

# **The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds**

## **FRANET national research in France**

### **Final Report**

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## **1. Introduction**

This report aims to explore ways in which French national human rights institutions can play a relevant, effective role in the European funding cycle.

It is based on the four key stages in the study:

- the desk research carried out in France in March 2022;
- ten semi-structured interviews conducted from April to June 2022 with the representatives of focus groups (National EU funds managers and controllers, academics, representatives of civil society organisations, and representatives of national institutions for the defence of fundamental rights);
- the organisation, on 29 June 2022, of roundtable with ten participants representing all these focus groups (2 National EU funds managers, 3 academics, 2 representatives of civil society organisations (one very large organisation and one small organisation), and 3 representatives of national institutions for the defence of fundamental rights), different from those previously interviewed.

Conducted on the basis of a clear methodology (1.1.), this study paid constant attention to the issue of the rights of people with disabilities, in particular stipulated within the terms of reference (1.2.), and reflected these aspects in each of the interim reports that were submitted (1.3.).

### **1.1 Research methodology**

Each of the stages allowed an assessment to be made of the context, existing practices, challenges and opportunities. They also allowed the key success factors to be identified.

The desk research aimed to explore the French context, the existing good practices, the difficulties encountered and the challenges to be met in France to apply, comply with and enforce the conditionality of European public funds relating to the respect for human rights.

A broad, systematic review of sources was carried out. It was conducted using the major databases and doctrinal bases, and the information available on public information sites and in audits and reports from associations, trade unions, independent institutions and French public authorities, in particular the Parliament, and in publications of academics and researchers.

It provided an initial assessment of the issues raised with regard to the operation of conditionalities related to fundamental rights in the 2013-2020 funding cycle. It also allowed key lessons with regard to EU funds and fundamental rights in France to be learned, in particular with regard to the new conditionality of fundamental rights laid down by the *Common Provisions Regulation*.

The semi-structured interviews brought to light a series of difficulties, both common and specific to the various actors, in a clear, detailed, concordant way.

The discussions revealed a number of possibilities for national institutions for the defence of fundamental rights to play a relevant, effective role in the process, in order to provide better effectiveness of the fundamental rights enshrined in the Charter and the ICRPD.

The roundtable provided an opportunity to build consensus regarding a risk map of the policy areas most likely to undermine the Charter of Fundamental Rights of the European Union (hereinafter referred to as "the Charter") and the United Nations Convention on the Rights of Persons with Disabilities (hereinafter referred to as "the ICRPD"). They also discussed the risk factors for these instruments to be infringed during the use of European funds. During the discussions, the participants reconsidered the European and national legal frameworks and noted potential improvements in the reflection of the Charter and the ICRPD as regards European funds. Above all, they identified and defined the scope of the concerns with regard to potential violations of the Charter and the ICRPD during the granting and implementation of European funds.

During the roundtable, it was noted that there is currently no participation of national institutions for the defence of fundamental rights and no recognition of the relevance and legitimacy of their involvement in the process. For each stage in the funding cycle, the role that national institutions could usefully play was considered. Limitations and ways to make their role as effective and efficient as possible were explored. The discussion thus made it possible to test a number of potentialities that had emerged during the semi-structured interviews as well as spontaneously during the discussions of participants.

Through this dialogue, the participants were able to set out their difficulties, the challenges they face, and their respective pressures and expectations, in a context of better mutual understanding.

## **1.2 Disability: a particular concern**

The ICRPD was a specific concern throughout the study. This concern had been apparent since the desk research. While the sources dealt with conditionality related to compliance with the Charter, it was very difficult to flesh out insight regarding conditionality to the ICRPD. This admittedly recent convention is not widely used in France. As pointed out by both the National Advisory Commission on Human Rights (*Commission nationale consultative des droits de l'homme - CNCDH*)<sup>1</sup> and the Defender of rights,<sup>2</sup> the ICRPD remains very little known in France.

To avoid the rights of persons with disabilities as guaranteed and led by the ICRPD becoming a blind spot of the study, it was decided to go significantly further into this point from the desk research stage, in particular by analysing the advisory reports of the National advisory council for people with disabilities (*Conseil national consultatif des personnes handicapées*). Then, at the semi-structured interview stage, it was decided to hear from a very high-level official of a leading advocacy association on the issue of implementing the ICRPD, who also had experience as a member of institutions in the disability sector, as well as experience as an association official of a small association. Although this official had never been a member of an association that supports projects financed by European funds, but had nevertheless in-depth knowledge of European mechanisms, this hearing proved to be very valuable.

The topic of conditionality with the ICRPD was regularly pointed out to the participants in the roundtable and regularly raised.

### **1.3 Deliverables**

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<sup>1</sup> France, CNCDH (2022), [People with disabilities](#); France, CNCDH and CFHE (2018), ICRPD Practical Guide ([Guide pratique](#)).

<sup>2</sup> France, Public Defender of rights (*Défenseur des droits*)(2016), The direct effect of the provisions of the International Convention on the Rights of Persons with Disabilities (*L'effet direct des stipulations de la Convention internationale relative aux droits des personnes handicapées - ICRPD*), available at: [www.defenseurdesdroits.fr/fr/etudes-et-recherches/2016/12/leffet-direct-des-stipulations-de-la-convention-internationale-relative](http://www.defenseurdesdroits.fr/fr/etudes-et-recherches/2016/12/leffet-direct-des-stipulations-de-la-convention-internationale-relative)

The following progress reports were delivered on time:

- desk research report,
- reports of interviews and recordings, all those interviewed having agreed to the principle of recording,
- roundtable report.

## **2. The implementation of EU funds: challenges and opportunities for fundamental rights**

The funding cycle operation has specificities due to France's centralised and deconcentrated/decentralised architecture (2.1). In this specific administrative context, two particular funds (2.2.) were chosen as they had raised significant issues with regard to the respect for fundamental rights enshrined in the Charter and the ICRPD (2.3.).

### 2.1. The operation of the funding cycle in the French context

In France, as in other EU member states, European funds can be either directly managed by the European Commission, or indirectly managed by a third-party state or accredited body, or the management can be shared between the Commission and the state. The procedures for implementing European funds are specified in the partnership agreement between the European Commission and France, which sets out the European regulations at the national level and assigns specific functions to those involved. Managing authorities, whether central or decentralised, play a key role in European funds and bear full financial, legal and political responsibility for programmes.

