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EU Fundamental Rights in practice and Charter conditionality

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Author: Vasiliki P. Karzi

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List of Abbreviations

AMIF	Asylum and Migration Fund
BMVI	Border Management Visa Instrument
CAP	Common Agricultural Policy
CPR	Common Provisions Regulation
CSOs	Civil Society Organisations
DI	De-institutionalisation
EAFRD	European Agricultural Fund for Rural Development
ECF	European Cohesion Fund
EMFF	European Maritime Fisheries Fund
ENNHRI	European Network of National Human Rights Institutions
ERDF	European Regional Development Fund
ESAMEA	National Confederation of Persons with Disabilities
ESF	European Social Fund
ESIF	European Structural and Investment Funds
ESPA	Partnership Agreement for the Development Framework
EU Charter	The Charter of Fundamental Rights of the European Union
EU	European Union
GNCHR	Greek National Commission for Human Rights
ISF	Internal Security Fund
KEDE	Central Union of Greek Municipalities
MFF	Multiannual Financial Framework
NCA	National Coordination Authority (NCA)
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institution
NMM	National Monitoring Mechanism for Returns of third-country nationals
NPM	National Preventative Mechanism
NTA	National Transparency Authority
OHCHR	Office of the High Commissioner for Human Rights
OP(s)	Operational Programme(s)
OPCAT	Optional Protocol to the UN Convention against Torture
OPMC(s)	Monitoring Committee(s) per OP
PA	Partnership Agreement
ROM network	Panhellenic Intra-municipal Network for the support of Greek Roma - ROM network
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities

Executive Summary

In recent years, the European Union has tried to ensure Member states' compliance with human rights obligations by linking the funding it awards to certain human rights conditions.

In the European Structural and Investment Funds (ESIF) for 2014-2020, the European Union introduced **'ex-ante conditionalities'** as prerequisites for the effective and efficient achievement of specific objectives and investment priorities. These were examined in the beginning of the programming period. The **horizontal 'ex-ante conditionalities'** included non-discrimination, gender equality and accessibility for persons with disabilities and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The Charter of Fundamental Rights of the European Union (EU Charter) was not included as an 'ex-ante conditionality' *per se*.

Greece benefitted significantly from the 2014-2020 ESIF programmes. The Partnership Agreement for the Development Framework (ESPA) 2014-2020 set the framework for resources originating from ESI Funds. '**Ex-ante conditionalities' for the EU Charter were not included but requirements related to non-discrimination, gender equality and accessibility for persons with disabilities were implemented at the level of management and monitoring, through related procedures.**

The **National Coordination Authority (NCA) of ESPA was primarily responsible for monitoring the implementation of the operational programmes including the human rights related 'ex-ante conditionalities**'. The promotion of social integration, gender equality and non-discrimination were also monitored by committees established at national and regional level, in which social partners and stakeholders had an active role.

Human rights bodies did not play an active role during the 2014-2020 funding cycle. Other bodies and institutions participating in the monitoring of the 'ex-ante conditionalities' in the ESPA 2014-2020 programme were: a) the General Secretariat for Gender Equality, b) The National Confederation of Persons with Disabilities - ESAMEA and c) the Panhellenic Intra-municipal Network for the support of Greek Roma - ROM network.

The only available complaints mechanism in the 2014-2020 funding cycle examined complaints related to fraud involving the funds and not the 'ex-ante conditionalities' per se. The mechanism was the **General Secretariat for Combatting Fraud and since 2019, the National Transparency Authority.** These bodies do not have a human rights remit and only examined cases involving fraud and corruption. There is no evidence on whether

complaints related to the human rights 'ex-ante conditionalities' were received and examined by either complaints mechanism.

The conclusion of the 2014-2020 funding cycle marked the transition from 'ex-ante conditionalities' to 'enabling conditions' as laid down by the new EU Common Provisions Regulation for the 2021-2027 funding cycle**.** 'Enabling conditions' must be fulfilled throughout the preparation, implementation, monitoring, reporting and evaluation of the 2021-2027 ESI funding cycle. Compared to the past, **the material scope of the fundamental rights conditionality was substantially expanded**.

The Common Provisions Regulation explicitly refer to the EU Charter and introduces a strengthened mechanism for monitoring human rights compliance throughout the funding cycle. However, it remains to be seen how the Regulation will be implemented in practice and how stakeholders will be involved in the process.

The Greek Partnership Agreement for the Development Framework (ESPA) 2021-2027 includes the enabling conditions related to the EU Charter and the UNCRPD. So far, in order to address these 'enabling conditions', a **Partnership Memorandum has been concluded between the Ministry of Development and Investments and the Greek National Commission for Human Rights (GNCHR)**. The GNCHR will also be participating as a member of the monitoring committees which will monitor the implementation of the funded operational programmes.

The **National Transparency Authority (NTA) remains the body competent for receiving and examining complaints related to the EU Charter**. However, as stipulated earlier, the NTA is not a national body with a human-rights remit. Its main purposes are enhancing transparency and addressing fraud and corruption.

Promising practices recorded during the first funding cycle in Greece are predominantly linked to the active role and valuable contribution of the National Confederation of Persons with Disabilities (ESAMEA) in operationalizing the 'ex-ante conditionality' of disability during the proposal phase. **ESAMEA contributed to the specification of the conditions related to accessibility for persons with disabilities**, into an **annex** attached to all tenders. An annex was also included in a communications' guide, aiming to mainstream disability and accessibility in the communication strategy of ESPA.

Given their specialization on human rights issues, **the Greek Ombudsman and the GNCHR are human rights bodies that could play a crucial role in monitoring the application of the EU Charter and the UNCRPD** during the current funding cycle.

In order to ensure adherence to the EU Charter and the UNCRPD, the following **challenges and gaps** should be considered:

A) In reference to the 2014-2020 funding cycle:

1. **'Ex-ante conditionalities' were insufficiently operationalised throughout the 2014-2020 funding cycle**. No specific guidelines, bodies or mechanisms were in place to transform these into action. For example, no guidance on gender or non-discrimination were available.
2. **Different conditionalities received different degree of attention**. While disability underwent specialisation during the 2014-2020 funding cycle, through annexes attached to ESPA guidelines, conditionalities on gender and non-discrimination were not subject to such operationalisation.
3. **Lack of data on the implementation of 'ex-ante conditionalities'.** In the 2014-2020 funding cycle there were no data collection requirements, procedures or mechanisms in place resulting in a lack of quantitative and qualitative data.
4. **Lack of mechanism monitoring the 'ex-ante conditionalities'**. During the 2014-2020 funding cycle, no body/ies were mandated to verify (at the level of individual projects or Operational programmes) on the extent to which 'ex-ante conditionalities' had been respected or not.
5. **Lack of reporting on the respect of 'ex-ante conditionalities'.** At the level of Operational Programmes or Actions there was a lack of reporting on the respect of conditionalities.
6. **Lack of dissemination of good practice**. During the 2014-2020 funding period, there was a lack of dissemination of good practice on 'ex-ante conditionalities'.
7. **Lack of clear mandate of stakeholders in relation to 'ex-ante conditionalities'.** None of the involved bodies had a specific mandate to monitor the respect of 'ex-ante conditionalities' or to report on them. So, the National Confederation of Persons with Disabilities, the General Secretariat for Gender Equality, Roma associations were assumed to mainstream their perspectives in the programmes in a very broad and generic way.
8. **Lack of an effective complaints' procedure and mechanism specifically in relation to the respect of 'ex-ante conditionalities'.** While 'ex-ante conditionalities' served as horizontal requirements for actions that would receive funding, these requirements had 'no teeth'.
9. **Lack of clarity on whether concerns on fulfilment of 'ex-ante conditionalities' fell within the mandate of the complaints body to address fraud.** In the 2014-2020 funding cycle, the complaints mechanism that was set up (at the National Transparency Authority) related exclusively to fraud. This raises two main points of

concern: firstly, that violations of fundamental rights conditionalities are not necessarily (or not at all) linked to fraud and secondly, it is unclear whether and to what extent a fraud -oriented complaints mechanism possesses the required human rights expertise.

10. During the 2014-2020 there was a **lack of evaluation reports on the practical impact of horizontal actions for improving accessibility of persons with disability (outcome assessment)**. Without data from evaluation reports it is difficult to determine whether a measure had an integrating or segregating effect in practice.

B) In reference to the 2021-2027 funding cycle

11. **There is a need to ensure the participation of more CSOs at central and regional/local level as a way to include representation for more target groups.** Currently, only ESAMEA and representatives of Greek Roma participate in a systematic way. There are no women's organisations or representatives of other human rights organisations participating in Monitoring Committees.
12. On a **local-administration level there was a lack of expertise concerning the human-rights related 'ex-ante conditionalities' and 'enabling conditions'.** As experience in the previous funding cycle showed, the local authorities do not appear to have the necessary expertise to effectively implement human rights related conditionalities.
13. So far, **the activity of human rights bodies is centralised and there is no outreach at regional and local level where support is mostly needed**. The decentralisation of their activities is necessary for gaining insight into the regional context and the needs of each area and help in the prioritisation of crucial human rights issues.
14. During the current cycle, there is **a need to expand the existing methodology on the disability-related 'enabling condition'**, in order to address all phases of the programming period.
15. **Lack of operationalisation of definitions of the 'enabling conditions' under the current funding cycle referring to the EU Charter**. The framework as it stands does not seem sufficient.
16. **Lack of awareness on the meaning and content of 'ex-ante conditionalities' and 'enabling conditions'.** Responses from stakeholders confirmed an acute lack of awareness, first of all, on the requirements of 'ex-ante conditionalities' but also regarding the full spectrum of rights included in the EU Charter and how their individual concepts could become 'measurable' in practice.

The gaps and challenges identified above could be addressed through the following **action points to enhance the role of Greek human rights bodies** in the current funding framework:

- **Consider the involvement – after consultation of these actors - of the Greek Ombudsman and/or the GNCHR in the Monitoring Committees** on all levels (national, regional) with voting rights.
- Establishment of **a separate focal point for issues related to the implementation of the EU Charter of Fundamental Rights and the UNCRPD** within the ESPA framework. Consider in this regard - **after consultation of these actors – the nomination** of **the Greek Ombudsman and/or the GNCHR as the focal points for providing support, information, training of the governmental staff on the 'horizontal enabling conditions' for the Charter and the UNCRPD**.
- **Creation of an independent complaints mechanism** for examining and deciding on complaints concerning the application of the EU Charter and the UNCRPD throughout the funding cycle.
- **Establishment of outcome indicators** with the collaboration of the Greek Ombudsman and the GNCHR in order to effectively monitor and evaluate the impact of specific actions carried out within the current funding cycle.
- **Creation of a database with fundamental rights relevant statistical data on target groups and collection of qualitative data** to help direct specific activities under the funds and funding itself to groups and social environments that need it the most.

Introduction

This report is implemented in the framework of the project "Greek Ombudsman actions for strengthening good governance, accountability and combating maladministration in the public sector" funded under the EEA/Norwegian Financial Mechanism Programme 2014-2021, Programme F "Good Governance, Accountable Institutions, Transparency".

The project aims to build the human capacities of the Greek Ombudsman in the field of fundamental rights, including the Greek Ombudsman's cooperation with public services/authorities and civil society in regions across Greece, through advice and technical assistance, as well as increasing awareness about the preventive role of the Ombudsman in combating exclusion.

The report draws from the experience with the application of the 'ex-ante conditionalities' on anti-discrimination, gender and disability under the Common Provisions Regulation (CPR) of 2013 for the EU funds, thereby drawing lessons for the implementation of the enabling conditionality on the Charter and the UNCRPD under the CPR 2021.

The report presents an overview of how the rights enshrined in the Charter of Fundamental Rights of the EU[1] (the Charter) and the UN Convention on the Rights of Persons with Disabilities (UNCRPD)[2] are taken into account for the drafting and implementation of national projects carried out with EU funding. It also aims to analyse the role of national bodies with a human rights remit in monitoring and ensuring the application of these rights.

In the past years, EU provisions for the awarding of funding to Member States introduced certain conditionalities linked to the adherence to certain human rights. The present report introduces in its first chapter the foundations for the EU funding system which aim to strengthen human rights. The chapter distinguishes between two European Structural and Investment (ESI) funding cycles, that of 2014-2020 and 2021-2027, respectively. Each cycle is analysed by presenting the EU and national legal and policy framework and how human-rights obligations were included as a conditionality for receiving funding. The main differences between the application of the 'ex-ante conditionalities' of the 2014-2020 ESI funding cycle and the 'enabling conditions' of the 2021-2027 ESI funding

[1] Charter of Fundamental Rights of the European Union, 2016/C 202/02, (OJ C 202, 7-6-2016, p. 389–405).

[2] United Nations Convention on the Rights of Persons with Disabilities, adopted by the General Assembly on 24-01-2007, A/RES/61/106.

cycle will assist in identifying lessons learned from the past and their usefulness for the future.

A short presentation of similar human rights obligations for receiving funding is also examined in relation to the Multiannual Financial Framework (MFF) which includes funding for migration and border-control. This is of particular interest in the case of Greece, as analysed in the report.

The second chapter of the report provides an in-depth analysis of the national legal and policy framework in Greece pertaining to the inclusion of 'ex-ante conditionalities' during the 2014-2020 ESI funding cycle. Problematic issues are identified, especially in relation to the application of the horizontal 'ex-ante conditionality' on the accessibility of persons with disabilities. The second part of the second chapter is dedicated to the national legal and policy framework for the new horizontal 'enabling conditions' related to adherence to the EU Charter and the UNCRPD for the ESI funding cycle of 2021-2027. The chapter also examines the role of national bodies with a human rights remit in monitoring and in ensuring the application the human rights conditionalities during the 2014-2020 funding cycle and explores opportunities for their involvement and contribution to the current 2021-2027 funding cycle.

The third chapter records practices and examples of participation of human rights bodies in the 2014-2020 funding cycle and those planned for the 2021-2027 funding cycle. Promising practices are included in Annex 2. These demonstrate the overall important role of human rights bodies in ensuring that funding is conditional on the adherence to the Charter as well as the UNCRPD. The chapter also identifies the gaps and challenges that need to be addressed in order to ensure a funding system that strengthens human rights.

