EUROPEAN EXPERT GROUP ON TRANSITION FROM INSTITUTIONAL TO COMMUNITY-BASED CARE

Use of European Union funds for the transition from institutional care to community-based services

Overview of the relevant provisions from the European Investment and Structural Funds Regulations 2014 – 2020

This document is part of the revised edition of the Tool Kit on the Use of European Union Funds for the transition from institutional to community-base care (Annex 1), published in June 2014 by the European Expert Group on the transition from institutional to community-based care (see: deinstitutionalisationguide.eu/)

Overview of the relevant provisions from the European Investment and Structural Funds Regulations 2014 – 2020

1. Common Provisions Regulation[1]

Provision	Text of the Regulation	Relevance to the Toolkit
Article 4(6) *(General principles)*	[...] the Commission and Member States shall ensure coordination between the ESI Funds and between the ESI Funds and other relevant Union policies, strategies and instruments [...]	ESF and ERDF have to be used in a manner which is compliant with the EU social inclusion policies (for a list, please see Chapter 1 of the Toolkit), and the EU's obligations under the CRPD. They should not be used to support institutional care. Similarly, if ESF is used to fund community-based services, ERDF should not be used to renovate or build new institutions.
Article 5(1) *(Partnership and multi-level governance)*	For the PA and each programme, each MS shall [...] organise a partnership with the competent regional and local authorities. The partnership shall also include the following partners: [...] (c) relevant bodies representing civil society, including [...] non-governmental organisations, and bodies responsible for promoting social inclusion, gender equality and non-discrimination.	Organisations representing children, people with disabilities, people with mental health problems and homeless people should be involved in the drafting of PAs and OPs, and in the implementation, monitoring and evaluation of the relevant programmes.
Article 6 *(Compliance with Union and national law)*	Operations supported by the ESI Funds shall comply with the applicable Union law and the national law relating to its application ('applicable law').	Following ratification of the CRPD by the EU and most Member States, the CRPD forms part of the EU and national legal frameworks. Therefore, SF should be used in line with the CRPD and other legislation relevant to children, people with disabilities, people with mental

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[1] Regulation (EU) No 1303/2013 of the European Parliament and of the Council, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R1303&from=EN

		health problems and homeless people .
Article 7 *(Promotion of equality between men and women and non-discrimination)*	The MSs and the Commission shall take appropriate steps to prevent any discrimination based on [...] disability, age [...] during the preparation and implementation of programmes. In particular, accessibility for persons with disabilities shall be taken into account throughout the preparation and implementation of programmes.	The article prohibits discrimination against people with disabilities at different stages of SF use. Accessibility for people with disabilities should be guaranteed in all programmes, not just those of direct relevance to them. It requires equal access to goods, services and facilities.
Article 9 *(Thematic objectives)*	[..] each ESI Fund shall support the following thematic objectives: (8) promoting sustainable and quality employment and supporting labour mobility; (9) promoting social inclusion, combating poverty and any discrimination; (10) investing in education [...]	These three thematic objectives provide a framework for using SF to support the process of deinstitutionalisation.
Article 15(1) *(Content of the Partnership Agreement)*	The PA shall set out: (c) arrangements for the partnership principle as referred to in Article 5 (d) an indicative list of partners and a summary of actions taken to involve them	MSs have to explain how they have involved civil society in SF programming, and how they will be involved in other stages of SF usage. They should specify the names of individuals and/or organisations involved.
Article 15(2)	The Partnership Agreement shall also set out: (a) (iii) where appropriate, an integrated approach to addressing the specific needs of geographical areas most affected by poverty or of target groups at highest risk of discrimination or social exclusion, with special regard to marginalised communities, persons with disabilities, the long term unemployed and young people not in employment, education or training	The PA should set out plans to address the situation of people in institutional care, or those at risk of institutionalisation, in countries where there is a lack of quality care and support services in the community.
Article 19(2) *(Ex ante conditionalities)*	The Partnership Agreement shall set out a summary of the assessment of the fulfilment of applicable ex ante conditionalities at national level and for those which [...] are not fulfilled at the	MSs have to explain in PAs how they have fulfilled, or are planning to fulfil, the thematic and general ex ante conditionalities (including by

