



EUROPEAN COMMISSION

Complaint – Infringement of EU law

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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)	
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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	
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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:
Name*	State Government of Tyrol
Address	Eduard-Wallnöfer-Platz 3
Town/City	Innsbruck
Postcode	6020
EU Country*	Austria
Telephone	+43 512 508
Mobile	
E-mail	post@tirol.gv.at

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 persons 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 Tyrol for Implementing Measures financed by the EU and the State, in the Framework of the Austrian Programme for Rural Development 2014-2020¹.

On page 22 of these guidelines, projects in the field of social affairs are listed, which include:

In para 2.2.1: 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 impairments
4. Institutions and living facilities that cover the needs for care and living of children, persons with impairments or in special situations of emergency as well as for old persons, including institutions for all generations

In para 2.2.2: investments to establish and improve mobile services like transport, delivery or other services.

The complainant obtained documentation for the following eight (8) facilities which were either renovated, adapted or newly built and co-funded by EAFRD on the basis of the abovementioned guidelines:

1 facility for children and young people with disabilities (boarding/residential, kindergarden, special school, vocational training): The facility for children is a large special institution with weekly boarding and long-stay accommodation exclusively for children with disabilities. Although non-disabled children from the neighbourhood community use the services provided by the facility to a certain extent, it tends to a majority of children with disabilities. These are brought from all over Tyrol and segregated from their original neighbourhood and families at a very early age. The residential component of the facility accommodates about 20 children with disabilities who live there permanently, while the boarding component provides weekly accommodation (Monday – Friday), only for children with disabilities.

5 residential facilities for persons with disabilities and 3 sheltered workshops / daycentres for persons with disabilities: All facilities for adults are specialised facilities aimed exclusively at groups of persons with disabilities.

All of the projects mentioned constitute a violation of the rights in the UN Convention on the Rights of Persons with Disabilities (UN-CRPD), as well as the Convention on the Rights of the Child (CRC), as they **reinforce the segregation, isolation and discrimination of children and adults with disabilities in Tyrol. Instead of supporting inclusive education in the children's community of origin and family support, EAFRD co-funded projects reinforce social exclusion of children with disabilities in a large specialised institution. Instead of improving access to housing that is open to the general population, expanding the provision of mobile support and personal assistance services for persons with disabilities, the State of Tyrol invested additional substantial resources into renovating and improving 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.**

In conclusion, the facility for children, as well as the 3 sheltered workshops and the 5 residential facilities 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, the European Structural Funds Regulations 2014 - 2020 and the EU Employment Directive.

¹ https://www.tirol.gv.at/fileadmin/themen/gesellschaft-soziales/soziales/LE-14-20/Sonderrichtlinie_-_Neufassung_Jaenner_2021.pdf

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”.

The European Commission’s **Strategy for the Rights of Persons with Disabilities 2021 – 2030** identifies “developing independent living and reinforcing community-based services” as one of the three priorities for the EU. It states that the “Commission will support national, regional and local authorities in their efforts for deinstitutionalisation and independent living, including through the 2021 – 2027 shared management funds ...”.

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.” With regard to children with disabilities, GC5 explains that for children “there is no substitute for the need to grow up with a family”. (General Comment 5, on living independently and being included in the community, para 16(c)).

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”.

In line with **Article 24 CRPD**, on the right of persons with disabilities to education, States are required to put in place an inclusive education system at all levels and must not exclude children from the general education system on the basis of disability.

General Comment 4 (GC 4) clarifies that, although this right is subject to progressive realisation, States must move away from maintaining a special/segregated education system in parallel with mainstream education. Specifically: “Article 4 (2) requires that States parties take measures to the maximum of their available resources regarding economic, social and cultural rights and, where needed, within a framework of international cooperation, with a view to achieving progressively the full realization of those rights. Progressive realization means that States parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of article 24. **This is not compatible with sustaining two systems of education: a mainstream education system and a special/segregated education system.** Progressive realization must be read in conjunction with the overall objective of the Convention to establish clear obligations for States parties in respect of the full realization of the rights in question.” (General Comment 4, on the right to inclusive education, para 40).

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).

Austria is a party to the **UN Convention on the Rights of the Child**, which in Article 2 prohibits discrimination based on disability.

