FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

# EU FUNDS

# ENSURING COMPLIANCE WITH FUNDAMENTAL RIGHTS

REPORT

## Contents

**Foreword** 4

**Key findings and FRA opinions** 5

Enable meaningful participation of fundamental rights bodies 7

FRA opinion 1 8

FRA opinion 2 8

FRA opinion 3 9

Build capacity and provide sufficient resources for fundamental rights bodies 9

FRA opinion 4 10

FRA opinion 5 10

FRA opinion 6 11

FRA opinion 7 11

FRA opinion 8 12

Enhance the transparency and accessibility of complaints mechanisms 12

FRA opinion 9 12

FRA opinion 10 13

FRA opinion 11 13

Ways forward for independent fundamental rights bodies 14

Participation 14

Capacity and resources 15

Complaints and monitoring 15

**Introduction** 17

The importance of EU funds to fundamental rights 18

Charter enabling conditions 23

Additional fund-specific fundamental rights provisions 28

Examples of compliance with the Charter at national level 29

**1. Participation** 32

1.1 Participating in the early stages of the programming period 35

1.2 Participation in monitoring committees 37

1.3 Participation in evaluation mechanisms 41

1.4 Cooperation and coordination 43

1.5 Participation of independent fundamental rights bodies 44

**2. Capacity** 47

2.1 Capacity and resources of civil society to monitor 48

2.2 Capacity and resources of independent fundamental rights bodies to monitor 50

2.3 Fundamental rights awareness and expertise of officials in administration 53

2.4 Capacity of project implementers 54

2.5 Importance of training 54
2.6 Tools and guidance for managing authorities and beneficiaries 57
2.7 Contact points for issues related to the Charter and the CRPD 58

**3. Complaints and monitoring 60**
3.1 Judicial remedies 60
3.2 Complaints to the Commission 61
3.3 Non-judicial remedies at EU and international level 62
3.4 Complaints at national level 65

**Conclusion 69**

**Annex: Methodology 70**

**Abbreviations and acronyms 73**

**Endnotes 74**

**About this publication 88**

# Foreword

It is of the utmost importance that every euro of EU money is spent in a way that respects fundamental rights. Billions of euros are spent each year on creating jobs, economic growth and sustainable development, all of which make a tremendous positive difference to people's lives.

However, situations arise in which EU funds are used in ways that neglect or even violate fundamental rights. Take an example: a funding programme is spent on an education initiative that leads to segregated schooling for Roma children. But fundamental rights, as enshrined in the EU Charter of Fundamental Rights, stand for inclusion and equality; excluding a vulnerable population at risk is therefore absolutely at odds with the common values on which the EU is built. In another example, funding may be used to house people with disabilities in institutional care, unfit for their needs. This clearly does not support them in realising their right to live independently in the community.

To prevent funds from being spent in ways that undermine or directly violate people's fundamental rights, the EU introduced new requirements for funds in 2021. The new safeguards have great potential and could be a game changer in securing rights across Europe.

Putting in place conditions in respect of EU funding has gained a great deal of attention in recent years, especially, for instances, when breaches of the rule of law have led to the withholding of funds.

Fundamental rights can and should be a lived reality for everyone in the EU today. These safeguards in EU funds are a step towards achieving this. This report looks at the role played by funds conditionality in protecting and promoting rights under the EU Charter of Fundamental Rights and the United Nations Convention on the Rights of Persons with Disabilities.

The report also explores the potentially invaluable role of national human rights institutions, ombudsperson institutions and equality bodies in holding Member States accountable when fundamental rights are not upheld.

Living up to this great potential requires a truly collective effort. The European Commission, EU Member States and independent fundamental rights bodies all have a part to play. Acting now, we can establish full respect for fundamental rights in all operations funded by the EU. Acting now, we can make a significant shift in protecting and promoting our most precious rights.

**Michael O'Flaherty**

Director

# Key findings and FRA opinions

The EU provides funding for programmes and projects on infrastructure, skills and education, scientific research, creating jobs and improving health. Projects often delivered by people such as researchers, businesses, farmers and public bodies. These funds are significant and make up more than a third of the EU's overall budget. For example, EU and Member State combined spending on Cohesion Policy will amount to over 529 billion Euros between 2021 to 2027. Spending on other funds has increased very significantly, including the Border Management and Visa Instrument (BMVI) (by 131 %), Internal Security Fund (ISF) (by 90 %) and Asylum, Migration and Integration Fund (AMIF) (by 43%).

However, the EU applies strict rules on how the money should be spent. The EU legislator strengthened the rules on complying with fundamental rights in 2021. Since then, the fact that expenditures must meet certain conditions linked to fundamental rights has received increased public attention.

These rules regarding fundamental rights are known as 'enabling conditions', which means there is an explicit requirement for effective mechanisms to implement the obligations under the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD) and ensure compliance of the programmes governed by these funds with the Charter of Fundamental Rights of the European Union (the Charter). Authorities managing EU funds must involve relevant partners including bodies representing civil society and other fundamental rights actors to ensure that these obligations are duly respected.

These rules regarding fundamental rights, or 'enabling conditions', apply to eight EU funds, listed below. They are set out in Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 (Common Provisions Regulation) for the programming period 2021–2027, hereafter referred to as CPR 21–27.

This report explores the challenges in effectively implementing the fundamental rights safeguards in the CPR 21–27 through the involvement of fundamental rights actors as partners in the funding process. It also examines the role of independent fundamental rights bodies and civil society organisations (CSOs) dealing with fundamental rights in the programming, implementation and monitoring of EU funds at EU and national levels.

The report explores the role of independent fundamental rights bodies. However, the research findings also concern civil society actors and their needs, for example, civil society organisations (CSOs) working in fundamental rights whose role in raising fundamental rights issues is often similar. Nonetheless, there is a difference between the NHRIs (independent statutory institutions conforming with the UN Paris Principles), Equality Bodies (public institutions required under EU legislation) and civil society actors.

Regarding terminology, this report uses the term 'independent fundamental rights bodies' when

referring to national human rights institutions, equality bodies, ombudsperson institutions. This includes other independent bodies monitoring specific international human rights obligations, as outlined in Article 33 (2) of the CRPD.

For more information about national human rights institutions and their accreditation status and mandates, see FRA's annual update from December 2022.

## Legal corner

**Effective application and implementation of the Charter and the CRPD**

The obligation to observe the Charter in EU funds is made very explicit in the governing regulations. Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 (Common Provisions Regulation) lays down common provisions for specific EU funds for the programming period 2021–2027. These include enabling conditions on the effective application and implementation of the Charter and on the implementation and application of the CRPD (see Table 1). The eight EU funds are as follows:

1. European Regional Development Fund
2. European Social Fund Plus
3. Cohesion Fund
4. Just Transition Fund
5. European Maritime, Fisheries and Aquaculture Fund
6. Asylum, Migration and Integration Fund
7. Internal Security Fund
8. Border Management and Visa Instrument.

**Involving fundamental rights actors**

Member States shall establish partnerships with relevant bodies representing civil society, such as "non-governmental organisations" and "bodies responsible for promoting social inclusion, fundamental rights, rights of persons with disabilities, gender equality and non-discrimination", according to Article 8 (1) (c) of the CPR 21–27.

This report is based on research in 12 Member States: Bulgaria, Croatia, Cyprus, Estonia, Finland, France, Germany, Greece, Latvia, Poland, Portugal and Slovakia. FRA used desk research, national roundtables and semi-structured interviews with relevant stakeholders in 2022 and 2023 (see Methodology). Findings emerged in three areas: participation, capacity and complaints mechanisms.

The opinions are based on FRA's research into lessons learned from the CPR 14–20 and emerging experiences under the CPR 21–27. They make practical suggestions on how EU Member States could make the Charter and CRPD-related enabling conditions more effective. They suggest that independent fundamental rights bodies and relevant CSOs should be actively and meaningfully involved.

In addition, following the opinions, ways forward are outlined as 'takeaways' for independent fundamental rights bodies indicating actions they could take to support this approach.

## Enable meaningful participation of fundamental rights bodies

The CPR 21–27 sets out that Member States shall establish "comprehensive" partnerships with many actors in society. These include relevant bodies representing civil society, such as bodies responsible for promoting social inclusion, fundamental rights, rights of persons with disabilities, gender equality and non-discrimination. Such partners need to be involved in all relevant phases of the process, namely throughout the preparation, implementation and evaluation of programmes, according to Article 8. Article 39 obliges Member States to "ensure a balanced representation of the relevant Member State authorities and intermediate bodies and of representatives of the partners referred to in Article 8 (1) through a transparent process." According to Article 2 of the CPR 21–27, intermediate bodies are public or private bodies that act under the responsibility of a managing authority or carry out functions or tasks on behalf of such an authority.

Some CSOs and independent fundamental rights bodies participated as partners in the previous programming period (2014–2020). However, there is significant scope for further enhancing the number and range of organisations involved. This includes involving organisations in both the early stages of the programming period, such as preparing the programming documents, and in the implementation phase, such as participating in monitoring committees.

Improvements are also needed in how participation is realised. FRA's research indicates that fundamental rights actors feel that, when they are invited to participate, the form of consultation does not allow them to meaningfully engage in the process. Often, there is a significant amount of documents to review and there are tight deadlines to review and provide input. They also highlight that the rather technical nature of the discussions in the monitoring committees does not allow them to easily identify the key information for assessing fundamental rights risks and opportunities.

Involving independent fundamental rights bodies and specialised CSOs in an efficient and targeted manner is a way to integrate the fundamental rights dimension into the programming period and help prevent fundamental rights violations.

In this context, conflict-of-interest regulations and standards on the independence of national human rights institutions (NHRIs) and equality bodies are relevant. Amongst these are the Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies

or the Paris Principles, a set of international standards governing the status and functioning of NHRIs.

## FRA opinion 1

Member States should consult independent fundamental rights bodies and specialised CSOs upfront in the process of implementing the funds covered by the Common Provisions Regulation, including on calls for proposals and selection criteria. To ensure that the relevant bodies and their expertise are included, Member States should invite independent fundamental rights bodies to participate in monitoring committees as a matter of routine and in a manner that fully respects their mandate and independence. Member States should ensure effective coordination, cooperation and communication at national level between the managing authorities, CSOs and independent fundamental rights bodies.

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According to Article 44 of the CPR 21–27, Member States or the managing authority are to carry out evaluations of the programmes. It lays down that, as well as effectiveness, efficiency, relevance or consistency, these evaluations may cover "other relevant criteria, such as inclusiveness, non-discrimination and visibility". Member States or the managing authority must ensure that the necessary procedures "to produce and collect the data necessary for evaluations" are set up.

Without fundamental rights evaluations, it is difficult to follow up on and to further develop the implementation of the fundamental rights requirements set out in the CPR 21–27 and the fundamental rights-relevant targets set out in the programmes.

## FRA opinion 2

Member States should conduct periodic evaluations of fundamental rights issues upfront in the process of implementing EU Funds covered by the Common Provisions Regulation to ensure fundamental rights-relevant thematic targets are met and obligations under the horizontal enabling conditions on the Charter and the CRPD are respected. They should set up indicator frameworks in the programming phase and ensure that relevant fundamental rights data are gathered so that the fundamental rights impact of funded operations can be measured. Member States should consult independent fundamental rights bodies and specialised CSOs on such indicator frameworks.

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Often, insufficient attention is given to setting up clear indicator frameworks to evaluate fundamental rights issues in the programming phase, the research found. That results in a lack of

specific criteria in the evaluation phase of the operations. This then makes evaluation less effective, as data on fundamental rights impacts may not have been gathered.

There is often a lack of communication and cooperation on fundamental rights between the various relevant actors involved in the EU programming period, namely managing authorities, CSOs and independent fundamental rights bodies.

### FRA opinion 3

The European Commission should actively promote the use of its Code of Conduct on Partnership, a delegated regulation from 2013 instructing Member States how to implement the CPR 14–20 partnership principle by promoting the inclusion of the expertise of independent fundamental rights bodies and specialised CSOs throughout programming period.

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## Build capacity and provide sufficient resources for fundamental rights bodies

The tasks and obligations set out in Articles 72 and 73 of the CPR 21–27 require managing authorities to establish and apply criteria and procedures for the selection of operations that are non-discriminatory and transparent, ensure accessibility to persons with disabilities, ensure gender equality and take account of the Charter. To fulfil this obligation optimally, the managing authority and the related programming bodies should be well trained and informed so that they can define these criteria and detect operation proposals that risk violating fundamental rights from the outset.

If at any phase in a programming period it appears that an operation could result in a violation of fundamental rights, an assessment needs to be carried out on whether to use funding suspension or interruption mechanisms. Financial corrections may be applied if a breach is identified that constitutes an irregularity. This requires advanced fundamental rights expertise. At the same time, expertise is required about positive obligations under international and European human rights law and about national fundamental rights policies and action plans or strategies. Such expertise is needed to determine the potential of EU-funded operations to promote fundamental rights and to ensure that EU funds are used in a manner that potentially complements fundamental rights policies.

FRA's research confirms that there is a need for more fundamental rights training of officials working for managing authorities or otherwise involved in administering EU funds, in particular at regional and local levels. Interlocutors, for example, perceive the Charter and CRPD as quite 'abstract' and find it difficult to apply these instruments in their daily practice.

## FRA opinion 4

Member States should ensure that the officials dealing with programming and implementation of the funds governed by the CPR 21–27, as well as fund beneficiaries, have sufficient expertise, tools and expert advice at their disposal to fulfil the Member States' obligation to apply the Charter and the CRPD correctly, including by ensuring dedicated and focused training.

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Similarly, those in receipt of EU funds, i.e. beneficiaries responsible for implementing operations supported by the funds, need sufficient training and guidance on how to plan and implement operations in a fundamental rights-compliant manner. Without training and guidance, the horizontal enabling condition in the CPR 21–27 may unintentionally be disregarded given that that the reference to fundamental rights in calls for applications is often not specific enough to be useful to beneficiaries. Both officials and beneficiaries often do not turn to independent fundamental rights bodies for advice on or to ask questions about fundamental rights issues as it may not be customary to do so. Furthermore, there seems to be a need to improve managing authorities' level of scrutiny of the implementation of fundamental rights requirements in programmes and funded operations, the research indicates. Compliance concerns have been raised, especially with regard to the funding of settings that are prolonging or enhancing segregation in the areas of education and care in institutions.

## FRA opinion 5

Member States should provide for avenues that allow officials to easily access specialised fundamental rights expertise, for instance by appointing a fundamental rights focal point or allowing officials to consult independent fundamental rights bodies on specific questions that may arise throughout the programming period or on developing fundamental rights guidance and training. Officials and beneficiaries should have access to practical guidance on fundamental rights issues relevant to them, such as checklists based on the Commission's 2016 '*Guidance on ensuring the respect for the Charter of Fundamental Rights of the European Union when implementing the European Structural and Investment Funds*'.

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Civil servants, beneficiaries, CSOs and other actors often lack knowledge of the roles, responsibilities and competences of other actors and institutions involved, interviews and roundtable discussions reveal. There is a call from stakeholders for more cooperation and coordination regarding correctly applying the Charter and the CRPD in the context of funds governed by the CPR.

## FRA opinion 6

The European Commission should support the Member States in implementing their fundamental rights obligations under the CPR 21–27 by coordinating and/or providing training and developing further guidance for officials and beneficiaries at EU level. Such guidance could then serve as a basis for national training material being developed.

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Working with EU funds is a complex task. The funds governed by the CPR provide resources worth many billions of euros to tens of thousands of projects in each programming period. Each Member State receives funding from multiple different funds and through a wide variety of different programmes.

International documents such as the UN Paris Principles on the status of NHRIs, the Council of Europe principles on the protection and promotion of ombudsman institutions and the European Commission's recommendation on standards for equality bodies underline that independent fundamental rights bodies need to be provided with the human, technical and financial resources necessary to perform their tasks and exercise their powers effectively. FRA's 2020 report Strong and effective national human rights institutions challenges. Promising practices and opportunities also highlighted this. It calls on the EU to consider "more funding opportunities to help NHRIs develop expertise on the Charter's application at national level. This could facilitate their role in assisting Member States apply the Charter, including in law and policy making and when using European structural and investment funds" (p. 14).

The resources allocated to such bodies need to take into account their competences and tasks. FRA's research and capacity-building work with NHRIs, funded by beneficiary states of the European Economic Area (EEA) and Norway Grants, reveals that, so far, relatively few NHRIs have been involved in monitoring funds governed by the CPR at national level. While such bodies' advisory role could be very useful at the preparation, implementation and monitoring stages, a lack of resources and expertise on EU funds-related procedures tends to prevent such involvement, FRA research reveals.