The fourth and final chapter focuses on the future, namely the horizontal 'enabling conditions' that apply within the current financial cycle and critical factors regarding the role of the national human rights bodies. Possibilities to promote their role in the national funding are also included.

Finally, the information included in the present report is mainly derived from desktop research, including that from legal databases and Greek legal literature. Given the scarcity of available data, personal interviews were conducted with relevant stakeholders as a means to supplement the research.[3]

[3] Communication included a questionnaire sent via email as well as personal follow-up telephone communication, with the following stakeholders: the Greek Ombudsman; the Greek National Commission for Human Rights; the Ministry of Interior, which forwarded the questionnaire to local authorities (municipalities and regional authorities); Ministry of Employment and the relevant Secretariats (for Roma integration, gender equality and combatting poverty); the Ministry of Development and Investments; the Ministry of Citizen Protection and the Management Office for European and Development Programmes; the Special Service for the Coordination and Monitoring of Actions of the ESF; the Greek Confederation for Persons with Disabilities; the Ministry of Migration and Asylum; UNHCR; the International Organisation for Migration; and the NGO Ellan-Passe.

1. EU funding and human rights: the foundations

1.1. The EU 'ex-ante conditionalities' of 2014-2020 and their transposition in Greece

The concept of "conditionalities" is unique in EU law and links funding cycles with fundamental rights. This chapter focuses on the impact of the Charter of Fundamental Rights of the EU and the UNCRPD in the funding and how the Greek legal framework has been affected in the past years.

The Charter of Fundamental Rights of the EU which has the same legally binding value as the EU treaties, was first declared in 2000 and entered into force in 2009 along with the Lisbon Treaty.[4] Respect for fundamental rights enshrined in the Charter is therefore a legal requirement. The Charter enshrines a full range of civil, political, economic and social rights based on the fundamental rights and freedoms recognised by the European Convention on Human Rights; the constitutional traditions of the EU Member States; the Council of Europe's Social Charter; the Community Charter of Fundamental Social Rights of Workers; and other international conventions to which the EU or its Member States are parties to.

The UNCRPD was ratified by the EU in 2010 and entered into force in 2011, becoming the first fundamental rights treaty legally binding on the EU as a whole, including EU Institutions and Member States. The EU implements and monitors the application of the UNCRPD to the extent of the competences included in the relevant declaration in Annex II of 2010/48/EC. It constitutes a 'mixed agreement' under the EU legal framework, which means that its provisions are of a lower rank compared to the EU Treaties, yet superior in rank compared to secondary EU legislation (such as EU regulations and directives for instance).

Conditionalities have been a part of the European cohesion policy since the reform of the Structural Funds in 1988 and their aim was to improve the accountability of EU Member-States in spending-related decisions. As part of the EU cohesion policy reform,

[4] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, 2007/C 306/01, (OJ C 306, 17.12.2007, p. 1–271).

'ex-ante conditionalities'[5] were introduced for the 2014-2020 EU funding cycle for the proper and effective use of the ESIF-European Structural and Investment Funds (ESI Funds).[6]

The general 'ex-ante conditionalities' for the ESI Funds[7] included three horizontal 'ex-ante conditionalities': anti-discrimination, gender equality and disability. The fulfilment of these three elements was assessed by each Member-State (self-assessment) in the preparation of the programmes to be funded and included in their respective partnership agreement (P.A).[8] The P.A. prepared by the states was then submitted to the European Commission for approval. Guidelines were issued by the European Commission in order to establish a framework for the assessment by the Commission of the consistency and adequacy of the information provided by Member States on the applicability and fulfilment of ex ante conditionalities.[9] For example, in the area of anti-discrimination, the following was included in the guidelines:[10]

Area	***Ex-ante conditionality***	***Criteria for fulfilment***
Anti-discrimination	The existence of administrative capacity for the implementation and application of Union antidiscrimination law and policy in the field of ESI Funds	– Arrangements in accordance with the institutional and legal framework of Member States for the involvement of bodies responsible for the promotion of equal treatment of all persons throughout the preparation and implementation of programmes, including the provision of advice on equality in ESI fund-related activities; – Arrangements for training for staff of the authorities involved in the management and control of the ESI

[55] According to Article 2 (33) of EU Regulation No. 1303/2013 (Common Provisions Regulation) an applicable ex-ante conditionality "*means a concrete and precisely pre-defined critical factor, which is a prerequisite for, a genuine link, and a direct impact on the effective and efficient achievement of a specific objective for an investment priority or a Union priority*".

[6] These included the European Regional Development Fund, the European Social Fund, the European Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime Fisheries Fund.

[7] Annex XI Part II of EU Regulation No. 1303/2013, Common Provisions Regulation.

[8] The Partnership Agreement, prepared by each Member-State is a strategic document guiding the negotiations between the European Commission and the Member-State in relation to the design of programmes under each funding scheme, containing the selection of thematic objectives and investment priorities.

[9] EU Commission (2014) Internal Guidance on Ex Ante Conditionalities for the European Structural and Investment Funds – Part II, last accessed on 17-08-2022.

[10] EU Commission (2014) Internal Guidance on Ex Ante Conditionalities for the European Structural and Investment Funds – Part II, last accessed on 17-08-2022, p. 338, under B.1.

The 2014-2020 EU funding cycle did not include the Charter *per se* as an 'ex-ante conditionality' for the granting of EU funding to Member-States. In 2016, the European Commission published guidance on the three phases of implementation of ESI Funds, which nevertheless required compliance with the Charter[11] in establishing the ESI funds intervention strategy and drawing up the programming documents; in setting up the management monitoring and control systems; and in the implementation of the programmes. **These requirements were of a 'soft' nature: it was not a legal obligation for Member-States to take active measures for the promotion of the Charter rights, but they were "encouraged" to do so.**

In the 2014-2020 funding cycle, the ESI Funds Regulation also contained provisions which reflected the entry into force of the UNCRPD. The Implementation of the UNCRPD was explicitly mentioned as a horizontal 'ex-ante conditionality'.[12] This 'ex-ante conditionality'[13] explicitly included measures for the shift from institutional to community-based care.

Greece benefitted significantly from the 2014-2020 ESIF programmes. It received EUR 25,2 billion from EU funding, representing an average of 2,300 euro per person in the 2014 population (as of January 2022).[14] The national legislative framework regulating the management, monitoring and application of programmes funded under the

[11] EU Commission (2016) 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) (2016/C269/01), last accessed on 17-08-2022.

[12] Annex XI Part II, of the Common Provisions Regulation called for the "*existence of administrative capacity for the implementation and application of the United Nations Convention on the rights of persons with disabilities*" with the following fulfilment criteria: arrangements to involve the representative organisations of persons with disabilities and other relevant bodies in charge of the protection of the rights of persons with disabilities; arrangements for staff training of the authorities involved in the management of ESI funds, including in the area of accessibility; and arrangements to ensure the monitoring of the accessibility provision of the UNCRPD (Article 9) throughout the preparation and implementation of the programmes.

[13] Annex XI Part I of the Common Provisions Regulation.

[14] See Annex 1.

2014-2020 cycle was included in Law 4314/2014.[15] A detailed analysis of the legal framework is included in Chapter 2 of the present report and information on the Greek budget for 2014-2020 is available in Annex 1.

The Partnership Agreement for the Development Framework (ESPA) 2014-2020 was the main strategic plan for growth in Greece with the contribution of resources originating from ESI Funds. **ESPA 2014-2020 did not contain any conditionality related to the EU Charter**. **However, non-discrimination, gender equality and accessibility for persons with disabilities were implemented in the management and monitoring procedures either as specific procedures or as steps within existing procedures.** To this end a Procedure Manual[16] was published by the competent office of the Ministry of Development and Investments.[17] The table below provides an example on how the 'ex-ante conditionalities' were implemented as a procedure or as a step within a procedure:

Procedure/Step	***Implementation of Ex-ante* conditionalities**
Publication of calls to submit proposals (Procedure D.I_1)	This procedure aims to present the necessary steps for informing potential beneficiaries on the terms and conditions they must meet in order to receive EU funding. Beneficiaries are informed on the assessment methodology and the criteria related to all the 'ex-ante conditionalities' (horizontal and thematic) that must be implemented.
Evaluation and Selection of Action (Procedure D.II_2) ***Step: Evaluation criteria***	This procedure aims to evaluate the proposals that have been submitted and select the actions that will be funded. As a specific step in the evaluation procedure, separate criteria for the adherence to EU and national law should be fulfilled in order for the action to qualify (on/off criteria). These include gender equality; non-discrimination; and accessibility for persons with disabilities.

The promotion of social integration, gender equality and non-discrimination was monitored by (monitoring) committees established on a national and regional

[15] Greece, Law 4314/2014 On the management, control and the application of development interventions for the programming period of 2014-2020 (*Νόμος 4314/2014 Για τη διαχείριση, τον έλεγχο και την εφαρμογή αναπτυξιακών παρεμβάσεων για την προγραμματική περίοδο 2014-2020*)(O.G. A' 265/23-12-2014).

[16] Greece, Ministry of Development and Investments, Procedure Manual for the Management and Monitoring System 2014-2020 (*Εγχειρίδιο Διαδικασιών Συστήματος Διαχείρισης και Ελέγχου 2014-2020*).

[17] Υπουργείο Ανάπτυξης και Επενδύσεων.

level in which social partners and stakeholders had an active role. Representative civil society organisations as well as social partners (such as the Greek Confederation of Persons with Disabilities – ESAMEA) participated with voting rights in the National Monitoring Committee for 2014-2020, which was tasked, *inter alia*, with monitoring the results of the application of the programmes, the progress in the accomplishment of the relevant strategic goals, the implementation of the policies and the approval of progress reports. Roma organisations participated in certain regional monitoring committees, depending on the existence or not of Roma populations in each region.

Complaints concerning co-financed programmes/projects could be submitted to the General Secretariat for Combatting Fraud.[18] In 2019, the National Transparency Authority[19] was appointed as the focal point for the submission of complaints related to fraud during the implementation of the funded programmes.[20] **The examination of complaints regarding the application of human rights 'ex-ante conditionalities' was not specifically included within the competencies of the National Transparency Authority.** There is no available information on whether such complaints were submitted and examined by the Authority. In any case, the body in question cannot be considered a national body with a human-rights remit.

1.2. The 'horizontal enabling conditions' and 'thematic enabling conditions' of 2021-2027 and their transposition in Greece

The conclusion of the 2014-2020 funding cycle marked the transition from 'ex-ante conditionalities' to 'enabling conditions'. EU Regulation 1060/2021 laying down the common provisions on a broad spectrum of EU funds set out 'enabling conditions' (horizontal and thematic). The main difference between 'enabling conditions' and 'ex-ante conditionalities' is that the former must be fulfilled throughout the preparation, implementation, monitoring, reporting and evaluation of the programming period (thus the full cycle). By contrast, 'ex-ante conditionalities' were only examined at the beginning of the programming cycle, during the adoption of the partnership agreements. **Therefore,**

[18] Greek Anti-Fraud Coordination Service-AFCOS based on Law 4320/2015, article 7 par. B and according to Regulation EC. 883/2013, article 4 par. 3.

[19] Εθνική Αρχή Διαφάνειας.

[20] Greece, Law 4622/2019 'Staff-run State: organization, operation and transparency of the Government, governmental bodies and the central public administration' (*Νόμος 4622/2019 Επιτελικό Κράτος: οργάνωση, λειτουργία και διαφάνεια της Κυβέρνησης, των κυβερνητικών οργάνων και της κεντρικής δημόσιας διοίκησης*)(O.G. A 133/7-8-2019).

'enabling conditions' offer a strengthened mechanism for monitoring compliance with human rights obligations throughout the funding period.

In addition, **the material scope of the fundamental rights conditionality was substantially expanded**. More specifically, Article 9 of the Common Provisions Regulation introduced four horizontal principles for 2021-2027:

a) respect for fundamental rights and compliance with the Charter of Fundamental Rights of the European Union in the implementation of the Funds;

b) equality between men and women, gender mainstreaming and the integration of a gender perspective to be taken into account and promoted throughout the preparation, implementation, monitoring, reporting and evaluation of programmes;

c) prevention of 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. Accessibility for persons with disabilities to be taken into account throughout the preparation and implementation of programmes; and

d) promoting sustainable development as set out in Article 11 TFEU, taking into account the UN Sustainable Development Goals, the Paris Agreement and the "do no significant harm" principle.

The '*horizontal* enabling conditions' (Article 15 of the Common Provisions Regulation, further elaborated in Annex III of the CPR) include *inter alia* the effective application and implementation of the Charter of Fundamental Rights and the implementation and application of the UNCRPD.[21]

'*Thematic* enabling conditions'[22] are specific for each Fund and specific fulfilment criteria are identified per area. For example, under policy objective 4 for a more social and

[21] For the fulfilment of the Charter conditionality, Annex III of the CPR requires Member-States to introduce: "*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).*" For the fulfilment of the UNCRPD conditionality, Annex III requires that Member-States establish a national framework for the implementation of the UNCRPD 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).*"

[22] Article 15 and Annex IV of the Common Provisions Regulation for the ERDF, the ESF+ and the Cohesion Fund 2021-2027.

inclusive Europe implementing the European Pillar of Social Rights, there are objectives for the ERDF as well as the ESF+ which include the enabling condition of adopting national strategic policy frameworks for social inclusion and poverty reduction, for gender equality, Roma inclusion, etc. Thus, in the new funding cycle, Member-States must assess whether the enabling conditions linked to a specific selected objective are fulfilled when preparing the programme or introducing a new objective.

In conclusion, the new Common Provisions Regulation for the 2021-2027 funding cycle contains explicit reference to the Charter and introduces a strengthened mechanism for monitoring of human rights compliance throughout the funding cycle. However, as pointed out by a recent study,[23] it remains to be seen how the Regulation will be implemented in practice and how stakeholders will be involved in the process.

