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**Statement
on the occasion of the 2nd and 3rd State review of Austria for the CRPD
compiled by Independent Living Austria (SLIÖ)
Vienna 28th July 2023**

Introductory note:

Independent Living Austria (SLIÖ) is a nationwide and independent interest group for all people with disabilities and has been politically active as a network of the Austrian disability rights movement since the 1970s. Since 2001 SLIÖ has been organised as an association, members are Centres for Independent Living (CILs) in seven Laender (provinces), as well as projects and individual disability rights activists from all over Austria¹.

Regarding to art. 9 Accessibility:

Deterioration in barrier-free housing legislation

The NAP 2022-2030 states: "Currently, only 13% of dwellings in Austria are accessible and at least adaptable" (NAP 2022-2030, p. 58). The figures are estimates from a market study by the Building Guild/Chamber of Commerce and do not correspond to verifiable figures according to technical standards. No valid figures exist. Estimates assume low accessibility in the entire housing stock. The Tyrolean Monitoring Committee for the CRPD estimated that in 2013 4% of the housing stock was "suitable for the elderly"².

¹ About SLIÖ: <https://www.sliö.at/>; on the history of the disability rights movement in Austria:

http://bidok.uibk.ac.at/projekte/behindertenbewegung/docs/introductory_text_digital_archive.docx

² Tiroler Monitoringausschuss (2020): Wohnen in Tirol, Teil 2, p. 14-15. https://www.tirol.gv.at/fileadmin/themen/gesellschaft-soziales/UN-Konventionen/tiroler-monitoring-ausschuss/dokumente/stellungnahmen/Wohnen_Teil_2_ONLINEVERSION.pdf

Building legislation is a competence of the Laender (provinces). Despite the lack of accessible housing facilities, lobby groups of the building industry have achieved a lowering of accessibility standards in most of the Laender during the last decade. This should be considered in the context of general demands for deregulation. Currently, there are great differences among the provincial laws with regard to regulations, e.g. for which new residential buildings barrier-free accessibility is prescribed or from which number of flats a facility must be built adaptable for barrier-free access.

The regulations in Tyrol can be cited as an example of deterioration: In 2008, buildings with more than 3 flats had to be accessible, but since 2020, this has been necessary only for buildings with more than 6 flats. An adaptable construction method is only required from the seventh flat onwards. These regulations cause serious deterioration and disadvantages, especially in rural areas, as buildings with fewer floors and flats are built more frequently in rural areas. Often, accessible and adaptable flats are limited to flats on the ground floor which reduces the opportunities to choose a flat for persons with disabilities rather seriously.

Adaptations of non-accessible and new adaptable flats have to be financed by tenants with disabilities themselves. Public subsidies have not been increased for 18 years. Flat owners are not obliged to bear the costs. There is no obligation for the building authorities to call in experts for accessibility for building decisions.

The lack of accessible housing in Austria creates great pressure for the building of new institutions for people with disabilities including homes for the elderly and nursing homes. International care corporations are beginning to invest here. According to official data for the period between 2013 and 2021, there was an increase of 31,6% in institutional care, compared to only 11.4% increase in community-based services for old people³. A recent study recommends "In view of these findings, the public sector in Austria should use various regulation and instruments to take protective measures against the expansion of shareholder-oriented transnational investors into central economic sectors of the everyday economy or to push them back." ⁴

There is neither a nationwide concept for accessible housing, nor staged plans and monitoring of the housing situation of people with disabilities.

Finally, Independent Living Austria would like to make a comment regarding the Individual Complaint under the Optional Protocol submitted in the name of Simon Bacher (CRPD/C/19/D/26/2014). Contrary to the Committee's recommendations published in 2018 the State Party has so far failed to make the seriously dangerous path accessible to Simon Bacher. The State Party has neither awarded Mr. Bacher with a compensation for the discrimination and damage he has and still is experiencing, nor has the State Party implemented any of the other recommendations. All measures taken to improve the access to Mr. Bacher's home were accomplished privately by his family.

³ Federal Ministry for Social Affairs, Health, Care and Consumer Protection (2022): Pflegevorsorgebericht, p. 237.
https://broschuerenservice.sozialministerium.at/Home/Download?publicationId=42&attachmentName=%C3%96sterreichischer_Pflegevorsorgebericht_2021_pdfUA.pdf

⁴ Plank, Leonhard u.a. (2023): Shareholderorientierte transnationale Investoren in der kritischen sozialen Infrastruktur. England, Deutschland und Österreich im Vergleich. Arbeiterkammer Wien, März 2023

Recommendations:

- The deteriorations in accessibility in the state building codes should be reversed.
- Experts for accessibility must be consulted by law in the building authorities.
- Valid data on accessibility in the Austrian housing stock must be collected. In particular, the situation in rural regions must be analysed in detail.
- Regarding the individual complaint submitted in the name of Simon Bacher: Make the dangerous path accessible for Simon Bacher and award him with a reasonable compensation for the damage he has experienced for more than 20 years.