In France, the management system for European funds, which was initially highly centralised, has evolved to give a greater role to local authorities, in particular the regions. The authority managing European funds was delegated to the regions by a law of 27 January 2014, known as the law on improving territorial public action and the assertion of metropolises (*modernisation de l'action publique territoriale et d'affirmation des métropoles*).<sup>3</sup> However, some funds remain fully managed by the

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<sup>3</sup> France, Law No. 2014-58 of territorial public action modernization and affirmation of metropolises (*Loi n° 2014-58 de modernisation de l'action publique territoriale et d'affirmation des métropoles*), 27 January 2014, Article 78, available at: [www.legifrance.gouv.fr/loda/id/JORFTEXT000028526298/](http://www.legifrance.gouv.fr/loda/id/JORFTEXT000028526298/)

centralised state, such as the European Fund for Maritime Affairs, Fisheries and Aquaculture and the Asylum Migration Integration Fund.

The regions have become the managing authorities for almost all of some funds, such as the European Regional Development Fund. However, it was noted that this delegation to the regions was only "partial"<sup>4</sup> concerning certain European funds (the European Agricultural Fund for Rural Development, the European Social Fund, and the European Fund for Maritime Affairs and Fisheries). This delegation is organised with varying degrees of involvement by the regions, both in terms of the proportion of funds transferred and the capacity of the region to exercise its responsibilities as a managing authority.

The Court of Auditors noted in 2019 that the management of European funds resulting from the 2014 law remained complex and needed to be improved, in particular because of a "jurisdiction quagmire" between the state and the regions.<sup>5</sup> Beneficial effects of this decentralisation have been stressed such as the recognition of the regional level, the consideration of local needs, the creation of a single contact or bringing citizens closer to EU actions.<sup>6</sup>

France thus finally chose a model that is different from other European models. It is the so-called "regionalised mixed" model.<sup>7</sup> This model can be defined by regional programmes managed and implemented by regional organisations that can rely on strong national coordination.

In addition, the authority responsible for coordinating European funds, the National Agency for Territorial Cohesion (*Agence nationale de la cohésion des territoires* - ANCT), ensures that the commitments made by France under the Partnership Agreement with the Commission are met. It assists

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<sup>4</sup> France, Senate (*Sénat*), Information report submitted on behalf of the information remit on the chronic under use of European funds in France (*Rapport d'information fait au nom de la MI Sous-utilisation des fonds européens*), No. 745 (2018-2019), 25 September 2019, available at: [www.senat.fr/notice-rapport/2018/r18-745-notice.html](http://www.senat.fr/notice-rapport/2018/r18-745-notice.html); France, Court of Auditors (*Cour des comptes*), Assessment of the transfer to the regions of the managing of European structural and investment funds.

<sup>5</sup> France, Court of Auditors (*Cour des comptes*), Assessment of the transfer to the regions of the managing of European structural and investment funds.

<sup>6</sup> [www.touteurope.eu/l-europe-en-region/le-role-central-des-regions-dans-la-gestion-des-fonds-europeens/](http://www.touteurope.eu/l-europe-en-region/le-role-central-des-regions-dans-la-gestion-des-fonds-europeens/)

<sup>7</sup> France, Senate (*Sénat*), Information report submitted on behalf of the information remit on the chronic under use of European funds in France (*Rapport d'information fait au nom de la MI Sous-utilisation des fonds européens*), No. 745 (2018-2019), 25 September 2019, available at: [www.senat.fr/notice-rapport/2018/r18-745-notice.html](http://www.senat.fr/notice-rapport/2018/r18-745-notice.html)

national and regional management authorities by providing technical support in the areas of regulation, communication, training and assessment.<sup>8</sup> ANCT is also responsible for implementing the national interfund communication strategy for the 2014-2020 period.

Finally, the checking of the use of European funds by the managing authorities at national level is assigned to the Interministerial commission for the coordination of checks (CICC), the audit authority for European funds in France.

## 2.2 Reasons for the choice of European funds

Although the study focuses on the conditionality of European funds in general, particular attention has been paid to two funds identified as being of specific interest with regard to the application of this conditionality in France in terms of respect for fundamental rights. These are the Asylum, Migration and Integration Fund (FAMI) and the Internal Security Fund (FSI), both managed by the Ministry of the Interior.

From the initial research stage, concerns arose about the policy areas in which these two funds operate: with regard to issues that go beyond the national framework regarding the FAMI, and with regard to issues that are more specifically French concerning the FSI.

The migratory crisis that crossed Europe during the funding cycle studied had a particular resonance in France as a country of transit and destination for both asylum seekers and economic migrants. Hence the interest in analysing the operation of conditionalities related to the fundamental involved in projects funded by the FAMI.

Specific national issues relating to internal security are of pressing interest with regard to respect for human rights in the period covered by the funding cycle. Struck by massive attacks in 2015, France was ruled under a state of emergency that largely restricted fundamental freedoms, even after the state of emergency had ended, with the bulk of the state of emergency measures incorporated into ordinary law. The policy involving anti-terrorism and the fight against organised crime, trafficking and radicalisation has left its mark on the exercise of fundamental rights in France, both in law and in administrative practices and public policies. Hence the particular interest in focusing the study on the FSI.

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<sup>8</sup> European funds information website coordinated by the ANCT, available at: [www.europe-en-france.gouv.fr/fr](http://www.europe-en-france.gouv.fr/fr)

Finally, although the management authority for these two funds is the Ministry of the Interior, the management methods differ widely, as does the profile of the project leaders. Their study thus made it possible to perceive the various roles that independent national institutions for the defence of fundamental rights could play.

### 2.3 Some specific issues

With regard to fundamental rights, various problems were noted in implementing the two above-mentioned funds during the last funding cycle.

As far as the IMF is concerned, in the light of the projects funded during the previous funding cycle, several tangible fields highlighting specific problems with regard to fundamental rights can be mentioned.

For example, two projects funded by the FAMI in the last funding cycle were aimed at helping exiled persons in Calais.<sup>9</sup> However, the CNCDH carried out several field missions in the Calais area and noted, in particular in 2021, violations of the fundamental rights of exile persons in Calais and Grande-Synthe, which it documented in an advisory report.<sup>10</sup> The Defender of rights also denounced this situation.<sup>11</sup>

Furthermore, the situation of people, and in particular children, in administrative detention centres is also a major concern. France has been

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<sup>9</sup> France, Ministry of the Interior, General Directorate for Foreigners in France (*Ministère de l'intérieur, La direction générale des étrangers en France*), List of actions agreed upon in the context of FAMI 2014-2020 (updated following the December 2021 Programming Committee).

