



Fundamental rights compliance of funding supporting migrants, asylum applicants and refugees inside the European Union

Policy Note

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I. Introduction

In recent years, the European Union (EU) has developed new legislation based on the principle that all EU actions, including projects supported by EU resources, should be performed in compliance with the common values of the EU, including respect for fundamental rights and the rule of law.

For example, the [Rule of Law conditionality mechanism](#) establishes that decisions related to granting EU funding to Member States (MS) cannot be taken in isolation from the overall rule of law situation in a country, and must be connected to upholding relevant standards. Similarly, under the current Multiannual Financial Framework (MFF) 2021-2027, the [Common Provisions Regulation](#) (CPR) also introduces strengthened provisions making compliance with fundamental rights a pre-condition to qualify for EU funding. The CPR sets out rules for a meaningful partnership with civil society and fundamental rights bodies from the inception and during the implementation of EU programmes in MS.

These new rules are binding on the [European Social Fund +](#) (ESF+) and – for the first time – on the [Asylum, Migration and Integration Fund](#) (AMIF), [Border Monitoring and Visa Instrument](#) (BMVI), and [Internal Security Fund](#) (ISF), the main EU instruments financing support for asylum seekers, protection beneficiaries, and undocumented migrants.¹

Despite these provisions, [reports](#) have emerged of EU funds directly or indirectly supporting actions that violate fundamental rights. A recently published [Lighthouse report](#) documents violations occurred at the borders in Croatia, Bulgaria and Hungary, where people have been arbitrarily detained to facilitate returns or removals in facilities that are at least partially financed by EU funding programmes.

The aim of this paper is to set out the new provisions and the obligations arising for different actors in relation to fundamental rights under the CPR rules. In addition, it aims to highlight opportunities for civil society organisations (CSOs) to play a role in monitoring the application of the requirements. Finally, it provides some recommendations to policy makers on the operationalisation of fundamental rights obligations in the implementation of EU-funded national programmes.

¹ The Common Provisions Regulation covers eight funding instruments: European Regional Development Fund (ERDF), European Social Fund Plus (ESF+), Cohesion Fund, Just Transition Fund (JTF), European Maritime, Fisheries and Aquaculture Fund (EMFAF), Asylum and Migration Fund (AMIF), Internal Security Fund (ISF), Border Management and Visa Instrument (BMVI). Some of these funds are not covered by the scope of this paper, but may still support actions in the areas of asylum, migration and inclusion, such as the ERDF and EMFAF.

II. Overview

The potential of the strengthened Common Provision Regulation rules

Eight funding instruments representing about [one third](#) of the EU budget² are governed by the CPR; this includes all the main EU programmes supporting activities in the area of borders, migration, asylum and inclusion implemented by MS in shared management. Covered by the CPR are the funds for Home Affairs – AMIF, BMVI, ISF (about [10.7 billion](#) euros for MS programmes) – and those in the Cohesion policy domain, such as the ESF+ (about [87.3 billion](#) euros for MS programmes).

The over-arching legislation that is the CPR sets common rules for the use of EU funds in shared management during the period 2021-2027. For instance, it outlines rules for the operationalisation of the [partnership principle](#), by clarifying that all relevant stakeholders, including CSOs, should be included in the preparation, implementation and evaluation of programmes through participation in monitoring committees.³

There are also new rules related to the management of EU funds, providing more clarity on and opportunities for increased compliance with fundamental rights obligations in EU programmes.

Having mechanisms in place to ensure compliance with the [Charter of Fundamental Rights of the European Union](#) (hereafter “the Charter”) is a pre-condition for MS to be able to use EU funds, as part of the set of so-called “horizontal enabling condition”⁴ in the CPR. This is a safeguard to ensure that the Charter is applied throughout the whole budgetary period, from the inception of national programmes throughout their implementation and to their completion. Similar enabling conditions have been introduced for the implementation of the United Nations Convention on the rights of persons with disabilities (UNCPRD), and Article 9 of the CPR requires respect for the principles of gender equality and non-discrimination.

The CPR further specifies that MS need to put in place:

- (1) arrangements to ensure compliance with the Charter, and
- (2) arrangements for reporting to the monitoring committee on cases of non-compliance with the Charter of activities supported by the funds in question.