Regarding to art. 19 and reply to paragraph 37 of the list of issues:

Nationwide Personal Assistance

Currently, there are certain offers of Personal Assistance in every province in Austria, but they are not uniform throughout the country, they are not needs-based in terms of scope, are not income-independent, have age limits (usually Personal Assistance is not provided for children and senior citizens who need support later in life) and are not accessible to persons with all forms of disabilities in all areas of life. Summarised official figures and data on this issue do not exist.

In December 2022, the Ministry of Social Affairs took an initiative to standardise PA with a pilot project "Nationwide uniform regulations for personal assistance in leisure and work" (budget framework € 100 million; duration 2 years), to be implemented from autumn 2023. The first participants in the pilot project are four out of nine provinces, the rest refuse to participate. The participatory approach was missing in the drafting of the guideline.

Despite the very welcome initiative of the Ministry of Social Affairs, there are serious shortcomings in the guidelines of the pilot project. The project is not linked to a legal entitlement to Personal Assistance; it does not include a shift towards the social model, but the medical model of disability is solidified by a prescribed minimum degree of disability; there are age limits (from 14 to 60 years) for receiving Personal Assistance; the amount of hours of Personal Assistance does not cover needs (capped at 300 hours per month).

The will, as expressed in the Guidelines, that Personal Assistance should also be developed and tested for people with intellectual disabilities and persons with psychosocial disabilities is to be acknowledged. Overall, however, Personal Assistance is not integrated into a strategy for de-institutionalisation and is not used as a basis for sustainable development to implement the UNCRPD.

Recommendations:

- The model project must be extended to the whole of Austria and actually be redesigned to meet needs without restrictions in order to ensure that persons with disabilities can live self-determined in the community.
- It must be guaranteed that the model project will be adopted in a needs-based variant in a federal-state agreement after the trial phase.

Regarding to art. 19 and reply to paragraph 37, 38 of the list of issues:

Lack of deinstitutionalisation and complaints about the financing of institutions via EU funds

In Austria, there are no de-institutionalisation concepts in the sense of the CRPD, neither at the level of the provinces nor at the federal level. The ongoing institutionalisation of persons with disabilities in Austria becomes obvious by three complaints which Independent Living Austria and ENIL (European Network for Independent Living) filed with the EU Commission regarding the misuse of money from the EU Structural Funds in Austria. Complaints were filed against the provinces of Tyrol, Upper Austria and Carinthia. Instead of investing in the establishment of comprehensive Personal Assistance schemes and deinstitutionalisation, EU funds were used for the renovation of existing and the building of new segregating institutions for people with disabilities. Additionally, the three provinces co-financed these institutions. The complaint argued that this not only contradicts Art. 19 of the UNCRPD, but also the Charter of Fundamental Rights and the EU's anti-discrimination law. The initiation of infringement proceedings against Austria was demanded.

Regarding the complaint against Upper Austria⁵: € 7.5 million from the European Agricultural Fund for Rural Development (EAFRD) was used in Upper Austria for the construction of new residential facilities and workshops for people with disabilities. Regarding the complaint against Tyrol⁶: an estimated € 3.2 million from the EAFRD was used for the renovation and new construction of segregated disability facilities. These include five residential facilities and three workshops for adults with disabilities as well as a large facility for children with disabilities.

Regarding the complaint by SLiÖ and ENIL 2022 against Carinthia⁷: an estimated € 1.0 million of EAFRD was used for the construction of a new home for disabled children between the ages of 5 and 17.

The EU Commission rejected all three complaints and referred to the regional competence of the Austrian provincial governments.

Recommendations:

- Recommendation 37 of the Concluding observations from September 2013 "promote de-institutionalisation and enable persons with disabilities to choose where they live" should be urgently reiterated.
- It is strongly recommended not to publicly fund the establishment of new institutions that do not comply with the UNCRPD, nor to apply for European structural funds for this purpose, nor to support their establishment in any other way.

⁵ https://enil.eu/wp-content/uploads/2022/12/Reply-to-commission_ENIL_ILA_August2021_.pdf

⁶ <https://enil.eu/press-release-disability-groups-file-second-complaint-against-austria-for-eu-funds-misuse/>

⁷ https://enil.eu/wp-content/uploads/2022/11/Complaint_3_by-ENIL_and_Independent-Living-Austria_021122.pdf