

## What to do if Union law has been breached?

If you are a national of a country of the European Union, or if you live in one of these countries, or if you run a business in the European Union, Union law gives you a number of rights.

If you would like to know more, you can:

- [Ask a question about the EU \(Europe Direct\)](#)
- [Find out more about your EU rights when moving around in the EU \(Your Europe\)](#)
- [Ask a question about your rights in a situation you are facing in the EU \(Your Europe Advice\)](#).
- [Find out more about the national justice systems throughout the EU \(e-Justice\)](#).

If you feel that your rights under Union law have not been respected by the national authorities of a country of the European Union, you should first of all take up the matter with national bodies or authorities. This will often be the quickest and most effective way to resolve the issue.

### Available means of redress at national level

As stated in the Treaties, public authorities and national courts have the main responsibility for the application of Union law.

Therefore, it is in your interest to make use of all possible means of redress at national level (administrative and/or out-of-court mediation mechanisms).

Depending on the system of each country, you may also submit your file to the [national ombudsmen](#) or [regional ombudsmen](#).

Or you can bring your matter to the court of the country where the problem occurred. [Find out more about national judicial systems or going to court](#). If solving your problem requires the annulment of a national decision, be aware that only national courts can annul it. If you are seeking compensation for damage, only national courts have the power, where appropriate, to order national authorities to compensate individuals for losses they have suffered due to a breach of Union law.

### Other problem-solving instruments

Alternatively, you may wish to:

- **contact SOLVIT**- SOLVIT is a service provided by the national administration, which deals with cross-border problems related to the misapplication of Union law by national public administrations in the Internal Market. There is a SOLVIT centre in every EU country, as well as in Norway, Iceland and Liechtenstein. Your Country will try to solve the problem with the other Country concerned. Going through SOLVIT might take less time than making a formal complaint to the European Commission and can solve your individual problem. If a problem goes unresolved, or you consider that the proposed solution is unacceptable, you can still pursue legal action through a national court or lodge a formal complaint with the European Commission. Please be aware that addressing the issue to SOLVIT does not suspend time limits before national courts.

[Submit your problem to SOLVIT](#)

- **contact European Consumer Centres** - there is a Europe-wide network of consumer centres, which cooperate to help settle disputes between consumers and traders based in different EU countries, as well as in Norway, Iceland and Liechtenstein.

[Submit your problem to European Consumer Centres](#)

- **contact FIN-Net** - which is a network for resolving financial disputes out of court in EU countries, as well as in Iceland, Liechtenstein and Norway. They are responsible for handling disputes between consumers and financial services providers.

Submit your problem to FIN-Net

### **Available actions at EU Level**

Although you will usually be able to enforce your rights better in the country where you live, the European Union may also be able to help you:

- **The Committee on Petitions of the European Parliament**

You have the right ([Article 227 TFEU](#)) to submit a petition to the European Parliament about the application of Union law. You may submit your petition by post or online via the [European Parliament's website](#). You can find out more about petitions to the European Parliament on the [EU citizenship and free movement website](#).

- **The European Commission**

You can contact the European Commission about any measure (law, regulation or administrative action), absence of measure or practice by a country of the European Union that you think is against Union law.

The European Commission can only take up your complaint if it is about a breach of Union law by authorities in an EU country. If your complaint is about the action of a private individual or body (unless you can show that national authorities are somehow involved), you have to try to solve it at national level (courts or other ways of settling disputes). The European Commission cannot follow up matters that only involve private individuals or bodies, and that do not involve public authorities.

If you are not an expert in Union law, you may find it difficult to find out exactly which Union law you think has been breached. You can get advice quickly and informally from the Your Europe Advice service, in your own language.

- **The European Ombudsman**

If you consider that the European Commission has not dealt with your request properly, you may contact the [European Ombudsman](#) ([Articles 24 and 228 TFEU](#)).

### **How to submit a complaint to the European Commission**

You must submit your complaint via the standard complaint form, which you can fill out in any [official EU language](#). Please make sure you include the following details:

- Describe exactly how you believe that national authorities have infringed Union law, and which is the Union law that you believe they have infringed.
- Give details of any steps you have already taken to obtain redress.