In Greece, Law 4914/2022[24] regulates the funding cycle of 2021-2027 (a detailed analysis of the legal framework is included in Chapter 2).[25] According to the National Coordination Authority of the General Secretariat of Public Investments and ESPA[26] compliance with the Charter will be included again as a separate "on/off" evaluation criterion throughout the programming period. This means that compliance with the Charter will be examined in order to qualify or disqualify related proposals or projects. A supporting list of indicators will be provided to evaluators and operators of actions when carrying out *in situ* monitoring and verification.

Law 4914/2022 also foresees the involvement of CSOs representing the rights of persons with disabilities and the rights of Roma was quite prominent during the 2014-2020 funding cycle. So far, the only body with a human rights remit that participates in the programming process during the 2021-2027 cycle is the GNCHR.

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[23] FRA, Providing technical assistance to national bodies with a human rights remit involved in assessing EU Charter & CRPD compliance of EU funds-EU level research, 2022, p. 12.

[24] Greece, Law 4914/2022 'Management, monitoring and application of development interventions for the Programming Period 2021-2027' (*Νόμος 4914/2022 Διαχείριση, έλεγχος και εφαρμογή αναπτυξιακών παρεμβάσεων για την Προγραμματική Περίοδο 2021-2027*) (O.G. A 61/21-03-2022).

[25] For the funding cycle of 2021-2027 the first Partnership Agreement to be adopted by the Commission was for Greece which submitted its strategic reference document for deploying more than €21 billion of investments for its economic, social and territorial cohesion. See European Commission, Press Release, EU Cohesion policy: Commission adopts €21 billion Greek Partnership Agreement for 2021-2027, 29-07-2021.

[26] Εθνική Αρχή Συντονισμού Γενικής Γραμματείας Δημοσίων Επενδύσεων και ΕΣΠΑ.

Finally, following the introduction of this explicit 'enabling condition' for the EU Charter, the Ministry of Development and Investments signed in February 2022 a Partnership Memorandum with the Greek National Commission for Human Rights (GNCHR) in order for the GNCHR to provide assistance in assessing compliance with the Charter throughout the programming period.[27]

1.3. Human rights-related conditionalities in other EU funding schemes

It is important to note that separate EU regulations apply to the Multiannual Financial Framework (MFF) which includes the Asylum and Migration Fund (AMIF), the Internal Security Fund (ISF) and the Border Management Visa Instrument (BMVI). The Common Provisions Regulation for these Funds enables the Commission to introduce a funding conditionality related to fundamental rights compliance. Furthermore, the regulations on the AMIF, ISF and BMVI include specific provisions that strongly link effective implementation of national programs to full compliance with fundamental rights.

The BMVI, AMIF and ISF Regulations all state that entities are only eligible to receive funding for actions that comply with the rights and principles enshrined in the Charter and which contribute to the objectives of the Fund.[28] These include full respect for the obligations arising from the international instruments to which the Union and Member States are party.

[27] Greece, Press Release, Partnership memorandum between the Ministry of Development and Investments and the National Commission for Human Rights (*Μνημόνιο συνεργασίας μεταξύ του Υπουργείου Ανάπτυξης και Επενδύσεων και της Εθνικής Επιτροπής για τα Δικαιώματα του ΑνθρώπουΜνημόνιο συνεργασίας μεταξύ του Υπουργείου Ανάπτυξης και Επενδύσεων και της Εθνικής Επιτροπής για τα Δικαιώματα του Ανθρώπου*), 11-04-2022.

[28] See Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund, consideration number 5, see also Article 6(2) and Art 35(2) lit. f; Regulation (EU) 2021/1149 of the European Parliament and of the Council of 7 July 2021 establishing the Internal Security Fund, Article 4, Article 30(2) lit. f; Regulation (EU) 2021/1148 of the European Parliament and of the Council of 7 July 2021 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy, consideration 4, Article 4, Article 29(2) lit. f.

The introduction of conditionality criteria in EU migration funds gathered attention when the European Commission started bilateral discussions with Croatia[29] and Greece[30] about the establishment of a mechanism to monitor fundamental rights compliance at the EU external borders. Greek authorities opposed the establishment of an independent border monitoring mechanism and assigned the investigation of complaints regarding fundamental rights violations at the borders to the National Transparency Authority - which is also the focal point for receiving fraud complaints related to the ESI Funds. However, the independence of the National Transparency Authority was questioned due to a report it published which denied illegal pushbacks of migrants at the Greek eastern borders, contradicting the findings of international, European and national bodies.[31]

Despite its limited success in the area of external borders, **the idea of a national mechanism for monitoring fundamental rights violations offers an interesting practice that could be of relevance for the monitoring of compliance with fundamental rights during the funding cycle for 2021-2027.**

[29] See EU Ombudsman, Report on the inspection of documents and meeting on how the European Commission ensures that the Croatian authorities respect fundamental rights in the context of border management operations financed by EU funds, 23-09-2021, last accessed on 17-08-2022.

[30] Euractiv, Commission asks Greece for transparency on pushbacks to release migration funds, 13-09-2021, last accessed on 17-08-2022.

[31] European Parliament, LIBE Committee on Civil Liberties, Justice and Home Affairs, Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations, 14-07-2021, last accessed on 17-08-2022, p. 3, which lists allegations of illegal pushbacks.

2. Implementation: the National Frameworks

2.1. The 2014-2020 national framework

(i) The Greek Partnership Agreement for the Development Framework for 2014-2020

The general framework for the implementation of the horizontal 'ex-ante conditionalities' of the funding cycle for 2014-2020 is the Greek Partnership Agreement for Development Framework - ESPA[32] for 2014-2020[33] as approved by the European Commission.[34] Operational Programmes are multiannual programmes, effective throughout the programming period, which are related to sectors and/or geographic regions at national or local level. The architecture of ESPA 2014-2020 included seven (7) Sectoral Operational Programmes covering one or more sectors and which were applicable across the country and thirteen (13) Regional Operational Programmes (ROP), one for each of the 13 administrative regions.

When it comes to the rights of persons with disabilities and the implementation of the UNCRPD, ESPA (Chapter 1.5.2.) **makes explicit reference to Article 7 of the Common Provisions Regulation for 2014-2020 and provides specifically for horizontal training activities on the application of the UNCRPD**. The Greek Confederation of Persons with Disabilities – ESAMEA was actively involved in the implementation of ESPA and played an active part in the delivery of the training and in the practical application and monitoring of the horizontal conditionality concerning the rights of persons with disabilities and their accessibility.

Four sectoral targets were included in ESPA 2014-2020 related to the prevention of discrimination and to accessibility for persons with disabilities. The

[32] Εταιρικό Σύμφωνο για το Πλαίσιο Ανάπτυξης - ΕΣΠΑ.

[33] Greece, Partnership Agreement 2014-2020, Partnership Agreement on the Development Framework – ESPA 2014-2020 (*Σύμφωνο Εταιρικής Σχέσης 2014-2020, Εταιρικό Σύμφωνο για το Πλαίσιο Ανάπτυξης – ΕΣΠΑ 2014-2020)*, 2014, available in Greek, last accessed on 17-08-2022.

[34] European Commission, Implementing Decision of 23-05-2014 for the approval of certain elements of the partnership agreement with Greece, C(2014) 3542 final, 23-05p 2014 (*Εκτελεστική Απόφαση της Επιτροπής της 23.5.2014 για την έγκριση ορισμένων στοιχείων του συμφώνου εταιρικής σχέσης με την Ελλάδα*), available in Greek, last accessed on 17-08-2022.

sectoral targets related to a) equal access to employment, b) equal access to education, vocational training and lifelong learning, c) the promotion of social inclusion and addressing poverty and d) combatting discrimination on grounds of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation.

A total of eight targets for the promotion of gender equality were also included in ESPA 2014-2020. These included, among others, equal access of women to employment; promotion of the social integration of women, prevention and combatting poverty among women and gender-based violence; gender mainstreaming for social protection and health-related issues; equal participation of women in public decision-making procedures; etc.[35]

Measures for the promotion of gender equality and non-discrimination in the preparation and implementation of ESPA 2014-2020 and the operational programmes, included:

- The active participation of /public consultation with competent authorities (e.g. the General Secretariat for Gender Equality) and CSOs (e.g. ESAMEA) through regional, sectoral and national conferences for planning and the development of programmes.

- The best possible balancing between the participation of men and of women in the monitoring committee and the involvement of representatives of public authorities with a mandate of equality issues and CSOs representing specific groups (e.g. General Secretariat for Gender Equality, ESAMEA and the ROM Network).

- Dissemination of information concerning the programme and its measures, through the members of monitoring committees (national and regional) and addressing all stakeholders to ensure that everyone has access to funding opportunities and of knowledge of the preconditions for receiving funding.

- Annual reporting on the measures for the promotion of equal opportunities within the Operational Programmes (O.P), their effectiveness and the corrective measures

[35] Greece, Partnership Agreement 2014-2020, Partnership Agreement on the Development Framework – ESPA 2014-2020 (*Σύμφωνο Εταιρικής Σχέσης 2014-2020, Εταιρικό Σύμφωνο για το Πλαίσιο Ανάπτυξης – ΕΣΠΑ 2014-2020)*, 2014, available in Greek, last accessed on 17-08-2022, p. 132.

needed in order to ensure non-discrimination and briefing of the monitoring committees and the European Commission.

- The use of specialized indicators for gender equality and non-discrimination, as well as the support of accessibility for persons with disabilities during the selection phase, the implementation and evaluation of actions for co-financing (where possible). These indicators and their relevance for Operational Programmes were further specified through Working Groups with the participation of stakeholders (e.g. Working Group for accessibility with the participation of ESAMEA).

The bodies and institutions with a role in ensuring the application of the 'ex-ante conditionalities' in the ESPA 2014-2020 programme were the following:

a) the General Secretariat for Gender Equality,

b) The National Confederation of Persons with Disabilities - ESAMEA and

c) the Panhellenic Intra-municipal Network for the support of Greek Roma - ROM network.[36]

Independent authorities and national human rights bodies such as the Greek Ombudsman and the Greek National Commission for Human Rights were not specifically mentioned in the ESPA implementing framework.

(ii) Law 4314/2014 for the implementation of the 2014-2020 funding cycle

Law 4314/2014[37] established the rules for the coordination, management, monitoring and application of the development interventions for the programming period of 2014-2020 with the aim to ensure the most effective use of ESIF and national co-financing and optimal coordination between all sources of financing. The law applied to all programmes included

[36] Πανελλαδικό Διαδημοτικό Δίκτυο για την Υποστήριξη των Ελλήνων Τσιγγάνων – Δίκτυο ΡΟΜ.

[37] Greece, Law 4314/2014 On the management, control and the application of development interventions for the programming period of 2014-2020 (*Νόμος 4314/2014 Για τη διαχείριση, τον έλεγχο και την εφαρμογή αναπτυξιακών παρεμβάσεων για την προγραμματική περίοδο 2014-2020*)(O.G. A' 265/23-12-2014).

in the Greek Partnership Agreement for Development Framework - ESPA for 2014-2020,[38] which were financed by the ESIF following their approval by the European Commission.[39]

The authorities responsible for the coordination and implementation of the operational programmes (OPs) of the 2014-2020 PA[40]) were: a) the National Coordinating Authority – NCA[41] and b) the Executive Units of the competent Ministries.[42] The NCA was the national focal point and responsible for promoting the application of EU law and harmonizing national law.[43]

An 'ex-ante conditionality'[44] was defined in the law as a specific and exactly predetermined crucial factor, which constitutes a necessary precondition for the affective and productive implementation of the special target of an investment priority or a priority of the EU and which has a direct and real relationship with the relevant implementation and an immediate effect on it.[45] The law did not list these "factors". However, according to the

[38] Greece, Partnership Agreement 2014-2020, Partnership Agreement on the Development Framework – ESPA 2014-2020 (*Σύμφωνο Εταιρικής Σχέσης 2014-2020, Εταιρικό Σύμφωνο για το Πλαίσιο Ανάπτυξης – ΕΣΠΑ 2014-2020)*, 2014, available in Greek, last accessed on 17-08-2022.

[39] European Commission, Implementing Decision of 23-05-2014 for the approval of certain elements of the partnership agreement with Greece, C(2014) 3542 final, 23-05p 2014 (*Εκτελεστική Απόφαση της Επιτροπής της 23.5.2014 για την έγκριση ορισμένων στοιχείων του συμφώνου εταιρικής σχέσης με την Ελλάδα*), available in Greek, last accessed on 17-08-2022.

[40] Article 4 of Law 4314/2014

[41] Εθνική Αρχή Συντονισμού.

[42] Επιτελικές Δομές Υπουργείων. ESPA Executive Units have been established in every ministry with the purpose of supporting the ministry as well as the stakeholders it oversees in order to record, prioritise and specialize the needs within every policy area involving the ministry. They are tasked with designing Ministry policies, the programming, adaption, preparation and implementation of specific projects and actions within these policies which are financed through the Operational Programmes of ESPA.

[43] Article 4 of Law 4314/2014 also lists the national authorities responsible for the management and control for the OPs: the National Management Authority for each OP, the Control Authority for all OPs, the Certification Authority for all OPs and the Intermediary Authorities, responsible for part of the OP or tasked with specific duties of the Management Authority.

[44] Εφαρμοστέες εκ των προτέρων αιρεσιμότητες.

[45] Article 3 of Law 4314/2014.

explanatory report of the law[46] the definitions reflect the provisions of the Common Provisions Regulation 1303/2013.