<sup>10</sup> France, CNCDH, Advisory report on the situation of exiled persons in Calais and Grande-Synthe (*Avis sur la situation des personnes exilées à Calais et Grande-Synthe*), A-2021-3, 11 February 2021, available: [www.cncdh.fr/sites/default/files/a\\_-\\_2021\\_-\\_3\\_-\\_situation\\_des\\_personnes\\_exilees\\_a\\_calais\\_et\\_grande\\_synthe\\_fevrier\\_2021.pdf](http://www.cncdh.fr/sites/default/files/a_-_2021_-_3_-_situation_des_personnes_exilees_a_calais_et_grande_synthe_fevrier_2021.pdf)

<sup>11</sup> France, Public Defender of Rights (*Défenseur des droits*), Visit of the Defender of rights to Calais on Tuesday and Wednesday, 22 and 23 September, Press release, 24 September 2020, available at: [www.defenseurdesdroits.fr/fr/communiquede-presse/2020/09/visite-de-la-defenseure-des-droits-mardi-22-et-mercredi-23-septembre-a](http://www.defenseurdesdroits.fr/fr/communiquede-presse/2020/09/visite-de-la-defenseure-des-droits-mardi-22-et-mercredi-23-septembre-a)

condemned on several occasions,<sup>12</sup> and again recently,<sup>13</sup> by the European Court of Human Rights for violations of Article 3, which prohibits torture and other cruel, inhuman or degrading acts, and Article 5, which ensures the right to liberty and security, of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

During the last funding cycle, the FAMI funded seven projects related to administrative detention centres (improvement of arrival, legal assistance, development of recreational and cultural activities or sports).<sup>14</sup>

However, both the CNCDH<sup>15</sup> and the Controller General of places of deprivation of liberty (*Contrôleur général des lieux de privation de liberté - CGLPL*) have expressed concern about the living conditions of persons detained in administrative detention centres as well as about the respect for their rights. The two independent institutions announced that they have sent observations to the Committee of Ministers of the Council of Europe regarding the failure to execute the European judgements finding France in violation of the European Convention on Administrative Detention.

With regard to the FSI, this European fund is intended to finance projects related to anti-terrorist policy, the prevention of radicalisation, and the fight

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<sup>12</sup> European Court of Human Rights (ECtHR), cases *M.D. and A.D. versus France*, 22 July 2021, case No. 57035/18 (8th conviction since the case *Popov versus France*): condemnation of France for having detained a four-month-old infant and his mother in an unsuitable centre for eleven days, on the basis of Articles 3 (Inhuman and degrading treatment), 5 § 1 (Failure of the domestic authorities to check whether the initial detention and its subsequent extension constituted last resort measures that could not be replaced by any other less restrictive measure; French law defines, in a restrictive way, the cases of administrative detention of a person accompanied by minors and the conditions for extending the detention period) and 5 § 4 (Lack of control over all the conditions subordinating the legality of the infant's detention).

<sup>13</sup> European Court of Human Rights (ECtHR), cases *N.B. and others versus France*, of 31 March 2022, Req. No. 49775/20, 9th condemnation of France for the administrative detention of a couple and their minor child, aged 8 at the time of the facts, for a period of 14 days, on the basis of Articles 3 (Inhuman and degrading treatment) and 34 (Obstruction of the exercise of the right to appeal, lack of justification for the non-execution for seven days of the provisional measure to stop the detention of the child).

<sup>14</sup> France, Ministry of the Interior, General Directorate for Foreigners in France (*Ministère de l'intérieur, La direction générale des étrangers en France*), List of actions agreed upon in the context of FAMI 2014-2020 (updated following the December 2021 Programming Committee).

<sup>15</sup> France, CNCDH, Advisory report on the bill to regulate the administrative detention of families with minors (*L'avis relatif à la proposition de loi visant à encadrer strictement la rétention administrative des familles avec mineurs*), A-2020-12, 24 September 2020, available at: [www.cncdh.fr/sites/default/files/2021-04/A%20-%202020%20-%2012%20-%20PPL%20R%C3%A9tention%20adm%20familles%20avec%20mineurs%20\\_%20sept%202020.pdf](http://www.cncdh.fr/sites/default/files/2021-04/A%20-%202020%20-%2012%20-%20PPL%20R%C3%A9tention%20adm%20familles%20avec%20mineurs%20_%20sept%202020.pdf)

against trafficking, so that the projects funded are likely to be at the junction between security imperatives and respect for fundamental rights. The change in French criminal law, which has included a derogatory law resulting from the measures of the state of emergency, and administrative practices relating to intelligence, files and the prevention of radicalisation, has been strongly criticised by national institutions for the defence of fundamental rights.<sup>16</sup>

In addition, it became clear during an interview with a management official that as part of a project to combat the sexual exploitation of children, the creation of a file containing the personal data of under-age victims had been considered. Such a file would have been in violation of the European Charter of Fundamental Rights.

### **3. The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds**

The study revealed many issues that highlight where national institutions could be most useful and where they should not add to the difficulties already identified (3.1.). It also revealed a series of barriers, challenges, and opportunities for national institutions to engage in the funding cycle (3.2.).

#### **3.1. The main issues**

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<sup>16</sup> France, CNCDH, Advisory report "Against the permanent state of emergency" (Avis "Contre l'état d'urgence permanent", 15 December 2016, available at: [www.cncdh.fr/publications/avis-contre-letat-durgence-permanent](http://www.cncdh.fr/publications/avis-contre-letat-durgence-permanent); France, CNCDH, Adoption of the Declaration on the bill to end the state of health emergency (*Adoption de la Déclaration relative au projet de loi organisant la sortie de l'état d'urgence sanitaire*), D-2020-5, 23 June 2020, available at: [www.cncdh.fr/actualite/adoption-de-la-declaration-relative-au-projet-de-loi-organisant-la-sortie-de-letat](http://www.cncdh.fr/actualite/adoption-de-la-declaration-relative-au-projet-de-loi-organisant-la-sortie-de-letat); France, CNCDH, Adoption of the advisory report on the bill introducing security measures for perpetrators of terrorist offences after their sentence has expired (*Adoption de l'Avis relatif à la proposition de loi instaurant des mesures de sûreté à l'encontre des auteurs d'infractions terroristes à l'issue de leur peine*), A-2020 -10, 23 June 2020, available at: [www.cncdh.fr/actualite/adoption-de-lavis-relatif-la-proposition-de-loi-instaurant-des-mesures-de-surete](http://www.cncdh.fr/actualite/adoption-de-lavis-relatif-la-proposition-de-loi-instaurant-des-mesures-de-surete)

The issues brought to light during the study are numerous and make it possible to outline the usefulness of the role that could be played by national institutions for the defence of fundamental rights.

#### 3.1.1. The lack of current organised involvement of national institutions

The only involvement recorded to date has been very occasional. It was a referral to the French Data Protection Authority (*Commission nationale informatique et liberté* - CNIL) regarding a project that involved the creation of a file containing sensitive data. The state official had the right approach in referring to the CNIL for advice. The latter prohibited the creation of the file. Without this spontaneous referral by the state official, the project would have led to a violation of the right to privacy and protection of the personal data of minors subjected to sexual exploitation.