## FRA opinion 7

Member States should, in accordance with international standards, make sure that, when independent fundamental rights bodies are engaged in the preparation, implementation or monitoring and evaluation of EU-funded programmes and operations, including through participation in monitoring committees, they are provided with sufficient and where required additional human, technical and financial resources so that they are able to perform their core tasks and exercise their powers effectively, including at the local or regional level.

Effectively involving both independent fundamental rights bodies and specialised CSOs throughout the programming period requires enhancing their financial, technical and human resources capacity. It is key that Articles 36 and 37 of the CPR 21–27 provide for the opportunity for the relevant funds to support capacity building and undertake additional technical assistance actions. Doing so will reinforce the capacity and efficiency of partner bodies such as independent fundamental rights bodies. Providing these resources is also possible under Article 9 of Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 establishing the European Social Fund Plus (ESF+) (ESF+ Regulation). This appears to be a key opportunity that has so far not been sufficiently utilised.

### FRA opinion 8

Member States and their managing authorities should fully use the potential granted by Articles 36 and 37 of the CPR 21–27 to fund capacity building and additional technical assistance for independent fundamental rights bodies that are included in a partnership in the meaning of Article 8 of the CPR 21–27. Member States should also fully use similar fund-specific technical assistance, such as the assistance on the delivery of employment, education and social inclusion policies provided in Article 9 of the ESF+ Regulation. Such capacity building should include training on the functioning of EU funds and their related procedures.

## Enhance the transparency and accessibility of complaints mechanisms

Article 69 (7) of the CPR 21–27 requires Member States to make arrangements to ensure the effective examination of complaints concerning the funds, including those concerning fundamental rights. Complaints may cover any dispute between potential and selected beneficiaries regarding the proposed or selected operation and any disputes with third parties on the implementation of the programme or operations. Third parties might include, for example, fundamental rights CSOs objecting to funding for operations that they consider violates the Charter and/or the CRPD. This requires a transparent process for submission and follow-up between the designated national authorities and the potential beneficiaries. Article 69 (7) of the CPR 21–27 requires Member States to have an effective complaints mechanism for complaints relating to the Charter and the CRPD.

### FRA opinion 9

Member States should ensure the possibility of an independent review of decisions by fund managers on fundamental rights grounds through transparent and effective complaint mechanisms. Such mechanisms need to be equipped with sufficient expertise and capacity to handle complaints based on fundamental rights. Member States should ensure that prospective complainants are pointed to the right body or bodies to file complaints, including by making relevant information on both complaint bodies and Charter arrangements available on dedicated Fund websites and clearly designating entry points for complaints. They should consult independent fundamental rights bodies when setting up complaint mechanisms. Whenever the Commission is alerted about fundamental rights concerns in the implementation of the funds, it should examine whether the issues are properly resolved at national level. If this is not the case, or if repeated violations occur, the Commission should refuse reimbursement in line with Article 15 CPR.

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Research indicates that complaints mechanisms are often insufficiently advertised to relevant stakeholders and the wider public. Moreover, there is often a lack of coordination between the various bodies involved. Therefore, individuals and organisations may not always be aware of the possibility to file complaints on fundamental rights grounds regarding the funds governed by the CPR 21–27.

In addition, the staff handling complaints mechanisms sometimes also lack the required fundamental rights expertise and are more experienced in dealing with complaints related to misuse of financial resources. The European Ombudsman has made relevant recommendations in this regard, including on enhancing the powers of complaint-handling bodies. In relation to the CRPD, it is currently not possible for individuals to complain to the Committee on the Rights of Persons with Disabilities about EU acts or omissions, as the EU has not yet ratified the Optional Protocol to the CRPD.

In more general terms, it appears that information about the governance of the funds, especially the national Charter “arrangements” in the context of fundamental rights, is not easily accessible.

## FRA opinion 10

The EU should consider ratification of the Optional Protocol to the CRPD to allow the Committee on the Rights of Persons with Disabilities to receive and consider communications from or on behalf of individuals or groups of individuals who claim to be victims of a violation of the CRPD by the European Union.

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## FRA opinion 11

The European Commission is invited to assign special importance to further improving the effectiveness of the Charter enabling condition when evaluating and when reviewing the CPR 21–27 and the fund-specific regulations. When reviewing the CPR 21–27 in 2027, it will be useful to consider whether the partnership principle could be further strengthened and whether the new legal environment of the EU needs to be reflected in the text. With the pending accession of the EU to the European Convention on Human Rights and the already approved accession to the Council of Europe Convention on preventing and combating violence against women and domestic violence, the EU legislator could consider including these two prominent frameworks in the enabling conditions in the next programming period (2028–2034). This would further strengthen the role of fundamental rights in the context of EU funds.

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## Ways forward for independent fundamental rights bodies

### Participation

Independent fundamental rights bodies could:

- share their expertise, recent findings, data and relevant reports in the programming phase to ensure EU funds are used to efficiently implement fundamental rights, as well as provide the authorities with fundamental rights expertise in a needs-based manner throughout the programming period;
- assist Member States in mainstreaming fundamental rights into the selection criteria for EU-funded projects to help ensure fundamental rights compliance, without having to be involved in the selection process;
- participate in relevant monitoring committees in a capacity that does not compromise their independence (for instance by participating as observers), providing relevant fundamental rights data and expertise to the committees;
- assist Member States in setting up indicator frameworks and identifying what constitutes fundamental rights-relevant data and share good practices in the area of fundamental rights data collection;
- provide relevant data, studies and other materials to those charged with conducting reviews and evaluations explaining how such data could populate the existing indicator framework, thereby contributing to a more developed assessment and evaluation frameworks;
- monitor whether performance reviews carried out annually take fundamental rights issues into account and check the quality and focus of the reviews to make recommendations for potential improvements, as well as consider contributing to and commenting on the evaluation of programmes;

- as part of the process of the evaluation of programmes conducted by the Member States, carry out specific studies, for example through focus group discussions or surveys, to assess the impacts of EU funding on fundamental rights and, based on this evidence, provide recommendations for improvement of programme delivery.

## Capacity and resources

Independent fundamental rights bodies could:

- assist with training of officials and beneficiaries of funds governed by the CPR by conducting training themselves, by assisting governments in preparing training or by offering 'train-the-trainer' modules that familiarise the authorities with existing fundamental rights data, findings and tools;
- develop or review guiding material on fundamental rights such as checklists, handbooks or factsheets for officials and beneficiaries, and remain available to provide guidance and advice in this regard to officials within the administration of support provided by the funds governed by the CPR who are responsible for fundamental rights issues/horizontal enabling conditions;
- when agreeing to take on roles in the context of the funds governed by the CPR, remind the authorities of hard and soft law standards requiring that any additional tasks for independent fundamental rights bodies come with additional resources so as not to compromise the existing responsibilities of such bodies;
- remind Member States that they can fund technical assistance to reinforce the capacity of independent fundamental rights bodies under Articles 36 and 37 of the CPR 21–27, and that support to such partner organisations may also take the form of a specific programme under the CPR 21–27.

## Complaints and monitoring

Independent fundamental rights bodies could:

- train staff in managing authorities to deal with complaints in line with fundamental rights principles;
- act as reference points for CSOs to analyse their experience, concerns and complaints, and distribute relevant recommendations to policymakers and/or monitoring committees;
- monitor the effectiveness, accessibility and independence of complaints mechanisms designated by the authorities;
- when complaints and violations are discussed, for example in monitoring committees, recommend and follow up on corrective action that may be needed to ensure compliance

with the Charter and the CRPD;

- where the mandate allows, serve as complaints mechanisms for Charter- or CRPD-related complaints in the context of funds governed by the CPR; when , provided the bodies have sufficient resources.

# Introduction

EU funds play a vital role in achieving economic and social progress, as well as other national and EU policy goals. Against this background and considering the fact that public spending has an impact on our societies, the following question arises: how can it be guaranteed that these funds are used in a manner that promotes and respects fundamental rights and does not lead to or enhance any violations of such rights? Recent regulations increasingly emphasise respect for fundamental rights where the use of EU money is conditional on the compliance of the programmes with the Charter of Fundamental Rights of the European Union (the Charter).

This report deals with the eight funds covered by Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 (Common Provisions Regulations (CPR)) [1]. It does not deal with Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality (Conditionality Regulation) [2]. The latter is a specific tool to protect the EU budget from breaches of the principles of the rule of law.

This report examines the challenges related to the implementation and monitoring of fundamental rights faced in the previous (2014–2020) programming period and early findings from the current period (2021–2027), hereafter CPR 14-20 and CPR 21-27.

Its focus is on the role of fundamental rights bodies in supporting fundamental rights compliance. These bodies include national human rights institutions (NHRIs), ombudsperson institutions and equality bodies, as well as the independent monitoring bodies under the CRPD. This report also deals with the current and potential role of civil society organisations (CSOs) that work on issues related to fundamental rights.

The report outlines where greater attention may be needed to ensure that the enabling conditions on the Charter and the CRPD of the CPR 21–27 are fully implemented. The findings are under three themes: participation, capacity and resources and complaints mechanisms. The report highlights measures for Member States and the Commission to take to ensure that these requirements are met. The report also suggests actions for independent fundamental rights bodies on how they can engage in the funding process as expert partners to help mainstream fundamental rights into the management of funds governed by the CPR.

The objectives were to map the existing challenges in implementing fundamental rights requirements for CPR 14–20 and CPR 21–27 and the effective participation of fundamental rights actors in the funding process. A second objective was to identify what role these actors foresee for themselves and where they consider they could most effectively make an impact.

**Legal Corner**

**Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 (CPR) lays down common provisions on the following eight EU funds:**

1. European Regional Development Fund (ERDF)
2. European Social Fund Plus (ESF+)
3. Cohesion Fund
4. Just Transition Fund
5. European Maritime, Fisheries and Aquaculture Fund
6. Asylum, Migration and Integration Fund (AMIF)
7. Internal Security Fund (ISF)
8. Border Management and Visa Instrument (BMVI).

The CPR 21–27 is binding EU legislation that states the conditions under which these EU funds are programmed and spent. Together, they represent roughly a third of the total EU budget.

These funds are delivered under shared management, which means that the European Commission and national authorities jointly manage the funding. The CPR is complemented by fund-specific regulations, which set out specific rules for the funds.

The CPR 21–27 and the fund-specific regulations are directly applicable in Member States. The CPR puts increased emphasis on fundamental rights. It requires the Commission and Member States to ensure respect for fundamental rights and compliance with the Charter in the implementation of the funds. It also requires that accessibility for persons with disabilities be considered throughout the preparation and implementation of programmes. These obligations entail setting up certain “arrangements” in Member States that aim to ensure such compliance of programmes. This requirement needs to be fulfilled for expenditure to be reimbursed. This is referred to as the horizontal enabling condition on the Charter on the CRPD.

The primary obligation to ensure that responsibility for fulfilling the enabling conditions throughout the whole programming period lies with the Member States. The Commission has an obligation to support the Member States and monitors whether these enabling conditions are duly being fulfilled.

## The importance of EU funds to fundamental rights

Funds governed by the Common Provisions Regulation are spent on a wide range of different

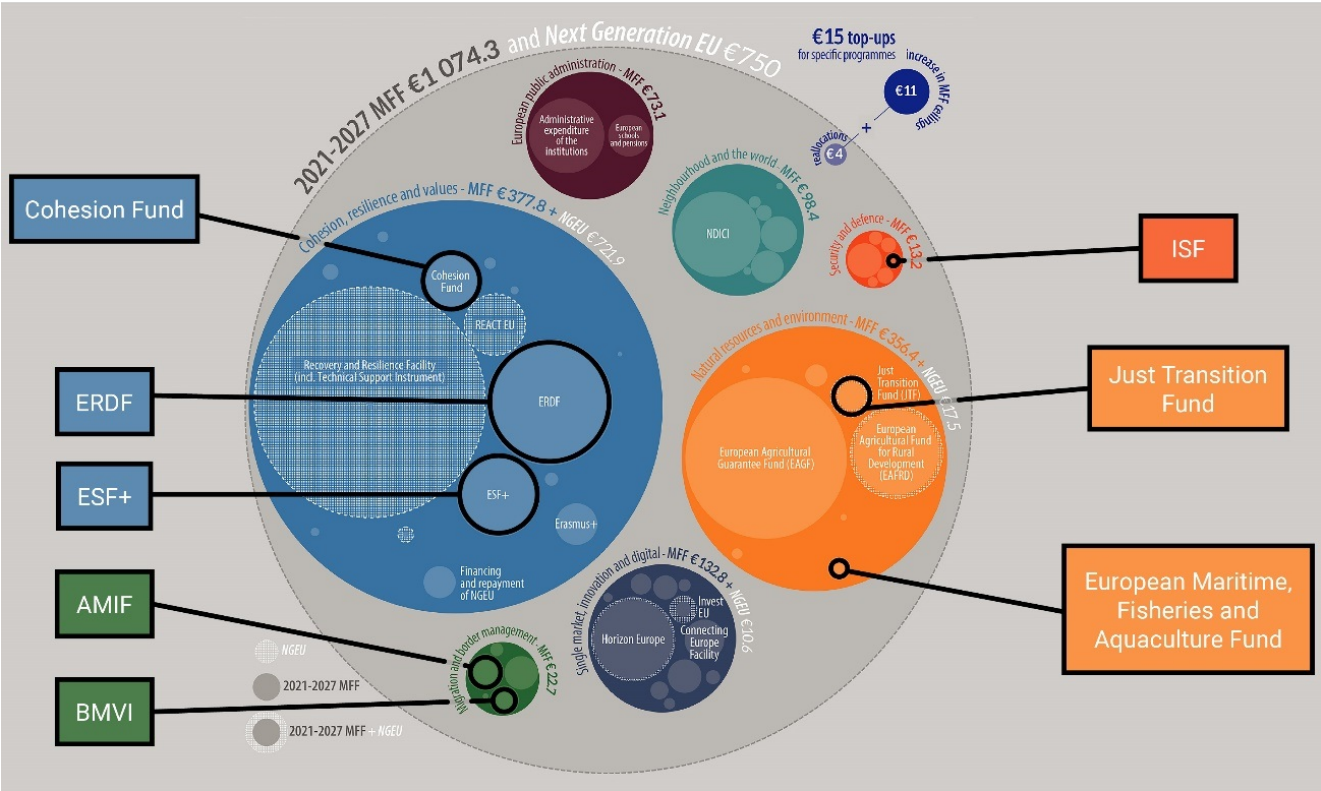
operations in areas such as infrastructure, skills and education, scientific research, creating jobs, improving health and many more. Government spending in the EU tends to amount to around half of national gross domestic product (GDP) [3]. The EU budget is very small in comparison. However, especially in Member States with a GDP per capita below the EU average, investments through funds governed by the CPR can reach significant levels. For example, the three smallest economies in the EU – Malta (2022 GDP: € 16.87 billion [4], Cyprus (2022 GDP: € 27.7 billion [5] and Estonia (2022 GDP: € 35.98 billion [6] – will receive € 417 million [7], € 682.4 million [8] and € 781 million [9], respectively, just from the ERDF and the Cohesion Fund over the seven years of the current programming period.

Cohesion Policy financing will amount to over 529 billion euros in the current programming period, which combines Member State and EU funds allocated from the Cohesion Fund, European Social Fund Plus and European Regional Development Fund. Of this total, over 350 billion euros is the EU's contribution, with an additional 19 billion euros coming from the Just Transition Fund. [10] The ERDF has seen its funding increase from € 185 billion to € 217 billion [11]. The ESF (now ESF+) has seen its funding increase from € 74 billion to € 99.3 billion from the previous programming period [12].

Statistical analyses by the Transnational Institute (Amsterdam) indicate a 131 % increase for the BMVI, a 90 % increase for the ISF and a 43 % increase for the AMIF, based on a comparison between the EU means available during the current funding period (2021–2027) and the previous funding period (2014–2020) [13].

Together, these sums, illustrated in Figure 1 below, form a significant portion of the overall EU budget. That underlines the importance of funds governed by the CPR and how they are used at a national level.

**Figure 1 –** ***The EU's multiannual budget for 2021 –2027 and the eight EU Funds covered by the CPR***




The diagram shows different sized circles for each of the seven main categories of the Multiannual Financial Framework. Each circle represents one of the seven main categories of spending. The size of the circle reflects the budget amount for each category. Within each circle are smaller circles which represent the different funds covered by the Common Provisions Regulation. In the biggest circle for 'Cohesion, resilience and values' the funds are the Cohesion Fund, European Regional Development Fund and the European Social Fund (Plus). In the second largest circle showing 'Natural resources and environment' the funds are the Just Transition Fund and the European Maritime Fisheries and Aquaculture Fund. In two of the smaller circles the category 'Migration and border management' includes the Asylum, Migration and Integration Fund and the Border Management and Visa Instrument fund and the category 'Security and defence' includes the Internal Security Fund.

