

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/

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 (ENIL)	
Address*	Rue de l'Industrie 10	
Town/City *	Brussels	
Postcode*	1000	
Country*	Belgium	
Telephone	00 32 2 893 25 83	
E-mail	ines.bulic@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:
Name*	Minister Ion Stefan, Ministry of Public Works, Development and Administration
Address	Bd. Libertății, nr. 16, Latura Nord, sector 5
Town/City	Bucharest
Postcode	
EU Country*	Romania
Telephone	+40 (0)372 111 506
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 adults with disabilities in facilities funded with the European Regional Development Fund (ERDF). Specifically, it concerns the **call for tenders P.O.R./8/8.1/8.3/B/1**, which foresees the opening of sheltered housing ('locuinte protejate', literally translated as 'protected housing') and day care centres for adults with disabilities, by refurbishing existing infrastructure and building new facilities. The call was open to county-level authorities alone or in partnership with NGOs, and targeted large residential institutions for persons with disabilities with more than 120 residents. The call was closed on 20 April 2018, with the total funding contracted amounting to EUR 16 million. This will allow for the opening of 65 sheltered housing units and 21 day care centres.

The complainant obtained documentation for 18 successful tenders from 7 counties, comprising 57 sheltered housing units and 18 day care centres, designed to accommodate 460 and 533 beneficiaries respectively. Information regarding the remaining 8 sheltered housing units and 3 day care centres is not publicly available. The implementation period for all the projects has already started and is expected to end by 2022 at the latest.

The sheltered housing units will accommodate between 6 – 10 persons each, and based on the available documentation for the 18 successful tenders, 14 units will accommodate 10 persons, 6 units 9 persons, 22 units 8 persons and 15 units six persons. The majority of successful applicants (9) plan to build 3 housing units each, six applicants will build 4 housing units each and 2 applicants will build 2 units each.

All but two applicants will build the sheltered housing units on the same perimeter, thus resulting in six complexes with 30 residents or more, eight complexes with 20 residents or more, five complexes with 16 residents or more and one complex with 8 residents. They will be located in small villages or in small towns, in some of the most deprived areas of the country and the EU. Residents of these facilities – which are considered to be places where persons with disabilities are deprived of their liberty – will be subject to block treatment, with a high likelihood of human rights abuses taking place. They will be forced to spend their days in day care centres and meaningless activity, without any opportunity to live independently and to be included in community.

Thus, the approved projects are in breach of Romania's and the European Union's obligations under the United Nations Convention on the Rights of Persons with Disabilities and the EU Charter on Fundamental Rights. They also contravene provisions of the Common Provisions Regulation No 1303/2013. Rather than enabling adults with disabilities to live independently and to be included in the community, as is required by both the CRPD and the Charter, and supported by the European Structural and Investment Funds Regulations 2014 – 2020, the approved projects will perpetuate the segregation and social exclusion of persons with disabilities in Romania.

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.”

Romania is a State party to the **United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD)**, which it ratified in 2011. 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 equal recognition before the law (Article 12) 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 invest into different community-based alternatives to meet everyone's needs and requirements.

The **General Comment No. 5 on Article 19 CRPD** (UN 2017), para 16c defines ‘independent living and being included in the community’ as:

“[...] life settings outside residential institutions of all kinds. It is not “just” about 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. Neither large-scale institutions with more than a hundred residents nor smaller group homes with five to

eight individuals, nor even individual homes can be called independent living arrangements if they have other defining elements of institutions or institutionalization.”

Institutions, or institutionalisation, are defined in para 16c as follows:

“Although institutionalized settings can differ in size, name and set-up, there are certain defining elements, such as 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. Institutional settings may offer persons with disabilities a certain degree of choice and control; however, these choices are limited to specific areas of life and do not change the segregating character of institutions. Policies of deinstitutionalization therefore require implementation of structural reforms which go beyond the closure of institutional settings. Large or small group homes are especially dangerous for children, for whom there is no substitute for the need to grow up with a family. “Family-like” institutions are still institutions and are no substitute for care by a family”

General Comment 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 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, creates a legal obligation 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 complainant has serious concerns that the newly built sheltered housing units and day care centres will not fulfil the stated aim of the project, which is “to facilitate the process of integrating disabled adults in the community, achieve the transition from old style residential facilities, through acquiring skills and abilities needed for integration”. Instead, due to the characteristics of the planned sheltered housing units and day care centres, and the reasons outlined below, the call will simply result in moving adults with disabilities from large into smaller size institutions.

Disproportion in the number of persons with disabilities living in the same environment: All successful applicants plan to build sheltered housing units from scratch and refurbish existing buildings for day-care centres. All but two applicants will build the sheltered housing units on the same perimeter, in a self-described “integrated complexes”. The remaining two applicants will split their housing units between two locations. Thus, the tenders will create **six complexes with 30 residents or more, eight complexes with 20 residents or more, five complexes with 16 residents or more and one complex with 8 residents**, comprising one housing unit and one day-care centre. Notably, the residential complex in Tg. Ocna, comprising **4 housing units for 24 people** and one day-care centre, will be built on a perimeter that already holds other residential facilities (ie: the Centre for Care and Assistance for Persons with Disabilities “Costache Negri”).

Isolation and segregation from independent life within the community: The planned developments are located in **small villages (13) or in small towns (5)**, in what are some of the poorest and economically deprived regions in the European Union. These small villages and towns typically lack any employment opportunities other than low-paid and insecure agricultural labour. There are little or no social opportunities, while public transport to larger settlements is scarce and pricey. It is not clear what the basis for choosing these settlements was, other than administrative convenience.