### **What does the European Commission do with your complaint?**

- The European Commission will confirm to you that it has received your complaint within 15 working days.
- The European Commission will invite you to resubmit your complaint in case you have not used the standard complaint form.
- Within the following 12 months, the European Commission will assess your complaint and aim to decide whether to initiate a formal infringement procedure against the country in question. If the issue that you raise is especially complicated, or if the European Commission needs to ask you or others for more information or details, it may take longer than 12 months to reach a decision. You will be informed if the assessment takes longer than 12 months. If the European Commission decides that your complaint is founded and initiates a formal infringement procedure against the country in question, it will inform you and let you know how the case progresses.
- Should the Commission contact the authorities of the country against which you have made your complaint, it will not disclose your identity unless you have given your express permission

to do so.

- If the European Commission thinks that your problem could be solved more effectively by any of the available informal or out-of-court problem-solving services, it may propose to you that your file be transferred to those services.
- If the Commission decides your problem does not involve a breach of Union law, it will inform you by letter before it closes your file.
- At any time, you may give the European Commission additional material about your complaint or ask to meet representatives of the European Commission.

Find out more about how the European Commission handles its relations with complainants: [Communication on the handling of relations with the complainant in respect of the application of Union law.](#)

There are two ways of submitting a complaint:

- **via internet:** SG-PLAINTES@ec.europa.eu
- **by post:**

European Commission Secretary-General  
B-1049 Brussels BELGIUM

Or

[EU Commission office in your country](#)

Or

by fax: 3222964335

### **What the Commission can and cannot do**

After examining the facts of your complaint, the Commission will decide whether further action should be taken. The Commission may decide not to open a formal infringement procedure, even if it considers that a breach of EU law has occurred. For instance, the Commission may consider that a national or EU level redress mechanism is in a better position to deal with your complaint.

In 2017, the Commission closed complaints received [in the area of gambling](#). The Commission did not consider it a priority to use its enforcement powers to promote an EU Single Market in the area of online gambling services. Complaints in the gambling sector can be handled more efficiently by national courts than by the Commission.

On the other hand, if the Commission takes a country to the Court of Justice and wins the case, the country will have to take all actions to remedy the violations.

If the Commission brings the case before the Court of Justice of the European Union, it may take several years for the Court of Justice to hand down its judgment. Judgments of the Court of Justice differ from those of national courts. The Court of Justice delivers a judgment stating whether there has been an infringement of European Union law. The Court of Justice cannot annul a national provision which is incompatible with European Union law, nor force a national administration to respond to the request of an individual, nor order the country to pay damages to an individual adversely affected by an infringement of European Union law. To seek compensation, complainants must still take their case to a national court within the time limit set out in national law.

### **Multiple complaints**

Where a number of complaints are lodged in relation to the same grievance, the Commission may register them under the same number.

Individual acknowledgements and letters may be replaced by a notice on the Europa website.

[Multiple complaints receipt confirmations](#)

Decisions taken on multiple complaints



Before filling in this form, please read 'How to submit a complaint to the European Commission':  
[https://ec.europa.eu/assets/sg/report-a-breach/complaints\\_en/](https://ec.europa.eu/assets/sg/report-a-breach/complaints_en/)

All fields with \* are mandatory. Please be concise and if necessary continue on a separate page.

### 1. Identity & contact details

	Complainant*	Your representative (if applicable)
Title* Mr/Ms/Mrs	Mrs	
First name*	Bernadette	
Surname*	Feuerstein	
Organisation:	Independent Living Austria (SLIÖ – Selbstbestimmt Leben Österreich)	
Address*	Laxenburger Strasse 28/1/1/15	
Town/City *	Wien	
Postcode*	1100	
Country*	Austria	
Telephone		
E-mail	bernadette@selbstbestimmtleben.at	
Language*	English / German	
Should we send correspondence to you or your representative*:	<input checked="" type="checkbox"/>	<input type="checkbox"/>

	Complainant*	Your representative (if applicable)
Title* Mr/Ms/Mrs	Ms	
First name*	Natasa	
Surname*	Kokic	
Organisation:	ENIL – European Network on Independent Living	
Address*	Rue de l'Industrie 10	
Town/City *	Brussels	
Postcode*	1000	
Country*	Belgium	
Telephone	32 (0)2 893 25 83	
E-mail	natasa.kokic@enil.eu	
Language*	English	
Should we send correspondence to you or your representative*:	<input checked="" type="checkbox"/>	<input type="checkbox"/>

