



EUROPEAN COMMISSION

Complaint – Infringement of EU law

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/

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*	Ines	
Surname*	Bulic Cojocariu	
Organisation:	European Network on Independent Living	
Address*	Rue de l'Industrie 10	
Town/City *	Brussels	
Postcode*	1000	
Country*	Belgium	
Telephone	+3228932583	
E-mail	ines.bulic@enil.eu	
Language*	English	
Should we send correspondence to you or your representative*:	X	<input type="checkbox"/>

	Complainant*	Your representative (if applicable)
Title* Mr/Ms/Mrs	Mr	
First name*	Steven	
Surname*	Allen	
Organisation:	Validity Foundation	
Address*	Impact Hub, Ferenciek tere 2	
Town/City *	Budapest	
Postcode*	1053	
Country*	Hungary	
Telephone	+36 1 780 5493	
E-mail	steven@validity.ngo	
Language*	English	
Should we send correspondence to you or your representative*:	X	<input type="checkbox"/>

2. How has EU law been infringed?*

	Authority or body you are complaining about:
Name*	Łódzkie Voivodeship Managing Authority
Address	ul. Tuwima 22/26
Town/City	Łódź
Postcode	90-002
EU Country*	Poland
Telephone	+48 42 663 30 92
Mobile	-
E-mail	pr@lodzkie.pl

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

This complaint concerns a number of measures (projects) in the Łódź Voivodeship, implemented during the current programming period (2014-2020) and listed below. Specifically, the Łódź Voivodeship Managing Authority has used the European Structural and Investment Funds (ESI Funds) to finance a number of projects that contravene the European Union and national law in the area of social inclusion and the rights of persons with disabilities.

Projects funded under the Call for proposals: RPLD.07.03.00-IZ.00-10-001/16, Priority Axis VII, Action VII.3

Project no. 1: Construction of an “Innovative social care home”, „Innowacyjny dom pomocy społecznej dla osób z zaburzeniami psychicznymi, jako element transformacji systemu wsparcia osób z zaburzeniami psychicznymi z instytucjonalnego w środowiskowy”, for approximately 90 plus persons in a 4-storey building, next to an already existing 140-person social care home in Łódź, Muncypalna 3, with approximately 1,5mln Euro ERDF funds, reference: UDA-RPLD.07.03.00-10-0031/16-00, date of signing of the agreement: 20.04.2017

State of implementation: according to our information, the construction work has not yet started.

Project no. 2: Extension and conversion of an 80-person social care home in Drzewica, “Rozbudowa i przebudowa budynku Domu Pomocy Społecznej dla Dorosłych w miejscowości Drzewica ul. Stawowa 21/25”, with approximately 1,9 mil Euro ERDF Funds, reference: WND-RPLD.07.03.00-10-0018/16

State of implementation: according to our information, the construction work has started.

Project no. 3: Construction of a social care home, “Budowa domu pomocy społecznej - Dom Seniora Kolumna”, with approximately 734,000 Euro ERDF Funds, reference: WND-RPLD.07.03.00-10-0001/16

State of implementation: unknown.

Project funded under the Call for proposals: RPLD.07.03.00-IZ.00-10-001/16, Priority Axis VII, Action VII.3

Project no. 4: Construction and equipment of a social care home, “Budowa i wyposażenie kompleksu mieszkalno-opiekuńczego „Dom Seniora Romanów”” in Łódź, with approximately 760,000 Euro ERDF Funds, reference: UDA-RPLD.07.03.00-10-0014/18-00, date of signing of the agreement: 03.01.2019

State of implementation: according to our information, the new building was already in place before the project started.

Project no. 5: Adaptation and extension of a social care home, "Adaptacja i rozbudowa istniejącego budynku w Drzykoczach w celu dostosowania do świadczenia usług pomocy społecznej oraz zakup wyposażenia obiektu", with approximately 1,3 mil Euro ERDF Funds, reference: UDA-RPLD.07.03.00-10-0009/18-00, date of signing of the agreement: 31.01.2019.

State of implementation: according to our information, the construction work has started, but hasn't been finalised.