	date of submission of the PA, the actions to be taken, the bodies responsible and the timetable for the implementation of those actions.	setting out the division of responsibilities and a clear timetable). These require the "existence and implementation of the national strategic policy framework for poverty reduction" and the "existence and administrative capacity for the implementation and application" of the CRPD.
Article 27(4) *(Content of programmes)*	Each priority shall set out indicators and corresponding targets [...] in order to assess progress in programme implementation aimed at achievement of objectives as the basis for monitoring, evaluation and review performance.	The relevant OPs should include the output and result indicators that will enable the MCs and EC to monitor whether the funded actions support the process of deinstitutionalisation. A number of result and output indicators are suggested in Chapter 2of the toolkit.
Article 48(1) *(Composition of the Monitoring Committee)*	The composition of the MC shall be decided by the MS, provided that the MC is composed of [...] representatives of the partners referred to in Article 5. Representatives of the partners shall be delegated to be part of the MC by the respective partners through transparent processes. Each member of the MC may have a voting right.	MS should involve organisations representing children, people with disabilities, people with mental health problems and homeless people, as well as other stakeholders, in the relevant OPs. They should be selected through a transparent process, and may be given voting rights (although this is up to the MS to decide).
Article 52(2) *(Progress report)*	The progress report shall set out information on and assess: (c) whether the actions taken to fulfil the applicable ex ante conditionalities set out in the PA not fulfilled at the date of adoption of the PA have been implemented [...]	MS are expected to submit two progress reports to the EC (due in 2017 and 2019), which should contain information about the implementation of the relevant general and thematic ex ante conditionalities (see Chapter XX of the Toolkit).
Article 96(4) *(Content, adoption and amendment of operational programmes under the Investment for*	In addition, the OP shall specify the following: (a) where appropriate, the identification of whether and how it addresses the specific needs of geographical areas most affected by poverty or target	The relevant OPs should include measures that address the needs of people in institutional care, or those at risk of institutionalisation. This is of relevance to all MS where there

growth and jobs goal)	groups at highest risk of discrimination or social exclusion, with special regard to marginalised communities, and persons with disabilities, and where relevant the contribution to the integrated approach set out in the PA;	is a lack of quality care and support services in the community.
Article 96(5)	The OP shall identify: (c) the actions taken to involve the relevant partners referred to in Article 5 in the preparation of the OP, and the role of those partners in the implementation, monitoring and evaluation of the OP.	The relevant OPs should explain how organisations representing different user groups were involved in the drafting of the OP, and how they will be involved in its implementation, monitoring and evaluation.
Article 96(6)	The OP shall also set out the following [...]: (b) for each ex ante conditionality [...] an assessment of whether the ex ante conditionality is fulfilled at the date of submission of the PA and the OP, and where ex ante conditionalities are not fulfilled, a description of the actions to fulfil the ex ante conditionality [...]	The relevant OPs should explain how the general and thematic ex ante conditionalities – requiring a national strategic policy framework on poverty reduction and capacity for implementation of the CRPD – have been fulfilled. In case they have not been fulfilled, the OP should explain what steps will be taken and in what timeframe, to fulfil them.
Article 96(7)	Each OP [...] shall [...] include a description of: (b) the specific actions to promote equal opportunities and prevent discrimination based on [...] disability, age [...] during the preparation, design and implementation of the OP and in particular in relation to access to funding, taking account of the needs of the various target groups at risk of such discrimination and, in particular, the requirements to ensure accessibility for persons with disabilities.	All OPs should include actions to promote equal opportunities for people with disabilities, and should include measures to ensure accessibility for persons with disabilities in all actions supported by SF.
Article 110(1) *(Functions of the Monitoring Committee)*	The MC shall examine in particular: (f) actions to promote [...] equal opportunities, and non-discrimination, including accessibility for persons with disabilities; (h) where applicable ex ante conditionalities are not fulfilled at the date of submission of the PA and OP,	MCs should pay particular attention to the manner in which actions supported by SF promote equal opportunities and non-discrimination with respect to people with disabilities, and whether they are accessible to people with disabilities.