While this involvement was very helpful, it was quite circumstantial and was only initiated because of prior questioning by a state official.

It would be desirable to organise this functional involvement of national institutions for the defence of fundamental rights.

In this respect, the Defender of Rights could be involved in the future, on two levels. The first level is part of the forthcoming provision of a good practices guide to be drafted by a working group led by the coordinating authority for European funds in France together with the managing authorities. This guide will be reviewed by the Defender of Rights once it has been written. A network of advisers regarding the Charter in the managing authorities will also be led by the coordinating authority of the European funds. It will provide managing authorities with training material, also reviewed by the Defender of rights. The second level comes from a referral to the Defender of Rights by the Agency for cohesion and territories (*Agence de la cohésion et des territoires* - ANCT) and the General Secretariat for European Affairs (*Secrétariat général des affaires européennes* - SGAE) for the management of ESF funds to determine the role that the Defender of Rights could play in the allocating, checking or monitoring of projects.

However, the Defender of rights institution does not consider that it has a role to play in the bodies that may be involved in allocating funds or in ensuring that projects comply with the rights enshrined in the ICRPD or the Charter, or in checking the use of funds in compliance with these texts. If the Defender of Rights is confronted with a problem related to compliance with the use of European funds, it should also consider the possibility of its involvement through recommendations given to supervisory bodies.

#### 3.1.2. The acculturation to fundamental rights issues

One of the major issues identified during the study is that of a dual cultural barrier.

On the one hand, state officials are not acculturated to identifying and analysing the "human rights" dimension of projects. They do not make it a true focus in the call for projects which is more a purely formal style clause. Nor do they make it a true focus in selecting project leaders, or in monitoring, assessing or checking projects. As a result, both the interviews and the roundtable revealed that compliance with the Charter and the ICRPD is an unthought-of aspect of the process.

On the other, administrations, with their long French history related to the philosophers of the Enlightenment, the French Revolution and the Declaration of the rights of man and of the citizen, are firmly convinced that they have nothing to learn from international instruments such as the Charter or the ICRPD. The interviews with state officials revealed that they tend to consider that respecting human rights on a daily basis is in some way part of their DNA. Several state officials indicated that they are doing human rights without having a strong awareness of this engagement. This belief can create potential risks, by creating too much confidence among state officials. One of the academics also stressed, during the roundtable, that respect for fundamental rights was only talked about in relation to European funds, and never in relation to public policies financed exclusively by national funds.

Under these conditions, it can be very difficult for state officials to realise the importance of these European and international reference texts and to create a verification reflex, in the spirit of the *Common Provisions Regulation*. The importance of the role of national institutions for the defence of fundamental rights, which have these international texts as a reference and real expertise in the matter, is thus apparent.

#### 3.1.3. The dialogue issue

It appeared both during the interviews and during the roundtable that project leaders, fund managers and controllers had too narrow a dialogue, and in any event far too insufficient to ensure any mutual understanding of the pressures on each of these actors.

However, some of the national institutions for the defence of fundamental rights are also seen as a bridge between the State and its administrations on the one hand, and civil society organisations on the other. In this respect, there is a useful role to be considered for these national institutions.

#### 3.1.4. The technical and legal expertise issue

The interviews clearly showed a lack of knowledge and technical and legal expertise on the part of both state officials and project leaders with regard to the Charter and the ICRPD.

While the rights enshrined in the Charter largely overlap with the fundamental rights enshrined at the national level, the same cannot be said of the ICRPD. The independent institutions that have developed an expertise in the subject, the CNCDH and the Defender of Rights, both of which are independent mechanisms participating in the monitoring mechanism provided for in Article 33 of the ICRPD, thus fully agree that French law does not comply with the ICRPD. In particular, they point out that the French definition of disability is contrary to that established by the ICRPD. The United Nations Special Rapporteur on the rights of persons with disabilities, in their report on their visit<sup>17</sup> to France submitted to the United Nations Human Rights Council in 2019, as well as the United Nations Committee responsible for monitoring the ICRPD<sup>18</sup> in 2021, stressed the need for France to revise the entire French legal and regulatory framework in order to bring it into conformity with the ICRPD.

Under these conditions, and without adequate dissemination, it is to be feared that the lack of knowledge of the ICRPD will lead to recurrent violations in the rights of people with disabilities in the context of projects financed by European funds. The CNCDH and the Defender of Rights, as institutions with recognised expertise in the ICRPD, could play a particularly useful role in this regard.

#### 3.1.5. The human resources issue

The lack of human resources was pointed out by all the actors. They also pointed out the tangible consequences of this lack of staff. Project leaders blame delays in the publication of recurrent calls for projects on the lack of staff of fund managers.

Fund managers emphasize the impossibility of recruiting staff even if the dedicated European budgetary envelope allowed it in theory. This impossibility is due to the French budgetary rule of the employment ceiling and the employment scheme, which restricts recruitment possibilities, even if the "payroll" budget would allow it.

The ICAC emphasises its lack of staff and its difficulties in dealing with its checking duties in a timely manner.

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<sup>17</sup> Report by the Special Rapporteur on the rights of persons with disabilities - Visit to France, January 2019, available at: [A/HRC/40/54/Add.1 \(un.org\)](https://www.un.org/ruhr/40/54/Add.1)

<sup>18</sup> Committee on the Rights of Persons with Disabilities. Concluding observations on the initial report for France, October 2021, available at: [CRPD/C/FRA/CO/1 \(un.org\)](https://www.un.org/ruhr/40/54/Add.1)

The turnover of staff within project leader organisations also appeared to be a prejudicial problem, due to the time lag in the checks carried out. When the audit occurs, the project leader's staff may have changed, and when new supporting documents are requested, it becomes very difficult to locate or assemble them. The consequence of this may be the refusal to disburse the remaining funds or to ask for the reimbursement of the funds already disbursed, which can considerably weaken civil society organisations that supported the project.

National institutions, in the role they could play in the funding cycle, should not add any additional burden to administrative services or civil society associations already under strain in terms of human resources.

#### 3.1.6. The check type issue

All of the actors interviewed agreed that the check is of a purely administrative, accounting and quantitative nature and that it is very disproportionate. They also all agree that the quality of the activities carried out within the funded project is never monitored with regard to compliance with the Charter and the ICRPD, which would make much more sense.

The exchanges show that the auditors mandated by the European Commission have no "professional" knowledge of the substance of the projects and may make requests that are disconnected from the reality on the ground. All the actors we interviewed emphasized the impossibility of discussing with the auditors or of bringing their difficulties before an appeal or arbitration body in order to initiate dialogue.

