

Position Paper on EU Funds in the Area of Cohesion

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The Roma Education Fund (REF) is as an international foundation with multi-country operations; it has thirteen years of experience in grant-making and the direct implementation of EU funds since its establishment in 2005. REF's raison d'être is built upon a mission to close the gap in education outcomes between Roma and non-Roma through the design and implementation of policies and programs that support quality inclusive education, and REF closely follows EU policy trends and developments in all areas concerning and influencing matters of Roma integration. Using accountability, integrity and tenacity to achieve its goals, REF has cultivated strong working relationships with civil society and institutional partners in 16 countries of Central and South Eastern Europe and the Western Balkans, and it has reached upward of 400,000 direct beneficiaries through its policies and programs that promote Roma inclusion in all aspects of the national education systems of the countries in which it operates.

In line with REF's portfolio covering preschool, primary, secondary, tertiary and adult education, and with the intent to contribute to the relevance and impact of the European Union's post-2020 Multiannual Financial Framework, REF submits this Position Paper as a response to European Commission's public consultation on EU funds in the area of cohesion. The content of this Position Paper is based on the REF's extensive and experience as well as information gathered from various sources and related to various aspects of Roma integration in the societies of EU Member States.

The REF Network currently is preparing to implement eight European Structural Fund projects in Romania and believes sharing its experience is essential to reform flawed processes and policies that neither effectively nor efficiently harnesses the European Union resources to support durable Roma inclusion in mainstream societies.

In its midterm review of the EU framework for National Roma Integration Strategies (NRIS), the European Commission Communication reported that even if progress had been made in some areas, mainly in education – in particular, in the growing participation of Roma children in early childhood education and care – early school leaving and poverty risk among Roma still remain stubbornly high. The proportion of young Roma who are not in education, employment or training (NEET) has not been successfully addressed. The European Commission concluded that “translating results in education into employment and other areas requires a more effective fight against discrimination.”

Instruments and mechanisms for a binding approach

The segregation of Roma children in schools in Central and Eastern Europe (CEE) remains a major violation of human rights and EU principles. In a 2013 resolution, the European Parliament urged the Member States to eliminate segregation in the field of education and to halt the illicit placement of Roma children in special schools, where relevant, and to create the necessary infrastructure and mechanisms to facilitate access to quality education for all Roma children within the context of the

progress made in the implementation of the National Roma Integration Strategies. The Member States by now are obliged to report annually on the progress made at the national level. Human rights activists and practitioners have demonstrated repeatedly that educational segregation is a discriminatory grounded practice. And infringement proceedings by the European Commission against the Czech Republic and Slovakia, as well as more recent moves against Hungary for non-compliance with the Fundamental Rights of the EU, which prohibit discrimination, represent important steps. Of special note, if the Member States fail to conform with EU law during the procedure, the European Commission can bring the case to the European Court of Justice, whose judgment is binding.

However, there is still a lack of political understanding and institutional accountability in governments within CEE to comply with this ruling in order to improve the situation. The EU Framework for National Roma Integration Strategies does not impose firm political commitments on EU Member States. It outlines a list of good intentions rather than a set of binding obligations, allowing Member States to avoid fulfilling their duties regarding Roma inclusion. The launching of infringement procedures represents a tool that can enforce the implementation of favorable policies for Roma. European institutions, and especially the European Commission, should be more robust and forceful in exerting pressure on Member States to deliver on their commitments – both in terms of implementing appropriate actions and planning sufficient financial means for the measures outlined in their national strategies.

The 2016 Report from the European Court of Auditors shows that the European Commission had made significant progress in setting out EU policy initiatives promoting Roma integration and that all Member States had developed a National Roma Integration Strategy (NRIS) by 2012. But these came too late to have an impact on programs and projects for the 2007–2013 programming period, and a number of shortcomings remained even during the next programming period. First, the strategies did not indicate what level of funding was needed or the amount of money available; second, anti-discrimination, in particular anti-Roma racism, was not considered as a key barrier; third, the need for active participation by Roma representatives was not always taken into account; and finally, the work of National Roma Contact Points appointed to coordinate the development and implementation of the national strategies sometimes was undermined by a mismatch of resources and responsibilities.