Source: European Parliamentary Research Service (2021), Multiannual Financial Framework for the years 2021–2027 and the New Own Resources, updated 12 July 2021 (names of relevant funds added). The agreed long-term EU budget (multiannual financial framework) amounts to € 1,074.3 billion in 2018 prices.

Finally, EU funds cover a broad scope of activities and projects, all of which require monitoring for compliance with fundamental rights. For a sense of scale, according to the website of the Commission, cohesion-related projects funded between 2013-2020 includes 818,191 projects funded in Italy, 298, 890 projects funded in Germany, 140,249 projects in Spain and 103,670 projects in Poland. [14]

## What are EU fundamental rights?

The EU speaks of 'fundamental rights' when dealing with human rights within its own borders. Human rights are inherent to all human beings, whatever our sex, national or ethnic origin, colour, religion, language or any other status. We are all equally entitled to our human rights without discrimination.

Universal human rights are often expressed and guaranteed in the form of treaties,

customary international law, general principles and other sources of international law and, of course, national constitutional law. They oblige governments to act in certain ways or to refrain from certain acts in order to promote and protect human rights and the fundamental freedoms of human beings.

EU fundamental rights are human rights laid down in EU legal sources, namely the Charter and general principles of EU law as developed by the Court of Justice of the EU. Recently, the EU became a party to the CRPD and to the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). It is in the process of becoming a party to the European Convention of Human Rights, thereby also integrating the rights enshrined in these documents into EU law. The Charter and the CRPD are explicitly referred to in the regulations for funds spent between 2021 and 2027 (CPR 21–27).

The funds governed by the CPR 21–27 impact on many different aspects of fundamental rights. For example, areas within the scope of EU legislation such as investing in and supporting forced return monitoring systems under Article 8 (6) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 (Return Directive) [15] or funding dignified facilities for asylum applicants.

Alternatively, funds may be used in areas outside the scope of EU legislation, for example by funding healthcare programmes. Funds may have very significant fundamental rights impacts in some areas, for example by funding a large part of the process of deinstitutionalisation of people with disabilities.

Funds have also been used to encourage fundamental rights-compliant policies at national level, with the CPR 21–27 providing for enabling conditions on specific topics. One such example is that, to have relevant expenditure reimbursed by the funds, the CPR 21–27 requires Member States to have action plans in place to foster equality, inclusion and participation of Roma and persons with disabilities or against poverty (CPR 2013) [16] .

However, sometimes spending from funds governed by the CPR can raise fundamental rights concerns. There is a risk that funds could, for example, be spent on operations that may directly fund the illegal return of asylum seekers [17] .

Another example is data protection. For instance, German Federal Criminal Police Office (*Bundeskriminalamt*, BKA) activities related to passenger name records received comparatively generous funding by the ISF during the 2014–2020 funding period [18] , despite such funding raising problems under Article 7 (respect for private and family life), Article 8 (protection of personal data) and Article 45 (freedom of movement and of residence) of the Charter [19] .

CSOs in various Member States have also challenged the use of EU funds to continue the process of institutionalising persons with disabilities rather than promoting life in the community [20] .

They have also criticised the treatment of refugees in reception centres funded by the European Union [21] and the use of EU funds in ways that perpetuate the segregation of Roma communities [22]. Encouraging Member States, beneficiaries (those who receive EU funding) and final beneficiaries (those who ultimately benefit from EU funding, such as Roma, refugees or persons with disabilities) to ensure compliance requires effective mechanisms to prevent such violations from happening and financial corrections if they do occur. This ensures sufficient attention is paid to the fundamental rights aspects of funded operations, which also helps prevent unintentional violations.

While outside the scope of this report, Articles 4 and 6 (1) of the Conditionality Regulation [23] and Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 (Recovery and Resilience Facility Regulation) [24] also show the interrelationship between EU funding and the values on which the Union is based. In accordance with Article 4 (1) of the Conditionality Regulation, appropriate measures must be taken by the Union institutions when breaches of the principles of the rule of law affect or seriously risk affecting the sound financial management of the Union budget or the financial interests of the Union in a sufficiently direct way. The Commission must open the procedure under the Conditionality Regulation if those conditions are fulfilled and the Commission considers that no other procedures provided for by Union legislation would allow it to protect the Union budget more effectively. The Commission can propose and the Council can adopt the following measures for the protection of the Union's budget under the Conditionality Regulation: suspension of payments and commitments, termination of payments and prohibition of new legal commitments and financial corrections (Article 5 of the Conditionality Regulation).

There is a link and partial overlap between fundamental rights and the rule of law [25]. As the Conditionality Regulation explains, the "rule of law requires that all public powers act within the constraints set out by law, in accordance with the values of democracy and the respect for fundamental rights as stipulated in the Charter of Fundamental Rights of the European Union and other applicable instruments, and under the control of independent and impartial courts" (recital 3 of the Conditionality Regulation; see also recital 6 and Article 2). Article 2 (a) of the Conditionality Regulation contains a definition of 'the rule of law' for the purposes of that regulation and includes "the principles of legality implying a transparent, accountable, democratic and pluralistic law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights; separation of powers; and non-discrimination and equality before the law".

The Recovery and Resilience Facility, run through direct management, does not contain a fundamental rights conditionality regime (see the Recovery and Resilience Facility Regulation) [26]. It is, however, performance-based, meaning that the Commission disburses funds to the Member States only when certain agreed targets and milestones have been satisfactorily fulfilled (Article 24 of the Recovery and Resilience Facility Regulation). Some of these targets and milestones can be linked to measures addressing challenges in the field of fundamental rights.

Policy objectives for the Recovery and Resilience Facility include social cohesion, health and education (Article 3 of the Recovery and Resilience Facility Regulation), which are then used to promote fundamental rights such as the right to education (Article 14 of the Charter) and the right to health (Article 35 of the Charter). Country-specific recommendations identify challenges that Member States' recovery and resilience plans should address (Article 18 (4) (b) of the Recovery and Resilience Facility Regulation). Examples include improving education outcomes for pupils from disadvantaged socioeconomic and migrant backgrounds in the schooling system [27], improving access to and the quality of social housing [28] and boosting the labour market participation of women [29].

## Charter enabling conditions

Member States and the European Commission must ensure respect for fundamental rights and compliance with the Charter when implementing the eight funds covered by the CPR 21–27. Article 9 of the CPR 21–27 requires Member States and the Commission to mainstream gender and other forms of equality. The CPR 21–27 also requires accessibility for persons with disability to be considered throughout the programming periods (Article 9 (3)). These obligations are explicitly reflected in the context of the selection of operations by the managing authorities (Article 73 (1) of the CPR 21–27).

### Legal Corner

**Article 9 of the CPR 21–27: Horizontal principles**

1. Member States and the Commission shall ensure respect for fundamental rights and compliance with the Charter of Fundamental Rights of the European Union in the implementation of the Funds.

2. Member States and the Commission shall ensure that equality between men and women, gender mainstreaming and the integration of a gender perspective are taken into account and promoted throughout the preparation, implementation, monitoring, reporting and evaluation of programmes.

3. Member States and the Commission shall take appropriate steps to prevent any discrimination based on gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the preparation, implementation, monitoring, reporting and evaluation of programmes. In particular, accessibility for persons with disabilities shall be taken into account throughout the preparation and implementation of programmes.

The CPR 21–27 significantly strengthens relevant provisions of the CPR 14–20. For a comparison,

see Table 1. First, while maintaining the previous cycle's requirements to uphold gender equality, non-discrimination and accessibility for people with disabilities throughout the cycle (Article 9 (2) and (3)), it requires the Member States to "ensure respect for fundamental rights and compliance with the Charter of Fundamental Rights of the European Union in the implementation of the Funds" (Article 8 (1) (c)).

Second, the CPR 21–27 sets out an enhanced "multi-level governance" approach to running the funds. It requires partnerships with an expanded list of actors compared with the CPR 14–20. This list now includes fundamental rights actors, such as "relevant bodies representing civil society, such as environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, fundamental rights, rights of persons with disabilities, gender equality and non-discrimination" (Article 8 (1) (c)). It also indicates that the code of conduct on partnership – a delegated Commission regulation from 2014 [30] – remains valid (recital 14 of the CPR 21–27).

## Legal Corner

**Code of conduct on partnership**

Working in partnership is a long-established principle in the implementation of EU funds. In 2014, the Commission issued a regulation on the European code of conduct on partnership (Commission Delegated Regulation (EU) No 240/2014) in the framework of the European Structural and Investment Funds. This code of conduct also applies to the current programming period. It states that "The partners selected should be the most representative of the relevant stakeholders" and that "Selection procedures should be transparent and take into account the different institutional and legal frameworks of the Member States and their national and regional competences".

Furthermore, Article 5 states:

"1. In order to ensure transparent and effective involvement of relevant partners, Member States and managing authorities shall consult them on the process and timetable of the preparation of the Partnership Agreement and programmes. In doing so, they shall keep them fully informed of their content and any changes thereof.

2. As regards the consultation of relevant partners, Member States shall take account of the need for:

a) timely disclosure of and easy access to relevant information;

b) sufficient time for partners to analyse and comment on key preparatory documents and on the draft Partnership Agreement and draft programmes;

c) available channels through which partners may ask questions, may provide

contributions and will be informed of the way in which their proposals have been taken into consideration;

d) the dissemination of the outcome of the consultation."

To improve the quality of partnerships in the implementation of EU funds throughout Europe and share good practices in this regard, the Commission has launched a European community of practice on partnership.

Third, the CPR 21–27 introduces four "horizontal enabling conditions" to be fulfilled by the Member States (specified in Annex III of the CPR 21–27). Two of them deal with fundamental rights. First, Member States have to put arrangements in place to ensure that the programmes supported by the funds comply with the Charter, so called 'Charter arrangements'. Second, Member States must put arrangements in place to ensure that the accessibility policy, legislation and standards are properly reflected when preparing and implementing the programmes, and that there are mechanisms for reporting cases of non-compliance with the Charter or the CRPD. The use of the term 'arrangement' allows Member States to take a variety of approaches and use a variety of tools to ensure compliance with the Charter and the CRPD and to establish complaints-related reporting mechanisms.

## Legal Corner

**Enabling conditions**

The enabling condition on the Charter as established by Article 15 and Annex III of the CPR 21–27 is as follows:

"Effective mechanisms are in place to ensure compliance with the Charter of Fundamental Rights of the European Union ('the Charter') which include:

1. Arrangements to ensure compliance of the programmes supported by the Funds and their implementation with the relevant provisions of the Charter.

2. Reporting arrangements to the monitoring committee regarding cases of non-compliance of operations supported by the Funds with the Charter and complaints regarding the Charter submitted in accordance with the arrangements made pursuant to Article 69(7)."

The enabling condition on the CRPD as established by Article 15 and Annex III of the CPR 21–27 is as follows:

"A national framework to ensure implementation of the UNCRPD is in place that includes:

1. Objectives with measurable goals, data collection and monitoring mechanisms.

2. Arrangements to ensure that the accessibility policy, legislation and standards are properly reflected in the preparation and implementation of the programmes.

3. Reporting arrangements to the monitoring committee regarding cases of non-compliance of operations supported by the Funds with the UNCRPD and complaints regarding the UNCRPD submitted in accordance with the arrangements made pursuant to Article 69(7).”

Table 1 below provides a comparison of the differences between the conditions imposed in different funding periods. Findings of this report are based on the previous funding period, which began in 2013, and the emerging findings from the current period, which began in 2021.

Table 1 – Comparison of EU funds conditions in the current and the former funding periods

| | **Former funding period (2013 – 2021) (CPR (EU) No 1303/2013 [(a)])** | **Current funding period (2021 – 2027) (CPR (EU) No 2060/2021 [(b)])** |
|---|---|---|
| **Timing:** at what point are programmes checked to assess whether they meet conditions | Ex ante conditions assessment at the submission of programmes (c) (Article 19) | ‘Enabling’ conditions fulfilment is required throughout the programming period (Article 15 (6)) |
| **Scope:** substantive scope of ex ante conditions/enabling conditions | There was no general ex ante condition on fundamental rights. Some ex ante conditions were relevant to fundamental rights but were limited to three areas: anti-discrimination, gender and disability (Annex XI, part 2) | Horizontal enabling conditions cover all relevant provisions of the Charter and the CRPD (Annex III) |
| Other important fundamental rights provisions | Article 7 requires Member States and the Commission to ensure promotion of equality between men and women, take a gender perspective, take appropriate steps to prevent discrimination and consider accessibility for persons with disabilities. | Article 9 requires Member States and the Commission to ensure respect for the entire Charter in the implementation of the Funds in addition to similar provisions on equality and non-discrimination as outlined in the previous CPR. |

*Source: FRA, 2023.*

*([a]) The CPR 14–20 covered the following funds: the ERDF, the ESF, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund. It also laid down general provisions on the ERDF, the ESF, the Cohesion Fund and the European Maritime and Fisheries Fund.*

*([b]) The CPR 21–27 covers the following funds: the ESF+, the Cohesion Fund, the ERDF, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund. It lays down financial rules for those funds and for the AMIF, the ISF and the BMVI.*

*(c) However, appropriate steps needed to be taken to prevent any discrimination during not only the preparation but also the implementation of programmes. In particular, accessibility for persons with disabilities needed to be taken into account throughout the preparation and implementation of programmes.*

If the enabling conditions are not fulfilled, the Commission will not reimburse expenditure declared by the Member State for the purposes of support from a CPR-funded programme until the conditions are fulfilled (Article 15 of the CPR 21–27). It is important to note that these are not *ex ante* conditions that have to be fulfilled just once. They must remain fulfilled throughout the entire programming period. In that sense, the horizontal enabling conditions create an important incentive for Member States to ensure compliance with the relevant fundamental rights.

The CPR 21–27 also contains "thematic enabling conditions" applicable to three of the funds. Some of them are relevant to fundamental rights, such as the requirements to "enhance the effectiveness and inclusiveness of labour markets" (for the ERDF), to promote "a gender-balanced labour market participation" (for the ESF+) and to improve "equal access to inclusive and quality services in education, training and lifelong learning" (for the ERDF) (Annex IV, policy objective 4, of the CPR 21–27).

### FRA activity: enabling condition on Roma inclusion in the European Social Fund Plus: FRA's contribution

Thematic enabling conditions are a key element of the Cohesion Policy for 2021–2027, laid down in the CPR 21–27. Annex IV of the regulation defines the thematic enabling condition 'National Roma inclusion strategic policy framework' as applicable to the ESF+-specific policy objective 'Promoting the socio-economic integration of marginalised communities such as Roma people'. This condition implements principle 20 of the European Pillar of Social Rights (access to essential services) to ensure equal treatment of Roma people in access to adequate, non-segregated housing and essential services, such as water, sanitation, energy, transport, financial services and digital communications.

The CPR 21–27 sets out four criteria for the fulfilment of this thematic enabling condition:

1. measures to accelerate Roma integration and prevent and eliminate segregation, taking into account the gender dimension and situation of young Roma, with baseline and measurable milestones and targets set;
2. arrangements to monitor, evaluate and review the Roma integration measures;
3. arrangements to mainstream Roma inclusion at regional and local levels;
4. arrangements to ensure that its design, implementation, monitoring and review are conducted in a close cooperation with the Roma civil society and

all other relevant stakeholders, including at regional and local levels.

The European Commission tasked FRA with assisting Member States in their efforts to implement this thematic enabling condition, as part of their efforts to achieve Roma inclusion.

FRA developed and piloted a specific framework of rights-based indicators showing Member States' progress in implementing their national Roma inclusion strategies. In 2023, the Commission (*) reminded Member States that the Council Recommendation of 12 March 2021 on Roma equality, inclusion and participation (EU Roma Strategic Framework) (**) requires that Member States monitor and evaluate the implementation of the national strategic frameworks. To do so, they should use the portfolio of indicators developed by FRA, national Roma contact points, national statistical offices and the Commission, as appropriate.

FRA continued its regular large-scale surveys of Roma populations (***) to provide data on the actual outcomes of these measures. Moreover, FRA provides on-demand support to national governments in the EU, supporting them in implementing relevant monitoring frameworks.

(*) European Commission (2023), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Assessment report of the Member States' national Roma strategic frameworks, COM(2023) 7 final, Brussels, 9 January 2023.

(**) Council Recommendation of 12 March 2021 on Roma equality, inclusion and participation 2021/C 93/01 (OJ C 93, 19.3.2021, p. 1).

(***) FRA (European Union Agency for Fundamental Rights) (2021), Roma survey 2021.