National institutions should not add any administrative burden, complexity or delays.

#### 3.1.7. The time issue

The time lag between the time the audit is conducted and the time the activities are carried out is likely to have detrimental consequences for large associations supporting projects, and devastating consequences for smaller associations.

The roundtable discussions revealed that it is not uncommon to have a 5-year delay.

It is essential that the involvement of national institutions does not add any administrative burden, complexity or additional delays.

#### 3.1.8. The discouragement issue

It was very clear from the interviews and the discussions during the roundtable that the current operation, in particular with regard to the

Asylum, Migration and Integration Fund (FAMI), has the effect of significantly discouraging civil society actors and the State as regards carrying out projects financed by this fund. Project leaders mentioned the disproportionate nature of administrative checks, their discrepancy with the reality of the content of the activities carried out and the resulting budgetary fragility. While all of them mentioned the legitimacy of checks, they stressed the time lag, and illustrated it with numerous examples: the fact that they have to provide supporting documents for which the link with the activity carried out is difficult to understand, the fact that they have to justify the existence of their head office again, when this aspect is already known and fully justified, or the fact that they have to justify the administrative status of the beneficiaries of the funded project, despite the sensitivity involved in gathering such information from them.

The risks of putting the survival of their associations at stake when an inspection goes wrong are very discouraging and all described a crowding out effect. Large associations pass on the message that they should only apply for European funds when the activity is essential and cannot be financed in any other way. Small associations stressed their desire to reduce their recourse to European funds, or even completely eliminate applying for these funds. The same is true of some administrations.

Project supporting associations, on the other hand, indicated that they would willingly accept checks on the quality of the activities and their impact on the final beneficiaries, as long as the list of supporting documents to be provided was clear and known in advance.

A special role for national institutions thus emerges, which could influence the type of checks or any other means of reducing this crowding-out effect. A plea should also be made to the European Commission to this effect.

#### 3.1.9. The legal certainty and foreseeability of remedies and complaint mechanisms issue

The study revealed the magnitude of the challenges in terms of remedies. If common jurisdictional law applies, it is far from easy to determine what relates to administrative litigation and what relates to judicial litigation, given the duality of jurisdictions in France and the areas of jurisdiction to which potential violations of fundamental rights relate. The lack of legibility was widely pointed out by actors.

With regard to sub-jurisdictional channels, many actors consider the Defender as an ombudsman to be competent to deal with petitions, but the institution itself doubts this.

Whatever the case, national institutions could play a useful role in making the complaint mechanisms clearer, in guiding the applicants, in drawing up an assessment of the litigation activity, and even, in the case of the Defender of rights, in becoming competent to receive the petitions that could be submitted to the latter.

### 3.2. Barriers, challenges and opportunities to the engagement of national institutions

While there are no insurmountable barriers to the engagement of national institutions, properly implemented involvement could turn challenges into real opportunities that would add to the opportunities that emerged loud and clear in the study.

#### 3.2.1. The barriers

The study revealed a large number of barriers to the engagement of National human rights institutions. These are related both to the procedures implemented by France, and to the legal jurisdiction of institutions, and are of the structural or even substantial type.

##### *3.2.1.1. Procedural barriers: the unthought-of aspect of fundamental rights*

From the discussions with all the representatives of the focus groups, it appears that State officials only implement the *Common Provisions Regulation* in a formal way, through a style clause at the stage of the call for tenders and by checking references to it at the stage during which project leaders' files are appraised.

Then, at the monitoring, assessment or checking stage, the question of the respect for fundamental rights is no longer considered in the procedures set up by French administrations, and the list of concerns does not mention compliance with the Charter or the ICRPD.

This procedural shortcoming is not without consequences for the quality of the activities carried out with regard to the respect for fundamental rights. Due to the lack of a procedure allowing an interest to be taken in the respect for fundamental rights, it is difficult to include the national institutions for the defence of fundamental rights in the consultation and decision making process.

##### *3.2.1.2. Legal barriers: mandate and jurisdictions*

While the CNCDH has a very broad human rights mandate that encompasses the entire corpus of rights enshrined in international and European human rights conventions as well as all the norms of international

humanitarian law, it does not have a mechanism for handling individual complaints. In order for it to deal with petitions in this area, it should be provided with a mechanism for handling individual complaints. However, the CNCDH would be competent to take action more broadly under its mandate of collective protection of human rights.

Not all other independent national human rights institutions have a comprehensive mandate covering the whole corpus of human rights. They have sectoral mandates: the CNIL's mandate is defined by the French data protection law,<sup>19</sup> and the CGLPL's mandate is defined by the enabling legislation of 2007, etc.

The jurisdiction of the Defender of rights is determined by an organic law<sup>20</sup> which defines the latter's fields of action. For this reason, the Defender of Rights considers it doubtful whether the petitions submitted to them on the basis of violations of fundamental rights in connection with activities financed by EU funds can be admissible. While it has never been referred for this type of petition, it believes that since its jurisdiction is limited, it should probably conduct a legal study to determine whether it has jurisdiction.

If it does not have jurisdiction in general, or only for some of the rights of the Charter or the ICRPD for which it does not have jurisdiction, an amendment to the organic law that establishes its jurisdictions and prerogatives should be considered in order for it to have jurisdiction. This is not an easy task since an organic law requires a qualified majority of votes in Parliament to be amended.

### *3.2.1.3. Substantial barriers: technical expertise*

The study shows that the national institutions are perceived by the different actors as credible and legitimate in terms of complying with the Charter and the ICRPD. However, in order to play a useful role, they also need to demonstrate significant technical expertise in budgetary, financial, and legal channels in order to be able to interact usefully with the other actors in the process.

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<sup>19</sup> France, Law No. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, available at : [www.legifrance.gouv.fr/loda/id/JORFTEXT000000886460/](http://www.legifrance.gouv.fr/loda/id/JORFTEXT000000886460/)

<sup>20</sup> France, Organic law No. 2011-333 regarding to the Defender of rights (*Loi organique n° 2011-333 relative au Défenseur des droits*), 29 March 2011, available at: [www.legifrance.gouv.fr/loda/id/JORFTEXT000023781167/](http://www.legifrance.gouv.fr/loda/id/JORFTEXT000023781167/)

This is an obstacle that could be circumvented by training staff or by recruiting them with the expertise they currently lack. However, for the time being, this lack of technical expertise may create reluctance in the confidence that managers or controllers may have in the Institutions that may be led to be involved.

#### 3.2.1.4. *Structural barriers: human resources and conflicts of interest*

The interviews with the representatives of the National institutions for the defence of fundamental rights revealed very significant challenges in terms of resources, in particular human resources. They all stressed their difficulties in dealing properly with the mandates already assigned to them and saw this as an additional difficulty, as new mandates were rarely given the resources needed to fulfil them.