In this regard, the [EC Communication Strategy on the application of the Charter](#), building on the CPR Regulation, explains that if these conditions are not met, the consequence is that MS can submit payment applications, but the European Commission (EC) may not disburse any reimbursements of expenditures until both sides consider that the horizontal enabling conditions are fulfilled.

² The EU budget breakdown can be viewed at this link: <https://www.europarl.europa.eu/factsheets/en/sheet/28/the-eu-s-expenditure>

³ The monitoring committees oversee the management of EU funds at national level, and they can cover more than one programme at the same time.

⁴ Horizontal enabling conditions are prescribed by Annex III of the Common Provisions Regulation (Regulation 2021/1060).

III. Analysis

A. Fundamental rights obligations

Conditionality in Member State programmes

During the programming phase, MS perform a self-assessment on the fulfilment of the enabling conditions that should be included, with due justifications, in the national programmes. When assessing the plans, the EC checks whether it agrees with the MS's self-assessment on the enabling conditions requirements, and includes its verdict in the written decisions adopting the programme. Should the EC conclude that the enabling conditions are not respected, the programme can still be approved, but reimbursements will not be possible until the MS fulfils its obligations.

As of January 2023, [8 national programmes in 3 MS had been adopted](#) which were not compliant with the effective application and implementation of the Charter of Fundamental Rights. This is the case for Hungary (AMIF, BMVI, ISF), Poland (AMIF, BMVI and ISF) and Cyprus (AMIF and BMVI), covering a total of around 1 billion euros of the EU budget.

The implication is that, for as long as the enabling conditions are not fulfilled, while the MS can start implementing the programmes, they will not be able to receive reimbursements of expenditure for the activities. The only exceptions are financial support for technical assistance and activities themselves aimed at fulfilling the enabling conditions. Examples of these actions are preparatory measures, monitoring control, audit and evaluation activities as specified by Article 35 of the CPR, or capacity building activities of partners as laid down by Article 36 of the same Regulation.

Monitoring and enforcement by the European Commission

The EC has the primary responsibility to ensure that MS comply with the CPR requirements.

The 2020 EC Communication Strategy on the Charter summarises the main tasks of the EC as regards the use of EU funds in compliance with fundamental rights obligations.

1) Assessing the fulfilment of the horizontal enabling conditions on the Charter

The EC's decisions on the national programmes are delivered in the form of implementing acts, which are not systematically published. The acts contain key information on funding allocations to the Member States and the EC's final assessment on the enabling conditions requirements. The detail on the fulfilment of the requirements are discussed bilaterally by the MS and the EC in the form of [unpublished correspondence](#). Within the EC, the Directorate-General for Justice and Consumers (DG JUST) assesses compliance of national programmes with the Charter, whereas the programming units from the Directorate-General for Migration and Home Affairs (DG HOME) remain responsible for the overall AMIF, ISF and BMVI plans, and units in the Directorate-General for Employment, Social Affairs and Inclusion (DG EMPL) lead on ESF+.

The CPR provides some broad criteria to guide the EU staff's assessment of the horizontal enabling conditions. However, there are no publicly available guidelines produced by the EC or other EU bodies and overall only limited information is available on how specific situations are evaluated. According to bilateral meetings with the Commission, some of the specific criteria used

include: involvement of fundamental rights bodies in the management of EU funds; existence of independent judicial review; provision of guidelines on fundamental rights to project beneficiaries; and functioning reporting mechanisms for cases of non-compliance with the Charter.

However, the lack of transparency on the content and outcome of the EC and MS assessments undermines the accountability of the process at national level, where access to information remains a major challenge. At a minimum, in the spirit of allowing public accountability, information on existing complaint mechanisms should be publicly available.

In response to a survey carried out in January 2023 by PICUM and ECRE targeting CSOs working in the field of migration and asylum at national level, of the 59 respondents, 40, from 22 EU countries and 2 non-EU countries, indicated that they were not aware of any avenue to report on alleged fundamental rights violations or concerns related to the fundamental rights impact of EU-funded projects in their MS. Ten respondents from 8 MS underlined that there were no possibilities for reporting such violations in their country.