The National Coordination Authority was responsible for monitoring the implementation of the 'ex-ante conditionalities'.[47] This responsibility is extended to the Special Service for Strategy, Design and Evaluation[48] subject to the NCA. The NCA has the additional task to provide information and direct the management authorities in relation to the correct application of EU and national law, receive updates on activities to ensure, *inter alia*, the application of provisions for combatting discrimination and promoting gender equality.[49]

A National Monitoring Committee[50] (NMP) and Monitoring Committees per OP[51] (OPMC) were competent for monitoring the implementation of the EU funding cycle for 2014-2020.[52] The NMP included as permanent members with voting rights the General Secretariat for Gender Equality and representative NGOs.[53] OPMCs were comprised of stakeholders competent on social integration, gender equality and non-discrimination and representative NGOs (all as members with voting rights).[54] Both NGOs and stakeholder-experts had voting rights.[55] All decisions of the NMP and the OPMCs were taken by absolute majority vote. Regional Committees for the Developmental Design[56] on

[46] Greece, Explanatory Report to Draft Law 4314/2014 (*Αιτιολογική Έκθεση στο σχέδιο νόμου Α) Για την Διαχείρηση, τον έλεγχο και την εφαρμογή Αναπτυξιακών Παρεμβάσεων για την Προγραμματική Περίοδο 2014-2020, Β) Ενσωμάτωση της Οδηγίας 2012/2017 του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 13ης Ιουνίου 2012 (ΕΕ L 156/16.6.2012) στο Ελληνικό Δίκαιο, Τροποποίηση του ν. 3419/2005 (Α΄ 297) και άλλες διατάξεις*), last accessed on 17-08-2022.

[47] Article 14 para. 3L of Law 4314/2014.

[48] Ειδική Υπηρεσία Στρατηγικής, Σχεδιασμού και Αξιολόγησης – ΕΥΣΣΑ.

[49] Article 14g of Law 4314/2014.

[50] Επιτροπή Παρακολούθησης ΕΣΠΑ 2014-2020.

[51] Επιτροπές Παρακολούθησης Επιχειρησιακών Προγραμμάτων.

[52] Article 23 of Law 4314/2014.

[53] Article 23 of Law 4314/2014.

[54] Article 24 of Law 4314/2014.

[55] The representatives of the audit authority, the General Secretariat of Public Investments and the European Bank of Investments participated without voting rights.

[56] Περιφερειακές Επιτροπές Αναπτυξιακού Σχεδιασμού.

a local-administration-level were established as sub-committees of the OPMC[57] with an advisory role in the preparation and implementation of the programmes on an *ad hoc* regional basis. Their main role was to ensure that the programmes were tailored to each region's specific circumstances.

The Monitoring Committee for the Agricultural Development Programme[58] and the Operational Programme for Fisheries and Sea[59] under the EAFRD and EMFF was explicitly tasked to assess actions from the perspective of promoting gender equality, equal opportunities and the prohibition of discrimination, including accessibility for persons with disabilities.[60]

No case-law or complaints were identified dealing with fundamental rights 'ex-ante conditionalities'. This includes the complaints received by the mechanism set up to deal with cases of fraud, initially, the General Secretariat for Combatting Fraud[61] and, since 2019, the National Transparency Authority.[62] The majority of complaints received by the NTA, according to the 2019 and 2020 reports, concerned cases of fraud related to the EU funding cycle of 2014-2020.[63] These particularly related to selection procedures for beneficiaries and the public procurement sector, non-compliance with implementation requirements and conflicts of interest. 'Ex-ante conditionalities' were not mentioned *per se* as the topic of complaints in these reports.

(iii) Non-legislative Measures

[57] Article 24A of Law 4314/2014.

[58] Πρόγραμμα Αγροτικής Ανάπτυξης.

[59] Επιχειρησιακό Πρόγραμμα Αλιείας και Θάλασσας.

[60] Article 68 of Law 4314/2014.

[61] Greek AFCOS service based on Law 4320/2015, article 7 par. B implementing Regulation EC. 883/2013, article 4 par. 3.

[62] Greece, Law 4622/2019 'Staff-run State: organization, operation and transparency of the Government, governmental bodies and the central public administration' (*Νόμος 4622/2019 Επιτελικό Κράτος: οργάνωση, λειτουργία και διαφάνεια της Κυβέρνησης, των κυβερνητικών οργάνων και της κεντρικής δημόσιας διοίκησης*)(O.G. A 133/7-8-2019).

[63] National Transparency Agency, 2019 Annual Report (*Εκθεση Απολογισμού 2019*) and 2020 Annual Report, last accessed on 17-08-2022.

As noted in section 1.2. above, **non-discrimination, gender equality and accessibility for persons with disabilities were implemented in national management and monitoring procedures either as specific procedures or as steps within the procedures applied by national operational authorities**. A Procedure Manual[64] published by the Ministry of Development and Investments operationalised 'ex-ante conditionalities' in specific procedures.[65]

For example, during the publication of a call for the submission of proposals (Procedure DI.1.) participants were notified of the methodology and criteria for the evaluation of their proposals. The application of horizontal policies for gender equality, non-discrimination on the grounds of gender, racial or ethnic origin, religious or other beliefs, disability, age and sexual orientation were highlighted as required criteria in the proposal phase.

Furthermore, during the evaluation of submitted proposals and selection procedure, **the national authority used 'ex-ante conditionalities' as "on/off" (i.e. qualifying/disqualifying) evaluation criteria. This means that only actions in line with EU and national law, and in respect of gender equality, non-discrimination and accessibility for persons with disabilities were selected for receiving funding**. If these conditions were not met, the action was disqualified.

According to the National Coordinating Authority,[66] the Procedure Manual provided overall detailed guidance for all procedures and their application was sufficient to guarantee rights enshrined in the EU Charter such as: equality, non-discrimination, gender equality, rights of children and older persons, integration of persons with disabilities, good administration, the right of access to documents, access to justice and protection of personal data.

Regarding regional monitoring committees, more than 40 ministerial decisions dealt with their establishment and the appointment of their members. ESAMEA was appointed as

[64] Greece, Ministry of Development and Investments, Procedure Manual for the Management and Monitoring System 2014-2020 (*Εγχειρίδιο Διαδικασιών Συστήματος Διαχείρισης και Ελέγχου 2014-2020*).

[65] The Procedure Manual identifies nine separate operational procedures which depend on the stage of implementation.

[66] Information provided in Prot. No. 55904/31-05-2022 Communication of the Special Service for Institutional Support of the National Coordinating Authority.

a member of the NMC and regional monitoring committees. Roma organisations were members of regional monitoring committees for the regions where there were records of Roma population. For instance, the Panhellenic Confederation of Greek Roma "Ellan Passe" was member of the Monitoring Committee for the Attica Region,[67] and the Thessaly Federation of Greek Roma in Monitoring Committee for the Thessaly region,[68] etc.

(iv) Problematic issues identified during the 2014-2020 funding cycle

a) Limited activities related to de-institutionalisation

The European Commission Guidance on ex-ante conditionalities[69] stipulated that the **funded programmes should include measures to prevent institutionalisation**, **measures to develop services based in the community enabling persons with disabilities to live independently and measures to enable access to mainstream community services**.

The 'Structural Funds Watch' reported in 2017[70] that in Greece few calls for proposals had been launched and substantive projects for the deinstitutionalisation had not started:

> "*A National NGO in Greece advised that budget reports of each Prefecture have a certain amount specified for deinstitutionalisation from the ESIF. However, substantive projects supporting deinstitutionalisation have not started. Civil society organisations have expressed concern that, given the lack of a specific deinstitutionalisation strategy or plan, this funding will not be spent on deinstitutionalisation and may be redirected toward other priorities or misused to support institutional care. This fear has intensified after a meeting in September 2017 between children's civil society organisations and the Greek Regional Government of Attica. Civil society organisations were advised that an amount of €2 million for deinstitutionalisation noted in 2016, will not be released for this purpose. A Government*

[67] Ministerial Decision 1203/2015, O.G. B' 474/27-03-2015.

[68] Ministerial Decision 1277/2015, O.G. B' 477/27-03-2015.

[69] EU Commission (2014) Internal Guidance on Ex Ante Conditionalities for the European Structural and Investment Funds – Part II, last accessed on 31-07-2022, p. 259.

[70] Community living for Europe, Structural Funds Watch, Opening up communities, closing down institutions: Harnessing the European Structural and Investment Funds, November 2017, last accessed on 31-07-2022.

official reportedly advised that there is no other option than to support residential homes "because they are understaffed and there is nowhere else to put the children."

Greece is a Member State for which the European Commission has identified the need for deinstitutionalisation (DI) reforms to create support systems in the community.[71] This led to the adoption of a Technical Support project on the deinstitutionalisation (DI) process, which aimed to assist the Greek Ministry of Labour and Social Affairs. The Project was implemented from May 2019 to July 2021 and funded via the Structural Reform Support Programme. One of its most important outcomes was the launch of National Strategy for Deinstitutionalisation.

b) Lack of ex post assessment mechanisms to verify the fulfilment of accessibility conditionalities for persons with disabilities

Even though the participation of ESAMEA in the funding cycle of 2014-2020 can be considered as a promising practice, ESAMEA reported[72] the **lack of assessment mechanisms that could verify whether the implemented projects satisfied in practice the horizontal 'ex-ante conditionality' related to the accessibility of persons with disabilities.** ESAMEA stressed that European structural and investment fund regulations are not sufficient on their own to change the socio-economic integration of persons with disabilities/chronic illness and dedicated assessment or verification mechanisms need to be put in place.

From a sectoral perspective, ESAMEA and the GNCHR[73] report a high degree of compliance with accessibility requirements in sectors such as infrastructure and transport, mainly due to the existence of specific legislative provisions. A gap is identified however in access to goods and services.

Box 1

Possible measures to consider for addressing gaps identified in relation to persons with disabilities

[71] European Association of Service providers for Persons with Disabilities (EASPD), Greece launches new Strategy for Deinstitutionalisation, 2021, last accessed on 31-07-2022.

[72] Information provided by ESAMEA through its 26-07-2022 Communication.

[73] Information provided by the GNCHR in its 06-06-2022 Communication.

- Review the national legal framework in order to bring the law on equal treatment (Law 4443/2016) in line with the UNCRPD and extend its scope so as to ensure equal treatment for persons with disabilities in all fields and not only in the field of employment.
- Implement the European Accessibility Act (EU Directive 2019/882/EU) which includes provisions for the accessibility of persons with disabilities to goods and services.
- Introduce indicators and collect statistical data related to persons with disabilities that benefited from actions and programmes of the 2014-2020 funding cycle.

2.2. The 2021-2027 national framework

(i) The Partnership Agreement for Regional Development for 2021-2027

Greece was the first country to submit a Partnership Agreement for the funding cycle of 2021-2027 and to have it approved by the European Commission.[74] The Partnership Agreement for Regional Development – ESPA 2021-2027[75] was first published on July 29, 2021. ESPA 2021-2027 states, under objective 5 "Europe Closer to Citizens", that there will be a partnership involving the systematic and multi-level cooperation of all local stakeholders, throughout the stages of design, programming, implementation and monitoring of the implementation of regional interventions. This will include local administration of municipal and regional authorities, central administration, trade union representatives, civil society, including stakeholders competent for issues related to disability, social rights and inclusion.

Under title '2. Policy choices, coordination and complementarity'", ESPA 2021-2027 states that the monitoring of "*adherence to the application of the Charter of Fundamental Rights and the United Nations Convention for Persons with Disabilities, gender equality and non-discrimination will cover 3 consecutive phases in the implementation of the Funds and specifically,* ***the preparation of documents*** *(ESPA and Programme preparation),* ***the establishment/preparation of management, control and monitoring systems and the***

[74] European Commission, Press Release, EU Cohesion policy: Commission adopts €21 billion Greek Partnership Agreement for 2021-2027, 29-07-2021.

[75] Greece, Partnership Agreement – Article 10(6), 2021-2027 (*Συμφωνία Εταιρικής Σχέσης*), CCI: 2021EL16FFPA001, available in Greek, last accessed on 19-06-2022.

implementation of the programmes and the execution of specific actions for their implementation".[76]

(ii) Law 4914/2022 and the introduction of 'enabling conditions'

Law 4914/2022 is the key national legislative document for the programming period 2021-2027.[77] Article 2 defines 'enabling conditions'[78] as prerequisites for the effective and efficient implementation of the objectives. The definition corresponds *verbatim* to the definition included in Article 2 of the CPR 2021-2027.

Box 2

The criteria and procedures for the inclusion of actions in the funded programmes shall: 1) not discriminate, 2) be transparent, 3) ensure the accessibility of persons with disabilities, 4) ensure gender equality and 5) take into account the EU Charter for Fundamental Rights

(Article 36 of Law 4914/2022)

The formulation of the article displayed in Box 2 in relation to the EU Charter, shows that the Charter should "be taken into account". This is a weak formulation that minimises the significance of the Charter in the national context. On an interesting note, this did not appear to be a point of discussion during the legislative process. In fact, the draft law remained unaltered in this respect and was adopted as it is displayed above in the box.

The National Coordinating Authority – NCA and the Executive Units of the relevant Ministries were re-established for the 2021-2027 funding programme including the specialised services per fund within the NCA.[79] The Executive Units within ministries have the task to cooperate with the Ministry Services and the stakeholders they oversee, with the

[76] Point (b)(ii) of Article 11(1) CPR.

[77] Greece, Law 4914/2022 'Management, monitoring and application of development interventions for the Programming Period 2021-2027' (*Νόμος 4914/2022 Διαχείριση, έλεγχος και εφαρμογή αναπτυξιακών παρεμβάσεων για την Προγραμματική Περίοδο 2021-2027*)(O.G. A 61/21-03-2022).

[78] Αναγκαίοι πρόσφοροι όροι.

[79] Articles 20-23 of Law 4914/2022.

Regions and the Central Union of Greek Municipalities (KEDE) .[80] They also have the task to cooperate with social partners and stakeholders representing civil society in the promotion of social integration, fundamental rights, the rights of persons with disabilities, gender equality and non-discrimination in order to capture, prioritise and specify the needs of relevant vulnerable groups in relation with the policy sectors of each Ministry.

Representatives of stakeholders responsible for promoting social integration, fundamental rights, the rights of persons with disabilities, gender equality and anti-discrimination are appointed as members with voting rights in the Monitoring Committees (national and regional). These committees have the task to monitor the implementation of the programmes and Article 40 of the CPR.[81] The Committees are also tasked with the monitoring and fulfilment of the enabling conditions and their application throughout the duration of the programming period. The same applies to the Monitoring Committees (national and regional) for programmes in the common agricultural policy strategic plans (CAP Strategic Plans) which are regulated separately by Law 4914/2022.