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 Hungary² 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

² 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

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 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 either newly built or renovated, adapted or enlarged facilities in Tyrol (1 of which is an educational/residential institution for children with disabilities, 5 of which are residential facilities and 3 of which are sheltered workshops). The main source of evidence is the written response of the Tyrolean Government to a parliamentary enquiry in June 2020 regarding the use of EAFRD for social affairs in Tyrol³:

Project	description
Institution for children with disabilities	3 individual project applications for improving, adapting and enlarging an institution for children with disabilities which includes a kindergarden, school, vocational training and boarding facilities, as well as a residential facility for about 20 children and young people with disabilities. ⁴
Residential facility 1	Renovation and adaptation of a residential facility for six persons with cognitive and multiple disabilities; renovation and improvement of accessibility (e.g.: new windows and doors, boiler to heat water with gas instead of with electricity, heating with gas instead of with oil; accessible showers and bathrooms, enlargement of rooms)
Residential facility 2	Alteration of a traditional residential facility for 10 persons with disabilities to a new structure which now includes 4 units for one, 3 and 4 persons
Residential facility 3	Renovation and adaptation of a residential facility for 12 persons with disabilities: e.g. elevator, car park, new windows and doors, improvement of heating and electricity
Residential facility 4	Adaptation of a residential facility for an unknown number of persons with autism: stair lift, safety glass for windows, fall protection
Residential facility 5	Renovation and adaptation of residential facility for 12 persons with disabilities: e.g. reducing size of living-units, improving accessibility (stair lift, accessible bathroom), additional toilet, non-slip tiles and a sun-shade for a terrace, additional access to the garden
Sheltered workshop 1	Adaptation of a daycentre (sheltered workshop) for persons with psychosocial disabilities: elevator and accessible bathroom
Sheltered workshop 2	Renovation and adaptation of a sheltered workshop for persons with disabilities: e.g. new floors, improvement of electricity and heating, accessible bathroom
Sheltered workshop 3	Construction of a new sheltered workshop for 16 persons with disabilities in an old building

Systems of special institutions for children and adults with disabilities are well established and generously funded in Austria, and there is a severe shortage of family and community-based services. Institutional care services are, due to the lack of alternatives, supported by a majority of the Austrian population and make the transition to inclusive support services in the field of education, vocational training, work and employment, and housing difficult. These findings are supported 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:

With regard to children with disabilities in Austria:

³ Response of the Tyrolean Government to a written parliamentary enquiry on the use of EAFRD for social affairs:

<https://portal.tirol.gv.at/LteWeb/public/ggs/ggsDetails.xhtml?id=16791&cid=1#>

⁴ It is mentioned that non-disabled children of kindergarden and primary school age attend the institution. According to the institutions' website, there are 12 school classes only for children or young people with disabilities and one integrated school class. Non-disabled children are from the local neighbourhood, but children with disabilities are segregated from their community of origin and taken to the facility on a daily or weekly basis.

“The AOB has been confronted with numerous complaints of families whose children with disabilities are discriminated against. Although equality among children is prescribed by the Austrian constitution, children with disabilities still face, in many instances, rejection in nurseries, schools, sports associations, youth groups and the like. Parents are often referred to special institutions for children with disabilities. The lack of a barrier-free environment, liability issues, shortage of individual support and lack of knowledge result in separation and hinder inclusion. (...)”

To promote equality, special institutional structures for children with disabilities should be reduced and inclusive education structures further promoted. (...) many parents also wish their kids to be educated or looked after in special institutions. Nevertheless, existing discriminatory structures and separation of children are consolidated through the promotion of those institutions.”⁵

With regard to living facilities for persons with disabilities in Austria:

“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.”⁶ “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.”⁷ “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.”⁸ “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.”⁹

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

⁵ Austrian Ombudsman Board (2018): Written Contribution, p. 6,

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

⁶ p. 24f.

⁷ Ibid., p. 22

⁸ Ibid., p. 20

⁹ Ibid., p. 17.

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.”¹⁰ 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”.¹¹

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.”¹²

In 2020, a judicial review that focused on the right to choose one’s residence and place of stay concluded that this right is structurally hindered by lack of or insufficient services for persons with disabilities in Austria. In practice, it is restricted to a small group of persons with disabilities. One central structural problem is the linkage of the place of residence to care or support. This is particularly true for persons with high needs of support to whom personal assistance services are not available.¹³ Furthermore, persons with disabilities do not have a legal entitlement to personal assistance or similar community based support services; they only have a legal entitlement to support depending on the services or institutions in a region and the available resources.¹⁴

Finally, major concerns were recently published on the therapeutic method used on persons with autism, and practiced in facility 4. The resident’s representation (which is legally responsible for controlling restrictions of freedom in residential facilities for persons with disabilities) considers measures and regulations which are taken to control and change the behaviour of residents in such institutions as harmful, dangerous and not in line with the UN-CRPD.¹⁵