The results suggest that even where mechanisms are in place, the information on how to report fundamental rights concerns does not reach potential beneficiaries of the funds and of the activities. Given that MS have to communicate the arrangements to the EC, it is a missed opportunity not to publicise them more widely. In addition, the information has to be reported to monitoring committees.

Among the few positive responses received, respondents highlighted some good practices related to the way MS implement their obligations. For instance, the Managing Authorities for AMIF, BMVI and ISF in Belgium and France appoint a focal point on fundamental rights within the relevant ministries; some guidelines with clear reporting mechanisms were developed in Germany, as well as revised guidance in Latvia; and staff capacity was increased in Portugal.

2) Provide technical guidance to the Member States

In its Communication Strategy on the Charter, the EC has committed to develop a training module and to provide technical guidance to MS. As part of its technical guidance role, the EC organised webinars for Managing Authorities and has recently concluded a [tender](#) to develop e-learning tools to ensure coherent and effective implementation of the enabling conditions. However, there are no new written guidelines for MS that can be publicly consulted, as the EC is still using older [guidelines](#) preceding the adoption of the enabling conditions rules in the current MFF.

3) Monitor compliance of EU programmes implementation with the Charter

The monitoring role of the EC does not stop after the adoption of the national programmes, rather it should continue throughout the seven years of implementation of the EU's budget. The EC should ensure continuous monitoring of the application of horizontal enabling conditions and, as the CPR specifies, take appropriate measures,

such as possible interruption or suspension of EU funding, or financial corrections when irregular expenditure has not been corrected by the Member States.

As found by a [study](#) commissioned by the Greens/EFA group in the European Parliament, the monitoring and performance evaluations framework already provide for some opportunities for the EC to perform its monitoring obligations.

Annual and Final Performance Reports. For Home Affairs funding, MS should submit to the EC an annual performance report containing information on enabling conditions, in particular on compliance with fundamental rights, by 15 February of each year. Regarding ESF+ funding, the MS only have to prepare a final performance report by 15 February 2031, including elements related to the enabling conditions. The performance reports are approved by the monitoring committees, which, as a consequence, should also be informed of complaints related to non-compliance with fundamental rights.

Mid-term evaluations by the Member States. According to the CPR, MS or Managing Authorities have the obligation to prepare a mid-term review of programmes measuring effectiveness, efficiency, relevance, coherence and Union added value. For Home Affairs funds, the evaluation should be carried out by 31 March 2024 by internal or external experts who are functionally independent. The monitoring committee should receive an evaluation plan within one year of the adoption of the programme.

Mid-term evaluations by the European Commission. The EC has to perform a similar evaluation by the end of 2024. The review should highlight any implementation shortcomings and take stock of the progress made in achieving the key milestones. Following the mid-term review, the EC decides on the allocation of additional funds for the possible adjustment of the amounts allocated to the MS programmes.

While the mid-term evaluations do not contain specific requirements to assess the implementation of enabling conditions, the EC and the MS could consider including them in their report, in order to increase the transparency and accountability of the whole process.

Additionally, Annexes VIII of the AMIF and BMVI Regulations requires the EC and the MS to follow a list of indicators in their evaluations. The legislation allows the Commission to amend, review and complement the monitoring and evaluation frameworks via a delegated act. As recommended by the European Court of Auditors in its [Report on the performance of the EU budget at the end of 2019](#), this tool could be used to strengthen monitoring of the implementation of the MS programmes and improve reliability and consistency of data collection. This could be extended to the enabling conditions.

B. The role foreseen for civil society

The current budget cycle provides a strengthened framework for the involvement of stakeholders in the inception, implementation, monitoring and evaluation of EU programmes at national level, via a reinforced [partnership principle](#). Traditionally implemented in European structural and investment funds, ECRE and PICUM welcomed the introduction of new and strengthened rules, which also extend to cover Home Affairs funds for the first time.

While the EC and the MS have the primary obligation to ensure that EU money is spent in compliance with fundamental rights, all relevant stakeholders, such as CSOs, have the possibility to play a role in this process via a number of avenues.

As broadly recognised, including by the [2022 Annual report on the application of the Charter of Fundamental Rights](#), CSOs and fundamental rights bodies (such as national human rights institutions, NHRI) should be closely involved in decision making related to fundamental rights and EU funding, given the crucial role they play in “channelling the voice of the underrepresented, and in empowering individuals to participate in the shaping of laws and policies on matters of public interest”.