Projects funded under the Call for proposals: RPLD.07.03.00-IZ.00-10-001/16, Priority Axis VII, Action: VII.3

Project no. 6: Construction of a residential facility for 60 persons, "Budowa Zakładu Opiekuńczo-Pielęgnacyjno-Rehabilitacyjnego świadczącego usługi Dziennego Domu Pobytu wraz z zakupem wyposażenia niezbędnego do realizacji usługi w zakresie rehabilitacji społecznej oraz opieki nad osobami starszymi oraz osobami z niepełnosprawnością", with approximately 188,000 Euro ERDF Funds, reference: UDA-RPLD.07.03.00-10-0053/16-00, date of signing of the agreement: 27.04.2017

State of implementation: unknown.

Projects funded under the Call for proposals: RPLD.04.02.02-IZ.00-10-001/15, Priority Axis IV, Action IV.2, Subaction IV.2.2

Project no. 7: Modernisation of a social care home, "Termomodernizacja filii Domu Pomocy Społecznej Nr 1 przy ul. Farbiarskiej 27/29 w Tomaszowie Mazowieckim", with approximately 265,000 Euro ERDF Funds, reference: WND-RPLD.04.02.02-10-0004/16

State of implementation: according to our information, the project has already ended.

Project no. 8: Modernisation of a social care home, "Termomodernizacja budynków Domu Pomocy Społecznej w Rąbieniu", with approximately 490,000 Euro ERDF Funds, reference: WND-RPLD.04.02.02-10-0072/16

State of implementation: according to our information, the project has already ended.

The above listed projects involve the **construction, renovation, extension or modernisation of institutional care facilities for persons with disabilities, including some with up to 80 or 90 residents**. Some of the institutions have already been built or renovated, while others have yet to be built. All of the projects will lead to human rights violations of persons with disabilities in Poland. They will reinforce the segregation, exclusion and discrimination of this group of individuals, thus denying them access to the right to living independently and being in the community and other rights set out in the UN Convention on the Rights of Persons with Disabilities, the European Fundamental Rights Charter and other international, European as well as national laws and policies (ex. Polish Guidelines for the implementation of projects in the area of social inclusion and combating poverty with the use of the European Social Fund and the European Regional Development Fund for 2014-2020).

The complaint focuses on one of the 16 voivodeships in Poland and only highlights a small number of examples that could be identified in this voivodeship, given the very limited data about ESIF funded projects that is publicly available and was therefore accessible to the complainants. This means that

there most likely are additional projects in this voivodeship and many more in other voivodeships, that involve investments in institutional care facilities for persons with disabilities.

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.

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”. Principle 18, on long-term care, states that “everyone has the right to affordable long-term care services of good quality, in particular home-care and community-based services”.

Poland is a State party to the **United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD)**, which it ratified in 2012. 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) 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”.

According to the **General Comment 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.”

Article 5 CRPD requires States to, inter alia, prohibit all discrimination on the basis of disability and to take all appropriate steps to ensure reasonable accommodation. Interpreting this article, the CRPD Committee has established that segregation, separate treatment and institutionalisation constitute a *prima facie* form of discrimination and thus a breach of Article 5. According to para 58 of the **General Comment 6**: “Institutionalization is discriminatory as it demonstrates a failure to create support and services in the community for persons with disabilities, who are forced to relinquish their participation in community life to receive treatment.”

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 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.

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

The subject of this complaint are 8 institutional care facilities for persons with disabilities in the Łódź Voivodeship, co-funded by ERDF during the 2014 – 2020 programming period. This, despite the fact that Poland is one of the countries where “deinstitutionalisation” has been designated as one of the priority areas for this funding period. Instead of closing down institutions and developing the much-needed community-based alternatives compatible with Article 19 CRPD, the Łódź Voivodeship is reinforcing outdated models of “care” using ESI Funds. One of the concerns is that the Polish guidelines on the use of ESF and ERDF - “Wytyczne w zakresie realizacji przedsięwzięć w obszarze włączenia społecznego i zwalczania ubóstwa z wykorzystaniem środków Europejskiego Funduszu Społecznego i Europejskiego Funduszu Rozwoju Regionalnego na lata 2014-2020” - are not in line with Article 19 CRPD and in some cases permit structural investments into institutional care.