The NRIS should set out targeted actions and information on the funding sources (national, EU and other) as preconditions for policy execution. They should also propose solutions to address the current barriers to a more effective use of EU funds and lay the foundations of a robust monitoring mechanism to ensure concrete results for Roma.

The planning and programming of EU funds should include Roma integration priorities outlined in the national Roma integration strategies, both within targeted and mainstream policy priorities. Recently, despite some incremental gains made during the Roma Decade, participation by Roma communities as well as the Roma civil sector is being increasingly marginalized from the planning and consultation process as well as from funding opportunities. This is especially valid for civil organizations that do not have any affiliation with the respective ruling party; therefore, it is necessary that apolitical and objective civil organizations are included during the consultation process.

Assuring funding

Funding is one of the main incentives for EU Member States to invest in Roma integration actions. EU political and financial priorities in the next 2020–2027 EU programming period should continue to focus on Roma inclusion as a particular priority, rather than merging Roma inclusion priorities with the inclusion of other socially excluded groups as has been proposed. Furthermore, it is important to further strengthen the links between EU political and financial priorities and the EU Framework for National Roma Integration Strategies. Therefore, the next Multi-annual Financial Framework (MFF)

should be connected to the policy priorities of the future EU Roma Framework. Moreover, the EC should strengthen its monitoring mechanisms to guarantee that the funds are adequately spent and invested in producing a positive impact for Roma communities and not misused to perpetuate situations of exclusion. In some countries the policy was distorted in such a way that EU funds were used for segregation or supported the further isolation of segregated areas. It is absolutely necessary to define what are the areas for which EU funds are strictly prohibited to be used. Furthermore, EC should consider direct investment in Member States through its own programs and initiatives; any such direct implementation via corresponding DGs should be complementary to the respective efforts of Member States.

It is crucial that not only EU funding for Roma inclusion be targeted but also that the Member States should consider Roma perspectives in the EU-funded programs by analyzing the results of the programs on Roma communities. By applying both approaches, Member States can ensure that they are decreasing the gap between Roma and non-Roma through targeted support and by making sure that the mainstream policies/programs do not disadvantage Roma.

Member States implementing EU funds understand that targeted funding and comprehensive interventions are needed for successful Roma inclusion. Roma Civic Monitoring Reports from 2012 described how Roma discrimination is increasing in Member States' societies and in government institutions. Direct discrimination will hinder the progress that EU funding seeks, especially when compounded by the institutional and personal beliefs of government workers and policymakers who inevitably influence, for better or worse, the successful implementation for EU funds for Roma integration.

In addition to the continuation of targeted funds and policies, Member States and their respective staff can review seeming neutral policies through an equity lens to ensure the funding or policy does not systematically increase outcome gaps for Roma. Many neutral policies are, in fact, not neutral because the policy can systematically create positive outcomes that favor the dominant group, while creating negative outcomes for non-dominant groups. A universal policy design pays less attention to the administration and implementation of a policy – and pays even less attention its impact. A neutral design does not mean there will be a neutral impact but creates an unconscious and unintentional process that favors or disfavors a particular group and can cause great maltreatment.¹ Examples of neutral policies that widen educational outcomes for Roma are so-called zero grades and the reduction of compulsory school-age.

Experience has shown that programs can be implemented more successfully in partnership with civil and governmental bodies (not solely by governmental institutions) because bureaucratic procedures often multiply the barriers and delays to project implementation. Therefore, it is suggested to open calls for combined partnerships between civil and governmental actors.