	progress on actions to fulfil the applicable ex ante conditionalities	MCs are also tasked with monitoring the implementation of the relevant ex ante conditionalities.
Article 111(4)	The annual implementation reports submitted in 2017 and 2019 may, depending on the content and objectives of OPs, set out information and assess the following: (h) progress in the implementation of measures to address the specific needs of geographical areas most affected by poverty or of target groups at highest risk of poverty, discrimination or social exclusion, with special regard to marginalised communities and persons with disabilities [...]	Implementation reports submitted by the EC should, include, *inter alia,* information on the manner in which the actions supported have contributed to the process of deinstitutionalisation in the MS, including prevention of institutionalisation.

1.1 Ex ante conditionalities (Annex XI, Common Provisions Regulation)

1.1.1 Thematic ex ante conditionalities

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment

9. Promoting social inclusion, combating poverty and any discrimination	ESF: - Active inclusion, including with a view to promoting equal opportunities and active participation, and improving employability. ERDF: - Investing in health and social infrastructure which contributes to national, regional and local development, reducing inequalities in terms of health status, promoting social inclusion through improved access to social, cultural and recreational services and **the transition from institutional to community-based services**. […]	9.1. The existence and the implementation of a national strategic policy framework for poverty reduction aiming at the active inclusion of people excluded from the labour market in the light of the Employment guidelines.	- A national strategic policy framework for poverty reduction, aiming at active inclusion, is in place that: […] - contains measures supporting the achievement of the national poverty and social exclusion target (as defined in the National Reform Programme), which includes the promotion of sustainable and quality employment opportunities for people at the highest risk of social exclusion, including people from marginalised communities; […] **- depending on the identified needs, includes measures for the shift from institutional to community based care**;
	ESF: - Socio-economic integration of marginalised communities such as Roma ERDF: - Investing in health and social infrastructure which contributes to national, regional and local development, reducing inequalities in terms of health status, promoting social inclusion through the improved access to social, cultural and recreational services and **the transition**	9.2. A national Roma inclusion strategic policy framework is in place	A national Roma inclusion strategic policy framework is in place that: - sets achievable national goals for Roma integration to bridge the gap with the general population. These targets should address the four EU Roma integration goals relating to access to education, employment, healthcare and housing; […]

	from institutional to community-based services.		
	ESF: - Enhancing access to affordable, sustainable and high-quality services, including health care and social services of general interest. ERDF: - Investing in health and social infrastructure which contributes to national, regional and local development, reducing inequalities in terms of health status, promoting social inclusion through improved access to social, cultural and recreational services and **the transition from institutional to community-based services**.	9.3. Health: The existence of a national or regional strategic policy framework for health […]	- A national or regional strategic policy framework for health is in place that contains: - coordinated measures to improve access to health services; […]

1.1.2 General ex ante conditionalities

Area	Ex ante conditionality	Criteria for fulfilment
1. Anti-discrimination	The existence of administrative capacity for the implementation and application of Union anti-discrimination law and policy in the field of ESI funds	- Arrangements in accordance with the institutional and legal framework of Member States for the involvement of bodies responsible for the promotion of equal treatment of all persons throughout the preparation and implementation of programmes, including the provision of advice on equality in ESI fund-related activities; - Arrangements for training for staff of the authorities involved in the management and control of the ESI Funds in the fields of Union anti-discrimination law and policy.