### 2. How has EU law been infringed?\*

	Authority or body you are complaining about:
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Name*	State Government of Upper Austria
Address	Landhausplatz 1
Town/City	Linz
Postcode	4021
EU Country*	Austria
Telephone	
Mobile	
E-mail	

## 2.1 Which national measure(s) do you think are in breach of EU law and why?\*

The complaint relates to the **segregation and social exclusion of women and men with disabilities in facilities co-financed by the European Agricultural Fund for Rural Development (EAFRD)**. These investments were based on special guidelines of the State of Upper Austria for Implementing Measures financed by the EU and the State, in the Framework of the Austrian Programme for Rural Development 2014-2020<sup>1</sup>. On page 32 of these guidelines, projects for social affairs are listed, which include:

In para 5.2.1: Investments to establish, improve or enlarge [...]

3. Institutions for care and attendance (e.g. daycentres) including adaptation and internal equipment, particularly for accessibility and living for old persons as well as for workshops for persons with disabilities
4. Institutions and living facilities that cover the needs for care and living of children, persons with disabilities or in special situations of emergency as well as for old persons, including institutions for all generations

In para 5.2.2: investments to establish and improve mobile services like transport, delivery or other services.

The complainant obtained documentation for **6 segregated living facilities and 2 sheltered workshops for adults with disabilities**, which were recently built and co-funded by EAFRD on the basis of the above mentioned guidelines. All projects are specialised facilities aimed exclusively at groups of persons with disabilities and can be considered institutional care settings.

In Upper Austria, the majority of persons with disabilities live in institutions or are occupied in sheltered workshops. According to the Social Report of the Government of Upper Austria 2018<sup>2</sup>, a total of 4.635 persons with disabilities (58% male, 42% female) lived in smaller or larger living facilities only for persons with disabilities. Compared to this large number of persons in institutions, Community Based Services (CBS) are much less established and available in Upper Austria. A total of 1.746 persons with disabilities (50,4% male, 49,6% female) received mobile support/help and only 215 persons with disabilities (43,3% male, 56,7% female) received personal assistance. Thus, **70% of all persons with disabilities in Upper Austria live in institutional care settings** and are not included in the community.

With regard to sheltered workshops (in Upper Austria, the term “ability oriented activity” is used), a total of 5.751 persons with disabilities (54% men, 46% women) attended such facilities in 2018. In contrast, a total of 846 persons with disabilities (53,4% male, 46,6% female) were in groups for integrated occupation, within regular employment schemes. The latter represents only about 15% of the clients who are provided with services for occupation by the State of Upper Austria. The **system of sheltered workshops in Austria has been criticised** as discriminatory for a long time by experts and Austria’s equality body, due to unequal treatment and discrimination of persons with disabilities in such facilities. Reasons cited include: no independent social security; not being subject to employment protection laws; no legal representation; not being eligible for retirement; **no wages received for the work performed**;<sup>3</sup> transfers from sheltered workshops into the regular labour market scarcely occur.<sup>4</sup> Moreover, data on persons with disabilities in sheltered workshops is not included in general labour market statistics in Austria and makes this group invisible.

<sup>1</sup> Sonderrichtlinie des Landes Oberösterreich zur Umsetzung von EU/Land-finanzierten Projektmaßnahmen im Rahmen des Österreichischen Programms für ländliche Entwicklung 2014-2020: [https://www.leader.at/Sonderrichtlinie\\_Land\\_ooe.pdf](https://www.leader.at/Sonderrichtlinie_Land_ooe.pdf)

<sup>2</sup> Source for all data: Social Report Upper Austria 2018 – Measures for Persons with Disabilities: [https://www.land-oberoesterreich.gv.at/Mediendateien/Formulare/Dokumente%20GSGD%20Abt\\_So/04\\_LMB.PDF](https://www.land-oberoesterreich.gv.at/Mediendateien/Formulare/Dokumente%20GSGD%20Abt_So/04_LMB.PDF)

<sup>3</sup> Koenig, Oliver (2009). Country report on the employment of disabled people in European countries – Austria. <https://www.disability-europe.net/downloads/294-at-aned-2009-employment-report-final>

<sup>4</sup> See e.g. Austrian Ombudsman Board (2018): Written Contribution, p. 29.