So far the National Transparency Authority remains as the body for the examination of complaints regarding the funded programmes under ESPA 2021-2027. It is still unclear whether the body will be competent for examining complaints concerning the 'enabling conditions' of the EU Charter and UNCRPD.

According to a guide issued by the Ministry of Development and Investment, the National Transparency Authority is explicitly mentioned as the competent authority for receiving and examining complaints related to the EU Charter.[82] However, the guide does not include information on why it considers the NTA a competent authority. As stipulated earlier, the NTA is not a national body with a human-rights remit. Its main purposes are enhancing transparency and addressing fraud and corruption. In fact, the examination of complaints or monitoring of issues related to human rights have not been included in its

[80] Article 22 of Law 4914/2022.

[81] Article 29 of Law 4914/2022.

[82] Greece, Ministry of Development and Investments, Enabling Conditions: demands and guidelines for their fulfilment, Programming Period 2021-2027 (*Οι Αναγκαίοι Όροι : απαιτήσεις και κατευθύνσεις για την εκπλήρωσή τους, Προγραμματική Περίοδος 2021-2027*), April 2021, last accessed on 10-08-2022, p. 67.

mandate.[83] In any case, a guide cannot be considered a legally binding document and therefore, the examination of human-rights-related 'enabling conditions' still remains unclear.

(iii) Significant steps adopted to involve the National Commission for Human Rights

Following the introduction of the explicit enabling condition related to the Charter, the Ministry of Development and Investments signed in February 2022 a Partnership Memorandum with the Greek National Commission for Human Rights (GNCHR) in order for the human rights body to provide assistance throughout the programming period.[84] The Memorandum is not legally binding *per se*, but defines a framework for the cooperation between the Ministry and the GNCHR in relation to compliance with the Charter. More information on this partnership is provided below (under section 3.2).

The GNCHR is an independent advisory body to the Greek State in accordance with the UN Paris Principles[85], and is the national institution for the protection and promotion of human rights (NHRI) in Greece. The GNCHR will also participate in all Monitoring Committees (national and regional) for the 2021-2027 funding cycle.[86] The Monitoring Committees are also mandated with the monitoring and fulfilment of the enabling conditions and their application throughout the duration of the programming period.

[83] Greece, Law 4622/2019 'Executive State: organization, operation and transparency of the Government, governmental bodies and the central public administration' (*Νόμος 4622/2019 Επιτελικό Κράτος: οργάνωση, λειτουργία και διαφάνεια της Κυβέρνησης, των κυβερνητικών οργάνων και της κεντρικής δημόσιας διοίκησης*)(O.G. A 133/7-8-2019).

[84] Greece, Press Release, Partnership memorandum between the Ministry of Development and Investments and the National Commission for Human Rights (*Μνημόνιο συνεργασίας μεταξύ του Υπουργείου Ανάπτυξης και Επενδύσεων και της Εθνικής Επιτροπής για τα Δικαιώματα του Ανθρώπου*), 11-04-2022.

[85] The Paris Principles were adopted through the United Nations General Assembly Resolution A/RES/48/134, 20-12-1993, "National institutions for the promotion and protection of human rights".

[86] Information provided in Prot. No. 55904/31-05-2022 Communication of the Special Service for Institutional Support of the National Coordinating Authority.

3. Experience so far: learning from the past

3.1. Notable Practices of the 2014-2020 funding cycle

As already noted in the previous section, **fundamental rights as such were not a specific 'ex-ante conditionality' in the 2014-2020 funding cycle. There were specific ex ante conditionalities related to gender equality, non-discrimination and accessibility for persons with disabilities.**

In practice, during the previous funding cycle, disability and accessibility for persons with disabilities gained the most attention as a 'horizontal ex-ante conditionality' due to the active role and contribution of ESAMEA (the Confederation for Persons with Disabilities). The following notable practices are identified which are of relevance for the present report.

A first good practice relates to the inclusion of disability and accessibility criteria in the selection criteria for actions. The principles of non-discrimination on grounds of disability and accessibility for persons with disabilities were included as criteria for the selection of actions to be covered by the Operational Programmes.[87] Furthermore, the obligations of beneficiaries[88] included the obligation to adhere to EU and national rules, especially those on non-discrimination and accessibility of persons with disabilities.[89] For this reason, proposals of potential beneficiaries were required to include a report elaborating on the accessibility for persons with disability.[90] However, the lack of an ex post assessment mechanism did not allow an accurate verification of the extent to which these requirements were respected.

A second promising practice is related to the role and contribution of ESAMEA in operationalising the 'ex-ante conditionality' of accessibility. ESAMEA contributed to the specification of the criterion of accessibility in different types of actions through a detailed annex "*Ensuring accessibility to persons with disability*" that was attached to all

[87] Information provided by the GNCHR in its 06-06-2022 Communication.

[88] Annex I of ESPA 2014-2020.

[89] Greece, Annex 1 Obligations of Beneficiaries (*Παράρτημα 1 Υποχρεώσεις Δικαιούχων*), available in Greek, last accessed on 19-06-2022.

[90] See indicatively, Protocol No. 3225/25-07-2016 Tender of the Special OP Management Service of the Region of South Aegean (*Α.Π. 3225/25-07-2016 Πρόσκληση της Ειδικής Υπηρεσίας Διαχείρισης Ε.Π. Περιφέρεια Νοτίου Αιγαίου*), available in Greek, last accessed on 19-06-2022.

tenders.[91] Moreover, all information and communication measures had to be accessible to persons with disabilities(.[92] For this reason, the Communication Guide for ESPA 2014-2020 included Annex 5 that was dedicated to "*the inclusion of the disability dimension and accessibility of persons with disabilities in the communication strategy of the Operational Programmes*".[93]

Furthermore, the close collaboration with ESAMEA led to the establishment of an Observatory for Disability Issues,[94] a project implemented by ESAMEA and funded through the Operational Programme "Development of Manpower, Education and Life-long Learning" 2014-2020. The Observatory conducts research, collects and processes data to support ESAMEA in the design and evaluation of disability policies and the identification of barriers faced by persons with disabilities. In its 2020 Report it included a section concerning the mainstreaming of disability during the ESPA 2014-2020 by recording the practices displayed in the previous paragraph.[95]

A third promising practice relates to the inclusion of stand-alone horizontal actions and measures targeting specific 'ex-ante conditionalities'. For example, separate actions were adopted to ensure the application of the gender 'ex-ante conditionality' (see Annex 2).

A fourth promising practice is the fact that the GNCHR and the Greek Ombudsman became members of the Monitoring Committee for the implementation of the national operational programmes of the Asylum and Migration Fund (AMIF) during the 2014-2020 funding cycle.[96] In this capacity, both bodies could intervene and support the protection and promotion of human rights, by raising awareness for the good governance and transparency requirements of the funding. Although initially the two

[91] Greece, Annex II on the specification of the criterion "Ensuring accessibility for persons with disabilities, (*ΠΑΡΑΡΤΗΜΑ ΙΙ για την εξειδίκευση του κριτηρίου αξιολόγησης «Εξασφάλιση της προσβασιμότητας στα άτομα με αναπηρία»*), available in Greek, last accessed on 19-06-2022.

[92] Greece, Communication Guide for ESPA 2014-2020, (*Επικοινωνιακός Οδηγός ΕΣΠΑ 2014-2020*), available in Greek, last accessed on 19-06-2022.

[93] Greece, ESAMEA Observatory on Disability Issues, National Report on Disability 2020, (*Εθνική Έκθεση για την Αναπηρίας έτους 2020*), available in Greek, last accessed on 19-06-2022.

[94] Greece, Observatory for Disability Issues, (*Παρατηρητήριο Θεμάτων Αναπηρίας*), available in Greek, last accessed on 19-06-2022.

[95] Greece, Observatory for Disability Issues, National Report on Disability 2020, (*Εθνική Έκθεση για την Αναπηρία 2020*), available in Greek, last accessed on 17-08-2022, p. 16-19.

[96] Information provided by the GNCHR in its 06-06-2022 Communication and the Ministry of Asylum and Migration in its in its prot. no. 3104/12-08-2022 communication.

institutions did not have voting rights, **in 2022 the representatives from the GNCHR, the Greek Ombudsman and ESAMEA became members of the AMIF monitoring committee with voting rights for the funds of the 2014-2020 funding cycle.**[97]

Box 3 ***Promising Practices for recording and investigating fundamental rights violations at the borders***
The GNCHR and the Greek Ombudsman play an important role in recording and/or monitoring human rights violations at the borders. The GNCHR together with UNHCR established an Informal Forced Returns Recording Mechanism,[98] made up of CSOs with the operational capacity and experience needed to record informal returns by Greek authorities. The Greek Ombudsman as the National Preventive Mechanism (NPM) in the framework of the UN Optional Protocol to the Convention Against Torture – OPCAT launched through its own initiative investigation into human rights violations at the borders.[99]

A list of promising practices that have been recorded for the present report is available in Annex 2.

3.2. First experiences for the 2021-2027 funding cycle

The 2021-2027 funding cycle includes more demanding conditions (compared to the past) with regard to compatibility with fundamental rights and the Charter. In preparation for its implementation, the following promising practices are noted:

A first promising practice is the involvement of the GNCHR in the assessment of compatibility of projects with the Charter of Fundamental rights. On February 25, 2022, the Ministry of Development and Investment and GNCHR signed a memorandum of

[97] Ministerial Decision 2180/24-06-2022 (O.G. B' 3257/2022).

[98] GNCHR press release, The GNCHR on the world refugee day (*Η ΕΕΔΑ για την Παγκόσμια Ημέρα Προσφύγων*), 20 June 2022, last accessed on 11.10.2022.

[99] Franet National contribution to the Fundamental Rights Report 2022, Greece, last accessed on 31-07-2022, p. 32-34.

cooperation to ensure the compatibility of the ESPA 2021-2027 programmes with the Charter of Fundamental Rights of the EU.[100] The GNCHR will cooperate with the NCA:

- to ensure the compatibility of the national regulatory and management framework for the design, implementation and application of EU-funded programmes with the EU Charter of Fundamental Rights and the corresponding arrangements for the Charter in the CPR. The cooperation will also cover the Ministerial Decisions to be issued for the implementation of Law 4914/2022
- to support the staff of the ESPA Services and all collaborating bodies and beneficiaries in the design and implementation of programmes in accordance with the Charter, through the provision of information, raising-awareness and training actions
- to facilitate the monitoring of the implementation of the relevant horizontal enabling conditions throughout the Programming Period 2021-2027 by developing tools to ensure the appropriate and representative participation of fundamental rights bodies in the Monitoring Committees.

The scope of cooperation with the GNCHR during the planning and programming phase aims to ensure that the requirements of the Charter of Fundamental Rights are considered in the institutional framework.

During the implementation of the Programmes and the Management System, the cooperation with GNCHR will include:

- monitoring legislative developments, strategies and good practices directly or indirectly related to the implementation of the EU Charter of Fundamental Rights at European and national level and formulation of proposals for its integration at all levels and phases of implementation of the ESPA 2021-2027 Programmes and training of the authorities responsible for their design, management and implementation
- examining and resolving implementation issues
- formulating proposals for the specification of the implementation of the Charter at all levels and phases of implementation of the ESPA 2021-2027 Programmes

[100] Greece, Press Release, Partnership memorandum between the Ministry of Development and Investments and the National Commission for Human Rights (*Μνημόνιο συνεργασίας μεταξύ του Υπουργείου Ανάπτυξης και Επενδύσεων και της Εθνικής Επιτροπής για τα Δικαιώματα του Ανθρώπου*), 11-04-2022, available in Greek, last accessed on 19-06-2022.

- formulating proposals for adjusting management procedures and issuing guides, instructions, circulars and other tools for information, training and resolution of any problems identified
- managing cases of non-compliance and/or complaints relating to the Charter in operations co-financed by the ESPA Programmes
- design and implementation of training seminars on the application of the Charter of Fundamental Rights in the authorities/bodies managing and implementing co-financed projects.

However, there is no available information on whether the GNCHR will be able to block certain projects or what exactly the "managing of cases of non-compliance and/or complaints" entails. There is also no available information on how the efficacy of this partnership will be assessed.

A second promising practice is that the GNCHR will participate in the monitoring committees for the operational programmes of ESPA 2021-2027.[101]

A third promising practice is that ESAMEA and Roma organisations will again participate in the monitoring committees for the operational programmes of ESPA 2021-2027.

It is a point of concern that the Greek Ombudsman has not been included in the monitoring system for ESI funding cycles as a self-standing member but only through its participation as a member of GNCHR.[102] There have been some meetings with the Ombudsman to discuss a possible future participation in the funding cycle of 2021-2027.

It should also be highlighted that no complaint mechanism has been identified to receive complaints related to the 'ex-ante conditionalities' or the 'horizontal enabling conditions' for the EU Charter and the UNCRPD. The only existing mechanism is that for complaints concerning fraud in the funding programmes (i.e. the National Transparency Agency).

In relation to the Multiannual Financing Framework, a **practice that will need to be assessed in the future regarding its actual role in monitoring fundamental rights within the Multiannual Financing Framework is the introduction of an Officer for the Protection of Fundamental Rights and the establishment of a Special Committee for the Compliance with Fundamental Rights.** This practice could be considered on

[101] Information provided in Prot. No. 55904/31-05-2022 Communication of the Special Service for Institutional Support of the National Coordinating Authority.

[102] Information provided by the Office of the Greek Ombudsman during a telephone interview on 14-06-2022.

application of the ESPA 2021-2027 in relation to the 'enabling condition' of the Charter. During the current funding cycle (2021-2027) for the Multiannual Financial Framework, Greece introduced:

- An **Officer for the Protection of Fundamental Rights**[103] who will be tasked with receiving and examining complaints on fundamental rights violations documented during the reception phase and the awarding of international protection.[104] Following an initial examination of complaints, the Officer will forward them to the National Transparency Authority or any other competent authority.

