



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
REGIONAL AND URBAN POLICY
Better implementation, closure and Programme Implementation III
Poland

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Subject: Your Complaint registered under CHAP (2020) 2159 – Projects No. 1, 2, 3, 4, 5,6,7,8

Dear Mrs Cojocariu and Mr Allen,

In your complaint, submitted to the Commission and registered on 31 July 2020, you alleged that the Managing Authority of the Łódź Voivodeship has used the European Structural and Investment Funds ('ESI Funds'), to co-finance, under the programming period 2014-2020, eight projects that contravene Union and national law in the area of social inclusion and the rights of persons with disabilities.

In order to assess your complaint, the Directorate-General for Regional and Urban Policy ("DG REGIO") contacted the Polish Managing Authority ("MA") to ask for additional information and explanations. Following the clarifications provided by the MA, on 1 October 2021 and on 11 March 2022 DG REGIO sent two pre-closure letters to you, one concerning **Projects No. 2, 3, 4, 5, 6, 7** ('pre-closure letter 1') and the other concerning **Project No. 1** ('pre-closure letter 2') (respectively, Ares(2021)5987544 and Ares(2022)1820201), concluding that, in the current circumstances, there is no breach of the applicable Union law for the Commission to pursue. You were asked to provide us with additional and precise information that would establish a breach of EU law, within four weeks of the date of the pre-closure letters, otherwise DG REGIO would close the complaint.

You replied to pre-closure letter 1 on 29 October 2021. To date, no reply has been received with regard to pre-closure letter 2.

In your reply, you argued that the Commission, in its assessment, did not seek opinions from some key sources necessary for the proper analysis of this complaint.

Specifically, you referred to the Polish Commissioner for Human Rights (hereinafter “PCHR”) who has expressed general concerns, in line with those of the UNCRPD Committee, about the progress of the deinstitutionalisation process (“DI process”) in Poland and its compliance with applicable human rights standards. You also mentioned the EU UNCRPD Framework, which complements the national monitoring frameworks in EU Member States responsible for promoting, protecting and monitoring the UNCRPD and its implementation at national level.

Therefore, on this basis, and taking into account the information provided, you requested the Commission to refrain from closing the complaint and to continue the investigation with a view of establishing a breach of EU law.

In your reply to pre-closure letter 1, DG REGIO did not identify any new and precise information that could prompt a review of the position it adopted with regard to the lawfulness of the co-financed projects, against the applicable legal framework already indicated in our previous replies.

First of all, DG REGIO would like to emphasise again the commitment of the European Union and its Member States, as parties to the UNCRPD, and to the extent of their respective competences, to adopt all the appropriate measures to implement the rights recognized therein as well as, at the same time, to refrain from engaging in any act or practice which is inconsistent with the same Convention.

As already stated, in accordance with the principles of shared management applicable under the framework of Regulation (EU) 1303/2013¹ (‘the CPR’), the Commission and the Member States shall carry out their respective roles in relation to the ESI Funds, by ensuring their coordinated and harmonised implementation, in a legal and regular manner as well as in accordance with the principle of sound financial management.

In line with the Commission’s role and the commitment to carefully monitor the operations co-financed under the calls as well as to ensure that their development remains compliant with the UNCRPD, DG REGIO take notes of the concerns evidenced by the PCHR and shared by you. However, DG REGIO believes that the latter are to be raised and addressed outside the framework of this specific complaint, i.e. in the broader political context of ensuring progress of and strengthening, in a coordinated manner, the DI process in Poland, through a continuous dialogue and monitoring exercise that must involve all the relevant parties.

¹ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, OJ L 347, 20.12.2013, p. 320–469.

In this regard, as anticipated in pre-closure letter 1, and in order to implement its monitoring role, the Commission has initiated a number of follow-up actions on these projects, aimed at ensuring that any reinforcement of segregation or isolation, discrimination of their target groups, as well as violation of their fundamental and human rights would be avoided. This includes, as further indicated in pre-closure letter 2, additional steps to be taken with the Polish authorities (namely the Ministry of Funds and Regional Development) and the Polish Commissioner for Human Rights.

Moreover, the process of deinstitutionalisation in the Łódzkie Voivodship is currently subject to analysis at national level. At the end of the process and when it is deemed necessary, the outcome will be presented to one of the Monitoring Committees.

The aforesaid is particularly relevant in the context of the ongoing programming process for the 2021-2027 period. To fulfil thematic enabling conditions on social inclusion and on health, Member States are required to have a national or regional strategic framework, which include 'measures for the shift from institutional to family- and community-based care' and operations need to be in line with this strategy to be eligible. The thematic enabling conditions will be assessed at the programme level and failure to fulfil them will lead to the non-reimbursement of the expenditure concerned.