Remote areas access to EU funds

The risk of poverty or social exclusion affects a higher proportion of the EU-28 population living in rural areas than those living in urban areas. In 2015, just over one quarter (26 percent) of the rural population was at risk of poverty or social exclusion, while lower shares were recorded for people living in cities (24 percent), and especially for those living in towns and suburbs (22 percent), perhaps explaining, at least in part, trends in migration towards towns and suburbs. The highest proportion of people at risk of poverty or social exclusion was recorded in rural areas. This was certainly the case in Bulgaria and Romania, where at least half of the rural population was at risk of poverty or social

¹ John A. Powell, "Post-Racialism or Targeted Universalism," 86 *Denv. U. L. Rev.* 785 (2008). Available online: <https://scholarship.law.berkeley.edu/facpubs/1633/>

exclusion in 2015. Many of the six million Roma people in the EU live in rural regions, in segregated communities. A November 2016 survey from the European Union Agency for Fundamental Rights (FRA) shows that 80 percent of Roma surveyed live below the at-risk-of-poverty threshold in their country. A high number of them are living in dilapidated settlements with inadequate amenities and poor sanitation. Such households typically are home to many children, their residents have little or no education, low life expectancy exacerbated by poor health, and the quality of housing is substandard. In these rural segregated areas, two-thirds of adults are unemployed, and only 15 percent of young people complete secondary school.

The March 2017 EU Parliament Briefing on Rural Poverty in the European Union states that:

[...] several EU funds and policies can contribute to alleviating poverty, in particular the current EU rural development policy which, for the first time, includes a priority relating to the promotion of social inclusion, poverty reduction and economic development in rural areas. Within this policy, Member States and regions can use EU funding to implement measures that, although not directly targeting poverty reduction, may help tackle those drivers of poverty in many ways, such as fostering job creation, improving services, developing infrastructure for information and communications technologies (ICT), and enhancing access to education.

However, many local and regional governments in rural areas, in addition to other actors such as Roma civil society organizations, do not possess the financial or human capacities to prepare and implement activities using EU funds – moreover, measures taken to increase their ability to access, absorb and manage EU funds have not borne fruit. In addition, the national focus for each Member State is discretionary, and some areas may be prioritized and others ignored. Interventions are often sporadic, inconsistent and improperly coordinated, far from the long-term and comprehensive social interventions proven to yield positive, life-changing impacts for Roma and achieving Roma integration.

EU funding procedures and constraints

In 2014 the European Commission announced a simplification of the procedures for applying to and implementing EU-funded projects. The procedural requirements vary between different financing instruments. Failure to comply with the procedural requirements results in financial corrections aimed at the implementing parties. In particular, corrections are accentuated in European Structural and Investment Funds (ESIF). The situation is not easy to resolve, because a labyrinth of rules and regulations, both on the EU and national levels, make it difficult for implementing parties to understand and follow them. In turn, national administrative bodies responsible for creating the system of management and control frequently misinterpret the regulations and implement them in such a way that may either exceed or muddy the EC requirements. Quite often implementation rules and guidelines are modified in an *ad hoc* manner during the implementation without adequate amendments to the signed contracts for EU-funded projects. Subsequently, that creates nearly insurmountable pressure on the implementing parties – regional and local actors both from public and civil sectors – to avoid producing non-eligible costs during implementation because the original contracts approved by managing authorities started with one set of rules and criteria but finished with another set of criteria.

The involvement of Roma civil society organizations in the implementation of EU-funded projects has remained at a relatively low level, which has limited their access to non-refundable financial support provided through the above-mentioned facilities established at the national level. Despite good awareness of relevant EU tenders and calls for project proposals, Roma associations submitted a relatively small number of applications and, consequently, obtained relatively small sums from available EU funds. The level of application and use of EU funds by Roma organizations is to a large extent influenced by, inter alia, the demanding criteria for the awarding of grants and an inability to

respect the arcane rules of their use, as well as a lack of professional resources to prepare competitive applications.

Civil society organizations are among the most important stakeholders when making comprehensive social interventions and play a significant role in the successful implementation of the programmed actions and priority measures. They provide services that state agencies and bodies are unable to provide, frequently driving innovation despite limited resources. But the lack of capacity among government agencies and civil society organizations hampers the effective implementation of needed activities that can create substantial change and impact in the specific targeted geographical areas and on the targeted population.