Concerns about the continued investments in institutions and the human rights violations have recently been highlighted by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in his communication to the European Commission (dated 11 March 2020):

“... due to their closed nature, the restriction of choice, the need for control by staff, the group nature of their management practices and policies, and the power imbalance between residents and staff, institutions cannot but, by their very nature foster ill-treatment and other rights violations. Institutionalisation reinforces a vicious cycle of stigmatization, discrimination and social exclusion and may be more detrimental than the mental health conditions it is supposed to treat. Institutions breed cultures of violence and helplessness. People in

segregated service systems and residential settings are particularly vulnerable to violations of their human rights.”¹

As explained in the previous question (2.2), investing in institutional care is incompatible with EU law and policy, including the UN Convention on the Rights of Persons with Disabilities. This point is reinforced by the 2018 recommendations of the Committee on the Rights of Persons with Disabilities (CRPD Committee) to the Polish Government and the recent UN report following the inquiry in Hungary. In the **Concluding Observations on the initial report of Poland on the implementation of the CRPD**², published on 23 October 2018, the CRPD Committee expressed concerns about:

“The critical stagnation in and absence of determination in the process of deinstitutionalization of persons with disabilities and their transition to independent living in community, ensuring the right of such persons to choose where, with whom and how to live outside institutions and group homes, including the absence of a strategy and action plan and targeted funding for the deinstitutionalization process after the termination of European Union funds allocated to this purpose” (para 32a)

Moreover, the Committee was concerned about:

“The **spending of European Union funds allocated to deinstitutionalization on measures that are not consistent with the Convention**, as elaborated by the Committee in its general comment No. 5, and the lack of monitoring of how the said funds are used”. (para 32d)

Therefore, the Committee made the following recommendation:

“Ensure **the spending of European Union funds allocated to deinstitutionalization on measures that are consistent with the provisions of the Convention**, and that such spending is monitored, with the effective participation of persons with disabilities and/or their representative organizations, to ensure that such spending is in line with the requirements of persons with disabilities themselves” (para 33c)

In April 2020, the CRPD Committee published the results of **an inquiry into implementation of Article 19 CRPD in Hungary**³ and made a number of recommendations that should be taken into account when interpreting EU’s and its Member States’ 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)

¹ See: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25091>

² Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Poland, CRPD/C/POL/CO/1, 29 October 2018, available at:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhslLFjcXmd8llx1hLUlxYOIoINx89NMrEyKDrTPKg7T8aUMAwDVpc%2fx6%2fd5Qg%2bJxRYV2Gi33mW2TralO6fd4KvKjXpOp0ORybDYY4RQBf5HB9>

³ 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

It is clear from the completed and ongoing projects, presented in this complaint, that neither the Polish Government nor the European Union are abiding by the recommendations of the CRPD Committee and are thus ignoring their obligations under the CRPD. Furthermore, the fact that in one of the projects (no. 4), the institution was built before the project started points to other possible violations of the ESI Funds Regulations and warrants investigation by the European Commission.

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

X Yes, please specify below No I don't know

Yes, the complaint concerns projects funded with the European Regional Development Fund.

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.

X 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 Poland leads to the breach of these two provisions of the Charter.

The European Commission Guidance on ensuring respect for the Charter⁴ 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?
- 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>)

The 8 institutional care facilities listed in this complaint breach the Charter on two main grounds: 1. They do not guarantee persons with disabilities the right to live independently and being included in the community; therefore the projects amount to a violation of Article 19 of the CRPD. 2. By being denied the opportunity to live in the community and forced to live with other persons with disabilities, as well as to accept all that comes with living in a closed, segregated setting, they are directly discriminated against on grounds of disability.

⁴ 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)

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.

Previous action taken includes correspondence (CHAP(2019)02723) and meetings with the European Commission (DG Regio), initiated by the Independent Living Institute in Poland.

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

No decision is pending.

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

Some of the projects have already been finalised and others are in the process of being implemented, some have most probably not started construction work. As of the projects finished, there were no effective remedies available to the complainant that would stop these projects from going ahead.

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:

V Petition to the European Parliament – Ref: 0865-18

V European Commission – Ref: CHAP(2019)03555

V European Ombudsman – Ref: T-613/19

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.

The information about the projects listed is in the public domain and can be found based on the reference numbers provided. The complainant also has copies of some crucial documents and information relating to the aforementioned examples, available in the public domain as of now, as well as photographic evidence relating to the projects.

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.*