The importance of stakeholder participation was recently reiterated in a [policy paper](#) on the Recovery and Resilience Facility plans by the OECD in collaboration with the European Ombudsperson. In their report, they recommend a whole-of-society approach to EU spending to ensure oversight and scrutiny from a plurality of actors, including civil society.

Partnership principle on paper and in practice

Article 8 of the CPR defines the following stakeholders who should be involved in the development of EU programmes at the national level at all stages:

regional, local, urban and other public authorities, economic and social partners, relevant bodies representing civil society, such as environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, fundamental rights, rights of persons with disabilities, gender equality and non-discrimination; research organisations and universities, where appropriate.

Article 4 of the AMIF Regulation further includes:

relevant international organisations, non-governmental organisations, such as refugee organisations and migrant-led organisations, as well as national human rights institutions and equality bodies, and economic and social partners.

Additionally, Commission representatives participate in the work of the committees in a monitoring and advisory capacity. For Home Affairs funds, there is also a possibility to include relevant decentralised agencies in the work of the monitoring committees, which could pave the way to a more structured involvement of the Fundamental Rights Agency (FRA).

According to the CPR, representatives of the afore-mentioned partners should be members of the monitoring committees for EU funds. Nevertheless, there is a persistent and wide gap between the partnership principle as described in legislation and in its practical implementation.

The results of the ECRE-PICUM survey mentioned above, with responses from 59 CSOs, show that the level of participation in the inception phase of the programmes was generally very low.

Despite the obligation to involve CSOs in the programming of national plans, only 20 out of 59 organisations provided input during the inception phase. In some cases, the quality of consultations was also poor. For instance, in Slovenia, there were particularly short timeframes to comment on the proposed AMIF plan, resulting in insufficient time to prepare meaningful contributions. In Luxembourg and Austria, the consultations on AMIF were only held at an informal level. Additionally, it is noteworthy that most inputs were provided in the context of AMIF (17 times) or ESF+ plans (8 times), and no input was provided for BMVI and ISF programmes, which remain largely inaccessible to fundamental rights bodies and organisations working to directly assist migrants and refugees. This is particularly concerning given the considerable fundamental rights risks entailed by some of the activities funded under BMVI and ISF.

Opportunities within monitoring committees

In the architecture of CPR funds, monitoring committees are the main platforms at national level for examining the fulfilment of the enabling conditions and their application in relation to the use of EU funds throughout the programming period.

In the current MFF, the tasks and composition of monitoring committees are now better defined, and they offer a key opportunity for participation to stakeholders. The committees have the duty to examine progress in programme execution, as well as any issues affecting performance. They should also be informed of reports of cases of non-compliance with the Charter of activities supported by the EU programmes in question. Additionally, the monitoring committees approve the final performance reports for ESF+ and the annual performance reports related to Home Affairs funds that MS or Managing Authorities should submit by 15 February of each year (with the first report due on 15 February 2023). The reports also cover the fulfilment of the enabling conditions related to the Charter of Fundamental Rights, which provides for the possibility for monitoring committee members to potentially provide feedback or input on compliance with fundamental rights. Concerning the mid-term review process, the monitoring committees are responsible for approving the evaluation plan, and could potentially ensure that this includes a thorough and independent assessment of enabling conditions.

Independence and the protection of complainants

A [decision of the European Ombudsperson](#) recognises that the fact that the EC is not directly responsible for managing EU funds “should never be used as a reason for not acting if fundamental rights have been, or risk being, violated”. Some elements of the decision have yet to be addressed even after the restructuring of conditionality rules on fundamental rights in the current CPR.

As guardian of the treaties, the Commission has an important supervisory prerogative to ensure that MS comply with the rules. In line with the Ombudsperson's view, ECRE and PICUM consider that in order to fulfil or discharge its responsibility in monitoring of fundamental rights implementation at national level, the Commission should promote a clear framework within which CSOs can support it to play its supervisory role.

While the requirement on MS to put in place monitoring arrangements to report cases of non-compliance with fundamental rights in EU projects to the monitoring committees is clear progress, this system does not foresee any protection for complainants. It could thus jeopardise access to EU funds for smaller and independent organisations. This is a real danger in the countries where there are persistent tensions between the government and CSOs.