Roundtable participants also identified this as a major barrier. In order for the involvement of institutions to remain realistic, this fact must be taken into consideration when defining the procedures and contours of the involvement of national institutions.

The risk of conflicts of interest stems from the fact that some fundamental rights institutions have a high level of involvement with civil society associations, some of which may be leaders of projects financed by EU funds. This is particularly true of the CNCDH, half of which is made up of representatives of civil society organisations (the main trade union confederations and human rights associations) and half of which are qualified individuals. This creates a real risk of conflicts of interest.

This risk can be limited by the obligation for the top management of the CNCDH (Secretary General) and the members of the institution to declare their personal interests and assets to the High Authority for transparency in public life (*Haute autorité pour la transparence de la vie publique*) at the beginning and end of each mandate. However, this does not seem to be sufficient, as it is a question of personal interests, whereas the interests of the associations represented should also be taken into consideration.

If necessary, a more comprehensive system should be put in place to ensure that representatives of these project leader associations and anyone else with an interest are deported when the issue of European funds is discussed.

#### 3.2.2. The challenges

The challenges identified in the course of the study relate to political will, information channels and reputation issues for national institutions. Properly implemented involvement of national institutions could turn into real opportunities to foster the adoption of the human rights-based

approach and also create the conditions for trust between administrations and national institutions and between civil society and administrations.

*3.2.2.1. The political backing challenge: embracing the human rights-based approach*

To achieve the inclusion of independent national human rights institutions, it is essential for administrations to include interactions with these institutions in procedures and channels. This cannot be implemented, as long as it involves changing administrative habits, without strong political backing.

Fund managers and officials who monitor the proper use of European funds can understand the interest for them to include Institutions for the defence of fundamental rights at certain stages. However, this approach needs to be explained to them and the changes in procedures and channels must not lead to an increase in activity that is not compensated for by adequate capacity building in terms of human and financial resources.

Political backing is a major challenge as it would allow, through European funds, the human rights-based approach to begin to be included in France. If state officials were to adopt this approach for EU funds, they could then use it in activities that do not involve EU funds. In gaining ground, the human rights-based approach called for by the CNCDH<sup>21</sup> could at last clarify and underpin French public policies.

*3.2.2.2. The information sharing challenge: creating the conditions for trust*

To successfully carry through their role, independent national human rights institutions will need access to certain information. However, the information circuit is not designed to be open to other actors. The administration can be very reluctant to provide transparency.

As in other areas, confidentiality should be ensured between the representatives of national institutions and the administrations concerned. For this purpose, inspiration could be drawn from the process used for preliminary drafts of national reports submitted to the CNCDH before they are sent and the confidential discussions involved, or from the confidential procedures surrounding investigations carried out by officials of the Defender of Rights' college of security ethics.

*3.2.2.3. The reputation challenge: the bridge between civil society and administrations*

The interviews with representatives of national human rights institutions indicated that they may fear a reputation risk: be perceived, by actors outside the process, as an easy endorsement of projects that approves

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<sup>21</sup> France, CNCDH, [Statement of opinion for a Human-rights based approach](#), 3 July 2018.

them, from their selection to their assessment, without having had the resources and operational capacity required to exercise sufficient control with the required detail. This reputation risk can damage their image, their integrity, their legitimacy, their credibility and the trust that people may place in them.

However, while their role is limited to the most important issues and accompanied by adequate capacity building, this challenge could also enhance their legitimacy in providing a kind of bridge between individuals, civil society organisations and administrations.

### 3.2.3. The opportunities

In addition to the challenges that could prove to be fantastic opportunities if the involvement of national institutions is well properly implemented in the funding cycle, several clear opportunities stood out during the interviews and roundtable discussions.

#### 3.2.3.1. *Training courses in fundamental rights*

The need to train officials managing European funds and those who monitor the use made of them in terms of the rights enshrined in the Charter and the ICRPD, was very clear from the discussions. In order to be useful, such training should not remain at a theoretical level, but be part of the tangible framework of their activity, since these officials are above all specialists in European funds. It would be a matter of teaching them how to mobilise these norms, whose wording is often abstract and concise, and to enable them to understand the jurisdictional decisions that relate to them or para-jurisdictional decisions regarding the interpretation that may be given by the United Nations Committee responsible for monitoring the ICRPD. This training could easily be provided by independent national institutions in order to consolidate the capacity of state officials regarding the Charter and the ICRPD.

These training sessions could also be offered to project leaders to ensure that all actors have the same understanding of the contours of the rights enshrined and their importance with regard to the mobilising of European funds.

National institutions could also draft practical guides and resource materials for actors involved in the funding cycle.

#### 3.2.3.2. *Dialogue platforms*

National institutions, due to their role as a bridge between the States and civil society, could provide a formalised framework for increased dialogue between the officials managing European funds and project leaders. This discussion platform, under the aegis of national institutions, could help to facilitate relations, answer questions from all sides, and provide a better understanding of the pressures on each of these actors.

Such a discussion platform could potentially aim to reduce the time between calls for tender and the carrying out of activities, in areas where the challenges of precariousness of project leaders are the most acute.

#### *3.2.3.3. The system for accrediting assessment bodies*

The independent national institutions for the defence of fundamental rights could also be a key factor in a system for accrediting assessment bodies whose role would be to ensure the quality of the activities carried out with regard to the respect for fundamental rights. The areas of jurisdictions of institutions could thus be put to good use, in particular in the development of more precise specifications. For example, the CGLPL, as the national mechanism for the prevention of torture under the OPCAT, could take an interest in projects in detention or administrative retention funded by the FAMI or the FSI.

This accreditation would be periodic (every three or five years) and the assessment bodies would have to submit an application for re-accreditation to the national institutions responsible for this mechanism.

This new approach would have the merit of encouraging national institutions to define specifications for the type of substantive checks on the activity carried out, to prevent violations of fundamental rights, and to create a list of concerns according to the type of activities financed by European funds. It would require few of their resources since it would involve upstream collective protection and the assessment itself would be carried out by private organisations. And it would be up to these accredited organisations to define the supporting documents that project leaders would have to send them. It would be essential to provide them with a list of such documents before the activity is carried out, in order to facilitate their collection during the activities.

It would also be possible to envisage dialogue between these accredited bodies and the managing authorities and controllers in order to provide a space for "professional" dialogue that focuses on the quality of the activities carried out and not just on their quantitative compliance with budgetary terms.

#### *3.2.3.4. European networking*

It seems desirable to create a formalised European network in order to allow the various actors (project leaders, managing authorities, national controllers and national institutions for the defence of fundamental rights) to discuss good practices and to analyse together the difficulties encountered and the ways and means to overcome them.

