



## **The European Commission's guidelines**

The assessment of projects' compliance with the Charter of Fundamental Rights under the Common Provisions Regulation

## **The Commission's internal checklist**

### **on the fulfilment of the horizontal enabling condition on the effective application and implementation of the Charter of Fundamental Rights**

#### **Enabling condition: Effective application and implementation of the Charter of Fundamental Rights (Annex III CPR)**

This internal note<sup>1</sup> provides guidance to the geographical desks of the DGs which are managing funds under Regulation (EU) 2021/1060, the Common Provisions Regulation (CPR)<sup>2</sup>. It applies to the complete cycle of the assessment of the fulfilment of the Charter HEC at the time of the approval of the programmes, as well as throughout the programming period. The objective of this checklist is to ensure equal treatment of Member States, to safeguard the financial interests of the EU and to guarantee the effective implementation of the Funds.

This checklist may have to be revised or updated in light of the experiences acquired with its implementation.

Annex III of the CPR defines this enabling condition as follows: *“Effective mechanisms are in place to ensure compliance with the Charter of Fundamental Rights of the European Union ('the Charter') which include:*

- 1. Arrangements to ensure compliance of the programmes supported by the Funds and their implementation with the relevant provisions of the Charter.*
- 2. Reporting arrangements to the monitoring committee regarding cases of non-compliance of operations supported by the Funds with the Charter and complaints regarding the Charter submitted in accordance with the arrangements made pursuant to Article 69(7).”*

The self-assessment submitted by the Member State constitutes the basis for the Commission's assessment. However, other sources of information can be used, notably to establish whether there are material breaches of the Charter in the Member State, which could have a direct link with the management and implementation of the CPR Funds. Sources should, at least, include infringement proceedings, CJEU judgements, the Rule of Law Reports, well-substantiated complaints underpinned by evidence, national court cases, reports from the Fundamental Rights Agency, court cases from the European Court of Human Rights and other EU instruments and procedures (e.g. Article 7 TEU, the Regulation on the General Regime for Conditionality for the protection of the Union budget<sup>3</sup>, relevant Country Specific Recommendations (CSRs) in the context of the European Semester)<sup>4</sup>. In the context of the Charter HEC, a continuous dialogue with Member States needs to be ensured.

CPR DGs will require the support of other services (including JUST, LS, SG and BUDG) for the assessment of this HEC, and, in particular, on the impact on the fulfilment of this HEC on matters

---

<sup>1</sup> This note is an internal document of the Commission services setting out guidance for the assessment of the horizontal enabling condition linked to compliance with the Charter of Fundamental Rights. It is not to be circulated outside the Commission services.

<sup>2</sup> Article 15 CPR in conjunction with Annex III and Article 2 CPR setting out definitions

<sup>3</sup> Regulation 2020/2092

related to material breaches of the Charter and lack of effective judicial protection, including the independence of the judiciary, under the arrangements agreed in the [joint approach](#)<sup>5</sup> and insofar as they are linked to the management and implementation of the programmes supported by the CPR Funds. To ensure full coherence between instruments, the developments under the RoL conditionality regime and, to a certain extent, also the assessment of NRRPs should be taken into account.

Member States' fulfilment of the Charter horizontal enabling condition ('HEC') is programme-specific. It is clear from Articles 15(2) and 22(3)(i) CPR that the assessment as to whether the Charter HEC is fulfilled should be included and assessed in each programme. However, Member States may decide to set out the same arrangements and mechanisms for several or all programmes. Member States may also decide to present information required for the fulfilment of the enabling condition in one single document covering the specificities of one or all of the CPR Funds programmes or in several documents, as long as these are consistent with each other and contain the necessary information required by the criteria for fulfilment.

**General considerations about the Charter horizontal enabling condition (for the two criteria):**

The horizontal enabling condition requires that Member States put in place effective mechanisms to ensure compliance with the Charter. This is a prerequisite horizontal enabling condition for Member States to fulfil for the effective and efficient implementation of all specific objectives of the CPR Funds programmes, with the exception of the Interreg programmes.

Assessing whether "*effective mechanisms are in place to ensure compliance with the Charter*", as laid down in the *chapeau* of the enabling condition, requires a qualitative assessment by the Commission services. The entire national or, where relevant, regional set-up for the programme concerned needs to be taken into account to conclude on the fulfilment of the horizontal enabling condition. Deficiencies have to be programme-specific and directly linked to the management and implementation of the CPR Funds to be considered for this assessment.

It is important to recall that the implementation of each operation funded has to comply with applicable EU law, including the Charter, as pointed out in the 'Guidance on ensuring the respect for the Charter of Fundamental Rights of the European Union when implementing the ESIF'<sup>6</sup> (hereafter 'Guidance'). An isolated/non-systemic breach of the Charter in the implementation of an operation cannot in itself result in the conclusion that the horizontal enabling condition on the Charter is not fulfilled. The adequate measure to take in such a case is financial corrections (Article 104 CPR).