To this end, as already stressed, and *inter alia*, the national implementation reports and concluding observations of the UN Committee will be used as one of the reference documents.

Therefore, the results of the on-going monitoring of these projects will inform the negotiations on the 2021-2027 programming documents.

With regard to your claim concerning the lack of consultation of the EU UNCRPD Framework, it also has to be underlined that the broader issue of the use of ESI funding to promote deinstitutionalisation and its monitoring has been subject, for instance, and in particular, to the European Ombudsman's scrutiny and subsequent recommendations². The Ombudsman will consider returning to this issue in future, to assess progress, and the Commission is aimed to pursue its suggestions.

Moreover, during our recent talks with the UN Special Rapporteur (UN SR) on the rights of persons with disabilities, in the course of his visit to the EU in March 2022, the Commission strongly supported the UN SR plea to use the Cohesion Policy funds to support the DI process.

DG REGIO would also like to remind you that, as set out in the CPR, in the event of an established irregularity³ on the part of the Member State, which received support from the

²See e.g. cases 417/2018/JN; 1233/2019/MMO; OI/2/2021/MHZ.

³'irregularity' means any breach of Union law, or of national law relating to its application, resulting from an act or omission by an economic operator involved in the implementation of the ESI Funds, which has, or would

ESI Funds, the Commission can make use of a series of available measures to protect the Union budget such as interrupting or suspending interim payments or making a financial correction if the irregular expenditure has not been corrected in first instance by the Member State.

Furthermore, on your allegation that our general considerations reflect only a very partial reading and application of the text of the UNCRPD Committee's General Comment No 5 on the right to live independently and being included in the community ('GC 5'), DG REGIO would like to point out that the assessment provided in the pre-closure letters, is based, first of all, on the relevant applicable framework mentioned therein⁴.

As indicated, there is no general and absolute prohibition for the ESI Funds to support long-stay residential institutions. At the same time, the policy intention when implementing the ESI Funds is indeed to move away from investments in institutions and support a move towards community-based living. Therefore, Member States are constantly reminded of the EU as well as their obligation under the UNCRPD to make progress on ensuring independent living arrangements and deliver de-institutionalisation.

However, promoting the transition from institutional to community-based services is a process that requires the progressive development of individualised services, the planned closure of long-stay residential institutions and making general services (education, health, housing) available to persons with disabilities.

Our considerations, in the above terms, are then further supported by the GC 5 at hand, as the latter recognises the progressive applicability of the right to access the facilities and services that ensure independent living conditions, requiring structural changes and strategic planning/implementation from the Members States, without disregarding their obligations under the UNCRPD.

It also has to be noted that this GC 5 refers to "independent living" as not "just" living in a particular building or setting; it is, first and foremost, about not losing personal choice and autonomy as a result of the imposition of certain life and living arrangements. Therefore, it focuses on the institutional character of the settings and underlines that policies of deinstitutionalisation require implementation of structural reforms which go well beyond the closure of institutional settings, whatever their size, both small-scale group homes and large-scale institutions.

Finally, concerning the timing for handling the complaint, please accept our apologies for the delays. These are due to the wide material scope of the complaint in light of the fact that it covers eight projects, which required the assessment and cooperation of different Commission services as well as several exchanges with the relevant authorities in order to

have, the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union.

⁴ The Treaty on the Functioning of the European Union; the Charter of Fundamental Rights of the European Union; the UN Convention on the Rights of Persons with Disabilities; Regulation (EU) 1303/2013 (the 'CPR') (and Regulation (EU, Euratom) 2018/1046); Regulation (EU) No 1301/2013 (the 'ERDF Regulation'). For more details, please see our letter of 1 October 2021, ref. Ares (2021)5987544.

obtain information about the projects in question. Moreover, the process of the complaint's analysis fell into the busiest period for both the Commission and the Managing Authority, namely elaborating and negotiating the new 2021-27 programming documents, which strongly influenced our dialogue on this matter. We have endeavoured to handle the complaint by balancing your interests with those of good administration, considering the workload represented by the specific, individual examination entailed for each of the eight projects.

Conclusion⁵

In line with the above assessment, we conclude that no breach of the applicable Union law in relation to the ERDF co-financing has been demonstrated and, therefore, the complaint will be closed.

DG REGIO will remain at your disposal for any further inquiries regarding these type of projects in the future and for pursuing a fruitful dialogue on this topic.

Yours sincerely,

e-signed

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⁵ Please note that, in case of publication, the applicable data protection rules, notably Articles 5 and 6 of the General Data Protection Regulation, should be adhered to, including the non-disclosure of personal data without any prior consent of the data subject.