Therefore, an independent system would be preferable, such as an online platform, as suggested by the Ombudsperson, for reporting abuses of funds, Charter violations or submit shadow reports on partnership principle and fundamental rights compliance to the EC.

Improving accountability and transparency of the enabling conditions' process

As found by the OECD and Ombudsperson Policy Paper, EU public spending should be based on the open government principles of transparency, accountability and stakeholder participation throughout the whole budget cycle. A number of their recommendations could also be applicable in the realm of migration and asylum funding under shared management. This includes committing to proactive publication of information, ensuring multilevel governance on transparency, and improving data collection.

In this spirit, the EC portal [Cohesion Data Platform](#) represents a particularly valuable tool to improve transparency and access to information on EU funds, including on monitoring committees and enabling conditions.

This online system involves all funding instruments covered by the CPR. While the platform contains extensive information on Cohesion programmes at national level, it also includes, for the first time, some elements from adopted Home Affairs programmes. For instance, it allows the user to search information on all EU funding programmes in each country, such as the allocated amounts from approved programmes, as well as providing interactive overviews of all EU funded programmes by country and in total. Cohesion programmes also include an overview of allocations by theme and specific objective in any given MS, and extensive explanations of the different financial instruments.

This good practice could be further expanded to fill the numerous information gaps related to EU funds implemented under shared management, by encouraging a central repository of data. For instance, the Cohesion Data Platform could be expanded to cover information on implementation of the horizontal enabling conditions related to the Charter at national level, with details on the safeguards and reporting mechanisms for cases of non-compliance with the Charter. The composition of monitoring committees could also be published in this central repository to ensure that information on members of the committees is accessible to the wider public. This information is already available to the EC and it would greatly improve the accountability of the whole system to ensure fundamental rights conditionality in EU funds.

**Funding for monitoring funding:
capacity building, technical
assistance and other opportunities**

One of the major challenges faced by CSOs is often the lack of capacity to monitor EU funds and fundamental rights compliance. In this regard, the legislative frameworks of EU financial instruments offer some possibilities to support the stakeholders through dedicated resources.

Article 8 of the CPR stresses that MS should allocate appropriate resources for the administrative capacity of stakeholders, in the spirit of implementing a multi-level governance principle and a bottom-up approach to the partnership. At the same time, the ESF+ plans should earmark at least 0.25% of resources for a similar purpose, whenever required by the Country-specific Recommendations addressed in the European Semester. This could be used to strengthen the capacity of organisations to participate in EU funding programming and implementation.

Additionally, there are also opportunities for the EC to support actions in the area of monitoring, evaluation, information exchange, and implementation of the funds under technical assistance, on its own initiative. In particular, the Commission could focus its supporting activities and capacity building efforts in those countries where compliance with fundamental rights in EU funds has been more challenging.

There are a number of additional funding programmes that could be used to strengthen the role of CSOs in monitoring fundamental rights compliance in EU funds, such as the Citizens, equality, rights and values (CERV) programme, Horizon Europe or the Erasmus+ programme.

C. Additional opportunities for CSOs at EU and national level

It should be clarified that the horizontal enabling conditions are not intended to serve as an additional means of judicial redress at national level. Rather, they aim to prevent misuse of EU funds in projects implemented in the MS. At the same time, the new rules create additional safeguards for ensuring fundamental rights compliance and may therefore be relevant to both legal and non-legal actions aimed at ensuring compliance with fundamental rights in EU programmes.

In this context, there are additional opportunities for CSOs to work with and channel information to EU bodies. By making a clear link between EU funds and fundamental rights in their reports, they may thus be able to better contribute to the just application of horizontal enabling conditions by the MS.

Some of these avenues include:

- **Formal complaints to the European Commission.** There is a possibility to lodge a [formal complaint](#) with the EC for cases of breaches of EU law, which can eventually lead to an infringement procedure in cases of in-compliance or non-transposition of EU legislation.

In practice, the EC intervenes only when there is a systematic breach of EU law, and if judicial remedy cannot be found at national level. Although the [Greens/EFA study](#) found that there is no systematic use of infringement procedures in the field of fundamental rights violations by MS in the context of borders, such complaints can also be viewed as a way to formally provide information on fundamental rights breaches in the context of EU projects.

