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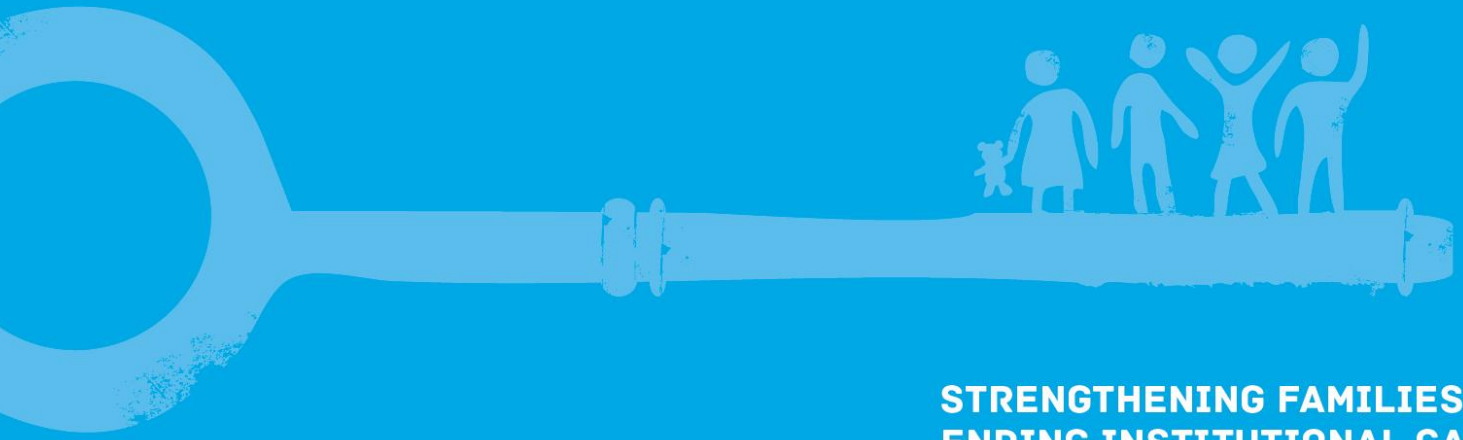
Legal framework of deinstitutionalisation

FEDAIA, Barcelona, Spain, 14 February 2017



STRENGTHENING FAMILIES.
ENDING INSTITUTIONAL CARE.

What is deinstitutionalisation?

Deinstitutionalisation is a process which includes:

1) the development of high quality, individualised services based in the community, including those aimed at preventing institutionalisation, and the transfer of resources from long-stay residential institutions to the new services in order to ensure long-term sustainability;
2) the planned closure of long-stay residential institutions where children, people with disabilities (including people with mental health problems), homeless people and older people live, segregated from society, with inadequate standards of care and support, and where enjoyment of their human rights is often denied;
3) making mainstream services such as education and training, employment, housing, health and transport fully accessible and available to all children and adults with support needs.

A short history lesson!

2004

2004

2005

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UN Guidelines

- As an outcome of the UNCRC '*day of general discussion*' 2005
- Drafted initially by NGO group in Geneva with support from UNICEF Headquarters
- Pushed by Government of Brazil through UN system
- '*Welcomed*' by UN General Assembly in 20009

UN Guidelines for the Alternative Care of Children

- They create neither new rights nor binding obligations
- Under pinned by current understanding of the UNCRC and other international human rights conventions
- Aimed at all services, organisations and professionals involved with alternative care issues,

Role of Council of Europe

- Rec 2005 (5) on the rights of children living in residential institutions,
- Rec 2006 (19) on positive parenting
- Rec 2012 (2) on the participation of children and young people.

The Common European Guidelines on the Transition from Institutional to Community-based Care.