With regard to children, there is conclusive scientific evidence of the harm of residential care on the development of a child, and their prospects of living independently and be included in the community as adults.¹⁶ According to UNICEF, even small scale residential care is not a suitable permanent placement for a child.¹⁷ A key recommendation, therefore, of the international scientific and child rights community is that “global actors should work jointly to support the progressive elimination of institutions and promote family-based care” and that “donors and volunteers should redirect their funding and efforts to community-based and family-based programmes”.¹⁸

Furthermore, in a recent landmark case *G.L v. Italy*, the European Court of Human Rights established denial of education in a mainstream setting to be discriminatory. The Court stated: The Government had failed to show that the authorities had acted with the requisite diligence

¹⁰ Ibid., p. 28

¹¹ Ibid., p. 29

¹² Ibid., p. 25

¹³ Vgl. Zapletal, Ilse (2020). *Freie Wahl von Aufenthalt und Wohnsitz*. Wien: Linde Verlag, p. 147f.

¹⁴ Ibid., p 144f

¹⁵ See: Wahl, Erich; Mayerhofer, Elke (2021): *Der total institutionalisierte Alltag. Autismusspezifische Alltagsgestaltung in Wohn- und Betreuungseinrichtungen auf Basis der multifunktionellen Fördertherapie nach Muchitsch*. <http://bidok.uibk.ac.at/downloads/wahl-mayerhofer-der-total-institutionalisierte-alltag.pdf>

¹⁶ See, for example, Van IJzendoorn et al, *Institutionalisation and deinstitutionalisation of children 1: a systematic and integrative review of evidence regarding effects on development*, 23 June 2020, the Lancet, Volume 7, Issue 8, p703-320, August 01, 2020, available at: [https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366\(19\)30399-2/fulltext](https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366(19)30399-2/fulltext)

¹⁷ See UNICEF White paper, 1st July 2020, available at: <https://www.unicef.org/eca/media/13261/file>

¹⁸ Phillip S Goldman et al, *Institutionalisation and deinstitutionalisation of children 2: policy and practice recommendations for global, national and local actors*, 23 June 2020, the Lancet, Volume 7, Issue 8, p611 – 633, August 01, 2020, available at: [https://www.thelancet.com/pdfs/journals/lanchi/PIIS2352-4642\(20\)30060-2.pdf](https://www.thelancet.com/pdfs/journals/lanchi/PIIS2352-4642(20)30060-2.pdf)

to guarantee the applicant the enjoyment of her right to education on an equal footing with the other pupils such as to strike a fair balance between the competing interests at stake.”¹⁹

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

¹⁹ G.L. v. Italy – 59751/15, see: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22002-12926%22%5D%7D>

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

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)	EAFRD share €
Institution for children with disabilities	3.065.804,75	1.515.921,59
Residential facility 1	1.153.285,26	570.068,9
Residential facility 2	166.329,73	162.580,16
Residential facility 3	231.226,83	114.295,42
Residential facility 4	58.709,00	29.019,86
Sheltered workshop 1	228.915,91	113.153,13
Sheltered workshop 2	555.926,72	274.794,58
Sheltered workshop 3	882.437,49	436.188,85
Total amount	6.505.215,85	3.216.022,49

The above list of facilities does not include all projects co-funded by EAFRD in Tyrol. Firstly, the overview of projects provided by the Tyrolean Government only includes projects approved in the framework of the 1st and 2nd call; no information was provided regarding the 3rd call. Secondly, the list includes projects that are not in the focus of Independent Living Austria.

Information on the amounts invested was included in the written reply of the Tyrolean Government.²⁰

Residential Facility 5 was financed in the framework of the 3rd call, no information is available on the amounts invested in this institution.

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 Charter²¹ 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?

²⁰ Response of the Tyrolean Government to a written parliamentary enquiry on the use of EAFRD for social affairs: <https://portal.tirol.gv.at/LteWeb/public/ggs/ggsDetails.xhtml?id=16791&cid=1#>

²¹ 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>)

Using these two questions as a guide, we can conclude that all the facilities co-funded by EAFRD breach of Articles 26 and 21 of the EU Charter on Fundamental Rights.

Firstly, institutional settings co-funded by EAFRD in Tyrol 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.²² 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.²³

Secondly, with regard to children, facilities co-funded by EAFRD deny children with disabilities the right to education alongside peers, in mainstream educational settings. The segregating nature of special schools is highlighted in the General Comment 4, para 11, which states: “Exclusion occurs when students are directly or indirectly prevented from or denied access to education in any form. Segregation occurs when the education of students with disabilities is provided in separate environments designed or used to respond to a particular or various impairments, in isolation from students without disabilities. [...]”²⁴ Para 50 further emphasizes that the place of inclusion should be the local community, respectively the neighbourhood school in the child’s community of origin: “The introduction of inclusive education in the local community must take place alongside a strategic commitment to the ending of institutions for persons with disabilities.”²⁵ In Austria, however, it is common practice to take children with disabilities from their community of origin and their neighbourhood peers to far-away, so-called integrated, institutions and to provide them with social contact with non-disabled children of this far-away community. This constitutes segregation and exclusion of children with disabilities and is not in line with Art. 24 of the UN-CRPD.