## Additional fund-specific fundamental rights provisions

Some fund-specific regulations for the 2021–2027 programming period contain additional fundamental rights language. This mainly concerns three areas: complaints mechanisms, mainstreaming of specific fundamental rights needs and partnerships. For instance, regarding complaints, Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 (ESF+ Regulation) [31] states under Article 8 that when the European Commission "finds that there has been an infringement of the Charter, the Commission shall take into account the gravity of the infringement in its determination of the corrective measures to be applied in line with the relevant provisions of the CPR". Recital 31 adds that the Commission should do "its

utmost to ensure that complaints are assessed in a timely manner […] and should inform the complainant of the results".

With regard to mainstreaming various aspects of equality, Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 (AMIF Regulation) [32] requires in Article 6 that both the European Commission and Member States "ensure the integration of the gender perspective" and that "gender equality and gender mainstreaming are taken into account and promoted" throughout the cycle. Article 4 of Regulation (EU) 2021/1149 of the European Parliament and of the Council of 7 July 2021 (ISF Regulation) [33] requires Member States to pay "special attention to assisting and protecting vulnerable persons, in particular children and unaccompanied minors".

Regarding partnerships, Article 4 of the AMIF Regulation makes the involvement of "national human rights institutions and equality bodies" (along with other partners) obligatory. Another variance is noteworthy: for the AMIF and BMVI only, EU legislation lays down an obligation to consult FRA "at an early stage and in a timely manner, in the development of the Member States' programmes". That has now happened (see the following FRA activity box) [34] . Whereas the additional provisions on mainstreaming and on complaints simply reflect existing obligations, the procedural provisions on whom to consult in the approval phase of national programmes are innovative and could also be replicated in other funds-related regulations.

### FRA reviews national programmes

Pursuant to Article 16 (4) of the AMIF Regulation and Article 13 (4) of Regulation (EU) 2021/1148 of the European Parliament and of the Council of 7 July 2021 (BMVI Regulation), the European Commission asked FRA to review all national programmes prepared for those funds at the beginning of the 2021–2027 programming period.

FRA highlighted fundamental rights concerns and the need to comply with both relevant case law and the recommendations of NHRIs, ombudsperson institutions and CSOs. Recurring issues in the programmes relate to the need to improve fundamental rights-compliant return, detention, asylum and border procedures, for example by ensuring access to legal aid or using alternatives to detention. FRA also underlined the need to include fundamental rights training when setting up new information technology systems in the area of freedom, security and justice.

*Source: FRA, 2023 (reviews not publicly available).*

## Examples of compliance with the Charter at national level

As mentioned in the Introduction, according to Annex III of the CPR 21–27, Member States have to put in place 'Charter arrangements' to ensure compliance of the programmes and their implementation with the Charter and to ensure that the preparation and implementation of the programmes properly reflect the accessibility policy, legislation and standards. Furthermore, Member States should set up arrangements for reporting to the monitoring committees on complaints submitted and on cases of non-compliance with the Charter and the CRPD. In this section, some examples of national arrangements are provided.

In Italy, a contact point responsible for monitoring Charter compliance throughout the programming period is appointed within the managing authorities of the different funds. The contact point is included in a training programme to strengthen that person's expertise on fundamental rights, especially on aspects most relevant to the programming and implementation of funds [35]. The contact point also reviews possible Charter complaints and, where appropriate, involves relevant bodies to identify what corrective measures should be taken. Anyone can submit a complaint on Charter breaches through an online form, which is available on the websites of the different funds [36]. The managing authorities report to the monitoring committee at least once a year about complaints registered and their outcome [37]. These arrangements apply to all programmes covered by the CPR 21–27 in Italy.

In Slovenia, similarly to Italy, the managing authority appoints one person or more who is responsible for collecting information on complaints about non-compliance with the Charter or the CRPD and for reporting these to the monitoring committee [38]. Furthermore, a working group for coordinating the implementation of the Charter and the CRPD in the framework of the European Cohesion Policy programme has been created, consisting of representatives from different ministries, the national equality body and the national human rights ombudsman. The working group serves as a consultative body and is involved in handling complaints [39].

Several Member States provide Charter training for managing authorities staff to ensure Charter compliance throughout the programming period. In some Member States, such as Estonia and Ireland, training is also provided for intermediate bodies and beneficiaries. An intermediate body is a public or private body that acts under the responsibility of a managing authority or that carries out functions or tasks on behalf of such an authority (Article 2 (8) of the CPR) [40]. The training is often developed together with experts, such as NHRIs and equality bodies.

Some Member States have published formal guidelines on fundamental rights in relation to funds governed by the CPR. For example, in Ireland, the Irish Human Rights and Equality Commission developed a guide in cooperation with various public bodies involved in the EU funding process [41]. Similarly, the ministry in charge of EU funds in Romania has issued a guide on the legal fundamental rights obligations under the CPR 21–27 [42].

Other Member States have developed fundamental rights checklists. They apply them, for example, when drafting funding conditions for different programmes, calling for applications, selecting operations to fund, monitoring them and/or reviewing the final reports. Some Member States also use the Commission's guidance on the Charter and European Structural and Investment Funds (ESIF) published in 2016 [43].

In Cyprus, the national human rights body is actively involved in an advisory capacity in the drafting of programmes. The Commissioner for Administration and the Protection of Human Rights provides written guidance and advice to the managing authority/intermediate body and, if a possible violation of the programmes in relation to any provision is found, the Commissioner can give suggestions to align the programmes with the provisions of the Charter [44] .

# 1. Participation

Fundamental rights actors are formally included in the funding process but have little chance to influence decisions regarding the funds. Independent fundamental rights bodies and CSOs face challenges regarding participation in the funding process in the previous programming period. There is a lack of opportunities to participate and ineffective participation. This is despite requirements in the regulation for partnership and involvement (see legal corner below). The partnership principle in the CPR 21–27 explains that national authorities should draw on the expertise of fundamental rights actors from the very beginning of the process. A range of different challenges regarding participation occur throughout the various phases in the programming period, outlined below.

## Legal Corner

**Article 8 of the CPR 21–27: Partnership and multilevel governance**

The CPR 21–27 calls for a partnership that is comprehensive, cross-cutting and effective. First, Article 8 (1) in the CPR 21–27 requires Member States to establish "comprehensive" partnerships with diverse actors in society, that is, "relevant bodies representing civil society", among others, "such as environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, fundamental rights, rights of persons with disabilities, gender equality and non-discrimination".

Second, the CPR 21–27 requires that these partners are involved in all relevant phases of the process, namely "throughout the preparation, implementation and evaluation of programmes, including through participation in monitoring committees in accordance with Article 39".

Third, it requires that these partnerships aim for effectiveness, as demonstrated by the Commission at least annually consulting organisations that represent partners at Union level (Article 8 (5)) and the requirement that Member States "shall, where relevant, allocate an appropriate percentage of the resources coming from the Funds for the administrative capacity building of social partners and civil society organisations" (Article 8 (2)).

Finally, these partnerships must operate "in accordance with the multi-level governance principle and bottom-up approach". This is commonly referred to as the partnership principle.

The EU programming period can be divided into different phases. Figure 2 shows potential entry points for the participation of independent fundamental rights bodies in the process.

**Figure 2 – Entry points for independent fundamental rights bodies in the stages of the programming period**

The diagram is a graphical representation of the EU multi-annual financial framework. The potential entry points for bodies with a human rights remit or civil society organisations to consult, monitor or advocate on behalf of their mandate are during the planning, implementation and programming phases. At planning stage the entry points are when a Member State could consult with the national body with a human rights remit when preparing the Partnership Agreement and when advocacy takes place during the process of adopting the Partnership Agreements in order to

influence the use of EU funds. During the implementation phase the entry point occurs when national bodies with a human rights remit could be involved in the monitoring committees with a voting right. During the programming phase the entry points occur when there is advocacy at the national level to influence the call for proposals of projects and also if national bodies with a human rights remit are involved in the preparation of programmes at national level.

*Source*: European Centre for Social Welfare Policy and Research (2023), The role of national human rights bodies in monitoring fundamental rights in EU funded programmes, Vienna

## 1.1 Participating in the early stages of the programming period

An overall finding is that both independent fundamental rights bodies and CSOs need to participate more at the early stages of the programming period. As a report by the European Network of Equality Bodies (Equinet) noted, participation in monitoring committees "tends to be the singular avenue opened up to equality bodies for their engagement with the European Structural and Investment Funds. This reflects a limited understanding of partnership on the part of managing authorities, whereby equality bodies should have the possibility to play a role at all stages" [45] .

A Commission representative suggested that early involvement of CSOs and independent fundamental rights bodies would help ensure their continued involvement in later stages of the programming period. They may be motivated to check what is happening regarding their input and would have greater awareness of the issues relating to funds governed by the CPR and the opportunities they could bring [46] .

Research participants confirm that involvement of fundamental rights actors from the early stages is crucial for effectively integrating fundamental rights considerations into the funding process [47] . Their expertise and reports on fundamental rights issues could be used to feed into the programming and to guide policy and investment priorities.

Based on the previous programming period, respondents to FRA's research consider the preparatory phase to be when fundamental rights actors should be most closely involved and could have the most meaningful impact. As a Portuguese representative of an equality body notes, "[t]he critical stage is the political negotiation stage because that's where the whole story begins. It's like putting a train in motion, once you're moving it's more complicated to make detours" [48] .

The same is true of the programming stage. One interviewee said "Programming is definitely the best time to influence it, because the moment the programme is adopted and confirmed in Brussels and by [the managing] authority, we don't have much room for someone to say that this may not be in line with fundamental rights" [49] .

However, there are challenges in ensuring the proper participation of independent fundamental rights bodies and CSOs who are specialists in fundamental rights at the early stages.

First, the managing authority does not always invite fundamental rights actors to participate [50] . Further, applications for membership of programming working groups are not always accepted.

For example, in Croatia, the ombudsperson's request to participate in working groups was rejected. [51] Croatian stakeholders also agreed that the range of actors consulted is not always as wide as it could be, with relevant organisations not always being fully integrated into the consultation process on the partnership agreement or programming [52]. The government of Croatia highlighted that there was consultation on its programmes. [53]

As further examples, in Finland and Portugal, representatives from both CSOs and independent fundamental rights bodies point out that they are often not consulted or involved in the working groups preparing the partnership agreement or in the bodies responsible for the preparation of the programmes [54]. The relevant body may also choose to not be involved; the Cypriot Commissioner for Administration and the Protection of Human Rights, for example, decided not to participate at the preparatory stages to preserve its independence. For a discussion of the issue of independence and the involvement of independent fundamental rights bodies in work on EU funds, see Section 1.5 [55].

Second, even when they are involved, fundamental rights actors' voice might not be properly taken into account [56]. Consultation in the early stages is not always meaningful. Either there is no opportunity to comment or there is insufficient time to do so, leading to what one CSO describes as "cosmetic feedback" to partnership agreements [57].

In Croatia, although the ombudsperson was invited to provide their views shortly just prior to the adoption of programmes, there was a lack of substantial consultation conducted and insufficient information available. Insufficient time for commenting and only informal consultations of fundamental rights actors taking place is also highlighted in a recent policy note. It also notes that access to and the quality of consultations also varies among different funds [58]. The government of Croatia notes that it held consultations on the programming document and that the public was kept informed through a website about the funds. [59]

There may be other reasons fundamental rights actors are not involved at the early stages and sometimes the actors themselves are hesitant to get involved for valid reasons. A representative of an umbrella organisation of independent fundamental rights bodies notes a mix of issues related to capacity, independence and mandates [60].For a discussion on issues related to independence and mandates of independent bodies, see Section 1.5. Lack of capacity may prevent early involvement: as an Estonian CSO representative notes, referring to Estonian independent bodies, "I cannot imagine that the Chancellor's or Commissioner's Office would have this time to consult on all of this in the planning stage" [61].

Considering the wide range of issues that may come up in the management of the extremely disparate range of EU funds, which cover funding areas ranging from border security to social policy, keeping up with developments and getting involved can also be challenging. As a representative of one CSO puts it, "monitoring ESIF is very complicated and nobody is making it easy for anyone to check what's going on" [62]. Another CSO representative points out that "[i]f there is no will on the part of the Managing Authority, a lot can be hidden in the Partnership Agreement and the Operational Programmes and even when there are explicit references to

potentially problematic issues from a fundamental rights perspective, you have to find it and follow-up" [63]. For a wider discussion on capacity issues of independent fundamental rights bodies, see Section 2.2.

Other reasons for a lack of involvement of independent fundamental rights bodies include independent bodies or CSOs lacking awareness of the (significant) amount of funding involved, reducing the degree to which they prioritise the topic [64]. In addition, as another CSO representative points out, NHRIs have traditionally been linked to UN institutions and so have been focused on UN and Council of Europe instruments, and less so on the Charter and cooperation with the EU [65]. This may mean they have less experience dealing with EU issues, such as the applicability of the Charter.

### Promising Practice

**Involving CSOs in programming work: Example from Croatia**

In Croatia, representatives of CSOs were included in working groups for the preparation of programme documents for the financial period 2021–2027. They were elected through a public call for nominations of candidates for members and replacement members of working groups. The Council for the Development of Civil Society then elected representatives proposed by interested CSOs. Up to three CSO members were elected, including replacement members, per individual working group. In total, representatives were elected for five working groups.

*Source: Ombudsperson of the Republic of Croatia (2023), 'The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds', report written in the framework of the FRA project "Supporting National Human Rights Institutions in monitoring fundamental rights and the fundamental rights aspects of the rule of law" (not yet publicly available).*

## 1.2 Participation in monitoring committees

The research indicates that there is both a lack of involvement and meaningful consultation of independent fundamental rights bodies and CSOs in the negotiation and programming phase and a lack of participation later in the programming period in some monitoring committees. More cooperation between independent fundamental rights bodies, CSOs and managing authorities has the potential for mutual learning and sharing of experiences.

### Legal Corner

**Article 39 of the CPR 21–27: Composition of the monitoring committee**

Regarding the monitoring committees, the CPR 21–27 provides:

"1. Each Member State shall determine the composition of the monitoring committee and shall ensure a balanced representation of the relevant Member State authorities and intermediate bodies and of representatives of the partners referred to in Article 8(1) through a transparent process."

Article 11 of the European Code of Conduct on Partnership of 2014: Rules of procedure of the monitoring committee

"When formulating the rules of procedure, monitoring committees shall take into account the following elements:

a) the members' voting rights;

b) the notice given of meetings and the transmission of documents, which, as a general rule, shall not be less than 10 working days;

c) the arrangements for publication and accessibility of the preparatory documents submitted to the monitoring committees;

d) the procedure for adoption, publication and accessibility of the minutes;

e) the arrangements for the establishment and activities of working groups under the monitoring committees;

f) the provisions on conflict of interest for partners involved in monitoring, evaluation and calls for proposals;

g) the conditions, principles and arrangements for reimbursement rules, capacity building opportunities and use of technical assistance."

Challenges may be noted here both in actual participation and in the utility and effectiveness of the participation that has occurred.

Participation in the monitoring committees is limited for both equality bodies and CSOs. Out of all Member States, only three bodies in Croatia, Finland and Sweden, which also function as equality bodies, took part in monitoring committees in the previous programming period. More generally, interviewees report that, during the previous programming period, the composition of monitoring committees was not always as wide as it could be. For example, some interviewees note that more CSOs working on gender equality should be included [66]. In relation to the current cycle, there was a lack of both human rights-related non-governmental organisations and non-governmental organisations dealing with women's rights [67].

Interviewees also highlight the challenge of the workload for monitoring committee members. Representatives from both CSOs and independent fundamental rights bodies note the highly technical and time-consuming nature of work on EU funds, with many pages of documents to

work through but a lack of capacity and expertise to do so [68] . The Cypriot NHRI notes that this can affect the quality of the feedback and thus the overall monitoring of the funds [69] . While the technical and time-consuming nature of the work on EU funds is inherent to responsible fund allocation, targeted documents highlighting relevant information, adequate resources, investment in modern digital infrastructure and tools and training can help enhancing the quality of the monitoring process [70] .

CSOs also mention that the information provided to participants in the monitoring committee is too abstract and general for a meaningful fundamental rights analysis [71] . The lack of detailed and fundamental rights-specific information and discussions may partially explain why fundamental rights actors find it difficult to engage with the monitoring committees in an efficient manner [72] and why CSOs do not always answer fund managers' calls to participate in monitoring committees [73] .

When it comes to the quality of participation, fundamental rights actors often feel that they lack real influence and that the meetings have not provided the possibility for genuine discussion on fundamental rights issues. For example, the Croatian NHRI notes in its report, referring to the previous programming period, that the ombudsperson's office was involved in two monitoring committees in an advisory role, but that its effective participation was hampered by a lack of any substantive discussion on fundamental rights issues [74] .