By bringing out the best practices, this network would help build a successful operating model.

This network could also allow common challenges encountered by actors to be brought to the attention of the EU Commission and advocacy to be carried out effectively.

## **4. Critical success factors**

In order to remedy the current lack of involvement of independent national institutions for the defence of fundamental rights in the European funding cycle, the key success factors identified during the study can be broken down with regard to the typical roles assigned to these institutions (4.1.), and with regard to each stage in the funding cycle (4.2.).

### 4.1. The roles typically assigned to national institutions

#### 4.1.1. Remit in providing advice to public authorities

##### *4.1.1.1. Determining policy priorities*

All the national institutions for the defence of fundamental rights in France are invested with a remit in providing advice aiming at enlightening public decisions in their field of jurisdiction.

National institutions, and in particular the Defender of Rights, the CNCDH, the CGLPL and the CNIL, would thus have a role to play in informing public decision-making at the time political priorities are defined. A key factor for success would be for the referral of national institutions to be systematically organised such that managing authorities consult them in order to benefit from their expertise in particular subjects of attention relating to fundamental rights. This systematic referral would create the conditions for continuous interaction on a political level and would allow potential violations of fundamental rights to be prevented based on the expertise of national institutions.

##### *4.1.1.2. The conditions for dialogue*

Considering themselves as a bridge between these actors, independent national institutions have a high level of engagement with both administrations and civil society organisations.

Their ability to inspire confidence on the part of both managing authorities and project leaders is therefore a key factor for the success of the formalisation of a platform for dialogue between all the actors in the funding cycle. In order to cement this trust, an agreement governing the discussion of information and ensuring its confidentiality could be signed between the public authorities and the national institutions concerned. This type of agreement would be a factor that would promote the fluidity of information exchanges.

#### *4.1.1.3. Networking for institutional advocacy*

The CNCDH is one of the few national human rights institutions to have initiated the creation of the European Network of National Human Rights Institutions (ENNHRI). This network now includes about forty national institutions belonging to the countries within the Greater Europe area. The CNCDH could share its experience in creating a network at the European Union level and in carrying out institutional advocacy. It is also part of the network of national spokespersons in the fight against human trafficking who directly engage in discussions at the European Commission level. The CNCDH could therefore mobilise the National Human Rights Institutions of EU countries to help create a network of national actors involved in the European funding cycle.

For its part, the Defender of rights belongs to the EQUINET network of Equality bodies. It could also contribute to this networking.

In addition to the voluntary national institutions for the defence of fundamental rights, this network could include project leaders, managing authorities and national controllers from all the States in the European Union.

A key success factor would be for the European Commission to finance the employment of an official representative to organise the sharing of best practices among actors in the member states and to establish, on this basis, one or more operating models that could be particularly effective in ensuring the application of conditionality related to compliance with the Charter and the ICRPD.

Another key factor for success would be for this networking to be as broad as possible to ensure that the advocacy that this network brings to the

European Commission is endowed with strong legitimacy that can carry weight in the discussions with the European Commission.

#### 4.1.2. Human rights education and awareness raising remit

Some national human rights institutions have an awareness-raising remit, such as the CGLPL in the fight against torture and other cruel, inhuman or degrading treatment, or the Defender of Rights in the fight against discrimination. The CNCDH, as a national human rights institution, has a general, transversal remit in human rights education, pursuant to the United Nations General Assembly resolution A/RES/48/134 of 20 December 1993, known as the Paris Principles.

It follows from all these factors that several national institutions are able to design training workshops and provide relevant stakeholders with training in the Charter and the ICRPD.

A key success factor is the way in which administrations and project leaders take ownership of these training courses and deploy educational resources in a tangible way in their activities.

#### 4.1.3. Monitoring, assessment or complaint handling remit

Some national institutions have a mechanism for handling individual complaints, such as the Defender of rights or the CGLPL, which could usefully be extended to potential violations in the context of activities financed by European funds.

For its part, the CNCDH's remit is to monitor France's compliance with its human rights commitments and to assess public policies with regard to the rights enshrined in the Charter and the ICRPD.

One of the key factors for success is to have access to information on potential violations of fundamental rights in order to allow national institutions, according to their own procedures, to respond either within the framework of the handling of individual petitions, or within the framework of actions relating to collective protection of fundamental rights, or by relaying the information collected to courts.

#### 4.2. Key success factors at each stage in the funding cycle

##### 4.2.1. Governance design

It would be very useful to rethink the governance of the funding cycle at the level of the fund managers and the checks carried out by the CICC in planning to include the French committee of disabled people for European and International affairs (*Comité Français des personnes Handicapées pour*

*les affaires Européennes et internationales - CFHE*) in steering meetings. This is the association that participates in the monitoring mechanism of the ICRPD under Article 33 para. 3 of the Convention.

This advocacy association does not support projects, thereby avoiding conflicts of interest. Above all, its regular involvement in this forum would be a key factor in preventing the rights of people with disabilities enshrined in the ICRPD from being a blind spot in projects financed by European funds.

#### 4.2.2. Project selection method based on an "impact" reference system

National institutions for the defence of fundamental rights could advise public authorities on the defining of tools for selecting projects. For this purpose, they could contribute to establishing of a reference framework for projects related to sensitive subjects with regard to the rights enshrined in the Charter and the ICRPD. This reference framework, which can be considered as an appraisal framework, could contain criteria and indicators to assess the project's impact on fundamental rights. It would be made public, by being included in the call for projects, to ensure that all the actors could take it up.

This reference framework could allow the managing authority to question a number of aspects that could represent a tangible infringement of fundamental rights. It would serve as the basis for assessments carried out by accredited assessment bodies.

#### 4.2.3. Recourse to the expertise of national institutions at the appraisal stage

At the stage of appraisal of project leaders' proposals, independent national institutions could be referred to for advice by managers, as necessary. This referral could relate to the problems of the field of action with regard to the respect for fundamental rights, the knowledge of the reliability of project leaders, and the issues specific to the planned activities (such as the creation of files containing sensitive personal data).

#### 4.2.4. Recourse to the expertise of national institutions at the implementation and monitoring stages

At the project implementation and monitoring stage, the advisory role of these independent national institutions with regard to managing authorities could be very useful in the context of referrals for advice by the managing authority, in the event of doubt or proven violation of the Charter or the ICRPD.

It would also be desirable to imagine a way for national institutions to refer to themselves in the event of a violation reported or observed during one of their respect for human rights monitoring activities or field remit.