---

<sup>5</sup> DG IUST will share with CPR DGs, SG (including RECOVER), IS and BUDG any relevant information at its disposal about material breaches of the Charter and lack of effective judicial protection that raise concerns about the fulfilment of the HEC on the Charter; when CPR DGs receive relevant information through the reporting to monitoring committees, this information should be shared with all CPR DGs, SG (including RECOVER), IS and DG IUST. Similarly, CPR DGs that have information about material breaches of the Charter in their respective areas that raise concerns about the fulfilment of the enabling condition, they should also share this information with the other CPR DGs, SG (including RECOVER), IS, BUDG and IUST.

DG IUST, IS, SG (including RECOVER) and others are invited to share any relevant information with CPR DGs as early as possible based on their dialogues.

<sup>6</sup> Commission notice — Guidance on ensuring the respect for the Charter of Fundamental Rights of the European Union when implementing the European Structural and Investment Funds ('ESI Funds'), C/2016/4384, OJ C.269, 23.7.2016, p. 1–19

The 'guiding questions' below aim at guiding the Commission services' assessment of the fulfilment of the HEC with a view to ensuring equal treatment across all Member States and programmes. They do not constitute additional requirements beyond what is provided for under the CPR; rather, they are meant to facilitate the assessment as to whether the set-up of arrangements/mechanisms by the Member States is effective (qualitative assessment) and whether the criteria of the enabling condition are fulfilled.

**Fulfilment criterion 1: Arrangements to ensure compliance of the programmes supported by the Funds and their implementation with the relevant provisions of the Charter:**

Member States must explain how they will ensure the compliance of the programmes and of their implementation with the Charter. Member States must ensure that the arrangements to ensure compliance with the Charter cover all the phases of the programmes and their implementation, including phases such as programming, launching of calls for proposals, selecting operations, following up implementation, evaluation, etc.

The Guidance could be used by Member States as a source of inspiration in order to set up the necessary arrangements to ensure compliance of the programmes supported by the Funds and their implementation with the relevant provisions of the Charter<sup>7</sup>. For example, they could use a 'Fundamental Rights checklist' developed with the bodies responsible for the compliance with the Charter<sup>8</sup> based on the model proposed in the aforementioned Guidance.

When assessing the Member States' self-assessments, the Commission services will check whether these arrangements are effective to ensure Charter compliance of the programmes. These mechanisms should provide sufficient guarantees that any alleged material breach of fundamental rights in the Member State/region concerned, where there is a justified and direct link on the implementation of the programmes, will be addressed as a matter of principle. These arrangements shall address any substantiated potential risks jeopardising the ability to effectively ensure Charter compliance in the programme's implementation by the concerned Member State and the beneficiaries referred to in the Guidance on ensuring respect for the Charter of Fundamental Rights<sup>9</sup>. At programme adoption, the Commission is looking to assess whether the proposed mechanisms and arrangements are likely to be sufficient to ensure effective compliance with the Charter. Existing material breaches can be used to identify potential risks for the implementation of the Funds.

In some cases, such risks may require the mechanism to be strengthened to enable an implementation of the programme in compliance with the Charter. In other cases, the risks may be so pervasive that the mere strengthening of the mechanism falls short of tackling them effectively. This may be the case of a national law that is in breach of the Charter and where a justified and direct link on the implementation of the programmes exists.

---

<sup>7</sup> This Guidance is about how to ensure compliance with the Charter throughout the implementation of the FSI Funds and not about how to ensure the fulfilment of the horizontal enabling condition on the Charter or how to comply with the CPR.

<sup>8</sup> Examples include: National Human Rights Institutions and Equality bodies

<sup>9</sup> Beneficiaries, which have been made responsible, pursuant to a measure adopted by a Member State, for providing a public service under the control of the State and which have for that purpose special powers beyond those which result from the normal rules applicable in relations between individuals.

In yet other cases, such risks could stem from deficiencies in the arrangements and mechanisms themselves; if they essentially do not work, they cannot ensure effective compliance with the Charter.

For example, the mechanisms and arrangements cannot be considered as able to effectively ensure Charter compliance in the Funds' implementation where the national entities involved in the implementation of the Funds and/or designated to ensure Charter compliance apply national legislation that infringes the Charter and directly affects the relevant specific objective and the relevant programme.<sup>10</sup> In any case, the breach of the Charter should have a concrete and sufficiently direct impact on the implementation of the relevant programme (in any phase of the programme's implementation, and including by dissuasion of potential eligible beneficiaries and contractors from submitting projects and tenders). Of relevance for such an assessment would be, for instance, infringement proceedings launched by the Commission.