Similarly, CSOs in Latvia feel "as if the Monitoring Committee has been set up due to requirements in the EU framework, but the activity is very formal to show that civil society is included" [75] . The national administration underlines that involvement in the Monitoring Committee is not limited but depends on the interest and capacity of CSOs. It also highlighted that improved communication and collaboration can enhance the quality of discussions and outcomes within Monitoring Committee. [76]

A report from Equinet also highlights the lack of meaningful engagement and discussions, noting that equality bodies perceive their influence on decisions taken in monitoring committees as limited [77] . As one interviewee notes, highlighting a perceived lack of added value in participation in work on EU funds: "Another issue is that the advantages of being involved in this process is not clear for the members. It would take a lot of time to prepare and then recommendations are not listened to […] it can be overwhelming […] it takes away their opportunities to focus on areas where they can reach impact" [78] .

CSO representatives also feel that their comments on fundamental rights issues are often not fully taken into account. One Estonian CSO representative describes the involvement of fundamental rights actors in monitoring committees as a "box-ticking exercise" [79] . In Latvia, some CSOs acknowledge that they are being heard and could influence processes, while others describe an overly formal process in which CSOs feel powerless [80] . While formalities may often be just the result of bureaucratic complexities, it is submitted that further efforts could streamline the process and make it more accessible for CSOs.

## Promising Practice

**Mapping of key issues in the implementation of effective partnerships with civil society: Assessment from Czechia**

To ensure effective and improved implementation of the European code of conduct on partnership, the Committee on the EU of the Government Council for non-governmental organisations in Czechia has mapped out the key issues relating to this and proposed a number of topics to be clarified and discussed for the evaluation phase of the 2021–2027 funding period and the programming and planning phase for the upcoming period.

The committee notes, among other things, that there should be clear criteria and guidelines for the composition of monitoring committees to ensure balanced representation of relevant partners, and that there should be a uniform and transparent nomination process for the monitoring committees of all programmes. Currently, the practices vary between different programmes depending on the managing authorities, and there is no clear process for the identification of relevant civil society representatives. Securing resources for capacity development is also highlighted.

*Source: Committee on the EU of the Government Council (2022), 'Implementation of the European code of conduct on partnership in the Czech Republic', meeting presentation, Prague.*

Another issue reported, especially by CSO representatives, is that either fundamental rights actors lack voting rights or their suggestions are outvoted in monitoring committees by government entity representatives, who form the majority [81]. One civil society respondent from Bulgaria, where government officials form an absolute majority in the committees, states that "NGOs [non-governmental organisations] presently play the role of a government decisions' confirmation mechanism" [82].

There are also complaints that other types of CSOs, such as trade unions or employers' organisations, have more influence than non-governmental organisations (NGOs), as they are consulted more frequently by the government throughout the programming period [83]. An Equinet report [84] also highlights concerns among equality bodies that an economic focus dominates the considerations of the monitoring committees. In addition, CSO representatives in Portugal refer more generally to a concern that there is a focus on the financial execution of the financed projects, rather than the execution of the goals [85].

Overall, there is clearly a need for more involvement of both independent fundamental rights bodies and specialised fundamental rights CSOs and to ensure that they can take part in a meaningful way in the work of the monitoring committees. Such involvement should enable them

to engage in an effective assessment of fundamental rights compliance of the use of funds. In addition, fundamental rights compliance is a legal obligation and not a matter of voting in a committee. Concerns raised by CSOs or others on fundamental rights matters should be treated with the requisite care in the work of the monitoring committees.

## 1.3 Participation in evaluation mechanisms

Another area in which fundamental rights actors can potentially participate is evaluation. According to Article 44 of the CPR 21–27, the Member State or the managing authority must carry out evaluations of the programmes. In addition to effectiveness, evaluations of efficiency, relevance and coherence "may also cover other relevant criteria, such as inclusiveness, non-discrimination and visibility".

In addition to the evaluations required under Article 44 of the CPR 21–27, Article 41 (7) states that annual performance reviews are to be conducted by the Member States and submitted to the Commission for programmes support by the AMIF, BMVI and ISF. In accordance with Article 8 of the CPR 21–27, which focuses on partnership and multilevel governance, the partners listed in the article should be included in the process of evaluating programmes.

### Legal Corner

**Article 44 of the CPR 21–27: Evaluations by the Member State**

"1. The Member State or the managing authority shall carry out evaluations of the programmes related to one or more of the following criteria: effectiveness, efficiency, relevance, coherence and Union added value, with the aim to improve the quality of the design and implementation of programmes. Evaluations may also cover other relevant criteria, such as inclusiveness, non-discrimination and visibility, and may cover more than one programme.

[…]

The Member State or the managing authority shall ensure the necessary procedures are set up to produce and collect the data necessary for evaluations.

[…]"

Article 35 of the AMIF Regulation, Article 30 of the ISF Regulation and Article 29 of the BMVI Regulation all note:

"The annual performance reports shall, in particular, set out information on:

[…]

(f) the fulfilment of the applicable enabling conditions and their application

throughout the programming period, in particular compliance with fundamental rights.

[…]”

The findings of evaluations can help ensure that new operations in the field of fundamental rights are (more) effective and that operations that violate fundamental rights are not continued and can be better avoided through future programming. Evaluations can also identify operations that would have had the potential to promote fundamental rights and can point to ways to harness such potential in future activities. A key challenge in this regard is the lack of appropriately disaggregated data to populate indicators showing the positive impact of fund operations targeting those in situations of vulnerability [86] .

Common output and result indicators for evaluations are identified in annexes to the specific regulations covering each of the funds. These indicators are useful, but appropriately disaggregated data (for instance by racial or ethnic origin, disability or sexual orientation) to populate them across the EU are lacking. This can then result in a lack of evidence on how fundamental rights obligations are fulfilled, as it may not be known whether funds are reaching the intended target audience or whether certain categories of persons tend to be excluded from benefiting from the funds [87] ..

In a recent report, the European Court of Auditors found that there is insufficient information on how many people with disabilities benefit from EU funding, and to what extent they benefit from it. [88] It also found that the horizontal enabling condition does not serve as a tool to ensure better targeting of EU funding. [89] However, the research also highlights some positive initiatives in this regard. For example, in Portugal, the fundamental rights impact is also measured in evaluations [90] .

At the same time, there appears to be room for more emphasis on fundamental rights. For instance, in Croatia, an evaluation for a 2014–2020 programme identifies a need for better measurement of fundamental rights impacts [91] . In Greece, non-discrimination on the grounds of disability and accessibility are included as criteria for the selection of operations to be covered by programmes; however, actual outcomes could not be properly evaluated because there was no appropriate assessment mechanism based on actual results [92] .

Independent fundamental rights bodies can contribute, along with specialised fundamental rights CSOs, to programme evaluations by highlighting the fundamental rights perspective and providing relevant recommendations [93] . This would require these bodies to use the existing indicators – or propose additional indicators – to evaluate fundamental rights aspects of the programmes, in particular compliance with the relevant horizontal and thematic enabling conditions.

More impact-oriented reporting and evaluation can help to determine whether fundamental rights are given sufficient priority in terms of resources and whether fundamental rights-related goals

are identified and achieved, and to examine what improvements may be needed to enhance fundamental rights mechanisms or to see what areas require extra resources. In addition, participants in the FRA workshop for civil society organised in December 2022 highlight that peer learning and networking are crucial among stakeholders involved in monitoring EU funds and their evaluations, focusing on different themes.

### Legal Corner

**Article 16 of the CPR 21–27: Performance framework**

"1. Each Member State shall establish a performance framework to allow monitoring, reporting on and evaluating programme performance during implementation of the programme, and to contribute to measuring the overall performance of the Funds.

The performance framework shall consist of:

(a) output and result indicators linked to specific objectives set out in the Fund-specific Regulations selected for the programme;

(b) milestones to be achieved by the end of the year 2024 for output indicators; and

(c) targets to be achieved by the end of the year 2029 for output and result indicators"

**Article 22 of the CPR 21–27: Content of programmes**

"Each programme shall set out:

(d) for each specific objective:

(ii) output indicators and result indicators with the corresponding milestones and targets"

**Article 69 of the CPR 21–27: Responsibilities of Member States**

"4. Member States shall ensure the quality, accuracy and reliability of the monitoring system and of data on indicators."

## 1.4 Cooperation and coordination

Another finding of the research at national level is that there is sometimes a lack of communication and coordination in the context of EU funds and fundamental rights. As the Polish

NHRI report points out, all "[i]nstitutions involved in EU funds implementation should be aware and actively engaging in securing the respect of the Charter within their actions at all stages […]. This means that [the] general scheme of EU funds implementation should be translated into concrete mechanisms and checks starting from design of financing programmes to the stage of clearance of individual contracts and projects" [94]. This is possible only by ensuring cooperation and coordination between all relevant actors.

### FRA activity: Supporting NHRIs in monitoring fundamental rights and the fundamental rights aspects of the rule of law

FRA, together with NHRIs in seven EU Member States and the European Network of National Human Rights Institutions (ENNHRI), is implementing a regional project to support NHRIs in monitoring fundamental rights and the fundamental rights aspects of the rule of law. This project, funded through the European Economic Area (EEA) and Norway Grants, aims to strengthen the role of NHRIs in the application of the Charter at national level by supporting NHRIs in Bulgaria, Croatia, Cyprus, Latvia, Poland, Slovakia and Slovenia.

Based on desk research and expert interviews, the NHRIs drafted analytical papers on their potential role in implementing fundamental rights conditions in their countries. In addition, the NHRIs developed guidance on how to apply the new obligatory Charter condition for relevant national-level actors. On the basis of this guidance, national training programmes are being developed and delivered to key stakeholders. Further details can be found on the web page of the project.

Participants in the roundtable in France highlight the need to facilitate discussions between project operators and managing authorities [95]. In Finland, the roundtable participants and interviewees likewise highlight the need for more discussions between all those involved in the programming period, including independent fundamental rights bodies [96].

Research participants note a lack of continuous communication between managing authorities and civil society and independent fundamental rights bodies, and a lack of a participatory approach [97]. This may be partly because the relevant authorities are not aware of the partnership principle, as established by the CPR 21–27. As became evident in the national context, awareness of the provisions of the CPR 21–27 is sometimes limited among relevant actors, including the managing authority [98].

## 1.5 Participation of independent fundamental rights bodies

In 2022, the European Network of National Human Rights Institutions (ENNHRI) issued a statement regarding participation in the programming period. It highlighted that NHRIs should

participate only in an advisory capacity and that "in line with their independence, it is inappropriate for NHRIs to take up a decision-making or voting position in the context of the CPR, or to issue 'fundamental compliance certificates' to state authorities in advance of the EU funded projects being implemented" [99]. The ENNHRI position refers to the UN Paris Principles, that is, the set of rules that govern the functioning of NHRIs [100]. Similar considerations also apply to ombudspersons, who must not "engage in political, administrative or professional activities incompatible with his or her independence or impartiality" [101], and to equality bodies, which are also expected to be independent [102].

Any involvement does not necessarily compromise the independence of independent fundamental rights bodies, but a structural engagement with public authorities in the programming period might compromise the perception of the institution's independence. The impact of this type of engagement on institutions' independence requires a case-by-case assessment that takes the overall mandate and role of the institution in question into account.

In FRA's research, many independent fundamental rights bodies themselves raise concerns regarding independence and highlight the need to avoid involvement in decision-making [103]. In some Member States, such as Cyprus, Croatia, Finland and Poland, the independent fundamental rights bodies participate in monitoring committees as observers with a consultative role only (i.e. providing advice without formally participating in any decision-making). The Estonian NHRI declined an invitation to become a member of a monitoring committee, seeing it as not in line with its independent role [104].

However, in other Member States, such as Greece, independent fundamental rights bodies, more specifically the Greek National Commission for Human Rights (GNCHR) and the ombudsman, became voting members of the AMIF monitoring committee for the 2014–2020 programming period later in the process [105]. For the current programming period, Greece has signed a partnership memorandum with the GNCHR stating that the body will provide advice throughout the programming period and participate in the monitoring committees [106]. The monitoring committee for the Migration and Home Affairs fund includes CSOs, international organisations, the ombudsman, the National Confederation of Disabled People and the Fundamental Rights Officer in the Ministry of Migration and Asylum. [107]

During the previous programming period, the Federal Anti-Discrimination Agency in Germany (FADA) was regularly consulted on anti-discrimination issues but did not have a formal seat in any monitoring committee, and recommendations issued by FADA were not always taken into account. In the new programming period, the role of FADA has been strengthened. FADA has secured an official seat in the ESF+ monitoring committee, with not only voting rights but also a veto right. The managing authority has to consider any recommendations by FADA [108].

Overall, it is for independent fundamental rights bodies themselves to decide what role is appropriate for them to play. Various considerations can come into play here, including the nature of the work of these bodies (i.e. in an advisory role rather than as part of the executive branch of government), what voting for or against certain positions in monitoring committees might mean for their later ability to deal independently with complaints against those decisions, and potential

clashes between being seen as politically neutral and statements on spending priorities. Not every EU Member Stater currently has an NHRI, or one that fully complies with the Paris Principles and the respective mandates of such bodies often differ significantly [109] . FRA has repeatedly taken the position that all Member States “should have independent, effective and impactful NHRIs that comply with the Paris Principles to deliver and promote human and fundamental rights more effective” [110] . Overall, it appears possible, however, for independent fundamental rights bodies to participate in each part of the monitoring cycle if they maintain an appropriate level of restraint and base their actions on the principles of international human rights law. It would be useful if governments were to extend an invitation to all independent fundamental rights bodies to participate in the monitoring committees. In line with their independence, these bodies could then decide whether to participate or not based on their own analysis and institutional practice. However, they will need sufficient capacity to act as discussed in the following section.

## 2. Capacity

Fundamental rights actors often do not have the financial capacity or technical expertise to get involved and efficiently monitor the programming period. Officials involved in the fund administration (i.e. the managing authorities and intermediate bodies) and the recipients (those receiving the funds to actually carry out operations) often lack fundamental rights expertise.

The representatives of independent fundamental rights bodies, CSOs and managing authorities consulted for this report emphasise the need for all the stakeholders involved in programming, implementation, monitoring and evaluation of funds governed by the CPR to undergo continuous training on fundamental rights but also, where needed, on the technicalities of EU funding [111]. This would enhance capacity and be in line with the European Commission's strategy to strengthen the application of the Charter [112].

Given that a lack of expertise in the area has emerged as a challenge, one would expect high levels of cooperation and coordination among all relevant actors, including between Member States. However, there seems not to have been much transnational exchange so far. There is not much evidence that Member States have cooperated with one another in developing training materials or guidance on fundamental rights issues or indeed on the functioning of mechanisms to uphold fundamental rights.

In Finland, interviewees representing both independent fundamental rights bodies and managing authorities express the need for more information directly from the Commission on enabling conditions-related expectations in fundamental rights. They also suggest that explicit common fundamental rights guidance and/or training be issued for each of the programmes [113].

At the same time, however, it is crucial that such guidance is adapted to the national context to ensure its relevance to the user.

### The European Commission's Charter strategy and funds governed by the CPR

In 2020, the Commission adopted a strategy to strengthen the application of the Charter, known as the Charter strategy. To ensure that the Charter becomes a reality for all, the strategy sets out the direction of the Charter's implementation for the next 10 years.

In the area of the funds governed by the CPR, the Charter strategy recommends that monitoring committees could include NHRIs, as "with their independent status and expertise in monitoring and advising authorities, NHRIs could play a role in ensuring that EU funded programmes are designed and implemented in compliance with the Charter".

In the Charter strategy, the Commission presents a series of actions it is going to carry out in order to promote respect for the Charter in the area of funds governed by the CPR. These include:

- developing a training module and providing technical assistance to ensure effective implementation of the CPR 21–27 "enabling condition" on the Charter;
- assessing the fulfilment of the "enabling condition" on the Charter;
- ensuring that funds governed by the CPR 21–27 are used in compliance with the Charter and take appropriate measures, such as interruption or suspension of funding, when irregular expenditure has not been corrected.
- Moreover, the Commission invited Member States to:
- ensure that funds governed by the CPR 21–27 are used in compliance with the Charter and establish the arrangements provided in the CPR 21–27;
- support national and local staff in designing and implementing programmes that comply with the Charter, in cooperation with the Commission;
- facilitate coordination and a coherent implementation of the "Charter enabling condition" and make the best use of available technical assistance;
- include fundamental rights bodies in the monitoring committees.

*Source: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Strategy to strengthen the application of the Charter of Fundamental Rights in the EU, COM(2020) 711 final.*

This section will discuss the capacity issues faced by some of the key actors in the programming period (Sections 2.1–2.4) and will then discuss potential solutions to these issues (Sections 2.5–2.7).