A **Special Committee for the Compliance with Fundamental Rights**,[105] which will be tasked with monitoring the procedures and the application of national, European and International law on the protection of borders and awarding international protection.[106] The law provides that representatives of both the GNCHR and the Greek Ombudsman will be members of the Committee.

It is still unclear how the Officer and the Special Committee will operate in practice . The initiative is far from meeting the requirements for an independent, impartial, external and effective border monitoring mechanism, as the Greek Ombudsman highlighted. The Ombudsman also expressed concerns about his own participation in the Special Committee referring to issues of incompatibility with his role, mandate and independence[107].

[103] Υπεύθυνος Προστασίας Θεμελιωδών Δικαιωμάτων.

[104] Article 49 of Law 4960/2022 (*Εθνικό Σύστημα Επιτροπείας και Πλαίσιο Φιλοξενίας Ασυνόδευτων Ανηλίκων και άλλες διατάξεις αρμοδιότητας του Υπουργείου Μετανάστευσης και Ασύλου*)(O.G. A' 145/22-07-2022).

[105] Ειδική Επιτροπή για τη Συμμόρφωση με τα Θεμελιώδη Δικαιώματα.

[106] Article 50 of Law 4960/2022 (*Εθνικό Σύστημα Επιτροπείας και Πλαίσιο Φιλοξενίας Ασυνόδευτων Ανηλίκων και άλλες διατάξεις αρμοδιότητας του Υπουργείου Μετανάστευσης και Ασύλου*)(O.G. A' 145/22-07-2022).

[107] Greek Ombudsman, press release, Reservations of the Greek Ombudsman regarding his participation in committees of the Ministry of Migration and Asylum (*Επιφυλάξεις του Συνηγόρου του Πολίτη για τη συμμετοχή του σε επιτροπές του Υπουργείου Μετανάστευσης και Ασύλου*), 7 September 2022.

3.3. Challenges and gaps in the application of 'ex-ante conditionalities'

The analysis of the policy and legislative framework and the implementation of the 2014-2020 funding cycle in Greece leads to the identification of the a number of gaps and challenges regarding the application of the ex-ante conditionalities in funding programmes. These gaps and challenges constitute an essential starting point in the effort to set up an effective mechanism for the application of the horizontal enabling conditions under the 2021-2027 funding cycle. The key gaps and challenges are the following:

a) In relation to the 2014-2020 funding cycle:

1. **'Ex-ante conditionalities' were insufficiently operationalised throughout the 2014-2020 funding cycle**. Despite their proclamation and an ex-ante assessment at the level of operational programmes or programming, no specific guidelines, bodies or mechanisms were in place to transform these into action. For example, no guidance on gender or non-discrimination was available.
2. **Different conditionalities received different degree of attention**. As already mentioned, the accessibility of persons with disabilities received specific attention in programming and was operationalised into concrete directions that were included as a dedicated Annex or specifications in all tender procedures. Conditionalities on gender and non-discrimination on the other hand were not subject to such operationalisation.
3. **Lack of data on the implementation of 'ex-ante conditionalities'.** In the 2014-2020 funding cycle there was noted lack of data in relation to the implementation of 'ex-ante conditionalities'. No data collection requirements, procedures or mechanisms were put in place resulting in a lack of quantitative and qualitative data. The lack of solid data does not allow neither a full assessment of how 'ex-ante conditionalities' were implemented nor a fully evidence based assessment of their impact.
4. **Lack of mechanism for verification on 'ex-ante conditionalities'**. While 'ex-ante conditionalities' were introduced as requirements in the 2014-2020 funding cycle, no body/ies were mandated to verify (at the level of individual projects or Operational programmes) on the extent to which 'ex-ante conditionalities' had been respected or not.
5. **Lack of reporting on the respect of 'ex-ante conditionalities'.** At the level of Operational Programmes or Actions there was a lack of reporting on the respect of conditionalities.

6. **Lack of dissemination of good practice**. During the 2014-2020 funding period, there was a lack of dissemination of good practice on 'ex-ante conditionalities'. There was also no inventory of measures that could assist beneficiaries develop more sophisticated approaches to their measures to comply with ex ante conditionalities.
7. **Lack of clear mandate of stakeholders in relation to 'ex-ante conditionalities'.** While no body had a specific mandate to monitor the respect of 'ex-ante conditionalities' or to report on them, this role was not explicit even for stakeholders whose primary mandate was related to these conditionalities. So, the National Confederation of Persons with Disabilities, the General Secretariat for Gender Equality, Roma associations were assumed to mainstream theory perspectives in the programmes in a very broad and generic way.
8. **Lack of an effective complaints procedure and mechanism specifically in relation to the respect of 'ex-ante conditionalities'.** While 'ex-ante conditionalities' served as horizontal requirements for actions that would receive funding, these requirements had 'no teeth'. No procedure or mechanism to respond to lack of compliance or breaches of 'ex-ante conditionalities' was put in place.
9. **Lack of clarity on whether concerns on fulfilment of 'ex-ante conditionalities' fell within the mandate of the complaints body to address fraud.** In the 2014-2020 funding cycle, the complaints mechanism that was set up (at the National Transparency Authority) related exclusively to fraud. This raises two main points of concern: firstly, that violations of fundamental rights conditionalities are not necessarily (or not at all) linked to fraud, thus making it unclear whether related complaints would fall within the mandate of this authority. The second point of concern is that it is unclear whether and to what extent a fraud -oriented complaints mechanism possesses the required human rights expertise and know how to investigate questions of compliance with fundamental rights.
10. There is no evidence of independent evaluation mechanisms to verify the existence or effectiveness of measures aimed to facilitate adherence to the Charter and the UNCRPD . For example, there have been no evaluation reports on the practical impact of horizontal actions for improving accessibility of persons with disability (outcome assessment). So far, during the second funding period, there appears to be no evaluation clause in place for evidence-based periodic evaluation. Without data from evaluation reports it is difficult to determine whether a measure had an integrating or segregating effect in practice.

b) In relation to the 2021-2027 funding cycle:

11. **There is a need to ensure the participation of more CSOs at central and regional/local level as a way to include representation for more target groups.** Currently, only ESAMEA and representatives of Greek Roma participate in a systematic way. There are no women's organisations or representatives of other human rights organisations participating in Monitoring Committees. Stakeholders consulted in the elaboration of this report,[108] shared the view that a mapping of CSOs per human-rights-related activity would help identify CSOs which can contribute substantially to the implementation and monitoring of the funding programmes at municipal and regional level.
12. Communication with regional authorities showed that **on a local-administration level there was a lack of expertise concerning the human-rights related 'ex-ante conditionalities' and 'enabling conditions**. As can be demonstrated by the previous funding cycle, the local authorities do not appear to have the necessary expertise nor efficient knowledge of the EU Charter and the UNCRPD. This means that the stakeholders directly involved in implementing the programmes may lack the capacity to effectively identify and address human rights issues on a local level.
13. In connection to the previous point, so far, **the activity of human rights bodies is centralised and there is no outreach at regional and local level where support is mostly needed**. The decentralisation of their activities is necessary for gaining insight into the regional context and the needs of each area and help in the prioritisation of crucial human rights issues.
14. During the previous cycle, the participation of the ESAMEA was crucial for the operationalisation of definitions related to the UNCRPD and accessibility for persons of disabilities. Assisting in the preparation of guides, a clearer methodology for ensuring the disability-related 'ex-ante conditionality' during the proposals' phase was formulated. During the current cycle, there is a need to expand the methodology, in order to address all phases of the programming period. –

15. Furthermore, there is an issue pertaining to the **operationalisation of definitions of the 'enabling conditions' under the current funding cycle referring to the EU Charter**. This is closely linked to the overall operationalisation of the Strategy to

[108] Information provided for instance by the Special Management Service for the Programme in Eastern Macedonia in its 06-06-2022 Communication.

strengthen the application of the Charter of Fundamental Rights in the EU.[109] The framework as it stands does not seem sufficient.

Lack of awareness on the meaning and content of 'enabling conditions'. Responses from stakeholders confirmed an acute lack of awareness first of all on the requirements of 'ex-ante conditionalities' but also regarding the full spectrum of rights included in the EU Charter and how their individual concepts could become 'measurable' in practice.

[109] European Commission, Strategy to strengthen the application of the Charter of Fundamental Rights in the EU, COM(2020) 711 final, 2-12-2020, last accessed on 17-08-2022.

4. Moving forward: funding conditionality and the role of human rights bodies

4.1. Identifying the national human rights bodies with a potential role in the implementation of 'enabling conditions'

A review of the legislative framework and the provisions in force on horizontal enabling conditions allow the conclusion that – at a formal level - the CPR requirements were fully transposed into national law. However, the implementation of the new CPR requires a far more encompassing fundamental rights scrutiny compared to the past funding period. The inclusion of the Charter of Fundamental Rights as an enabling condition implies that national level frameworks have to accommodate for a broad spectrum of rights and principles.

In Greece the application and use of the Charter of Fundamental Rights is not widespread. Case-law rarely refers to the Charter and when it does it is only by reference to the Charter as a human rights instrument, with courts rarely interpreting its provisions and directly applying its articles. Public administration and civil society do not use the Charter consistently as a human rights framework, thus leaving much to be desired in relation to its implementation. This means that it is important to ensure that institutions with expertise and experience on the Charter **play a more active role in the implementation, monitoring and evaluation of the EU funded programmes and act as points of knowledge and dissemination of good practice**. Key aspects of the effective implementation of the 'enabling conditions' include:

- Operationalising the enabling conditions (guidance on definitions and the respective methodology)
- Ex ante monitoring
- Data collection and reporting
- Ex post monitoring / reporting
- Investigation of complaints
- Dissemination of knowledge and good practice
- Impact assessment reporting of enabling conditions
- Involvement of national human rights bodies throughout all stages of the funding programme
- Raise awareness on the EU Charter and the UNCRPD

In Greece, there are **two bodies with a human rights remit** which could play a **crucial role in monitoring the application and adherence to the EU Charter of Fundamental Rights and the UNCRPD: the Greek Ombudsman and the GNCHR**. While the GNCHR already plays that role, the Greek Ombudsman could play a key role in the future as a monitoring mechanism for the application and adherence to the EU Charter for Fundamental Rights as well as the UNCRPD.

(i) The Greek Ombudsman

The Greek Ombudsman is an Independent Authority according to the Greek Constitution. It has been in operation since October 1st, 1998 and provides its services free of charge.[110] The Greek Ombudsman mediates between the public administration and citizens in order to help citizens to exercise their rights effectively. Additionally, the Greek Ombudsman has multiple mandates including to: safeguard and promote children's rights; promote equal treatment and fight discrimination in the public sector based on race, ethnicity, religious or other conviction, disability, age or sexual orientation; and monitor and promote the application of equal opportunities and equal treatment of men and women. The Greek Ombudsman is the National Framework for the Promotion (NFP) of the Rights of Persons with Disabilities as foreseen in Article 33(2) of the UNCRPD.[111] With a view to performing its tasks as the national monitoring framework, the Ombudsman cooperates with ESAMEA, which is the organisation representing persons with disabilities and an independent CSO.[112]

In the Ombudsman's capacity as an equality body, the Ombudsman receives and examines complaints of discrimination. However, the Greek Ombudsman can only make recommendations and proposals to the public administration. It does not impose sanctions or annul illegal actions of the public administration. Finally, the Ombudsman is also the National Preventive Mechanism (NPM) in the framework of the UN Optional Protocol to the

[110] Greece, Official Website of the Greek Ombudsman, available in English, last accessed on 19-06-2022.

[111] Article 33(2) of the UNCRPD: "*States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a **framework**, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.*"

[112] Article 72 of Law 4488/2017.

Convention Against Torture - OPCAT, the National Monitoring Mechanism (NMM) for Returns of third country nationals and Readmissions in the frame of EU Directive 2008/115 and the EU-Turkey Joint Statement of March 2016.

During the previous and current ESI funding cycles, the Greek Ombudsman did (so far) not participate as a self-standing body in the monitoring committees which were tasked also with monitoring the application of human rights conditionalities ('ex-ante conditionalities' or 'enabling conditions'). However, it did participate as a member of the monitoring committee for the AMIF operational programmes, as analysed above in the previous sections (3.1 and 3.2).

(ii) The Greek National Commission for Human Rights

The Greek National Commission for Human Rights (GNCHR)[113] was established by Law 2667/1998 as the independent advisory body to the Greek State in accordance with the UN Paris Principles).[114] The GNCHR is the national institution for the protection and promotion of human rights (NHRI) in Greece. The founding legislation of GNCHR was amended by Law 4780/2021,[115] which now governs the operation of the National Commission.

The aim of the GNCHR is to constantly monitor developments regarding human rights protection domestically and internationally, to inform Greek public opinion about human rights-related issues and, above all, to provide guidelines to the Greek State aimed at the establishment of a modern, principled policy of human rights protection. The GNCHR provides recommendations to the competent bodies of the State. This advisory role, however, is not limited to submitting opinions, recommendations, proposals or reports and participating in Parliamentary sessions. The GNCHR duties extend to assisting competent national authorities in the preparation of reports they have to submit to international and regional bodies as part of their reporting obligations foreseen in human rights instruments.

[113] Greece, Official Website of the Greek National Commission for Human Rights, available in English, last accessed on 19-06-2022.

[114] The Paris Principles were adopted by the United Nations General Assembly Resolution A/RES/48/134, 20.12.1993, "National institutions for the promotion and protection of human rights".

[115] Greece, Law 4780/2021 on the National Authority for Accessibility, the National Commission for Human Rights and the National Commission for Bioethics and Technoethics (*Εθνική Αρχή Προσβασιμότητας, Εθνική Επιτροπή για τα Δικαιώματα του Ανθρώπου και Εθνική Επιτροπή Βιοηθικής και Τεχνοηθικής*)(O.G. A' 30/28-02-2021).

The GNCHR encourages the accession to and ratification of international human rights treaties.