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fIFR%2fAUT%2f32189&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fIFR%2fAUT%2f32189&Lang=en); or statements and demands of the Austrian Ombudsperson for the Equality of Persons with disabilities, e.g. [https://www.ots.at/presseaussendung/OTS\\_20191203\\_OTS0008/behindertenanwalt-hofer-es-gibt-noch-luft-nach-oben](https://www.ots.at/presseaussendung/OTS_20191203_OTS0008/behindertenanwalt-hofer-es-gibt-noch-luft-nach-oben)

In summary, we conclude that the majority of services for living and occupation provided by the State of Upper Austria to persons with disabilities can be considered segregating and discriminatory. Only to a much smaller degree are services individualized and oriented towards inclusion and equality of persons with disabilities. **The projects co-financed by EAFRD have therefore reinforced the segregation, isolation and discrimination of persons with disabilities in Upper Austria. Instead of supporting inclusive living arrangements, by improving access to housing that is open to the general population and by expanding the provision of mobile support and personal assistance services for persons with disabilities, the State of Upper Austria invested additional substantial resources into expanding special facilities, where only persons with disabilities may live. The same applies to sheltered workshops, which are segregating, exclude persons with disabilities from the general labour market and keep individuals and families in poverty.**

The 6 living facilities, as well as the 2 sheltered workshops, are in breach of Austria's and the European Union's obligations under the United Nations Convention on the Rights of Persons with Disabilities, the EU Charter on Fundamental Rights and the EU Employment Directive. Rather than enabling adults with disabilities to live independently and to be included in the community on an equal basis with other citizens, as is required by both the CRPD and the Charter, and supported by the European Structural and Investment Funds Regulations 2014 – 2020, the projects funded by EAFRD will perpetuate the segregation and social exclusion of persons with disabilities in Upper Austria.

## 2.2 Which is the **EU law** in question?

Article 26 of the **EU Charter on Fundamental Rights** states that “[t]he Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.” Article 21 of the Charter prohibits discrimination on any ground, including disability.

**Council Directive 2000/78/EC** (on equal treatment in employment and occupation) protects persons with disabilities from discriminations and requires that reasonable accommodation is provided to enable persons with disabilities to “have access to, participate in, or advance in employment” (Article 5). Principle 17 of the **European Pillar of Social Rights**, on inclusion of persons with disabilities reaffirms the right of persons with disabilities to “services that enable them to participate in the labour market and in society, and a work environment adapted to their needs”.

Austria is a State party to the **United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD)**, which it ratified in 2008. As a regional integration organisation, the EU also became a party to the treaty by way of confirmation in 2010. Ratification or confirmation of the treaty creates binding obligations under international law on parties to promote, protect and fulfil the human rights of all persons with disabilities, including the right to independent living and inclusion in the community (Article 19), the right to work and employment (Article 27) and the right to the equal protection and equal benefit of the law without discrimination (Article 5) .

Pursuant to **Article 19 CRPD**, persons with disabilities have the right to live independently and be included in the community, with choices equal to others. States must ensure that persons with disabilities can “choose their place of residence and where and with whom they live” and that they are “not obliged to live in a particular living arrangement”. This requires “access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community.” It also requires access to mainstream services and facilities, which should be available and “responsive to their needs”. To ensure that services are responsive to individual needs, a thorough individual needs assessment is required, with the goal of facilitating disabled people's social inclusion and participation in society. As part of this process, it is important to map out individual wishes and requirements of all those in institutional settings and in the community, and invest into different community-based alternatives to meet everyone's needs and requirements.

According to the **General Comment 5 (GC 5)**, the authoritative guidance on the implementation of Article 19 CRPD, published by the Committee on the Rights of Persons with Disabilities, defining characteristics of institutions, or institutionalisation, include: “[...] obligatory sharing of assistants



with others and no or limited influence over whom one has to accept assistance from; isolation and segregation from independent life within the community; lack of control over day-to-day decisions; lack of choice over whom to live with; rigidity of routine irrespective of personal will and preferences; identical activities in the same place for a group of persons under a certain authority; a paternalistic approach in service provision; supervision of living arrangements; and usually also a disproportion in the number of persons with disabilities living in the same environment.”