#### 4.2.5. At the checking stage, the creation of an accreditation system

At the project *retrospective* checking stage, independent national institutions that do not themselves have the means to check the quality of the activities carried out and their compliance with the Charter and the ICRPD, could establish a system for accrediting assessment bodies. Their assessment would focus on "professional" quality, the positive impact of the activity on the final beneficiaries and the continuous respect for the fundamental rights of the persons involved throughout the project performance.

#### 4.2.6. Handling of complaints

Independent national institutions have never been referred to in cases of violations of fundamental rights. A key success factor would be for institutions to draw up and disseminate a guide to make the judicial and sub-jurisdictional procedures for handling complaints readable, understandable and visible. It is also a question of giving the Defender of Rights jurisdiction, in particular by amending the organic law that defines its jurisdiction and prerogatives.<sup>22</sup>

## 5. Conclusion

The study revealed the lack of organised involvement in France of independent national institutions for the defence of fundamental rights. At the end of the study carried out in France, the added value that these institutions could bring in order to better prevent violations of fundamental rights, to identify the risks, and to stop and remedy violations, appears undeniable.

However, in the perspective of the new conditionality regarding the respect for fundamental rights, this commitment of national institutions will be all the more effective and efficient if their involvement is accompanied by a series of prerequisites and other useful, or even necessary reforms.

In this context, the following recommendations are directed at the French public authorities (5.1.), the national institutions themselves (5.2.), civil society organisations (5.3.) and the European Commission (5.4.).

### 5.1. Public authorities

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<sup>22</sup> French final report, p. 21.

Given their importance, the following recommendations made to the French public authorities should be reiterated:

- disseminate the Charter and the ICRPD and promote the deployment of these reference texts within its administrations.
- review the entire legal framework and administrative practices to bring them into compliance with the rights enshrined in the ICRPD, as already recommended by the United Nations Special Rapporteur in 2019 and the United Nations Committee that appraised France in 2021 with regard to the implementation of the ICRPD.

At the end of the study, French public authorities are recommended to:

- provide national human rights institutions with adequate mandates, jurisdictions, prerogatives and resources to enable them to play an effective role in the funding cycle;
  - o provide the CNCDH, the CGLPL and the CNIL with the resources needed to carry out these new tasks, in terms of an increase in the employment ceiling, the "payroll" budget and the operating budget, on the basis of an impact study;
  - o provide the Defender of Rights, possibly by amending the Organic Law of 2011 if necessary, with the jurisdiction needed to deal with individual petitions concerning violations of fundamental rights in the context of the implementation of a project financed by European funds, and provide this new jurisdiction with the corresponding means;
- amend procedures and information flows to include:
  - o systematic consultation with relevant national institutions when determining policy priorities;
  - o the possibility for fund managers to refer to the relevant national institutions for advice, in the event of doubt or proven violation of the Charter or the ICRPD;
  - o the possibility of sending all relevant information to national institutions, within a strict framework of confidentiality;
  - o include the French committee of disabled people for European and International affairs (*Comité Français des personnes Handicapées pour les affaires Européennes et internationales - CFHE*) in steering meetings;
- publish the reference system and the specifications drawn up with national institutions at the same time as the call for tenders;
- participate regularly in the dialogue platform set up by national institutions;
- participate in the European network of actors in the funding cycle.

## 5.2. National institutions

It is recommended that national institutions for the defense of fundamental rights should:

- provide a comprehensive conflict of interest and deferral system to limit risks;
- participate in the drawing up of a reference framework and specifications containing the criteria and indicators specific to the assessment of the impact of projects on

fundamental rights, which would be used by managers as an appraisal framework and by the organisations assessing the impact of projects;

- create an accreditation system for assessment bodies whose remit would be to assess "professional" quality, the positive impact of the activity on the final beneficiaries and the continuous respect for the fundamental rights of the persons involved at all stages in the project;
- create a dialogue platform to formalise discussions between project leaders, European funds managers and CICC controllers;
- take action, even without a complaint, in the event of a violation reported or observed during one of the activities to monitor respect for fundamental rights or during a field mission ;
- organise training workshops on the deployment of the Charter and the ICRPD in the context of the funding cycle, and the corresponding practical guides and educational resources;
- make remedy and complaint mechanisms visible, intelligible and readable and guide plaintiffs wherever possible;
- contribute to the creation, via the ENNHRI and EQUINET networks, of a specific network consisting the widest possible range of project leaders, managers, assessment bodies and national controllers from all the Member States of the European Union in order to:
  - o discuss best practices,
  - o devise one or more efficient models,
  - o make an effective plea to the European Commission regarding the common difficulties encountered;

### 5.3. Civil society

It is recommended that civil society organisations should:

- enrol their staff in the training workshops regarding the Charter and the ICRPD organised by national institutions and disseminate the corresponding educational resources;
- refer to the reference system and the specifications, drawn up jointly by national institutions and managers, when drawing up their project and their request for funding;
- solicit the expertise of national institutions when they are confronted with questions about the respect for fundamental rights in carrying out projects;
- participate regularly in the dialogue platform;
- have recourse to bodies for the assessment of the impact of the activities carried out, accredited by national institutions;
- participate in the European network of actors in the funding cycle.

### 5.4. The European Commission

It is recommended that the European Commission should:

- remind Member States, and France in particular, that the conditionality related to the respect for fundamental rights cannot be a purely formal clause at the stage of calls for tender and the appraisal of files;
- remind Member States, and France in particular, that the conditionality related to the respect for fundamental rights should also be ensured at the project implementation, monitoring, assessment and checking stages;
- ask France to support the creation of an accreditation system for organisations that assess the impact of projects financed by European funds;
- create the conditions for dialogue between the "professional" actors of Member States and the auditors mandated by the European Commission;
- provide for a mediation body when the "professional" actors of Member States disagree with the auditors mandated by the European Commission regarding the interpretation of contractual clauses;
- finance the employment of a project manager serving the European network of funding cycle actors;
- be attentive to the advocacy of the European network of actors in the funding cycle and encourage the sharing of good practices.

These sets of recommendations, broken down by the type of actors to whom they refer, concern all levels: legal, organisational, procedural, structural, operational, substantial, etc.

They aim to provide impetus for a complete paradigm shift.

The study indeed revealed that the current system is marked by the unthought-of aspect of fundamental rights, the non-uptake of what conditionality should be. More broadly, it is marked by mistrust between project leaders, managers and controllers and a closed silo operation.

It is by giving independent national institutions for the defence of fundamental rights a special role in the European funding cycle that the overall operation in France of the European funding cycle can be transformed so that conditionality will finally have a tangible meaning, rather than remaining something theoretical and illusory.

The recommendations made aim to promote mutual understanding and cooperation between all actors, rather than mistrust; networking and dialogue rather than isolated, insular operation; sharing of expertise rather than the mistaken belief that human rights do not need to be protected in France.