Applicability

- children,
- persons with disabilities,
- persons with mental health problems;
- and older persons

Process for drafting the guidelines

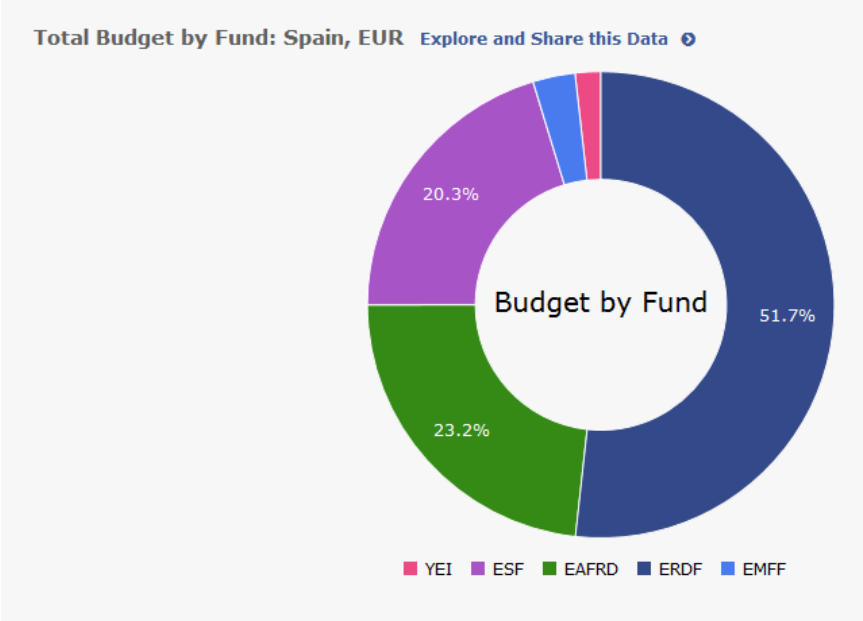
- 2009 former Commissioner for Employment and Social Affairs, Mr. Vladimir Spidla, produced a Report to address the issue of institutional care reforms in its complexity and issue recommendations towards the EU and its Member States.
- European Expert Group on the Transition from Institutional to Community-Based Care' (EEG). drafted the guidelines in 2012.

Initial results of EU advocacy and common guidelines

- Ex ante conditionalities have been included in the current round of the use of 2014-2020 European Structural & Investment funds
- Specifically: Member States must fulfil ex ante conditionality 9.1 which requires them to have and to implement a National strategic policy framework that includes measures for the shift from institutional to community based care. This condition must be fulfilled before ESI Funds can be spent.

Spain & the EU

- With regards to EU funding, Spain has designed the so called “Paquete de Inversiones Sociales” within the funds allocated in the framework of the European Social Fund. The fund also aims to cover deinstitutionalisation policies.



Reporting on success

- As part of the criteria for confirming success member states wishing to use EU structural funds must: involve relevant stakeholders in combating poverty (see Partnership and multi-level governance and the European Code of Conduct on Partnership).

- Opening Doors campaign countries in several countries are members of the national review panel

EEG Guidelines: What is applicable for children at risk?

1. Making the case for developing community-based alternatives to institutions
2. Assessment of the situation
3. Developing a strategy and an action plan
4. Establishing the legal framework for community-based services
5. Developing a range of services in the community
6. Allocating financial, material and human resources
7. Developing individual plans
8. Supporting individuals and communities during transition
9. Defining, monitoring and evaluating the quality of services
10. Developing the workforce

Establishing the legal framework for community-based services

- **Right to live in the community:** In line with the CRC, the CRPD and other relevant treaties legislation should support the principle that children should grow up in a family environment.
- **Access to mainstream services and facilities:** access to social housing, education, employment, health care, transport, sports and cultural facilities, childcare facilities and any other services from which the community benefits.
- **Guardianship and decision making:** For children in institutions, guardianship can also present a significant challenge. In some countries, the local authority acts as the legal guardian for the child and is also the body that makes the decision on allocation of local funds for care services. UNCRPD §12 and UNCRC §12
- **Provision of community-based services:** Alongside the development of community-based services, countries should establish the legal and regulatory framework governing the delivery of, access to and funding for services.

Developing the workforce

- UNCRPD State Parties should “promote the training of professionals and staff working with persons with disabilities”
- and UNCRC; there is an adequate number of suitable staff involved in care or protection of children.

Developing the workforce

object of care → rights holder

- Diversified services, requiring an increased number of professionals.
- The need to support people with different needs in mainstream services.
- Reduction in the number of administrative posts required.
- Change in the geographical location of services, with services following the users (as opposed to institutional care).

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