## 2.1 Capacity and resources of civil society to monitor

CSOs at both national [114] and EU level [115] raise capacity and resource concerns in relation to being able to engage in monitoring fundamental rights in the EU programming period. Some express doubt that they have the requisite expertise to deal with major budgetary decisions or strategic issues [116]. There is also sometimes a hesitancy to comment on strategic issues rather than concrete operations because the former are too abstract to comment on in a meaningful way. Others highlight a broader difficulty derived from their lack of expertise, noting a shortage or absence of trained professionals among their teams to deal with EU funds and fundamental rights [117]. For example, one civil society representative summarised, "I have had the same issue

as the rest of the civil society, we have not had enough capacity to participate properly in discussions. Hundreds and thousands of pages to work through and only me doing that" [118] .

The research identifies proposals to deal with CSOs' lack of capacity to participate in monitoring committees. For example, an Estonian CSO suggests more remuneration or a reimbursement of costs for participating in meetings and giving feedback to documents [119] . In March 2023, the CSOs Platform for International Cooperation on Undocumented Migrants (PICUM) and European Council on Refugees and Exiles (ECRE) issued a policy note that refers to the European Commission's Citizens, Equality, Rights and Values (CERV) programme, Horizon Europe and the Erasmus+ programme, which could be used to strengthen the role of CSOs in monitoring fundamental rights compliance in funds governed by the CPR [120] . Training on the Charter for CSOs, NHRIs, equality bodies, ombudsperson institutions, other rights defenders and Member State authorities, including train-the-trainer activities, are foreseen in the Commission Implementing Decision on CERV [121] .

Participants in the FRA workshop for CSOs on EU funds noted that managing authorities should provide technical assistance to CSOs and that CSOs should participate in training programmes set up for them. Indeed, the regulations on EU funds require resources in EU-funded programmes to be allocated to capacity building, including of CSOs, for training or networking.

## Legal Corner

The CPR 21–27 states that part of the funds can, when relevant, be used to support capacity building of the partners referred to in Article 8, including both CSOs and independent fundamental rights bodies.

**Article 36 of the CPR 21–27: Technical assistance provided by Member States**

"1. At the initiative of a Member State, the Funds may support actions, which may concern previous and subsequent programming periods, necessary for the effective administration and use of those Funds, including for the capacity building of the partners referred to in Article 8(1), as well as to provide financing for carrying out, inter alia, functions such as preparation, training, management, monitoring, evaluation, visibility and communication."

**Article 37 of the CPR 21–27: Financing not linked to costs for technical assistance provided by Member States**

"In addition to Article 36, the Member State may propose to undertake additional technical assistance actions to reinforce the capacity and efficiency of public authorities and bodies, beneficiaries and relevant partners necessary for the effective administration and use of the Funds."

**Partnership and ESF+**

The ESF+ Regulation provides more specific provisions than the CPR 21–27 on

supporting the capacity building of partners, namely their capacity to participate in the programming period.

## 2.2 Capacity and resources of independent fundamental rights bodies to monitor

As discussed previously, only the NHRIs of Croatia and Cyprus, which are also equality bodies, and the equality body of Sweden, were involved in monitoring funds governed by the CPR under the previous EU programming period (2014–2020) [122]. Independent fundamental rights bodies and other experts interviewed by FRA note that one of the reasons for their lack of involvement in the issuing of EU funds is that they lack the time, staff, expertise on EU funds and funding required for this additional area of activity [123].

The Latvian NHRI also points to the significant volume of documents to be processed that use complex language, and the lack of human resources to participate in work on funds or in subcommittees of the monitoring committee [124]. In France, similarly, although the independent fundamental rights bodies have the expertise required on the Charter and on the CRPD, they also need to have significant technical expertise on the running of EU funds to be able to interact usefully with the other actors in the process [125]. Even when there is participation, a lack of resources is an issue. Reflecting on the participation of the Croatian ombudsperson in two monitoring committees, the Croatian NHRI report points out that "it has been challenging because the institution does not have sufficient knowledge of the implementation of EU-funded programmes and cannot devote a staff member solely to focus on this issue" [126].

The CSOs interviewed point out some possible reasons for the lack of funding for independent fundamental rights bodies to monitor EU funds. These include Member States not being interested in increasing the capacity of national human rights bodies and NGOs to monitor EU funds, given the sensitivity of the topic in some Member States [127]. Some equality bodies in large EU countries lack both financial resources and sufficiently skilled human resources, partially as a result of political decisions; therefore, they cannot have as significant an impact as they should [128].

This situation is not in line with international standards. The Paris Principles require NHRIs to have adequate funding to have their own staff and premises so that they can be independent from their government and not be subject to financial control [129]. The Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation has emphasised that "[w]here an NHRI has been mandated with additional responsibilities by the State, it must be provided with additional financial resources to enable it to assume the responsibilities of discharging these functions" [130]. This is also highlighted in a recommendation issued by the Council of Europe Committee of Ministers in 2021 [131]. A cross-regional assessment of the implementation of that recommendation by ENNHRI showed that some of the main challenges relate to the lack of

adequate resources to carry out the full breadth of NHRI mandates and the lack of additional resources for additional mandates [132]. Furthermore, ENNHRI reiterated this in a 2021 report on human rights scrutiny of public funds for migration and asylum [133] and in its common statement on the CPR 21–27 in May 2022 [134].

Similarly, the need for additional resources for additional mandates applies to ombudsperson institutions. This is noted in the Council of Europe's Venice Principles which set out that "[s]ufficient and independent budgetary resources shall be secured to the Ombudsman institution" [135] and that "The Ombudsman Institution shall have sufficient staff".

In relation to equality bodies, the European Commission has criticised the fact that in "some Member States existing equality bodies have seen their mandate extended to the most diverse fields without an appropriate increase in resources" [136]. Equinet's position paper on strengthening equality bodies and the proposal for an EU directive on standards for equality bodies also highlight the need for adequate funding to support equality bodies' functioning and independence [137].

Finally, regarding the CRPD monitoring bodies set out in Article 33 (2) of the CRPD, FRA has repeatedly highlighted overall capacity issues of the national monitoring bodies [138]. In the context of this research, a representative of the German CRPD monitoring body confirmed that the body lacked sufficient staff to deal with EU funds issues [139].

## Legal Corner

**UN: *Principles relating to the status of national institutions (the Paris Principles)*, Composition and guarantees of independence and pluralism**

*"2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding."*

**Council of Europe: *Principles on the protection and promotion of the ombudsman institution ('the Venice Principles')***

*"21. Sufficient and independent budgetary resources shall be secured to the Ombudsman institution. The law shall provide that the budgetary allocation of funds to the Ombudsman institution must be adequate to the need to ensure full, independent and effective discharge of its responsibilities and functions. The Ombudsman shall be consulted and shall be asked to present a draft budget for the coming financial year. The adopted budget for the institution shall not be reduced during the financial year, unless the reduction generally applies to other State institutions. The independent financial audit of the Ombudsman's budget shall take into account only the legality of financial proceedings and not the choice of priorities in the execution of the mandate."*

In addition, Recommendation CM/Rec(2021)1 of the Committee of Ministers to

member States on the development and strengthening of effective, pluralist and independent national human rights institutions, in point 6, calls on the states to "provide NHRIs with adequate, sufficient and sustainable resources to allow them to carry out their mandate, including to engage with all relevant stakeholders in a fully independent manner and freely determine their priorities and activities".

**European Union: Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies**

*"1.2.2. Resources*

*(1) The Member States should ensure that each equality body is provided with the human, technical and financial resources, premises and infrastructure necessary to perform its tasks and exercise its powers effectively. The resources allocated to equality bodies should take into account the competences and tasks allocated. Resources can only be considered adequate if they allow equality bodies to carry out each of their equality functions effectively, within reasonable time and within the deadlines established by national law.*

*(2) Member States should ensure that the equality bodies' staff is sufficiently numerous and adequately qualified in terms of skills, knowledge and experience, to fulfil adequately and effectively each of the equality bodies' functions.*

*(3) Member States should enable equality bodies to monitor effectively the execution of their own decisions as well as decisions by institutions, adjudicatory bodies and courts in relation to discrimination cases. To that effect, they should be promptly informed of such decisions and the measures taken to implement them."*

**Proposal for a Council directive on standards for equality bodies in the field of equal treatment, Article 4 (Resources)**

*"1. Member States shall ensure that each equality body is provided with the human, technical and financial resources necessary to perform all its tasks and to exercise all its competences effectively […] including in the event of increases in competences, increases in complaints, litigation costs and the use of automated systems."*

Article 4 of the AMIF Regulation invites to engage in the partnerships set out in Article 8 of the CPR 21–27 for the AMIF at national level. A 2021 study financed by ENNHRI pointed out that NHRIs cannot simply "expand on new areas of work" because they have "limited staff and not enough financial resources" [140] .

Interviewees participating in the research for this report highlighted that NHRIs need more human resources to participate in making sure that fundamental rights are respected during the

programming period. The German NHRI suggests, for example, that a new position should be created to deal with this matter only [141]. The Cypriot NHRI also points out that "[t]he involvement in the monitoring of EU funds' compliance to EU Charter comes to be added to the other tasks the Office of the Commissioner has in ensuring the safeguarding of human rights in Cyprus, combating discrimination, and ensuring equality, and helping individuals who suffer infringements on their fundamental rights find redress. The additional role it plays when it comes to EU funds […] only adds to an already heavy workload. Successfully carrying out its tasks, requires reinforcement of the Office of the Commissioner with additional human resources, especially of staff at senior level" [142]. The National Liaison Officer of Cyprus noted that although seven staff members have been recently added, there is still need for recruitment of staff at senior level. In addition, some NHRIs, such as the French NHRI, have an employment ceiling, precluding the hiring of additional staff for tasks related to the EU programming period [143].

The Slovak NHRI summarises the position taken by many independent fundamental rights bodies on their capacity to be involved in EU funds in its report: "[t]he potential role of the [Slovak Human Rights] Centre in the implementation of the EU Funds is defined by the current legal mandate and available budget of the Centre. In the case of any cooperation beyond the legal mandate, which could imply an extension of the competence and tasks already given to the Centre, it is important that these tasks are covered by legislation, adequate human resources and especially by sufficient funding. Consequently, if the scope of the mandate of the Centre is extended, increasing the human resources and budget (compared to the current situation) are necessary prerequisites" [144].

## 2.3 Fundamental rights awareness and expertise of officials in administration

Member States are responsible for ensuring that the legal obligations under the CPR 21–27 are fulfilled and therefore must ensure that relevant staff are sufficiently knowledgeable of fundamental rights. Sufficient knowledge of fundamental rights is necessary to ensure that officials do not approve operations that are not in line with the Charter and/or the CRPD.

In the previous programming period, there appeared to be a lack of overall awareness on the part of managing authorities of how to take fundamental rights into account [145]. One managing authority official from Bulgaria mentions that they find it challenging to recognise whether a complaint submitted has fundamental rights implications, as they lack the requisite expertise in this area [146]. Civil servants might be well aware of the text of the CRPD and of the Charter but find these instruments "abstract" and would not know how to recognise rights violations in real-life situations [147]. Fundamental rights-related horizontal principles are often not scrutinised in any level of detail by the relevant managing authorities, and the observance of these clauses in some cases is dependent solely on the dutifulness of the beneficiaries [148].

The Croatian NHRI points to the need to ensure training on the Charter "for all those working with EU funds, as the visibility of the Charter at the national level is rather low" [149]. The Cypriot NHRI

notes in its report that, “there is a need for further guidance and greater support to the authorities involved via building their capacity further, in order to ensure the effective monitoring of the EU funds and the procedures and safeguards discussed” [150] . It is also noted that there is a lack of expertise on the Charter at local level [151] even though local and regional authorities are both a key target for EU funds and are also often highly involved in managing funds.

## 2.4 Capacity of project implementers

Project implementers are those beneficiaries who receive funds to carry out operations accepted under the fund programmes. These beneficiaries play a central role in ensuring that the fundamental rights requirements under the CPR 21–27 are duly fulfilled. A lack of understanding of the Charter and of the CRPD can lead to unintentional disregard of and non-compliance with these instruments. In some cases, there appears to be a low level of awareness of how to implement fundamental rights on the part of the beneficiaries [152] .

Interviewees from Greece, for example, report that there is a lack of specific guidelines on operationalising fundamental rights provisions, both during the previous and the current programming period [153] . For example, guidance is available in some areas, such as disability, but not in others, such as gender (in the previous programming period).

In addition, interviewees note that there could be greater clarity on what constitutes a fundamental rights violation in the context of the funds [154] . CSOs and national fund representatives from Finland note that “[t]here is a pressing need […] to get more knowledge and easily understood information on EU Charter rights, and on how to assess compliance with fundamental rights in concrete projects” [155] .

Moreover, it is noted that the reference to fundamental rights in the calls for applications is sometimes not concrete and specific enough in order that its implications are understood by applicants for funding [156] .

Some research participants suggest that parts of the funds themselves should be dedicated to providing support to the monitoring of fundamental rights-related operations [157] . The Commission also suggested this in its 2020 Charter strategy, urging Member States to “[f]acilitate coordination and a coherent implementation of the ‘enabling condition’ and make the best use of available technical assistance”.

## 2.5 Importance of training

As is clear from the above, there is a need for training of the key actors in the EU programming period. It is the responsibility of Member States to ensure that officials are competent in ensuring compliance with fundamental rights. This is planned as part of the new requirements for Member

States to set up Charter arrangements for the 2021–2027 programming period (see Sections 1.2 and 1.4).

Participants in the research generally feel that training of all relevant actors on the Charter and the CRPD is key to ensuring compliance with the horizontal enabling conditions [158]. For example, a representative of a German independent fundamental rights body notes that it would be more sensible for NHRIs to build the capacity of the administration, for example through training, than to get involved in the examination of individual operation proposals [159].

Several practical examples of training are mentioned by interviewees. In the previous programming period, the Croatian ombudsperson's office conducted training for EU fund officials on combating discrimination, as did the ombudsperson for persons with disabilities [160] and the ombudsperson for gender equality [161]. EU-level training may be useful. Nevertheless, the Croatian ombudsperson also points to the need for more training of fundamental rights bodies involved in the operation of funds governed by the CPR adapted to the national context and beyond single-day training events [162]. More training for officials is being planned in Croatia, including for those who are supposed to decide on the approval of operations [163].

In Slovakia, the department within the Ministry of Labour, Social Affairs and Family that implements the new Charter arrangements for the current funding period, the so-called 'Gestor of Horizontal Principles' (see section 2.7), will take over the training of government officials involved in the management, coordination, implementation, evaluation, monitoring and audit of the horizontal principles [164].

Participants in the research made several suggestions on how to improve fundamental rights training in EU funds.

First, the capacity of independent fundamental rights bodies to deal with EU funds issues needs to be increased. Although some independent bodies note that they have sufficient expertise, especially if they have had past involvement in running EU operations, others note a need to gain more knowledge. They suggest that the networks of independent fundamental rights bodies (ENNHRI and Equinet) should be involved in capacity building in this regard [165].

Second, strengthening the training and awareness-raising work of independent fundamental rights bodies at local and regional levels would be key. This should focus on awareness-raising on key issues and on the ability of local and regional officials involved in decision-making on EU funds to recognise potential fundamental rights problems in operations that are submitted to them [166].

Overall, given the limited resources of NHRIs, a 'training of trainers' approach by national human rights bodies seems most appropriate. For instance, it has been suggested that training packages be provided to different stakeholders [167]. Training efforts need to involve tested approaches of fundamental rights teaching and training, including being part of an overall capacity-building strategy, having mechanisms for evaluation and impact assessment, training content relevant to the audience and the use of participatory techniques [168]. All training material, both for officials and for beneficiaries, should be practical and accessible, including for persons with disabilities.

## FRA framework for reinforcing rights locally

It is at local level that human and fundamental rights become a reality in people's lives. The FRA framework for reinforcing rights locally, published in 2021, and the associated practical guidance aim to showcase what being a human rights city means and to encourage more cities to integrate human rights into their work. The framework also aims to facilitate links between human rights cities and EU instruments. This is done by promoting the importance of linking city work to the Charter and by fostering the use of EU funds, such as the EU CERV programme, to facilitate cross-national practice exchange or pilots of new human rights initiatives and tools in cities [169] .

The European Commission develops and provides training and guidance on the implementation of the Charter for European institutions staff and for national and local administrations. In addition, it provides dedicated guidance on applying the Charter in the funding context.