The practice of national courts should also be taken into account<sup>11</sup>. The mechanisms and arrangements indicated in the Member States' assessment may not ensure Charter compliance if there is directly relevant national case law that is not compatible with the Charter. For this purpose, isolated or numerically insignificant judicial decisions, or a lower court's position disowned by the national highest courts, cannot be considered decisive for the purpose of the fulfilment of the HEC. Where national legislation has been the subject of different relevant judicial court rulings, some leading to the application of that legislation in compliance with EU law, others leading to the opposite application, such legislation is not sufficiently clear enough to ensure its application in compliance with EU law.

Article 47 of the Charter includes the individual right to effective remedy and fair trial. This includes the right "to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law." In the absence of such effective remedy and fair trial, the arrangements/mechanisms in place cannot be considered as fulfilling the criterion under the enabling condition, if the identified weaknesses can be directly linked to the implementation of the CPR funds.

For assessing this article of the Charter, the analysis performed by the geographical desks shall rely on the support of other services (including JUST, LS, SG and BUDG) and all available information sources, to allow the Commission to evaluate the impact of the identified risk on the implementation of the specific CPR Funds. [REDACTED]

---

<sup>10</sup> In such case, where the legislation has in fact displayed its impact, no individual cases are necessary to demonstrate that the national arrangements and mechanisms are not effective. On the other hand, if it is unclear whether the national legislation could actually have such effects, a number of concrete individual cases are needed. A systematic (general and consistent) administrative practice contrary to Union law could also be taken into account in this regard, keeping in mind the Court of Justice's requirements on the Commission to prove that the practice is generalised (see notably judgements by the Court of Justice of the European Union of 27 April 2006 in Case C-441/02 Commission v Germany, of 7 June 2007 in Case C-156/04 Commission v Greece, and of 19 March 2009 in Case C-489/06 Commission v Greece).

<sup>11</sup> Relevant source of information: [EU portal for national case law related to EU law](#) - it can be filtered for the Charter of Fundamental Rights

**Guiding questions**

- What legal procedures and other mechanisms are in place, at the regional and national level, to ensure compliance with the Charter throughout all the phases of the programmes and their implementation?
- In particular, does the Member State explain/set out the role and tasks of the different authorities and bodies (managing authorities, intermediate bodies and audit authorities) in ensuring the compliance of the programmes with the provisions of the Charter? Who is involved and when?
- Are these authorities (managing authorities, intermediate bodies and audit authorities) able to effectively ensure compliance with the Charter? Relevant sources for the Commission's assessment include activity reports, audits, complaints, Court judgements and studies.
- In particular, has the Member State stated which bodies or persons will provide assistance and the expertise on fundamental rights matters and have the ability to effectively ensure compliance with the Charter?
- Does the Member State explain how the compliance with the Charter will be ensured at all stages of programming, ex ante and ex post, and in particular when:
  - Establishing the funds intervention strategy and drawing up programming documents, including the preparation of strategic policy frameworks, the Partnership Agreement and programmes.
  - Setting up management, monitoring and control systems, including the working arrangements between them, the set-up of the monitoring committee and the adoption of manuals of procedures.
  - Implementing programmes, in particular, when drawing up selection criteria and procedures, launching calls for proposals, selecting operations, supervising the work of intermediate bodies, carrying out on-the-spot verifications, dealing with complaints and ensuring the availability of other remedies.
- Can the arrangements described be considered effective in practice, in light of the challenges in the area of fundamental rights in the Member State/region (see sources of information included above)?
- Has the Member State developed appropriate systems and tools to ensure compliance with the Charter, for example a relevant 'Fundamental rights checklist' and training modules?
- Based on the available information provided by DG JUST, LS, SG, BUDG and others, including the existence of related milestones under the RRF, do the national procedures and mechanisms fulfil the requirements of effective judicial remedy and a fair trial? In order to be taken into account for the purpose of the Charter HEC, any identified weakness linked to the judiciary would need to be directly linked to the implementation of the specific programme under assessment. Systemic issues would be dealt with at the political level as described above. Relevant sources can inter

alia include judgements of infringement procedures, the Court of Justice, national case law, and factual information stemming from the Rule of Law Reports<sup>12</sup>, the Mechanism for Cooperation and Verification (CVM), EU Justice Scoreboard,<sup>13</sup> other EU instruments and procedures (e.g. Article 7 TEU, conditionality mechanism, relevant CSRs in the context of the European Semester).