GC 5 explains that investments should not support institutions or institutionalisation of persons with disabilities, by stating in para 51 that: “States parties should ensure that public or private funds are not spent on maintaining, renovating, establishing building or creating any form of institution or institutionalization. Furthermore, States parties must ensure that private institutions are not established under the guise of “community living”.

Pursuant to **Article 27 CRPD**, on work and employment, persons with disabilities have the right to “the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible”.

In order to promote equality and ensure effective protection from discrimination, States must “take all appropriate steps to ensure reasonable accommodation is provided” (Article 5 CRPD). In the context of employment, this means that “to achieve reasonable accommodation” and “to achieve or accelerate de facto equality in the work environment”, States must “facilitate the transition away from segregated work environments for persons with disabilities and support their engagement in the open labour market, and in the meantime also ensure the immediate applicability of labour rights to those settings” (General Comment 6, on equality and non-discrimination, para 67a).

Pursuant to Article 216(2) of the **Treaty on the Functioning of the European Union (TFEU)**, “[a]greements concluded by the Union are binding upon the institutions of the Union and on its Member States.” Thus, Article 19 of the CRPD, as interpreted by General Comment 5, Article 27 and Article 5, as interpreted by General Comment 6, create legal obligations for the Union and the Member States, including the European Commission.

Pursuant to Articles 4 and 6 of **Regulation 1303/2013 on the common provisions for the European Structural and Investment (ESI) Funds**, operations supported by ESI Funds shall comply with EU law, including its obligations under the CRPD. Moreover, Article 7 of the Regulation states that “the Commission shall take appropriate steps to prevent discrimination”, including that based on disability, during the preparation and the implementation of an ESI Funds programme.

There is **mounting jurisprudence** in support of the prohibition of investing ESI Funds into segregating services, under the CRPD. In April 2020, the Committee on the Rights of Persons with Disabilities published the results of an inquiry into implementation of Article 19 CRPD in Hungary<sup>5</sup> and made a number of recommendations that should be taken into account when interpreting EU’s and Austria’s obligations under the CRPD. It called on the State party to:

- Reorient the investment of public funds, including the way in which European Structural and Investment Funds are allocated, from institutions to support in the community by accelerating the development of a full range of in-home and other community services offering support in daily life, including personal assistance, and other forms of supported decision-making (para 112/2e);
- Revise its understanding of community-based services to exclude from this concept any form of refurbishment of institutions or group homes and construction of “supported housing” (para 112/3b);
- With the participation of organizations of persons with disabilities, expeditiously adopt a comprehensive strategy to ensure employment and income-generation opportunities for

<sup>5</sup> United Nations, Committee on the Rights of Persons with Disabilities, Inquiry concerning Hungary carried out by the Committee under article 6 of the Optional Protocol to the Convention, 13 September 2019, CRPD/C/HUN/IR/1, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fHUN%2fIR%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fHUN%2fIR%2f1&Lang=en)

persons with disabilities without discrimination in the open labour market, and move away from sheltered employment (para 112/3d).

2.3 Describe the problem, providing facts and reasons for your complaint\* (max. 7000 characters):

This complaint relates to 8 newly built facilities in Upper Austria (6 of which are residential facilities and 2 of which are sheltered workshops):

<b>Project</b>	<b>description</b>
Living facility 1	New living unit accommodating persons with high support needs, situated in a large residential facility with about 200 places for children and adults with disabilities
Living facility 2	New residential facility, accommodating 3 groups of 7, with a total capacity of 21 persons with disabilities, located in the same building as the sheltered workshop 2.
Living facility 3	New residential facility, with places for 20 persons with disabilities
Living facility 4	New residential facility, with places for 12 persons with disabilities, mostly persons with Autism Spectrum Disorder
Living facility 5	New residential facility, with places for 16 persons with motor and cognitive impairments
Living facility 6	New residential facility, with places for 16 persons with motor and cognitive impairments
Sheltered workshop 1	New sheltered workshop, with 24 places for persons with motor and cognitive impairments
Sheltered workshop 2	New sheltered workshop, with 32 places for persons with motor and cognitive impairments, located in the same building as living facility 2.