 European Commission and FRA general training tools on the Charter  <ul> <li class="ListBullet">  <a href="https://european-training-platform.e-justice.europa.eu/about-platform">European Training Platform</a><br>The European Training Platform (ETP) is a search tool for legal practitioners and justice professionals who want to train themselves on any practice area of EU law or related matters. On the ETP, justice professionals can find training courses and self-learning materials on a great variety of EU law-related topics. The training providers inform potential trainees about the training activities they organise everywhere in the EU and in different languages.<br>The European Commission contributes to the platform with ready-to-use training materials and handbooks produced notably thanks to EU financial support. The training takes place on the platform, and the European Commission endorses these courses. </li> <li class="ListBullet"> <a href="https://e-justice.europa.eu/459/EN/fundamental_rights_interactive_tool">European e-Justice Portal: Fundamental rights interactive tool</a><br> The fundamental rights interactive tool can be used by individuals to find the appropriate organisation to help with a fundamental rights-related problem. </li> <li class="ListBullet"> <a href="https://e-justice.europa.eu/37134/EN/member_states_best_practices_on_the_charter"> European e-Justice Portal: Member States' best practices on the Charter</a><br>This describes Member States' initiatives to promote the use and awareness of the Charter in their countries. </li> <li class="ListBullet"> <a href="https://fra.europa.eu/en/eu-charter">Charterpedia</a> <br>FRA's online tool provides easy-to-access information about the Charter and its provisions. For each Charter article, it includes official explanations of the articles, related European and national case law, and related provisions in national constitutional law and international law. It also contains references to academic analysis and related FRA publications.  </li> <li class="ListBullet"> <a href="https://fra.europa.eu/en/products/search?pub_type[]=1286&field_fra_publication_publisher_target_id[]=81&langcode[]=en&year=&yea FRA handbooks</a><br>FRA has developed practical handbooks on the Charter and secondary EU law (which in many cases specifies different rights and obligations arising from the Charter) in a range of different fundamental rights areas, which guide practitioners on implementation. These handbooks are available on FRA's website, where one can search according to the rights work area of interest. </li> </ul>

## 2.6 Tools and guidance for managing authorities and beneficiaries

As noted above, guidance is most useful at national level, as materials can consider the national and local context and be adapted to national or local needs and interests. For example, an official working for a fund dealing with the justice sector may need materials on the right to a fair trial. However, an official working on social policy may need information on disability rights and the CRPD. As a further example, an official working on funds related to migration may need practical guidance on the EU acquis in that area. At the same time, more specific guidance provided at EU level can also be useful, especially regarding questions related to the interpretation of EU law such as the European Commission guidance on the ESIF.

### European Commission guidance on the ESIF

In 2016, the European Commission issued guidance on ensuring respect for the Charter when implementing the ESIF. It explains the importance of ensuring respect for the Charter in the context of funding governed by the CPR 14–20. It also includes a fundamental rights checklist to help Member States check operations against the Charter. It explains the content, legal status and applicability of the Charter, enforcement in the context of the programmes provided by those funds and their implementation, and the possible consequences of non-compliance with the Charter. It also contains recommendations on how to check for Charter compliance and provides examples of implementation of EU law in the context of these Funds.

*Source: Commission notice* – Guidance on ensuring the respect for the Charter of Fundamental Rights of the European Union when implementing the European Structural and Investment Funds ('ESI Funds') *(OJ C 269, 23.7.2016, p. 1).*

The Commission has also issued guidance on more specific issues in the context of funds governed by the CPR, including on tackling segregation issues and infrastructure mapping [170]. However, these guidance notes were of an internal nature and primarily addressed the Commission's own services.

The European Institute for Gender Equality (EIGE) has provided a useful online toolkit available in all EU languages on gender budgeting in EU funds. It includes 11 practical tools related to the EU regulatory framework and information on national/subnational programming and project-level support and on reporting, monitoring and evaluation. Each tool highlights good national practices and includes links to relevant EU fund-specific regulations [171].

The European Expert Group on the Transition from Institutional to Community-based Care, which focuses on deinstitutionalisation, has also developed a model checklist for EU officials. It is aimed at European Commission desk officers who check if the operations requesting support from funds governed by the CPR 21–27 comply with the Charter and the CRPD. It covers a range of issues, such as the transition from institutional to family-based and community-based services; the development of quality family-based and community-based services; the prevention of separation of children, including with disabilities, from their families; and the prevention of segregation and institutionalisation of children, persons with disabilities, persons with mental health problems, older people and homeless people, regardless of the residence status [172]. Considering its scope and level of specificity, it can also be useful to inform guidance for staff working on disability-related issues for managing authorities or intermediate bodies.

At national level, a range of proposals have been identified for tools to support an *ex ante* fundamental rights assessment. For example, in Finland, representatives of the managing authorities have suggested that a checklist be distributed to the actors operating at each stage of the programming period that is developed in cooperation with national fundamental rights bodies, taking into account the guidance provided at EU level.

Fundamental rights guidance is particularly important when formulating the calls to apply for EU funding. A research participant in Portugal stresses the importance of this for the entire programming period: "I think that if the calls were more specific [about human rights issues], the monitoring and evaluation of the project would also be done differently" [173]. Setting up fundamental rights-compliant selection processes for operations is an important preventive measure through which independent fundamental rights bodies and CSOs could provide guidance. For example, organisations of persons with disabilities can ensure that accessibility requirements are upheld and representatives of gender equality bodies could formulate gender-specific selection criteria for funding applications.

The research also identified other elements that could improve efficiency and transparency. For example, respondents in Portugal note the need to improve digital platforms for the national funds to obtain information more easily and improve cooperation [174]. The Croatian NHRI also points to the need for more tools, suggesting that "to support both evaluators and beneficiaries, manuals on how to integrate the Charter/CRPD into project proposals and how this would be evaluated would be beneficial" [175].

## 2.7 Contact points for issues related to the Charter and the CRPD

For the 2021–2027 programming period, each managing authority must appoint a contact person for cooperation with the focal point for the implementation of the CRPD and the Charter horizontal enabling condition. The European Commission considers that creating a 'fundamental rights officer' or a similar position at national level in relevant national authorities would be a useful step in improving compliance with fundamental rights [176]. In Finland, sharing experiences and knowledge on assessing fundamental rights in concrete cases between Member State authorities

involved in EU funding is also considered valuable [177]. National focal points could also be established to which questions and complaints on funds governed by the CPR could be directed, as was done in the case of Slovakia as part of its Charter arrangement. In Slovakia, a department under the Ministry of Labour, Social Affairs and Family, known as the 'Gestor of the Horizontal Principles', took on this role when established in 2014 [178].

In addition to experts within the government itself, independent fundamental rights bodies could also be called upon for advice. It would be useful to ensure that procedures invite officials to consult these experts when taking decisions on funding, and that they are encouraged to do so when in doubt about whether to grant funding to a particular operation. Currently, this does not always take place because officials in the state administration are not accustomed to discussing such matters with independent fundamental rights bodies [179].

# 3. Complaints and monitoring

The CPR 21–27 provides that a complaints mechanism should be in place that is capable of an "effective examination" of complaints. The type of complaint most relevant to fundamental rights and EU funds would be one in which a third party (e.g. an NGO or someone affected by a funded operation) would seek to complain about an operation being a violation of fundamental rights and to end (the funding of) that operation (or set of operations).

This section will discuss the various remedies available to such individuals or organisations. It will then explain the research findings on complaints mechanisms at national level to see what improvements might be needed in the current cycle and in the future. It will not cover situations in which a beneficiary seeks to appeal against a decision not to fund an operation.

### Legal Corner

**Article 69 of the CPR 21–27: Responsibilities of Member States**

Article 69 (7) of the CPR 21–27 reads:

*"Member States shall make arrangements to ensure the effective examination of complaints concerning the Funds. The scope, rules and procedures concerning those arrangements shall be the responsibility of Member States in accordance with their institutional and legal framework. This is without prejudice to the general possibility to address complaints to the Commission by citizens and stakeholders. Member States shall, upon request by the Commission, examine complaints submitted to the Commission falling within the scope of their programmes and shall inform the Commission of the results of these examinations. For the purposes of this Article, complaints cover any dispute between potential and selected beneficiaries with regard to the proposed or selected operation and any disputes with third parties on the implementation of the programme or operations thereunder, irrespective of the qualification of means of legal redress established under national law."*

## 3.1 Judicial remedies

Article 47 of the Charter provides that "[e]veryone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal". This can be

the EU's own court, the Court of Justice of the European Union (CJEU) or the national courts.

FRA is not aware of cases successfully filed in national court seeking to block or cease funding for operations approved by national managing authorities. Filing a case before the CJEU to complain against funding-specific operations is not a promising avenue either, given that acts granting funding to operations will typically be acts of Member States, which cannot be reviewed by an action for annulment by the CJEU (Article 263 of the Treaty on the Functioning of the European Union). Instead, the CJEU can deal with requests to annul an act adopted by a European Union institution, body, office or organisation.

Moreover, the legal standing of individuals before the CJEU is limited. This was exemplified in a case in which NGOs dealing the rights of persons with disabilities requested the European Commission to suspend a call for proposals for the award of grants under the procedure 'Support for the deinstitutionalisation of social services for elderly people and people with disabilities and all related payments'. In its letter, the Commission replied negatively to the appellants' request to act. The NGO brought an action for a failure to act (under Article 265 of the Treaty on the Functioning of the European Union) before the General Court. The General Court dismissed the NGO's action due to the lack of standing of the applicants to bring the case, essentially because they were not the beneficiaries of the funds in question (this was Bulgaria, the Court held), nor were they liable for the sums which would have to be recovered in the event of a decision by the Commission to suspend the payments. The applicants were thus not directly affected by the decision concerning the financial assistance granted by the European Social Fund and could not bring the case, as this requires the party bringing the case to be directly and individually affected by the contested measure [180]. This order by the General Court was confirmed in April 2021 by the CJEU [181].

It is possible for the Commission to file infringement procedures against Member States, including for violations of the Charter. An investigation by the Commission could be triggered if multiple complaints are submitted to the Commission regarding a systemic issue in a Member State in relation to the funds governed by the CPR [182]. However, it is up to the Commission, within the margin of its discretion as Guardian of the Treaties, whether it initiates such procedures. A recent study on infringement proceedings and conditionality in EU funding instruments in the context of external border management concluded that there appears to be no systematic use of the infringement procedure in the field of fundamental rights violations by Member States [183]. The report notes that, although the Commission has an obligation to suspend or withdraw funding when a Member State is not complying with fundamental rights, "numerous reports of fundamental rights violations … did not lead to the suspension or withdrawal of funds" [184].

In principle, two broad avenues remain open at EU level: a complaint to the Commission and the use of non-judicial remedies, discussed in the following sections.

## 3.2 Complaints to the Commission

Submitting a complaint to the Commission is always possible, regardless of whether a national complaint has been filed (Article 69 (7) of the CPR 21–27). This can be done through a form available on the Commission's website [185]. For example, the European Network on Independent Living has previously filed complaints concerning the use of funds from the European Agricultural Fund for Rural Development through this channel regarding the funding of institutions for persons with disabilities [186].

Interviewees also note the option of complaining to the Commission in its capacity as observer in the monitoring committee of a programme. This is done more frequently, and, for the Commission, complaints submitted at EU level can be helpful to spot problematic issues and start a dialogue with the managing authorities.

Two problems arise here, however. First, the Commission, after it receives a complaint, usually checks the validity of complaints directly with the national authorities only. This significantly reduces the information available to the Commission to examine the validity of the complaint. There could be a role for independent fundamental rights bodies here, which would be able to investigate the situation on the ground and inform the Commission of any violations in projects funded by the EU. A broader reporting system could be established so that the European Commission is informed on a more systematic basis of how fundamental rights were considered in the funding process [187].

Perhaps a more important problem, however, is that appeals to the CJEU are not possible when the Commission rejects the complaint raised by the relevant individual or organisation, as explained previously. This is most visible in the case of the issue of independent living, with the UN body overseeing the CRPD, the Committee on the Rights of Persons with Disabilities, having explicitly called for an end to all funding of institutions for persons with disabilities [188]. The UN Special Rapporteur on the Rights of Persons with Disabilities has described the difference of views between the EU and the CRPD experts in some detail [189]. This means that, although it may be possible to convince the Commission to suspend funding, there is no viable route for CSOs or other fundamental rights actors to legally require it to do so.

## 3.3 Non-judicial remedies at EU and international level

Another route is to file a complaint with the European Ombudsman. While such complaints can only concern an EU institution (in the context of EU funds and the Commission), the European Ombudsman can engage national or regional ombudsperson institutions from the European Network of Ombudsmen, a network of 95 national and regional ombudsperson institutions and similar bodies in 36 European countries [190], and invite them to launch inquiries in parallel regarding the same issue but concerning national-level administration.

The European Ombudsman has conducted several own-initiative inquiries into matters related to the implementation of support from the funds mentioned in the CPR, for example relating to funding of institutions for persons with disabilities and/or older persons [191]. These inquiries

have resulted in reports with concrete recommendations for improvement to both the Commission and the Member States. Other inquiries conducted by the European Ombudsman regarding EU funds have concerned migration management facilities and border management. These inquiries have also resulted in recommendations on how to address existing fundamental rights concerns [192] .

## European Ombudsman inquiry on EU funds and independent living

The European Ombudsman opened an inquiry into the implementation of support from the funds governed by the CPR in 2021.

The inquiry concerned how the European Commission monitors if Member States are using the ESIF (one of the funds governed by the CPR) to promote the right of persons with disabilities to independent living ('deinstitutionalisation') and whether the Commission applies sanctions if they do not. Deinstitutionalisation is an objective of the CRPD, to which the EU is a party.

The European Ombudsman found that the Commission could provide clearer guidance on the need to promote deinstitutionalisation in the context of the use of the ESIF. It also noted that organisations representing persons with disabilities should be consulted in drafting the guidance. The European Ombudsman also considered that the Commission could take steps to improve the monitoring of ESIF-funded activities and that it should take a more proactive role in enforcement, particularly when concerns are raised that ESIF-funded activities are at odds with the obligation to promote deinstitutionalisation.

*Source: European Ombudsman (2022), 'How the European Commission monitors EU Structural and Investment funds to ensure they are used to promote the right of persons with disabilities to independent living and inclusion in the community'.*

## European Ombudsman strategic initiative concerning the complaints mechanism on EU funds

During the previous programming period, the European Ombudsman launched a strategic initiative concerning the complaints mechanism for the ESIF. The initiative aimed to provide guidance on how the Commission could assess whether the complaints mechanisms, set up by Member States in accordance with the CPR

14-20, were effective. This was important, as Member States had wide discretion on how to set up the required complaints mechanisms. This is indeed also the case as regards the corresponding provision in the CPR 21–27 (Article 69 (7)).

The European Ombudsman's initiative resulted in a proposal that included a number of factors for the Commission to take into account when assessing the effectiveness of complaint-handling arrangements, namely:

- the independence of the complaint-handling body;
- whether unjustified restrictions on who can submit complaints exist;
- whether unjustified restrictions regarding the subject matter of complaints exist;
- the accessibility of complaints mechanisms;
- whether the powers of complaint-handling bodies are sufficient to effectively deal with the complaints;
- whether funding decisions can be suspended while complaints are ongoing.

*Source: European Ombudsman (2019), 'Decision on strategic initiative SI/3/2018/JN: Effective complaint mechanisms for matters concerning European Structural and Investment Funds – Follow-up to OI/8/2014/AN'.*

It is also possible to file a petition with the European Parliament's Petitions Committee on a subject that falls under the EU's fields of activity and that affects them directly [193]. For example, this was done by a disability NGO on the issue of EU funding for institutions for persons with disabilities in 2021 [194]. The right to file a petition with the European Parliament, as outlined in Article 44 of the Charter, allows every individual resident in the EU to address the Parliament through its Petitions Committee, which conducts investigations and looks into how EU law is implemented. The Petitions Committee may also ask the European Commission to conduct a preliminary investigation on a petition and provide information regarding compliance with relevant EU legislation or take any other action considered appropriate to try to resolve an issue. However, a petition does not lead to a binding decision on the issue under complaint.

It is also possible to complain to the European Anti-Fraud Office in some cases. The European Anti-Fraud Office deals with EU expenditure fraud, including wrongful payment of EU funds, non-disclosure of required information with the same effect or any misuse of funds for purposes other than those for which they were originally granted. A violation of fundamental rights may be seen as an irregularity, that is to say, "any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities […] by an unjustified item of expenditure" [195]. If an irregularity is committed deliberately, it constitutes fraud. In some cases, allegations of fraud can be taken up by the European Public Prosecutor's Office [196].

Finally, complaints mechanisms at international level can also be used. Individuals can file complaints under the Optional Protocol to the CRPD if the Member State in question has ratified it [197]. The Committee on the Rights of Persons with Disabilities can also commence inquiries if it has received reliable evidence of grave or systematic violations of CRPD provisions [198]. This latter procedure was used in Hungary, where the committee found grave and systemic violations in the context of institutionalisation of persons with disabilities, including through the use of EU funds [199]. Regarding EU funds in particular, it found that "public funds, including funding from the European structural and investment funds, continue to be invested in building, renovating and expanding large- and small-scale institutions, thus removing resources for support for independent living and the development of accessible, community-based services that foster inclusion" [200].