We assume that this is particularly the case for the EAFRD co-funded kindergarten, which is being completely renovated and enlarged. A majority of children who start attending special educational institutions at an early age remain in segregating educational settings until the age of 18 years. Research indicates that special school leavers are much more likely to find occupation only in sheltered workshops, unable to earn their own living.²⁶

²² Mayrhofer, Hemma; Schachner, Anna; Mandl, Sabine; Seidler, Yvonne (2019). *Erfahrungen und Prävention von Gewalt an Menschen mit Behinderungen*, p. 463ff <https://broschuerenservice.sozialministerium.at/Home/Download?publicationId=718>

²³ Ibid., p. 466

²⁴ General Comment 4 on Article 24 Right to inclusive education

²⁵ Ibid.

²⁶ See e.g. Fasching, Helga (2013). *The Educational Situation and Transition Process to Work of School Leavers with intellectual Disability in Austria*. In: J. Seifried, E. Wuttke: *Transitions in Vocational Education*, p. 105 – 122; Fliieger, Petra; Naue, Ursula (2018). *Employment conditions in sheltered workshops*, in: Country report on the European Pillar of Social Rights <https://www.disability-europe.net/downloads/834-country-report-on-the-european-pillar-of-social-rights-focus-topics-austria>, p. 11 – 12.

3. Previous action taken to solve the problem*

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

A complaint (reference: AT CHAP(2020)01883) has been submitted to the European Commission in July 2020. The complaint has been submitted by the European Network on Independent Living and Independent Living Austria. It 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).

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

In March 2019, ENIL first raised concerns about the use of EAFRD for segregating institutions in Austria at DG AGRI. In August 2019, ILA filed a complaint about the misuse of EAFRD for institutions at the Austrian Disability Council, which is the official representative of persons with disabilities in the development and implementation of ESIF programmes in Austria. According to the information we have, and which was provided in confidence, meetings took place with representatives of different Federal Ministries, as well as with the EAFRD advisory body, in autumn 2019. Concerns about the investments and their misalignment with the UNCRPD were raised and alternative approaches to residential facilities and sheltered workshops were presented.

None of these efforts had any impact on the calls in Tyrol. Early in 2020, the same text was used for a 3rd time by the Government of Tyrol, despite all attempts to raise awareness about concerns regarding non-compliance with the UN-CRPD.

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: AT CHAP(2020)01883
- 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.

It is difficult to find meaningful and comprehensive information on single projects co-funded by EAFRD. As mentioned before, most data was provided in a written reply of the Tyrolean Government to a parliamentary enquiry.²⁷ Some public information is available for some of the projects:

Project	Link
Facility for children	https://www.tirol.gv.at/meldungen/meldung/elisabethinum-axams-lernumgebung-verbessert/ https://www.slw.at/images/pdf/fidelis_4-2020.pdf (see page 16: report on the renovation of the kindergarden)
Residential facility 1	https://www.arche-tirol.at/images/Bilder_Aktuelles/Rundbrief_2019_07_web.pdf (page 9)
Residential facility 2	https://lebenshilfe.tirol/barrierefreie-wohnungen-in-telfs/
Residential facility 3	https://www.wir-sozialdienstleistungen.tirol/barrierefreier-umbau-wohnhaus-fritzens/
Residential facility 4	Not available
Residential facility 5	https://www.wir-sozialdienstleistungen.tirol/vieles-neu-in-tulfes/
Sheltered Workshop 1	Not available
Sheltered Workshop 2	https://www.tirol.gv.at/regierung/pressemeldungen/meldung/barrierefreie-und-freundliche-lern-und-arbeitsumgebung/
Sheltered Workshop 3	https://www.meinbezirk.at/westliches-mittelgebirge/c-lokales/neues-slw-angebot-mitten-in-axams_a3986811 https://www.wirkstatt-axams.at/

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.*

²⁷ Response of the Tyrolean Government to a written parliamentary enquiry on the use of EAFRD for social affairs: <https://portal.tirol.gv.at/LteWeb/public/ggs/ggsDetails.xhtml?id=16791&cid=1#>