The data given in question 2.1. show that congregated living facilities and sheltered workshops are much more common and available in Upper Austria than Community Based Services, such as personal assistance or integrated occupation. Consequently, persons with disabilities often do not have the freedom of choice on where to live and to work in the open labour market. This is well described by the Austrian Ombudsman Board (AOB), which has a mandate to protect and promote human rights, and functions as an independent authority under Article 16, Paragraph 3 CRPD, and is the National Preventive Mechanism, in accordance with the Optional Protocol to the Convention Against Torture (OPCAT). In a report to the Committee on the Rights of Persons with Disabilities, the AOB stated in 2018:

“The size of numerous institutions (...) gives rise to doubt that the right to make choices and community-based support are ensured and that concepts of deinstitutionalisation are being progressively implemented. The impression is reinforced by the fact that residents are often placed far away from their hometowns. Even though a centralisation of homes might provide some selective advantages in the overall management of care, “normality” for clients is lost as a result in those facilities. (...) .. a lack of privacy, pocket money that is “managed”, care and outdoor walks that are scheduled are just some of the restrictions that residents must often accept in large-scale facilities. Furthermore, it is far more difficult, to maintain personal relationships with family or friends when residents are transferred to homes, which are further away from their hometowns. Usually individual needs and wishes can be better addressed in community-based accommodations. (...) An example for the limitation of independence is often the institution’s approach to sexuality. Sexual needs in homes are often viewed as disruptive. This is particularly the case when no private rooms or pedagogical concepts relating to sexuality are available. At least one case is reported of a resident in a

large-scale institution who received psychotropic drugs to reduce his sexual urge to masturbate. Accordingly, the resident was not able to practice his sexuality with sufficient self-determination. In another facility a female resident expressed her wish to have a child. However, the management denied her right and took the stand that the fulfilment of this wish was considered not to be possible.”<sup>6</sup> “Many institutions and facilities lack pedagogical concepts regarding sexual education. It is often not ensured that support will be provided regarding exploration or experience of sexuality and issues surrounding masturbation, relationships, contraception and parenthood.”<sup>7</sup> “The AOB observed on several occasions massive restrictions of self-determination and privacy, the repeated use of derogatory language, sanction systems with the aim of absolute submission, social isolation as well as conditions which did not counter neglect.”<sup>8</sup> “Measures that restrict freedom are regularly carried out in residential facilities and workshops in Austria. (...) the use of mechanical, electronic or medication-based restrictions of freedom, are repeatedly observed.”<sup>9</sup>

The AOB considers it particularly problematic if housing and sheltered workshop are organised by the same service provider or the same building, as is the case with the Living facility 2 and Sheltered workshop 2:

It is “observed (...) that residential places in facilities and sheltered workshops attended by clients are often closely interlinked. In many cases, residential homes and day workshops are operated by the same operator organisation; in some cases, both types of facility are actually in the same building or directly adjacent. (...) there are many regions in Austria where one can basically find only one residential home and one-day structure available. There are no options or freedom of choice.”

The AOB “frequently observed that clients often lack social contact with the outside world and move in closed social circles. If an operator organisation offers a residential place as well as a day structure, the individual in question lives within a very narrow control system. Within this closed system, power relations and unilateral dependencies are pre-programmed, even though the goal should be to prepare clients for the regular or intermediate labour market and therefore ultimately see them depart.”<sup>10</sup> Furthermore, it can be assumed “that there is at least implicit pressure to attend that workshop. This is true especially because in many cases residential facilities are unstaffed or staffed with reduced personnel during the day and residents therefore feel the pressure to attend those workshops during the day. (...) ... the AOB presumes that employment in the current form does not conform to the provisions of the CRPD”.<sup>11</sup>

Finally, the AOB concludes “that it is not fully accepted in Austria that persons with disabilities should individually be able to choose a way of living, which is suitable for them, and have to receive the necessary support and services to do so.”<sup>12</sup>

All the factors and elements are evidence of the extremely high risk of isolation and segregation from independent life within the community of persons with disabilities in all of the facilities co-funded by the European Union.

2.4 Does the Country concerned receive (or could it receive in future) EU funding relating to the subject of your complaint?

Yes, please specify below       No       I don't know

<sup>6</sup> Austrian Ombudsman Board (2018): Written Contribution, p. 24f.

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fIFR%2fAUT%2f32189&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fIFR%2fAUT%2f32189&Lang=en)

<sup>7</sup> Ibid., p. 22

<sup>8</sup> Ibid., p. 20

<sup>9</sup> Ibid., p. 17.