However, the EU itself has not ratified the Optional Protocol to the CRPD. Therefore, the Committee on the Rights of Persons with Disabilities is not mandated to receive and consider communications from or on behalf of individuals or groups of individuals claiming to be victims of a violation by the EU. Moreover, the Committee cannot conduct an inquiry according to Article 6 of the Optional Protocol. At the same time, even without ratification of the Optional Protocol, the CRPD Committee can comment on national practices, including the funding of institutions for persons with disabilities, in the regular reporting procedure foreseen by the Convention or under Article 6 CRPD as described above.

## 3.4 Complaints at national level

A final option is national complaints, which, as noted previously, should allow for an "effective examination" in accordance with Article 69 (7) of the CPR 21–27. Under the horizontal enabling condition on effective application and implementation of the Charter and the CRPD, Member States need to have reporting arrangements to the monitoring committee regarding cases of non-compliance of operations supported by the funds and regarding complaints concerning the funds linked to the Charter or the CRPD submitted in accordance with the arrangements made pursuant to Article 69 (7) of the CPR 21–27, Annex III. This means that Member States must also ensure that fundamental rights-related complaints can be submitted.

The level of publicity associated with complaints mechanisms on EU funds is historically not high [201]. FRA research appears to confirm this, as the issue most frequently cited in relation to the previous programming period by research participants was a lack of awareness about existing complaints mechanisms.

For example, in Finland, various research participants representing independent fundamental rights bodies, CSOs and national fund managers mention a lack of familiarity with the complaints mechanisms for fundamental rights concerns in the context of EU funds [202].

Croatian research participants highlight the same issue. In Croatia, complaints can be submitted to, among others, the national ombudsperson institutions. However, as the Croatian NHRI notes in

its report, the public is not always aware that these are the institutions with which complaints can be filed [203]. A similar example in relation to the previous programming period can be cited from an interview conducted in Germany. In this case, a representative of a refugee rights NGO with 20 years' experience who was serving on a monitoring committee was unable to identify how to complain against a decision in relation to the German AMIF [204].

The recent policy note by PICUM and ECRE also highlights the lack of awareness about complaints mechanisms [205]. Their survey of 59 CSO respondents, carried out in January 2023, shows that CSOs working in the field of migration and asylum at national level are unaware of any formal avenue to report fundamental rights concerns or submit complaints regarding EU-funded operations. The policy note concludes that, although it is an obligation to set up such complaints mechanisms, it seems that information about them does not reach the public.

In Bulgaria, research shows that the lack of knowledge concerning which body should be addressed for which issue led to a great deal of time lost in "forwarding correspondence" to determine the competent authority to deal with a particular complaint [206]. In relation to the previous programming period, representatives of the French Defender of Rights themselves were unsure of whether they were mandated to deal with complaints related to the use of EU funds, noting that this could require further legal analysis [207]. In some cases, for example in Bulgaria and Poland, research respondents point out that the number of fundamental rights complaints related to EU funds is very low. Local and regional body representatives in Bulgaria see this as a positive sign [208], whereas a representative of civil society suspects that it rather shows lack of awareness of complaint mechanisms or the Charter [209].

The situation is similar regarding publicity of the Charter arrangements to be set up under the CPR 21–27. When it comes to the horizontal enabling conditions, Member States are obliged to communicate the arrangements set up to the European Commission in so-called 'self-assessments'. PICUM and ECRE note that it is a missed opportunity that the same information is not publicised more widely. They suggest that these assessments be made public to ensure that the information becomes available to those monitoring fundamental rights. They state in their policy note: "The lack of transparency on the content and outcome of the EC [European Commission] and MS [Member State] assessments undermines the accountability of the process at national level, where access to information remains a major challenge" [210].

Another issue that has emerged in the research is a lack of expertise on fundamental rights issues of the designated complaints mechanisms. National fund managers may be inexperienced in dealing with these types of complaints, particularly at regional level [211]. National complaints mechanisms are also sometimes more suited to complaints of fraud, which are more common in the context of EU funds than complaints about fundamental rights violations. For example, the Greek authorities refer to the National Transparency Authority as a body competent to receive complaints about the Charter. However, CSOs have expressed concerns about its expertise in this area [212] as has the European Parliament's Committee on Civil Liberties, Justice and Home Affairs [213] and the UN Special Rapporteur on Human Rights Defenders, who notes that "[w]hile the National Transparency Authority has made some welcome contributions in the fight against

corruption, it is not equipped to conduct independent investigations into the management of migration flows" [214] .

Many independent fundamental rights bodies are mandated to deal with individual complaints. However, research shows that their decisions may not be effectively implemented. In some Member States, research participants note that these bodies cannot issue binding decisions and in general lack the capacity to follow up on the implementation of their recommendations [215] .

## Promising Practice

**Establishing a common point for fundamental rights complaints: Example from Slovakia**

In Slovakia in the 2021–2027 programming period, all Charter- and CRPD-related complaints can be submitted to the same email address. If the public is aware of an EU-funded operation that in any way appears to be in breach of the horizontal principles, they can submit their complaint to that address. The complaints will then be forwarded to the managing authority or will be handled by informing the complainant about the possibility of contacting other relevant institutions.

Information about complaints and identified cases of non-compliance are then gathered into a database. This information, including how the cases were dealt with, is regularly submitted to the monitoring committee.

*Source: Gestor for Horizontal Principles (2021), 'Horizontal principle on non-discrimination'.*

CSOs note that a potential threat to a fair and efficient complaint procedure is a lack of protection for small and independent organisations, which might feel that their own requests for EU funding might be rejected if they file fundamental rights complaints against decisions to fund particular operations [216] . Such retaliation for earlier complaints could motivate a new complaint alleging such retaliation.

Moreover, the lack of independence can be an issue. The CPR 21–27 requires Member States to set up effective complaints mechanisms. While independence is not explicitly required by the CPR 21–27, EU law and practice underline independence as a key element underpinning the effectiveness of complaints mechanisms [217] . International human rights monitoring bodies have highlighted in other contexts the importance of independence or impartiality of the officials dealing with complaints [218] . Concern over the lack of institutional independence of complaints mechanisms is highlighted as a potential issue, for example as regards the proposed arrangement in Poland [219] .

## Promising Practice

**Role of an independent fundamental rights body: Cyprus**

In Cyprus, the national human rights body is involved in an advisory capacity in the drafting of programmes and acts as a complaints mechanism. If a possible violation is found, the Commissioner for Administration and the Protection of Human Rights can provide suggestions to align the programmes with the provisions of the Charter.

The Commissioner also acts as a complaints mechanism to whom claims concerning Charter and CRPD violations can be made. Under the Commissioner's broad mandate, they can monitor recommendations under a follow-up procedure provided by the enabling laws of the Commissioner for Administration of 1991 to 2022 (Article 6 (8) and (9)).

Under the Commissioner's Equality Body mandate, the Commissioner can make binding recommendations and require corrective measures to be implemented, in accordance with Articles 21 and 22 of the Combating of Racial and Other Discrimination (Commissioner) Law (Law 42 (I)/2004).

Recommendations of the Ombudsman are recorded and it is the responsibility of the managing authority to ensure compliance, otherwise funding suspension or interruption mechanisms are mobilised.

Furthermore, the Commissioner also reports on complaints and recommendations given to a monitoring committee, in which the Commissioner participates as an observer.

*Source: Ombudsman of Cyprus (2023), 'The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds', report written in the framework of the FRA project "Supporting National Human Rights Institutions in monitoring fundamental rights and the fundamental rights aspects of the rule of law" (not yet publicly available), see also the* Mandate *section of the ombudsman's website.*

# Conclusion

This report highlights how mainstreaming the Charter and the CPRD in the implementation of funds governed by the CPR could be improved through involving independent fundamental rights bodies and civil society as partners in the funding process. The report contains suggestions for Member States and their authorities and practical actions for independent fundamental rights bodies.

The enabling conditions contained in the CPR 21–27 may help to prevent operations that are not in full compliance with the Charter and the CRPD from being funded in the first place. This requires Member States to take measures promised in their Charter and CRPD arrangements. Measures include improved fundamental rights training, raising the awareness of all key players in the cycle and ensuring the availability of practical tools to check Charter and CRPD compliance. Action is particularly required at local and regional levels.

There are three main findings related to participation, capacity and resources, and the complaints mechanism.

First, to make better use of the expertise, data and findings of independent fundamental rights bodies and CSOs specialising in fundamental rights, their involvement needs to be greater and more meaningful, including at the initial stages of the funding cycle. Although many of these actors were involved in the previous programming period, greater efforts are needed to ensure that their participation is encouraged, meaningful and facilitated.

Second, it is important that all actors involved, including independent fundamental rights bodies and specialised fundamental rights CSOs, are provided with the necessary extra human, financial and technical resources for this new role.

Third, lessons need to be learned from evaluations and complaints procedures to ensure that the enabling conditions on the Charter and the CRPD make a real difference in the activities and operations that the EU is funding. Member States need to ensure that their complaints procedures are sufficiently effective to identify any violations that occur and deal with them effectively.

FRA stands ready to assist the Commission, Member States and independent fundamental rights bodies in line with the findings of this report.

# Annex: Methodology

This report is based on research FRA conducted in 2022 and 2023 through its multidisciplinary research network Franet [220] and through interviews and meetings at both national and EU levels. Researchers were asked to focus on the eight funds covered by the CPR 21–27. In total, 92 interviews were conducted for this report at international, EU, national and local levels.

At EU level, FRA's Franet partner conducted desk research and semi-structured interviews with six officials from the Commission (from the Directorates-General for Employment, Social Affairs and Inclusion; for Regional and Urban Policy; for Justice and Consumers; and for Migration and Home Affairs), five representatives from EU-level CSOs, three representatives of independent fundamental rights bodies (or their umbrella organisations), one academic, a representative of EIGE and a representative of the European Ombudsman.

The selection of Member States covered by the Franet research was based on Member States with an A-status accredited NHRI to ensure that FRA could hear from fully independent institutions in these countries (i.e. an NHRI that, according to the Sub-Committee on Accreditation of the Global Alliance of NHRIs, is independent in law, membership, operations, policy and control of resources). The selection among the countries having an A-status accredited NHRI was based on their level of relative per capita funding from EU funds and a reasonable geographical balance.

At national level, Franet partners in Bulgaria, Croatia, Estonia, Finland, France, Germany and Portugal carried out desk research and semi-structured interviews with representatives from government, civil society, independent fundamental rights bodies and academia.

- In Bulgaria, representatives of the Ministry of Labour and Social Policy, the Ministry of Regional Development and Public Works, the Commission for Protection against Discrimination, the Ombudsman and three CSOs were interviewed.
- In Croatia, Franet partners spoke to representatives of three CSOs, one academic and representatives of the Office for the Cooperation with the Civil Society, the National Foundation for Civil Society Development, the Ministry of Labour, the Ministry for Regional Development and EU Funds, the Office of the Ombudsperson, the Government Office for Human Rights and Rights of National Minorities, the Ombudsperson for Gender Equality and the Office of the Ombudsperson for Persons with Disabilities.
- In Estonia, interviews were conducted with representatives of the Ministries of Finance, Social Affairs and Interior and of the State Shared Service Centre, as well as with representatives of the Chancellor of Justice, the Gender Equality and Equal Treatment Commissioner and representatives of four CSOs.
- In Finland, representatives from the Interior Ministry, the Ministry of Economic Affairs and Employment, and the Centre for Economic Development, Transport and the Environment were interviewed, together with four representatives of national bodies with a human rights

remit, two academics and one civil society representative.

- In France, interviews were conducted with two academics and representatives of three CSOs, the Interior Ministry, the Authority for the Audit of European Funds in France, a managing authority and the French National Consultative Commission on Human Rights and the Public Defender of Rights.
- In Germany, representatives of three CSOs, one academic, representatives of three managing authorities, two representatives of the German Institute for Human Rights (one working on disability rights) and a representative of the Federal Foundation for Gender Equality were interviewed.
- In Portugal, representatives of two CSOs, two academics and representatives of the National Monitoring Mechanism for the Implementation of the Convention on the Rights of Persons with Disabilities, of the Commission for Citizenship and Gender Equality, of the High Commission for Migration and of the programmes 'Social Inclusion and Employment', 'Human Capital' and 'Sustainability and Efficient Use of Resources' were interviewed.

Seven roundtables were also organised by Franet partners to allow for an exchange of views on EU funds and fundamental rights between actors from different backgrounds.

- In Bulgaria, this roundtable brought together a representative of a managing authority, representatives of the national equality body and representatives of civil society working in the fields of child-related and housing policies (both part of monitoring committees).
- In Croatia, the roundtable brought together representatives of the Ministry of Regional Development and EU Funds; the Government Office for Cooperation with NGOs; the Ministry of Labour, Pension System, Family and Social Policy; the Office of the Ombudsperson; and the Office of the Ombudsperson for Persons with Disabilities, as well as five civil society representatives.
- In Finland, participants were from the Ministry of the Interior, the Ministry of Economic Affairs and Employment, two independent fundamental rights bodies and a CSO.
- In France, the roundtable brought together three representatives of national bodies with a human rights remit, representatives of the Interior Ministry and a national agency dealing with EU funds, three academics and two civil society representatives.
- In Germany, the roundtable brought together three representatives of civil society, one academic, five representatives of the NHRI and two fund managers. In Estonia, the roundtable featured two representatives from a governmental body dealing with EU funds (the State Shared Service Centre), representatives of the Ministries of Finance and Social Affairs and two CSOs.
- In Portugal, the roundtable brought together representatives from the High Commission for Migration, the Commission for Citizenship and Gender Equality, the Commission for Equality on Work and Employment, two CSOs and two representatives of national fund managers of operational programmes.

FRA also organised an EU-level civil society workshop with representatives from civil society

umbrella organisations with support from the Commission. The resulting report is as an additional basis of information for this report.

All interviews and the workshop led to seven reports drafted by the agency's Franet partners reflecting the situation in Bulgaria, Croatia, Estonia, Finland, France, Germany and Portugal, as well as a report analysing the interviews done at EU level. Additional evidence was provided via desk research.

Reports regarding the work of the NHRIs in Croatia, Cyprus, Latvia, Poland and Slovakia were also published under the European Economic Area (EEA) and Norway Grants Fund for Regional Cooperation project 'Supporting national human rights institutions in monitoring fundamental rights and the fundamental rights aspects of the rule of law', which FRA leads. Moreover, information from a project on EU fundamental rights in practice and the Charter enabling condition in Greece under the EEA Grants, in which FRA acts as partner of the Greek Ombudsman, fed into this report. The project is titled 'Greek Ombudsman actions for strengthening good governance, accountability and combating maladministration in the public sector'. Finally, the report also builds on evidence from previous FRA work in this area.

# Abbreviations and acronyms

- **AMIF** - Asylum, Migration and Integration Fund
- **BMVI** - Border Management and Visa Instrument
- **CERV** - Citizens, Equality, Rights and Values
- **CJEU** - Court of Justice of the European Union
- **CPR**- Common Provisions Regulation
- **CRPD** - United Nations Convention on the Rights of Persons with Disabilities
- **CSO** - Civil society organisation
- **ECRE** - European Council of Refugees and Exiles
- **EEA** - European Economic Area
- **EIGE** - European Institute for Gender Equality
- **ENNHRI** - European Network of National Human Rights Institutions
- **Equinet** - European Network of Equality Bodies
- **ERDF** - European Regional Development Fund
- **ESF(+)** - European Social Fund (Plus)
- **ESIF** - European Structural and Investment Funds
- **FADA** - Federal Anti-Discrimination Agency in Germany
- **GDP** - gross domestic product
- **GNCHR** - Greek National Commission for Human Rights
- **ISF** - Internal Security Fund
- **NHRI** - National human rights institution
- **NGO** - Non-governmental organisation
- **PICUM** - Platform for International Cooperation on Undocumented Migrants
- **UN** - United Nations

# Endnotes

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[31] Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013 (OJ L 231, 30.6.2021, p. 21).

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[46] Interview with representatives of the Directorate-General for Migration and Home Affairs, 19 July 2022.

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[146] Interview with a Bulgarian national fund manager representative, 1 June 2022.

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[148] Raised by a national fund manager at a roundtable discussion in Germany (see Franet country report – Germany, 2023, p. 23) and in interviews in Bulgaria with all groups of respondents (see Franet country report – Bulgaria, 2023, p. 11); Franet country report – France, 2023, pp. 13–14.

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