Even if the EC does not follow up with a judicial action, it might collect reports of violations in the context of EU projects, and act in accordance with the enabling conditions rules by suspending payments where there are cases of non-compliance with the Charter.

- **Scrutiny role of the European Parliament and petitions.** The EP has the possibility to request regular updates from the EC and MS that provide information and report on the implementation of the enabling conditions in the MS, both orally and in writing.

Additionally, all EU residents have the right to [submit a petition](#) to the EP “in the form of a complaint or a request on an issue that falls within the European Union’s fields of activity”. The EP Committee on Petitions (PETI) can decide to follow up on the petition through a number of actions, such as requesting clarifications from the EC, MS or EU bodies; proposing the adoption of an EP position; holding a public hearing in the EP; organising a fact-finding mission; or adopting an own initiative report on the topic.

A previous example is a [petition](#) launched by ECRE and PICUM member Associazione per gli studi giuridici sull'immigrazione (ASGI) and Associazione ricreativa e culturale italiana (ARCI), on alleged misuse and mismanagement of EU funds by the EC in the context of financial support to the so-called Libyan coastguard, which follows a complaint submitted to the European Court of Auditors⁵ in 2020. A [hearing](#) in the European Parliament was held in January 2023 and more actions are to follow.

- **European Anti-Fraud Office (OLAF).** There is a possibility [to report](#) fraud or other irregularities with a negative effect for EU finance to OLAF. A previous example concerns the OLAF [report](#) on serious misconduct and violations of fundamental rights at the European Border and Coastguard Agency (Frontex), which concluded a long investigation by OLAF. Similar investigations could also potentially be launched in the context of shared management of EU funds for failure to apply the Charter, and CSOs could support them by providing evidence.

- **Ombudspersons at national and EU level.** [National, regional](#), and the [European](#) Ombudspersons have the possibility to (also proactively) investigate complaints about maladministration that involve the EU and national or regional administrations. There are previous examples of investigations into the use of EU funds, such as the afore-mentioned [decision](#) of the European Ombudsperson on the EC monitoring role on fundamental rights in EU funds, and an [own-initiative inquiry](#) of the European Ombudsperson on the use of EU resources in line with the UNCPRD.

- **Litigation at national and European level.** Judicial engagement at national level often proves to be a particularly useful means for ensuring accountability and necessary legal changes. In this regard, rules on the horizontal enabling conditions in EU funds may create an additional opportunity to bring individual cases before national and European courts against violations of fundamental rights in EU funded projects.

Investigative journalists have published [some reports](#) that link cases of arbitrary detention with EU resources, and which could be used as evidence by individuals seeking judicial remedy at national or European level.

⁵ The European Court of Auditors (ECA) is not included in this list because there is no formal procedure to submit complaints by civil society organisations. However, there are past examples of civil society organisations approaching the ECA to encourage its intervention in these matters, such as in the mentioned example on EU funds supporting the Libyan coastguard.

IV. Conclusions

If effectively put in place, the new framework offers a plethora of new opportunities to prevent misuse of EU funds and ensure compliance of EU projects with the Charter of Fundamental Rights.

Where fundamental rights are not respected, the EC has the possibility to freeze EU funding, with the ultimate objective of ending EU support to harmful actions. This is an important tool for change in ongoing and future investments in the field of migration, asylum and inclusion. However, it should be clarified that stopping EU funds in situations where people's rights are being violated does not per se provide for practical solutions or judicial remedy for the people affected – and may not even end the violations. In such circumstances, the already available means of redress and a human-centred approach to EU funding should be deployed. At the same time, the new framework could be used to build stronger judicial cases and as a practical way to take forward complaints at national level by individuals and CSOs.

The 2021-2027 MFF will be a key implementation test when it comes to increasing the compliance with fundamental rights of EU-funded actions. The EC and MS have the ultimate responsibility for implementing the legislation, and it is their duty to ensure that the horizontal enabling conditions are meaningfully applied. They should ensure that national programmes do not merely tick a box in a checklist, but that there is a transparent and open process for beneficiaries to lodge complaints and contribute to a rights-based and effective use of EU resources.