<sup>10</sup> Ibid., p. 28

<sup>11</sup> Ibid., p. 29

<sup>12</sup> Ibid., p. 25

Yes, the complaint relates to the following projects co-funded by the European Structural and Investment Funds, more precisely the European Agricultural Fund for Rural Development (EAFRD).

Project	Total amount € (EU + national)
Living facility 1	517.100
Living facility 2	2.490.000
Living facility 3	4.740.000
Living facility 4	1.367.645
Living facility 5	1.787.564
Living facility 6	1.814.663
Sheltered workshop 1	1.290.300
Sheltered workshop 2	1.380.000
<b>Total amount</b>	<b>15.387.272</b>

With an assumed EAFRD share of 49,42%, a total of € 7.604.389,82 (approximate calculation) was invested into the establishment of the 8 facilities for living and sheltered work for persons with disabilities described above.

Taking into consideration that sufficiently detailed information about projects that are co-funded by EAFRD is difficult to find in sources available to the public, the above list of facilities might not include all projects of this type in Upper Austria. The total EAFRD share being spent on institutions for persons with disabilities in Upper Austria might thus be bigger than what is included in this complaint.

## 2.5 Does your complaint relate to a breach of the EU Charter of Fundamental Rights?

The Commission can only investigate such cases if the breach is due to national implementation of EU law.

Yes, please specify below       No       I don't know

Article 26 of the EU Charter on Fundamental Rights states that “[t]he Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.” Article 21 of the Charter prohibits discrimination on any ground, including disability.

The manner in which EU law – as explained in question 2.2 – is implemented in Austria leads to the breach of these two provisions of the Charter.

The European Commission Guidance on ensuring respect for the Charter<sup>13</sup> suggests, among other, the following key questions (in Annex III) when establishing whether the Charter has been breached:

- How does the action entail any different treatment of groups or individuals directly on grounds of sex, racial or ethnic origin, religion or belief, disability, age, and sexual orientation? Or could it lead to indirect discrimination?

<sup>13</sup> Guidance on ensuring the respect for the Charter of Fundamental Rights of the European Union when implementing the European Structural and Investment Funds (‘ESI Funds’) available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0723\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0723(01)&from=EN)

- Does the action ensure respect for the rights of people with disabilities in conformity with the UN Convention on the rights of persons with disabilities? How? (see <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010D0048>)

Institutional settings co-funded by EAFRD in Upper Austria force persons with disabilities to live and work in groups, for the sole reason of having disabilities, where they must adapt to predefined conditions and regulations. There is typically a rigidity of routine, which does not respect personal will and preferences of individuals. Identical activities in the same place are carried out by a group of persons under the authority of the institution. Persons with disabilities have to share attendants and care persons with others, and they have no or limited influence over whom one has to accept assistance from. Findings of a recently published study from Austria clearly indicate that it is usually decided by the institutions who lives or works with whom.<sup>14</sup> Furthermore, there is a lack of person centred approaches in many institutions and persons with disabilities who live and/or work in institutions have reduced contacts with the outside world, which strongly indicates the isolating effect of institutional settings.<sup>15</sup>

In a situation where the sheltered workshop and the living facility belong to the same service provider, the setting is similar to a “total institution”, which produces a high risk of violence and vulnerability for persons with disabilities.<sup>16</sup> This exactly is the case for two of the listed projects: Living facility 2 and Sheltered workshop 2 are included in one building. Thus, persons with disabilities will spend most of their time in highly regimented activities between the housing facility and the sheltered workshop, with little or no access to the outside world.

It is clear that the living facilities and the sheltered workshops co-financed by the European Union bear a high risk of isolation and segregation from independent life within the community for persons with disabilities. This is in breach of Articles 26 and 21 of the EU Charter on Fundamental Rights.

### 3. Previous action taken to solve the problem\*

Have you already taken any action in the Country in question to solve the problem?\*

**IF YES**, was it:  Administrative     Legal ?

**3.1** Please describe: (a) the body/authority/court that was involved and the type of decision that resulted; (b) any other action you are aware of.