REF Network experiences and issues

- The programming process provided possibilities for incorporating Roma integration priorities in the operational plans; however, the proposed priorities were severely reduced in the finalization phase. Consultants in charge of the programming are often insensitive to Roma issues as well as gender mainstreaming issues.
- The legal and procedural environment constantly changed during implementation. For example, in November 2014 the Romanian Sectoral Operational Program of Human Resources Development (SOP HRD) substantially changed the reporting obligations concerning indirect expenses from one day to another, multiplying the necessary workload. These costs are usually ineligible expense increases that are not covered by the project budget, therefore leading to additional, crippling financing requirements.
- The contractual terms of the financial contract with the management authority were unilateral. The management authority can terminate the contract at any time due to ineligibility of the project and/or the beneficiaries and/or the project partners. The management authority monitors, evaluates and eventually may terminate the contract without any independent verification or judgment.
- Reporting and administration was over-bureaucratic and demanding. For example, a financial report in Romania required the scanning and reporting of over 180,000 documents. At the same time, there was a high fluctuation in the staff of the management authority, the consequences of which being that the contracting authorities often changed the officers responsible for the projects, resulting in no continuity in checking the documents and project concepts that had to be presented repeatedly.
- The contracting authority's payment approvals experienced severe delays and required additional *ad hoc* reporting and human resources.
- Financial reconciliation with project partners was often problematic, while the pre-financing of partners' activities was largely provided by REF.
- Civil society organizations implementing European Structural Fund projects were vulnerable to bankruptcy due to problems with cash-flow and liquidity; finding new partners willing to accept this risk is a real challenge.
- Some of the projects that were being implemented on the national level lacked real impact and logic of intervention. Direct funding through the national bodies enables approval and implementation of such actions, and as a result great amounts of money are spent without an impact. That puts a question on the selection and expertise of the evaluators engaged in the evaluation processes.
- Consultations with civil society organizations are often lacking both on the national and EU level.
- There is no grant scheme for capacity development of civil society organizations.

Recommendations

European Commission

- Programming should include Roma integration priorities outlined in the National Roma Integration Strategies.
- It is necessary to ensure that measures carried out under the ESIF are of an inclusive nature and contain provisions aimed at fighting segregation.
- It is important to make full use of the reports from Member States on effective Roma integration measures.
- It should be ensured that Roma inclusion objectives in the respective National Roma Integration Strategies of EU Member States are reflected in the ESIF framework.
- It is necessary to ensure simplification of the regulations and procedures in using ESIF both at the EC and Member States level.
- It is recommended to introduce targeted funding and direct implementation via corresponding DGs. The direct implementation should be complementary to the efforts of Member States.
- The EC should consider legislation to ensure that, from 2020, the distribution of funds among Member States takes into account social inclusion indicators.
- It is necessary to work with the Member States on a common methodology for Roma ethnicity data in order to monitor their social inclusion.
- It is important to encourage Member States to collect comprehensive statistical data on ethnicity.
- EC should ensure that the Member States are including funds for capacity building of civil society organizations in order to increase their capacities for preparation and implementation of EU-funded projects.
- EC should require the Member States to ensure the inclusion of Roma expertise into programming as well as implementation.
- EC should require agencies' project staff and leadership who are administering EC funds to attend Roma sensitivity training, improving correct intervention design and implementation. Monitoring indicators will include successful completion of trainings and their impact in the design of national strategies and interventions

Member States

- Roma integration issues should be adequately included and emphasized in the European Commission and EU Member States Partnership Agreements and Operational Programmes. Those documents should include strategic and investment priorities related to Roma integration issues and access to EU funds should be secured.
- Coordination among various EU funds and programs to enable integrated interventions at all levels should be ensured.
- When implementing their operational programs, the national governments should make use of best practice criteria for Roma integration in proposals and for selecting projects; and complement current output and results indicators with Roma-specific indicators, where appropriate.
- It is recommended to consider acting together to ensure legal certainty on the use of ESF funds for social inclusion, irrespective of a link to employment.
- The operational programs should include measures aimed at the sustainable strengthening of organizational and individual capacity building of local and national Roma stakeholders. Particular attention should be paid to creating sustainable capacity of Roma civil society organizations and local and regional self-government units for obtaining and using EU funds for Roma inclusion.
- The programming process should include apolitical civic sector actors through consultancy, both on the national and EU level.