. The enabling conditions are the prerequisites to ensure the necessary conditions for the effective and efficient use of EU Funds. There are two sets of relevant enabling conditions:

- Horizontal conditions¹⁰ will be applicable to all EU Funds operations in Cohesion Policy and include criteria to ensure the compliance with the UNCRPD and the EU Charter of Fundamental Rights.
- Thematic conditions¹¹, relevant for the shift from institutional to community-based care will be included in "National strategic policy framework for social inclusion and poverty reduction" and "National and regional policy framework for health".

The fulfilment of enabling conditions is to be closely monitored by the monitoring committees and discussed in annual review meetings with the Commission. Managing authorities need to ensure that selected operations are consistent with the corresponding strategies and planning documents established for the fulfilment of enabling conditions. In the event of an enabling condition being no longer fulfilled, the Commission will start a contradictory procedure, which may lead to financial sanctions to the relevant programme.

In addition, the partnership with all relevant stakeholders will remain a key principle to design and implement the EU cohesion policy. Relevant stakeholders including disability organisations will be involved in the design and implementation of the programmes. Their expertise and input will be essential for the monitoring and implementation of the operations throughout the programming period.


⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1303&from=EN>

¹⁰ COM/2018/375 final - 2018/0196 (COD) Annex III

¹¹ COM/2018/375 final - 2018/0196 (COD) Annex IV

Let me conclude by informing you that the Commission is currently preparing the new European Disability Strategy 2021-2030. The current preparation follows a process of an extensive public consultation to which we have already received extensive feedback. I can assure you that independent living and inclusion in the community for people with disabilities will be in the focus of the preparations for the new European Disability Strategy to be presented early 2021 with the view of deepening and improving the implementation of the UNCRPD and the respect of the rights of persons with disabilities.

Yours faithfully,

p.o. 
Andriane Sukow
DDG

Joost KORTE