At the stage of project selection, the tendering procedure did not require a scoping exercise to look at opportunities available in the community from an independent living perspective. The tenders include little original thinking in this respect, other than standard text copied from general regulations applying to these types of services.

Obligatory sharing of assistants with others and no or limited influence over whom one has to accept assistance from; lack of control over day-to-day decisions; lack of choice over whom to live with: Relevant regulations cited in the call for tenders define sheltered housing very flexibly.¹ At one end of the spectrum, there is very little other than size to differentiate sheltered housing from larger residential services, such as “centres for recovery and rehabilitation” or “centres for independent living” (both different types of institutions). Sheltered housing has a **hierarchical staff structure in place, with beneficiaries clearly being in receipt of services provided without any real choice and possessing very little autonomy**.

At the other end, the regulations are flexible enough to also allow small-scale genuinely community-based services. Unfortunately, by choosing to lump several sheltered housing units and day care centres together, with each sheltered housing unit at or close to the maximum permitted size of 10 beneficiaries, by choosing to locate such services in inaccessible rural areas and by building isolated facilities from scratch, the authorities are merely replicating residential institutions in kind and culture in anything but name.

Rigidity of routine irrespective of personal will and preferences; identical activities in the same place for a group of persons under a certain authority: The format of the services planned suggests that beneficiaries will spend their whole time in highly regimented activities between the sheltered housing and the day-care centres, with little or no access to the outside world.

There is relatively little research on existing sheltered housing in Romania, although clearly this notion tends to encompass very different realities as discussed above. A good number of these facilities

¹ Hotărârea nr. 867/2015 pentru aprobarea Nomenclatorului serviciilor sociale, precum și a regulamentelor-cadru de organizare și funcționare a serviciilor sociale; Ordinul nr. 82/2019 privind aprobarea standardelor specifice minime de calitate obligatorii pentru serviciile sociale destinate persoanelor adulte cu dizabilități.

are institutional in nature, having been built next to larger residential facilities and administered as part of the same complex. Crucially, **sheltered housing units are considered to be places where persons with disabilities are deprived of their liberty and subject to monitoring** by the National Preventative Mechanism (NPM) and the Monitoring Council.

A paternalistic approach in service provision: As stated above, residents have little, if any control, over their lives in the sheltered housing units and are treated as objects of care, rather than rights holders in control of their support and their lives.

An NPM monitoring report from 2016, from a visit to the sheltered housing complex “Buzoesti”, provides an example of service provision in the type of service funded through this call for tenders.² The NPM noted that an existing residential institution had been restructured with funds from a World Bank loan, having been broken up as a result into two complexes: one comprising a residential institution with 50 beneficiaries and a sheltered housing unit of 6 persons; and the other located in a village and comprising four sheltered housing units accommodating 24 beneficiaries, assisted by 14 employees. The NPM, which visited the latter facilities, documented **allegations of abuse against the beneficiaries, including forced work, forced shaving, other assaults, insults and theft**. The report also noted that a private security firm was contracted to watch over the place from 4 pm until 8 am daily; that the beneficiaries were not engaged in any activities and that they were instead sitting by idly, they were performing informal labour for some villagers, or they were begging.

Supervision of living arrangements: In 10 of the successful projects, sheltered housing and day-care centres will be built in the same location. These are self-contained, security-conscious facilities. Based on the available documentation (i.e. approved building plans), **all complexes will be fenced, with at least one protected housing unit including, by design, an isolation room**. Each complex is supposed to employ a full complement of staff, performing supervisory and management functions among others. All these complexes have workshops and staff on call to engage beneficiaries in various activities in situ.

It can be concluded that **this call for tenders is not directed at the elimination of large institutions and institutional culture**, but rather at the maintenance of the system that fails to provide individualised support and uses the ‘one size fits all’ approach. The call fails to advance the inclusion of people with disabilities in their communities and instead of contributing to a shift from institutional care to community-based support, will result in the trans-institutionalisation of residents. Should this grant scheme proceed, we believe that it will run contrary to Romania’s obligations under international and EU law.

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 projects funded from the European Structural and Investment Funds.

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.”*

The call for tenders P.O.R/8/8.1/8.3/B/1 will result in continued segregation and social exclusion of persons with disabilities in Romania, by moving them from large institutions into smaller facilities, but with the identical institutional culture.

² Avocatul Poporului, Raport privind vizita efectuata la Complexul de locuinte protejate Buzoesti si la DGASPC Arges, in data de 28.01.2016.

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.

On 30 May 2017, ENIL sent a letter to the Minister of Labour and Social Justice, Mrs Lia-Olguta Vasilescu, expressing concerns about the use of ESI Funds in the process of deinstitutionalisation. Specifically, ENIL expressed concern about the focus of the planned measures on developing protected housing units ('locuinte protejate') and day care centres as the only alternative to institutional care, in particular for people with intellectual disabilities and people with psychosocial disabilities.

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

ENIL has never received a response to this letter and given that two and a half years have passed, a response is not expected.

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

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: 0865-18
- European Commission – Ref:.....
- European Ombudsman – Ref: 1233/2019/JAP
- 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.

- Documentation for the 18 successful tenders
 - Witness statement from a disabled person, currently living in an institution, and who is directly concerned by the process of deinstitutionalisation

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.*