The GNCHR interprets its mandate in a broad and constructive manner, in order to promote a comprehensive approach to human rights standards, as these are defined in international, regional and national texts (the EU Charter and UNCRPD included) and are interpreted by the competent international judicial and quasi-judicial bodies. 43 bodies participate in the GNCHR as permanent members. Regular members with voting rights include, *inter alia,* representatives of the Greek General Confederation of Labour (primary workers' union in Greece), of ESAMEA, the Greek Council for Refugees, Amnesty International, the Hellenic League for Human Rights, Greek League for Women's Rights, the Federation of Greek Roma Associations (POSER), the Panhellenic Confederation of Greek Rom (Ellan-Passe), Greek Transgender Support Association, Athens Pride, the OLKE-LGBT Community of Greece, Colour Youth, Rainbow Families, the Hellenic Roma Action (HEROMACT), the Hellenic Consumer's Ombudsman, the Greek Ombudsman, the Greek Data Protection Authority, etc. The member-organisations and bodies are foreseen in the statute of the GNCHR. Each organisation appoints a representative to GNCHR.

Therefore, the GNCHR provides a unique framework, which allows for direct dialogue between state authorities and Civil Society bodies. It also helps to reflect on the pluralism of views on human rights issues. Its rich composition brings together independent authorities (including the Greek Ombudsman), universities of law and political science, trade unions, NGOs, political parties and ministries, among others, thus ensuring a very high level of expertise.

The GNCHR has been accredited, since 2001, as an A-level (full compliance) NHRI, by the competent Sub – Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions - GANHRI under the auspices and in collaboration with the Office of the High Commissioner for Human Rights (OHCHR) of the UN. National Human Rights Institutions (NHRIs) are regularly evaluated by the SCA following a series of demanding procedures. In March 2017, the GNCHR was re-accredited A-level status by SCA, endorsing the fulfilment of its mission to promote and protect human rights.

However, the GNCHR cannot receive and examine complaints in relation to human rights violations according to its mandate. It may only issue recommendations and intervene as an advisory body for the State and the public authorities.

During the previous ESI funding cycle, the GNCHR did not play an active role, however, its member ESAMEA actively sought to ensure the rights of persons with disabilities by assisting in the proposals phase and participating as member with voting rights in the monitoring committees (national and regional) for the operational programmes funded by the ESIF. As noted in the previous section (3.2), the GNCHR will be directly

involved in the current funding cycle for 2021-2027 based on a Partnership Memorandum signed with the Ministry of Development and Investments and its inclusion as a member of the monitoring committees for all the funded operational programmes (national and regional level).

4.2. Enhancing the role of national human rights bodies for the effective implementation of 'enabling conditions'

As analysed in the previous section, two human rights bodies in Greece, the Greek Ombudsman and the GNCHR respectively, have the expertise, know-how and the mandate to play a crucial role in the current funding cycle. The legal foundations appear to be present and can be supplemented through ministerial decisions in order to enhance their role in the current 2021-2027 funding cycle. More specifically:

i) The expertise and potential role of the Ombudsman

As noted earlier, the Greek Ombudsman through the establishment of regional offices is well placed to address non-compliance with the enabling conditions on a regional or local level. The Ombudsman institution already operates as an independent complaint mechanism for violations of rights enshrined in the EU Charter and the UNCRPD.[116] Given that it can also open investigations on its own initiative or issue opinions as an observer it could be encouraged to play a more active part in monitoring the application of the relevant rights within the current funding cycle, especially if this is accompanied by an increase in its budget/staff (i.e. through ear-marked funds).

The Ombudsman has acquired a high level of expertise through its multiple mandates, endowing this institution with in-depth knowledge of fundamental rights implementation requirements. As the designated framework for the UNCRPD in Greece, the Ombudsman can function as a focal point on the application and monitoring of policies directed at the integration of persons with disabilities and the examination of measures that might be leading to the segregation of this vulnerable group instead of their integration as the UNCRPD requires.

Furthermore, the Greek Ombudsman has a long experience in examining complaints and reporting on the integration of other vulnerable groups such as the Roma, children and third-country nationals (including asylum seekers and beneficiaries of

[116] The information was provided through an interview with a representative of the Greek Ombudsman.

international protection). As an equality body it examines complaints related to equal treatment irrespective of racial or ethnic origin, religious or other beliefs, age, disability or chronic illness, gender, sexual orientation and gender identity or characteristics.

The Greek Ombudsman could potentially facilitate the implementation of the 'enabling conditions' by offering advice regarding proposed actions, as well as contribute to the monitoring and the evaluation of the EU funded programmes.

The Ombudsman could also act as a complaint mechanism dealing with complaints relating to the fundamental rights dimension of implemented programmes. This function is likely to be covered by its current mandate as equality body or its function under the UNCRPD. However, an expansion of its mandate as a complaint mechanism may be required in relation to other fundamental rights covered under the EU Charter. Alternatively, the Ombudsman could participate in a complaint mechanism which will be established for receiving complaints concerning the application of human-rights-related 'enabling conditions'.

ii) The potential role of the GNCHR

For its part the GNCHR, though statutorily restricted to an advisory role (see above section 4.1.), constitutes a forum where the representation of multiple stakeholders, including the Greek Ombudsman, is guaranteed. Its unique composition helps it prioritise certain human rights-related issues and discern where funding is most needed. The GNCHR is comprised of members-stakeholders with a remit related to one or more fundamental rights enshrined in the EU Charter. These stakeholders could provide through the GNCHR valuable guidance during the preparatory phase as well as the monitoring phase in relation to the horizontal enabling conditions of the EU Charter as well as the UNCRPD.

The GNCHR, on the basis of the Partnership Memorandum mentioned earlier, can act in an early stage, namely in the preparation of tenders, offering guidance and focusing [on specific fundamental rights issues and in the preparation of selection criteria. The GNCHR can also provide guidance on those human rights issues that need to be prioritised. The GNCHR cannot act as a self-standing complaints mechanism given its statutory limitations. However, this does not necessarily mean that it cannot participate in a complaints' mechanism established for the application of 'enabling conditions' in an advisory capacity.

In conclusion, the potential role of human rights bodies in the effective implementation of enabling conditions in the 2020-2027 period could include the following:

Measure required for the effective implementation of the enabling conditions	Potential role of the Ombudsman	Potential role of the GNHRC	Action needed for enacting the Ombudsman and the GNHRC's role in that regard
Operationalising the enabling conditions	Assist in providing necessary definitions and proposing methodology for applying 'enabling conditions' related to the EU Charter and UNCRPD thereby rendering the criteria more specific.	Assist in providing guidance on definitions and the methodology for applying 'enabling conditions' related to the EU Charter and the UNCRPD thereby rendering the criteria more specific.	None. It is part of their existing mandates.
Ex ante monitoring	Participation in relevant monitoring bodies with voting rights.	Participation in relevant monitoring bodies with voting rights.	Legislative measure (i.e. amending the ministerial decision establishing the monitoring bodies).
Data collection and reporting	Carry out independent monitoring/reporting concerning the implementation of the human rights 'enabling conditions'.	Carry out independent monitoring/reporting concerning the implementation of the human rights 'enabling conditions'.	Reporting is included in existing mandates. Additional staff and resources, regional and local presence would

			however be needed.
Ex post monitoring / reporting	- Participation in ex post monitoring body. - Provide assistance and necessary guidance	- Participation in ex post monitoring body - Provide assistance and necessary guidance	Legislative measure establishing ex post monitoring bodies.
Investigation of complaints	- Expansion of existing complaint mechanism in order to include all rights of the EU Charter; OR - Participation in new complaints mechanism.	Participation in complaints mechanism with advisory role	Possibly legislative measures amending the mandates of the respective bodies. Additional staff and resources would be needed.
Dissemination of knowledge and good practice	Assist in providing information on existing good practices related to the 'enabling conditions' of the Charter and UNCRPD and/or recommendation/introduction of new practices.	Assist in providing information on existing good practices related to the 'enabling conditions' of the Charter and UNCRPD and/or introduction/recommendation of new practices.	Additional staff and resources, regional and local presence would be needed.
Reporting on the implementation of the enabling conditions	Preparation of implementation reports in order to determine achievements or gaps concerning the application of 'enabling conditions' related to the Charter and the UNCRPD. Issue recommendations for improvement of implemented programmes.	Preparation of implementation reports in order to determine achievements or gaps concerning the application of 'enabling conditions' related to the Charter and the UNCRPD. Issue recommendations for improvement of implemented programmes.	Included in existing mandates for human rights monitoring. Additional staff and resources, regional and

			local presence.
Involvement throughout the funding progamme	Provide guidance throughout all stages of the funding mechanism in an advisory or active capacity (assist in preparation of guides, participation in monitoring bodies, dissemination of data/raise awareness, recommend improvements, examine complaints, etc.)	Provide guidance throughout all stages of the funding mechanism in an advisory or active capacity (assist in preparation of guides, identify issues that need prioritising, participation in monitoring bodies, dissemination of data/raise awareness, recommend improvements, etc.)	Additional resources and staff. Regional and local presence.
Raise awareness on the EU Charter and the UNCRPD	- Dissemination of information/good practices related to the EU Charter and UNCRPD. - Preparation of easy-to-read pamphlets/organisation of information campaigns on regional/local level. - Participation in training of staff involved in the implemented programmes on a regional/local level. - Act as a Focal point for EU Charter and UNCRPD related issues.	- Dissemination of information/good practices related to the EU Charter and UNCRPD. - Preparation of easy-to-read pamphlets/campaigns - Participation in training of staff involved in the implemented programmes on a regional/local level - Act as a Focal point for EU Charter and UNCRPD related issues.	Regional and local presence as well as additional staff and resources needed. .

Concluding remarks and action points

The present report aims to draw from the experiences with the application of 'ex-ante conditionalities' on non-discrimination, gender quality and disability under the Common Provisions Regulation of 2013 for the ESI funds to identify lessons for the implementation of the horizontal 'enabling conditions' on the EU Charter and the UNCRPD under the CPR of 2021.

The research showed that Greece implemented in the past and continues to implement a complex funding system through a multilevel governance approach, which involves multiple stakeholders from different levels of governance as well as actors from the civil sphere. This unfortunately means that **there is a lack of clarification concerning the role of each stakeholder involved in the funding system**. Even though the National Coordinating Authority was established as a focal point which would act as a "bridging point" between all stakeholders involved in the implementation of the operational programmes, it cannot address on its own the issues related to human rights conditionalities.

During the first funding cycle, the 'ex-ante conditionality' of disability was closely linked to the participation of ESAMEA, a body with expertise on defending the rights of persons with disabilities. ESAMEA provided assistance in the definition of the conditionality and the promotion of the mainstreaming disability and accessibility for persons with disabilities.

The second funding cycle includes with the far reaching 'enabling conditionalities' a much wider obligation to respect and promote fundamental rights. This implies new responsibilities and calls for new action. **The gaps and challenges identified by the report, highlight the need to assign to bodies with a human-rights' remit a clearer role in the application of the 'enabling conditions' of the Charter and the UNCRPD**. As in the previous cycle, expertise on fundamental rights will be needed for the effective implementation and monitoring of these 'enabling conditions'.

The Greek Ombudsman and the GNCHR are well established and respected human rights bodies and a valuable source of human rights expertise in the Greek legal order. This expertise can be used and mainstreamed throughout all the stages of the funding cycle in a way to enhance the effectiveness of enabling conditions and the human rights footprint of EU funded projects. During the programming phase, they can assist in defining funding priorities so they can address the most important human rights issues. As members of monitoring committees, they can assist in the proper implementation of the programmes.

Most importantly, these human rights bodies can provide valuable insight during the monitoring and evaluation phase by assessing the impact of the funds on targeted groups

and by providing recommendations for the improvement of existing frameworks. The GNCHR especially, can draw expertise from the valuable network of human rights organisations at its disposal, which cover a broad spectrum of human rights: its members. The Greek Ombudsman can also draw expertise from its multiple mandates.

An issue that is highlighted throughout the report, is **the need of a complaints' mechanism for the examination of complaints on fundamental rights violations in relation to the funding programmes.** The Greek authorities have encompassed all funding-related complaints under the jurisdiction of the National Transparency Authority. This is problematic, especially when considering that the NTA was established to enhance transparency and address fraud and corruption issues. The NTA does not have the necessary expertise on human rights issues to be able to conduct investigations and examine complaints on human rights related conditionalities. A report recently published by the NTA on the violation of fundamental rights at the borders confirmed the concerns over the lack of human rights expertise.

A long-standing issue in Greece is also **the lack of publicly available quantitative and qualitative data on human rights issues, target groups and their social context**. The collection of such data in relation to the application of human rights conditionalities and their impact on targeted groups will provide a valuable tool for the evaluation and improvement of programmes being implemented or for programmes to be implemented in the future.

Notwithstanding all the mentioned advantages of systematically involving fundamental rights bodies such as the Greek Ombudsman and/or the GNCHR in the implementation of the newly introduced "enabling conditionalities" it is crucial to underline that such an involvement needs substantial resources and may at no cost compromise the independence of the human rights bodies concerned. Finally, the comprehensive and proper implementation, monitoring and evaluation of the 'enabling conditions' of the EU Charter and the UNCRPD in the national funding context could **set the foundations for the operationalization of the European Commission Strategy to strengthen the application of the Charter of Fundamental Rights (2020)[117] as well as the European Commission Disability Rights Strategy for 2021-2030.**[118]

Considering all the above, **action points to enhance the role of Greek NHRIs in the funding framework would include**:

[117] European Commission, Strategy to strengthen the application of the Charter of Fundamental Rights in the EU, COM(2020) 711 final, 2-12-2020, last accessed on 17-08-2022.