CSOs and fundamental rights bodies can contribute to the process by participating in the main platforms dedicated to ensuring respect for the enabling conditions, such as the monitoring committees on EU funds. By bringing their experience from the ground, as well as the voice of people directly benefitting from EU-funded actions, they can increase accountability and promote a rights-based approach to EU funding for migration, asylum and inclusion.

V. Recommendations

To the European Commission:

- Ensure the enforcement of the horizontal enabling conditions related to the Charter of Fundamental Rights by closely monitoring the implementation of national programmes (AMIF, BMVI, ISF, ESF+), and by following up on reports on alleged fundamental rights breaches;
- Update written guidelines to MS on the implementation of the horizontal enabling conditions in funds covered by the CPR, and clarify the assessment criteria by making public the evaluations of enabling conditions and internal guidelines;
- Expand internal capacity of EU staff assessing enabling conditions, by providing publicly available guidelines for staff, dedicated internal trainings for EU programming units (DG HOME and DG EMPL), and ensure adequate staffing and resources dedicated to assessing enabling conditions in DG JUST;
- Ensure transparency and accountability of information related to the programmes by publishing information on monitoring committees, national plans and enabling conditions on a central repository at EU level, such as the Cohesion Data Platform;
- When performing the mid-term review, include an assessment of the implementation of the partnership principle by including information on the composition and functioning of the monitoring committees, and an evaluation of the functioning of enabling conditions requirements; if need be, consider adopting a delegated act to amend, review and complement the monitoring and evaluation frameworks as foreseen by the AMIF and BMVI Regulations;
- As recommended by the European Ombudsperson in its decision on case OI/8/2014/AN, develop an open platform to directly communicate alleged breaches of the Charter of Fundamental Rights to the EC, and consider amending legislation to ensure protection of complainants and prevent the risk of negative repercussions on EU fund allocations;
- Promote visibility and exchange of good practices in different Member States on the operationalisation of fundamental rights requirements;
- Safeguard the operationalisation of the partnership principle by supporting the capacity of CSOs and fundamental rights bodies through adequate financial opportunities under direct and indirect management of EU programmes.

To EU Member States:

- Ensure meaningful implementation of the partnership principle by promoting participation of CSOs and fundamental rights bodies in monitoring committees via a fair and transparent process;
- Increase visibility and transparency on the application of the horizontal enabling conditions, by publishing relevant information on the fulfilment of requirements and on available reporting arrangements of cases of non-compliance with the Charter of Fundamental Rights;
- Enhance transparency and accountability of MS actions in the area of migration, asylum and inclusion supported by EU funds, by making programmes, and information on monitoring committees publicly accessible;
- Include a thorough assessment of the horizontal enabling conditions in the annual and final performance reports, with clear information on reporting mechanisms, a list of complaints related to cases of non-compliance with the enabling conditions, and related follow up measures;
- When performing the mid-term review, include an assessment of the implementation of the partnership principle by including information on the composition and functioning of monitoring committees, and an evaluation of the functioning of enabling conditions requirements;
- Implement and facilitate reporting related to fundamental rights breaches in EU projects through clearly established, independent and fair complaints mechanisms to ensure protection of complainants and avoid risks of repercussions on project beneficiaries in terms of access to EU resources;
- Provide adequate funding opportunities through the national programmes to increase capacity of CSOs and fundamental rights bodies in participating in the programming, implementation, monitoring and evaluation of EU programmes.

To the European Parliament:

- Make full use of supervisory powers by requesting regular updates from the EC on the fulfilment of enabling conditions related to the Charter of Fundamental Rights in EU funding programmes, and on reports of breaches of fundamental rights in connection with EU funds;
- Set-up an EP working group bringing together members from the Committee on Civil Liberties, Justice and Home Affairs, the Committee on Budgetary Control, and other relevant Committees to follow the implementation of EU funds in the area of migration, asylum and inclusion;
- Support and ensure appropriate follow up and visibility of petitions submitted in the area of EU funds for migration, asylum and inclusion.

To the Fundamental Rights Agency:

- Support MS capacity building in the area of implementation of the horizontal enabling conditions by drafting guidelines and by participating in the works of the monitoring committees where appropriate.



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