**3.2** Was your complaint settled by the body/authority/court or is it still pending? If pending, when can a decision be expected?\*

<sup>14</sup> Mayrhofer, Hemma; Schachner, Anna; Mandl, Sabine; Seidler, Yvonne (2019). Erfahrungen und Prävention von Gewalt an Menschen mit Behinderungen, p. 463ff <https://broschuere.service.sozialministerium.at/Home/Download?publicationId=718>

<sup>15</sup> Ibid., p. 466

<sup>16</sup> Ibid.

**IF NOT** please specify below as appropriate

- Another case on the same issue is pending before a national or EU Court
- No remedy is available for the problem
- A remedy exists, but is too costly
- Time limit for action has expired
- No legal standing (not legally entitled to bring an action before the Court) please indicate why:


- No legal aid/no lawyer
- I do not know which remedies are available for the problem
- Other – specify

The 8 facilities are already built and in use. When Independent Living Austria found out about the projects in 2019, it was too late to take action regarding these specific projects.

4. If you have already contacted any of the EU institutions dealing with problems of this type, please give the reference for your file/correspondence:

- Petition to the European Parliament – Ref:.....
- European Commission – Ref:.....
- European Ombudsman – Ref:.....
- Other – name the institution or body you contacted and the reference for your complaint (e.g. SOLVIT, FIN-Net, European Consumer Centres)

5. List any supporting documents/evidence which you could – if requested – send to the Commission.

 Don't enclose any documents at this stage.

As mentioned above, it is difficult to find meaningful and comprehensive information on single projects co-funded by EAFRD. Basic data provided was collected in the following sources:

Project	Link
Living facility 1	<a href="https://www.caritas-linz.at/hilfe-angebote/menschen-mit-behinderungen/aktuelles/detailansicht-aktuelles/news/79108-bischof-segnete-pflegewohngruppe/">https://www.caritas-linz.at/hilfe-angebote/menschen-mit-behinderungen/aktuelles/detailansicht-aktuelles/news/79108-bischof-segnete-pflegewohngruppe/</a>
Living facility 2	<a href="https://www.tips.at/nachrichten/linz-land/land-leute/472063-21-wohnplaetze-fuer-menschen-mit-beeintraechtigung-in-wilhering">https://www.tips.at/nachrichten/linz-land/land-leute/472063-21-wohnplaetze-fuer-menschen-mit-beeintraechtigung-in-wilhering</a>
Living facility 3	<a href="https://www.lpbz-ooeg.at/schloss-haus/angebot/wohnen/aussenstellen/wohngemeinschaft-goetschka-1">https://www.lpbz-ooeg.at/schloss-haus/angebot/wohnen/aussenstellen/wohngemeinschaft-goetschka-1</a>
Living facility 4	<a href="https://www.land-oberoesterreich.gv.at/220031.htm">https://www.land-oberoesterreich.gv.at/220031.htm</a>
Living facility 5	<a href="https://www.zukunftsraumland.at/projekte/1738">https://www.zukunftsraumland.at/projekte/1738</a>

Living facility 6	<a href="https://www.zukunftsraumland.at/projekte/1739">https://www.zukunftsraumland.at/projekte/1739</a>
Sheltered Workshop 1	<a href="https://www.zukunftsraumland.at/projekte/1737">https://www.zukunftsraumland.at/projekte/1737</a>
Sheltered Workshop 2	<a href="https://www.institut-hartheim.at/?seite=news-institut&amp;sprache=DE&amp;inhaltID=2200">https://www.institut-hartheim.at/?seite=news-institut&amp;sprache=DE&amp;inhaltID=2200</a>


Information on the amounts invested is even more difficult to find, but a published piece of research on the use of EAFRD funds in Austria includes on page 20 a list of projects with references to finances as of Dec. 31<sup>st</sup> 2016:

[https://www.bmlrt.gv.at/dam/jcr:296a065f-7b0b-497d-add2-b4eee2030bc5/Evaluierungsbericht%20LE%2014-20\\_Paket%20J\\_Soz\\_Infra\\_Dienste.pdf](https://www.bmlrt.gv.at/dam/jcr:296a065f-7b0b-497d-add2-b4eee2030bc5/Evaluierungsbericht%20LE%2014-20_Paket%20J_Soz_Infra_Dienste.pdf)

## 6. Personal data\*

Do you authorise the Commission to disclose your identity in its contacts with the authorities you are lodging a complaint against?

Yes       No

 *In some cases, disclosing your identity may make it easier for us to deal with your complaint.*