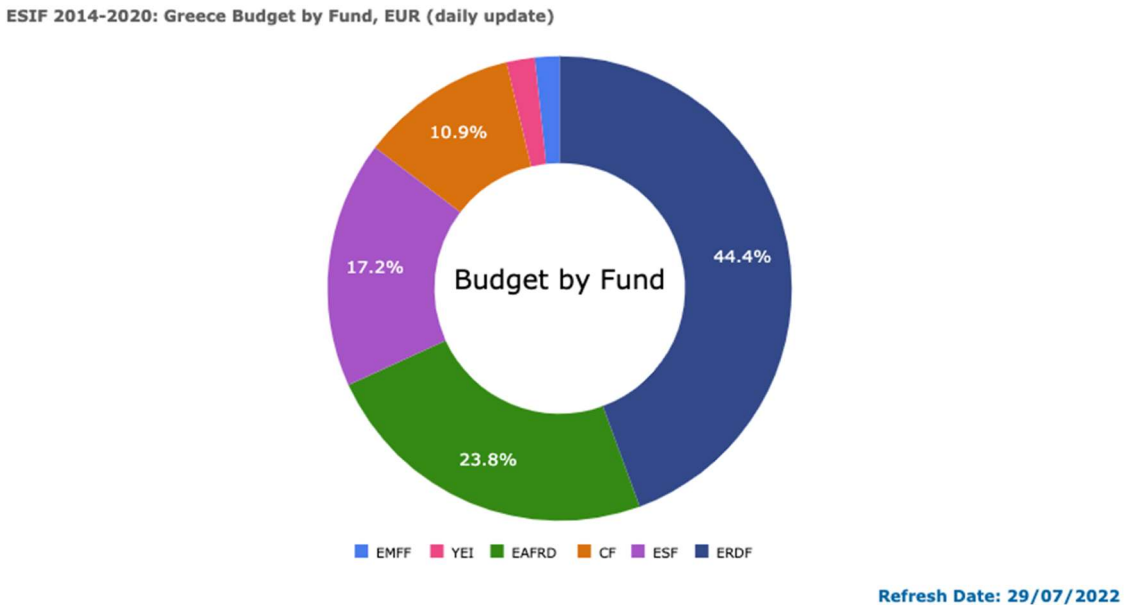
[118] European Commission, Union for Equality: Strategy for the Rights of Persons with Disabilities 2021-2030, last accessed on 17-08-2022.

- **Participation of the Greek Ombudsman and/or the GNCHR in the Monitoring Committees** on all levels (national, regional) with voting rights.
- **The establishment of a separate focal point for issues related to the implementation of the EU Charter of Fundamental Rights and the UNCRPD within the ESPA framework**. This could contribute to streamlining the complicated implementation system. It would allow local and regional authorities to engage in a dialogue with CSOs on the implementation of human-rights-related 'horizontal enabling conditions'. The fact that none of the stakeholders consulted in the elaboration of this report were able to provide any information on adherence to human rights conditionalities would point at the need to establish such focal point to facilitate knowledge about their existence and provide assistance to the various actors involved in their implementation.
- **Establishment of the Greek Ombudsman and/or the GNCHR as the focal points for providing support, information, training of the governmental staff on the 'horizontal enabling conditions' for the Charter and the UNCRPD**. In this capacity, the Ombudsman and the GNCHR could also help to promote dialogue between the central and local administration with CSOs that have a long-standing practice of collaboration with these NHRIs.
- **Creation of an independent complaint mechanism**. This could be done within the Greek Ombudsman, which will entail an expansion of its mandate as well as an increase in its budget/staff. Alternatively, a new complaint mechanism could be established with the participation of representatives of the Greek Ombudsman - and possibly the GNCHR in an advisory capacity – and tasked with examining and deciding on complaints concerning the application of the EU Charter and the UNCRPD throughout the funding cycle. Provisions should explicitly refer to the possibility of CSOs to submit complaints.
- **Creation of outcome indicators with the collaboration of the Greek Ombudsman and the GNCHR in order to effectively monitor and evaluate the impact of specific actions carried out within the current funding cycle**. Monitoring and evaluation should be carried out and published on a regular basis and throughout the implementation of each programme.
- **Creation of a database with statistical data on target groups and collection of qualitative data in order to have an objective understanding of the needs of those groups and the socio-economic context they live in, from a fundamental rights perspective, and based on evidence**. This should facilitate directing the specific activities under the funds and the funding itself to address the specific needs of those groups and their social environment.

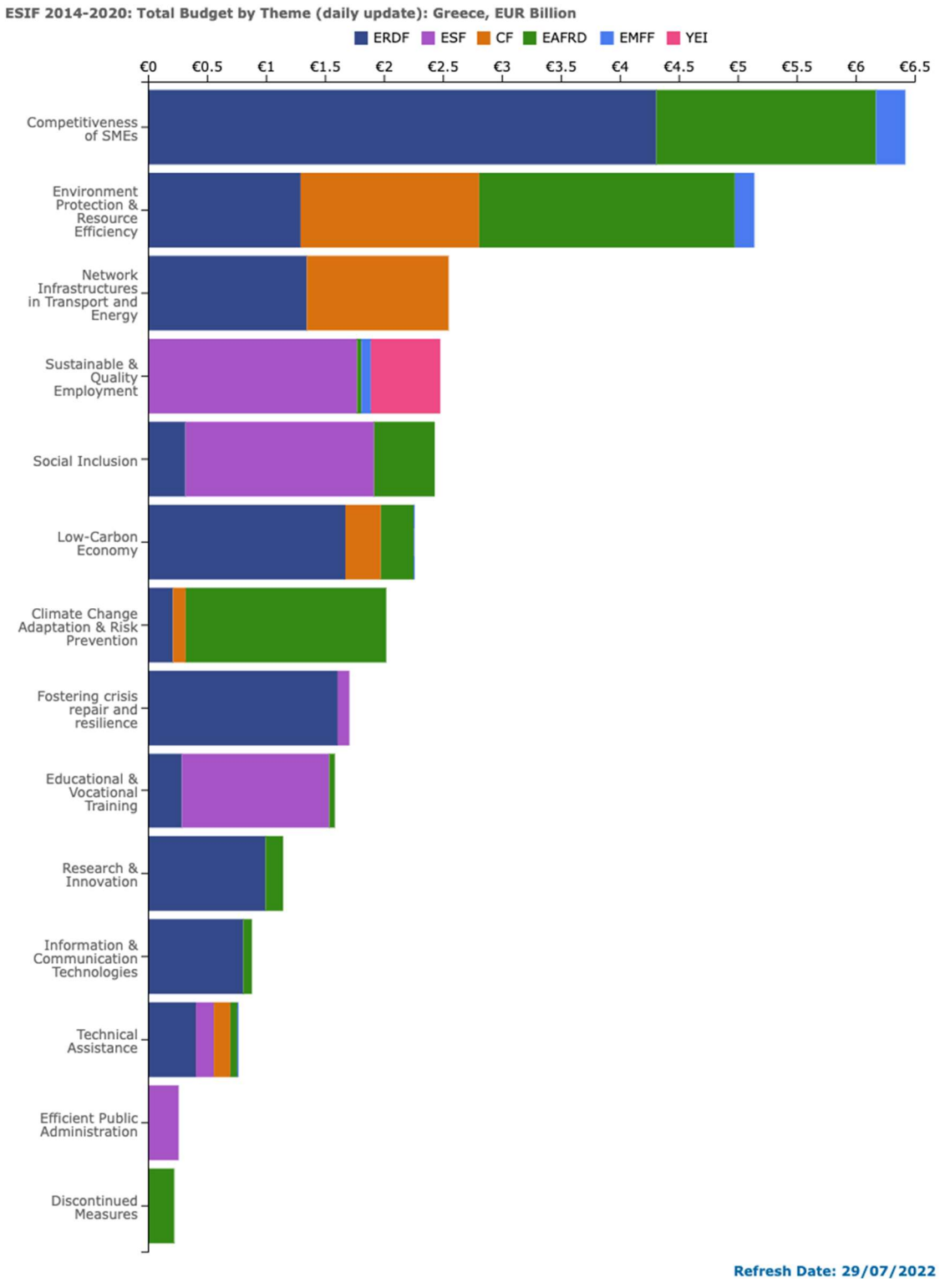
Annex 1 Data on EU funding directed to Greece during 2014-2020

Greece, through 7 national and 13 regional programmes, benefitted from EU funding of EUR 25.2 billion under the 2014-2020 ESIF programmes (as of January 2022). This represented an average of 2 300 euro per person in the 2014 population.

More information on the budget for Greece within the ESIF is displayed below:



Source: *European Commission Cohesion Data*



Source: *European Commission Cohesion Data*

Annex 2 Promising Practices

Name of practice	Description	Conditionality	ESIF (yes/no) and funding cycle
On/off Criteria during the Evaluation of Applications for Funding Actions	According to the "Guide for the Evaluation of Applications for Funding Actions" (2015), the evaluation is carried out in two stages. The first stage examines cohesiveness and eligibility criteria. The second examines five groups of criteria pertinent to the content of the proposed action. Group 2 includes criteria related to horizontal ex-ante conditionalities including a) gender equality and non-discrimination and b) accessibility of persons with disabilities. This means that the proposed action is examined to verify whether a) it promotes gender equality and combats discrimination on grounds of gender, racial or ethnic origin, religious and other beliefs, disability, age, sexual orientation and b) it ensures the accessibility of persons with disabilities in accordance with the national legal framework. Mandatory documentation submitted with the proposals of potential beneficiaries also included a self-assessment "Report substantiating the accessibility of persons with disabilities". Finally, the "Communication Guide for ESPA 2014-2020" stipulated that all communication and information measures should comply with a duty to provide accessible information for persons with disabilities (p. 17).	Non-discrimination, Gender Equality, Accessibility of Persons with disabilities, UNCRPD	Yes, 2014-2020 funding cycle
Horizontal interventions for gender equality[119]	The sectoral Operational Programmes "Public Sector Reform 2014-2020" and "Human Resources Development, Education and Lifelong Learning 2020-2024" included interventions for the promotion of gender equality as separate actions. Specifically, for the OP "Public Sector Reform" there were five actions for the implementation of policies for the prevention and combatting gender violence on a national scale: - Action MIS 5000490 supported interventions for the support of victims of gender violence though the establishment of counselling Centres and Homes. Direct beneficiaries were the staff at the centres and homes and victims of gender-based	Gender Equality ('ex-ante conditionality')	Yes, 2014-2020 funding cycle

[119] The information was provided by the Special Secretariat for the Management of ESF Programmes of the Ministry of Development and Investments in its 08-06-2022 Communication.

	violence were indirectly benefited through the improvement of the relevant infrastructures, the provision of legal aid and the creation of a helpline. - Action MIS 5000536 was targeted at preventing and combatting sexism and gender-identity issues in the Media. The beneficiary of the action was the Research Centre for Equality Issues (KETHI). - Action MIS 5001091 was adopted for the upgrade and functioning of a beneficiaries' database for the network of structures on the prevention and addressing gender-based violence. - Action MIS 5001377 offered specialised support to the Monitoring Mechanism for Gender Equality operating through the General Secretariat of Gender Equality (now General Secretariat for Demographic and Family Policy and Gender Equality). - Action MIS 5041426 supported the preparation of a new action plan for gender equality for 2021-2025, the creation of a helpdesk for the mainstreaming of gender equality, implementation of gender-equality policies on a local level and information/sensitisation campaigns promoting urging voters to support female candidates during election procedures.		
Participation of ESAMEA[120]	The participation of ESAMEA in the evaluation and monitoring of the horizontal 'ex-ante conditionality' for the accessibility of persons with disabilities led to the following promising practices: - Aid in the publication of Annex II attached to all tenders which specialised the evaluation criterion on ensuring the accessibility of persons with disabilities. - Proposal to include Annex 5 in the the "Communication Guide for ESPA 2014-2020" with the title "Integration of the disability and accessibility mainstreaming in the communication strategy of the Operational Programmes". - Following a proposal of ESAMEA, the National Coordination Authority of ESPA established in June 2017 a Working Group for the monitoring of the integration of the dimension of disability and non-discrimination in the ESPA and the Operation Programmes of 2014-2020. - The Operational Programme "Development of Manpower, Education and Lifelong Learning" 2014-2020 also included an Observatory for Disability Issues, implemented by ESAMEA (Action MIS 5000817). The aim of the action was to establish an Observatory for research and action and the collection and processing of data in order to support ESAMEA in drawing and evaluating disability policies and identifying obstacles faced by persons with disabilities	UNCRPD – Accessibility for persons with disabilities	Yes, 2014-2020 funding cycle

[120] The information was provided by ESAMEA in its 26-07-2022 Communication and the GNCHR in its 06-06-2022 Communication.

Mechanism for recording human rights violations at the borders	In response to complaints concerning illegal pushbacks at the eastern borders of Greece, the GNCHR together with UNHCR an Informal Forced Returns Monitoring Mechanism made up of CSOs with the operational capacity and experience needed to record informal returns by Greek authorities. The plan is to follow the operational scheme of the Racist Violence Recording Network (also established by GNCHR and UNHCR) which has been characterised as a good practice for recording racist violence in Greece. In other words, the Mechanism will mainly record instances of alleged pushbacks and fundamental rights violations at the borders, which will be forwarded to the Mechanism through participating NGOs. This practice is important especially for recording fundamental rights violations and can be easily adapted and introduced for other situations such as the monitoring of the fundamental rights enabling condition of the 2021-2027 EU funding cycle.	Fundamental Rights Monitoring	No, AMIF-ISF

The EEA Grants represent the contribution of Iceland, Liechtenstein and Norway towards a green, competitive and inclusive Europe.
There are two overall objectives: reduction of economic and social disparities in Europe, and to strengthen bilateral relations between the donor countries and 15 EU countries in Central and Southern Europe and the Baltics.
The three donor countries cooperate closely with the EU through the Agreement on the European Economic Area (EEA). The donors have provided €3.3 billion through consecutive grant schemes between 1994 and 2014. For the period 2014-2021, the EEA Grants amount to €1.55 billion. The priorities for this period are:

#1 Innovation, Research, Education and Competitiveness

#2 Social Inclusion, Youth Employment and Poverty Reduction

#3 Environment, Energy, Climate Change and Low Carbon Economy

#4 Culture, Civil Society, Good Governance and Fundamental Rights

#5 Justice and Home Affairs
The EEA Grants are jointly financed by Iceland, Liechtenstein and Norway, whose contributions are based on their GDP. Eligibility for the Grants mirror the criteria set for the EU Cohesion Fund aimed at member countries where the Gross National Income (GNI) per inhabitant is less than 90% of the EU average.