- Is the effectiveness of the national procedures and mechanisms (potentially) affected by a breach of the Charter by sectoral national legislation? Does the deficiency identified (if any, based on the above) have a direct link to the mechanisms/arrangements' possibility to ensure Charter compliance?
- [Throughout the programming period/once the Monitoring Committee is set up] Does the composition of the Monitoring Committee ensure a balanced representation of relevant partners with the necessary independence to ensure compliance with the Charter? (To be considered if it can have a significant impact on the ability to ensure compliance of the programme with the Charter and is not counterbalanced by other effective mechanisms)

**Relevant partners may include the following (non-exhaustive/prescriptive list):**

- **National Human Rights Institutions (NHRIs)** are state-mandated bodies, independent of government, with a broad constitutional or legal mandate to protect and promote human rights at the national level. NHRIs address the full range of human rights, including civil, political, economic, social and cultural rights. NHRIs are unique as they are national institutions with a legal mandate to promote and protect human rights domestically in an independent manner. Contrary to other national institutions, NHRIs are accredited with an internationally accepted quality label, on the basis of their compliance with the UN Paris Principles.
  - When National Human Rights Institutions are involved: it is relevant to take into consideration inter alia their accreditation. Relevant sources for this assessment include the Paris Principles, reports and recommendations of the Global Alliance of National Human Rights Institutions (GANHRI) and its updates, and the recommendations of the Council of Europe.
- **Equality bodies** are public organisations assisting victims of discrimination, monitoring and reporting on discrimination issues, and contributing to an awareness of rights and a societal valuing of equality. Their role is defined in accordance with EU equal treatment legislation requiring Member States to set up equality bodies to combat discrimination based on race and ethnic origin, as well as gender. Many Member States have gone beyond these requirements and ensured that equality bodies can also deal with discrimination based on other grounds (gender, race and ethnicity, age, sexual orientation, religion or belief, and disability). They play a fundamental role in the non-discrimination architecture of the EU.
  - When Equality bodies are involved: it is relevant to take into consideration inter alia the organisation of those bodies, their place in the overall administrative structure, the allocation of their budget, their procedures for handling resources, with particular focus on the procedures for appointing and dismissing staff, including persons holding leadership positions. Relevant sources for this assessment include the Commission Recommendation on standards for equality bodies; and the ECRI

---

<sup>12</sup> The Annual Rule of Law Reports are available via: [Rule of law mechanism | European Commission \(europa.eu\)](#)

<sup>13</sup> The Justice Scoreboard is available via: [EU Justice Scoreboard | European Commission \(europa.eu\)](#).

General Policy Recommendation no 2 on equality bodies to combat racism and intolerance at national level.

- **Civil society organisations (CSOs) are independent actors, organised on a not-for-profit and voluntary basis, and active in different fields, such as poverty reduction, emergency aid, human rights, environment etc. Contrary to local authorities, CSOs are completely independent from the State.**
  - **When civil society organisations are involved: it is relevant to take into consideration inter alia the composition of their board, their financing, and their activities. Relevant sources of inspiration include reports by stakeholders, such as FRA Reports on the civil society space, reports of the Council of Europe, reports of ECRI, and the CIVICUS monitor.**

**Fulfilment Criterion 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) CPR:**

Under this criterion, Member States should explain how and at which frequency they will report to the monitoring committee on:

- (1) cases of non-compliance of operations supported by the Funds with the EU Charter and
- (2) complaints.

Cases of non-compliance are cases for which a competent body for making the assessment of compliance with the Charter – in accordance with the institutional and legal framework of the Member State – has concluded that it was not complied with in managing and implementing the CPR funds. The reporting on the number and subject matter of the cases of non-compliance and complaints should be sufficiently detailed to allow the monitoring committee to effectively draw lessons for the implementation of the programmes in order to avoid similar cases in the future.

Lessons learnt could for instance lead the monitoring committee to revise/adjust programming/project documents as well as selection criteria for future calls. The reference to Art. 69(7) CPR in the second criterion of the Charter HEC links the reporting requirement to the obligation for Member States to make arrangements for the effective examination of complaints concerning the Funds. It is clear from Article 69(7) CPR that such arrangements are the responsibility of the Member State in accordance with its institutional and legal framework. Thus, the Commission's observations should be limited to the way in which the Member State intends to report to the Monitoring Committee on complaints regarding the Charter.

**Guiding questions:**

- Does the Member State provide information on the frequency of this reporting to the Monitoring Committee? => This point should be discussed in the Monitoring Committee at least once a year.
- Does the Member State describe the scope of information that will be presented to the Monitoring Committee, i.e. how many complaints have been received, what is their status, how many cases of non-compliance there are, what fundamental rights are affected and which corrective measures have been taken, what has been/will be done to avoid such cases in the future (preventive measures)?



- Does the information provided by the Member State or available to the Commission as regards the complaint mechanism imply any restrictions in the effective examination of complaints with regard to infringements of the Charter? Sources of information include the [study on complaint-handling systems](#).
- Does the Member State provide information on who will be responsible for presenting this information to the Monitoring Committee?

INTERNAL DOC - COMMISSION ONLY