3. Disability	The existence of administrative capacity for the implementation and application of the United Nations Convention on the rights of persons with disabilities (UN CRPD) in the field of ESI Funds in accordance with Council Decision 2010/48/EC	- Arrangements in accordance with the institutional and legal framework of Member States for the consultation and involvement of bodies in charge of protection of rights of persons with disabilities or representative organisations of persons with disabilities and other relevant stakeholders throughout the preparation and implementation of programmes; - Arrangements for training for staff of the authorities involved in the management and control of the ESI Funds in the field of applicable Union and national disability law and policy, including accessibility and the practical application of the UNCRPD as reflected in Union and national legislation, as appropriate; - Arrangements to ensure monitoring of the implementation of Article 9 of the UNCRPD in relation to the ESI Funds throughout the preparation and the implementation of the programmes.

2. ESF Regulation[2]

Provision	Text	Relevance to the Toolkit
Recital 6	The ESF may be used to enhance access to affordable, sustainable and high quality services of general interest, in particular in the fields of health care, employment and training services, services for the homeless, out of school care, childcare and long-term care services. Services supported can be public, private and/or community-based, and delivered by different types of	The ESF can be used to support a range of high quality services in the community, which can help to eliminate the need for institutional care. Community-based services can be delivered, among others, by non-governmental organisations.

	providers, namely public administrations, private companies, social enterprises, non-governmental organisations.	
Recital 19	The ESF should support the fulfilment of the Union's obligations under the UN CRPD with regard *inter alia* to education, work, employment and accessibility. The ESF should also promote the transition from institutional to community-based care. The ESF should not support any action that contributes to segregation or to social exclusion.	Actions supported by the ESF should be in line with the UN CRPD and should contribute to the process of de-institutionalisation in the MS. There is also an explicit prohibition on the use of ESF to support actions which contribute to segregation or social exclusion of any group of people.
Article 2(1) *(Missions)*	The ESF shall promote high levels of employment and job quality, improve access to labour market [...] encourage a high level of education and training for all [...] combat poverty, enhance social inclusion, and promote gender equality, non-discrimination and equal opportunities [...]	The ESF can contribute to making mainstream services available and accessible to people with care and/or support needs, in particular employment and education.
Article 2(3)	The ESF shall benefit people, including disadvantaged people, such as the long-term unemployed, people with disabilities [...] marginalised communities and people of all ages facing poverty and social exclusion.	People experiencing social exclusion, including children in care, people with disabilities, people with mental health problems and homeless people, must benefit from the ESF support.
Article 3(1)(a) *(Scope of support)*	For the thematic objective 'promoting sustainable and quality employment and supporting labour mobility': (i) Access to employment for job-seekers and inactive people, including the long-term unemployed and people far from the labour market [...] (ii) Sustainable integration into the labour market of young people [...] including young people at risk of social exclusion and young people from marginalised communities [...]	The ESF should facilitate access to employment for people with disabilities, people with mental health problems, homeless people and young people in care or those from minority communities (such as Roma or migrants).
Article 3(1)(b)	For the thematic objective 'promoting social inclusion, combating poverty and any discrimination': (i) Active inclusion, including with a view to promoting equal opportunities and active participation, and improving employability; (ii) Socio-economic integration of	The ESF should support access to employment and to high quality health and social services for different groups of people with care and/or support needs. The situation of the Roma, who are more likely to be placed in

	marginalised communities such as the Roma; (iii) Combating all forms of discrimination and promoting equal opportunities; (iv) Enhancing access to affordable, sustainable and high-quality services, including health and social services of general interest	institutional care in some MS, should also be addressed by the ESF funded actions. Actions which discriminate against any group of people and perpetuate their social exclusion should not be supported by the ESF.
Article 3(1)(c)	For the thematic objective 'investing in education, training and vocational training for skills and life-long learning': (i) [...] promoting equal access to good quality early-childhood, primary and secondary education [...]	The ESF should be used to support access to mainstream education for children and young people with care and/or support needs. This is of particular relevance to de-institutionalisation, considering that inability to access mainstream education is one of the main reasons for institutionalisation of children with disabilities.
Article 4(2) *(Consistency and thematic concentration)*	At least 20% of the total ESF resources in each Member State shall be allocated to the thematic objective "promoting social inclusion, combating poverty and any discrimination" [...]	MS should use at least 20% of the ESF for actions promoting social inclusion, combating poverty and discrimination against people with care and/or support needs.
Article 6(3) *(Involvement of partners)*	To encourage the adequate participation of, and access by, non-governmental organisations in and to actions supported by the ESF, in particular in the fields of social inclusion, the managing authorities of an OP [...] shall ensure that an appropriate amount of ESF resources is allocated to capacity building for non-governmental organisations.	The ESF should be used for capacity building of NGOs working with, or representing, children, people with disabilities, people with mental health problems and homeless people , so that they are able to participate in the planning of actions to be supported by ESF and in applying for ESF funding.
Article 8 *(Promotion of equal opportunities and non-discrimination)*	The MS and the Commission shall promote equal opportunities for all, without discrimination based on [...] disability, age [...] through mainstreaming the principle of non-discrimination [...] Such actions shall	Actions supported by the ESF should promote equal opportunities for all. Therefore, employment, education, health and social services should be

	aim to combat all forms of discrimination as well as to improve accessibility for persons with disabilities, with a view to improving integration into employment, education and training, thereby enhancing social inclusion, reducing inequalities in terms of educational attainment and health status, and facilitating the transition from institutional to community-based care, in particular for those who face multiple discrimination.	available and accessible to people with disabilities, and other groups with care and/or support needs. Importantly, any action funded by the ESF should support the process of de-institutionalisation in the MS.

3. ERDF Regulation[3]

Provision	Text	Relevance to the Toolkit
Recital 15	In order to promote social inclusion and combat poverty, particularly among marginalised communities, it is necessary to improve access to social, cultural and recreational services, through the provision of small-scale infrastructure, taking into account the specific needs of persons with disabilities and the elderly.	MS should use ERDF to improve access of persons with disabilities to mainstream services, rather than fund infrastructure that will further their social exclusion and segregation from the rest of society.
Recital 16	Community-based services should cover all forms of in-home, family-based, residential and other community services which support the right of all persons to live in the community, with an equality of choices, and which seek to prevent isolation or segregation from the community.	Infrastructure that is funded by ERDF should support the right of all people to live in the community, as opposed to institutional care. This includes children, people with disabilities, people with mental health problems and homeless people .

ERDF cannot be used to fund infrastructure which leads to isolation or segregation of children, people with disabilities or other groups from the community. This means that MS cannot renovate or build new institutions using ERDF. |
| Article 3(1) *(Scope of support from the ERDF)* | The ERDF shall support the following activities in order to contribute to the investment priorities set out in Article 5: (d) investment in social, health, research, | Read together with Recital 16, ERDF should be used to support infrastructure that will support the right to live in the community of |

[3]Regulation (EU) No 1301/2013 of the European Parliament and of the Council, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1301&from=EN

	innovation, business and educational infrastructure	all groups in institutional care or at risk of institutionalisation. This can include mainstream housing, education and health infrastructure.
Article 5(9) *(Investment priorities)*	The ERDF shall support the following investment priorities [...]: (9) promoting social inclusion, combating poverty and any discrimination, by: (a) investing in health and social infrastructure which contributes to national, regional and local development, reducing inequalities in terms of health status, promoting social inclusion through improved access to social, cultural and recreational services and the transition from institutional to community-based services;	Any infrastructure supported by the ERDF should promote social inclusion and facilitate the process of de-institutionalisation in the MS. This means that MS cannot fund infrastructure that is institutional in nature.