



# The role of national human rights bodies in monitoring fundamental rights in EU funded programmes\*

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## Introduction

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The European Union (EU) provides significant resources to a broad range of programmes and projects covering various areas, such as research, education, employment, regional development, social inclusion, environment, humanitarian aid, agriculture, and the marine, among many others. When Member States are using these EU Structural and Investment Funds, they must comply with the Common Provisions Regulation (CPR), a complex set of rules, including conditionalities specifically related to compliance with human rights. A series of fundamental rights issues have been identified by non-governmental organisations (NGOs), legal scholars and the European Ombudsman in relation to the use of EU funds, such as investment in segregating facilities for different vulnerable groups (e.g. persons with disabilities, Roma people, children, refugees) (European Ombudsman, 2020). In response, a strengthened mechanism to monitor human rights compliance was introduced in the legislative framework throughout the funding period, with a more articulated role foreseen for national bodies with a human rights remit (NHRBs) (CPR, 2021). There is no long-standing tradition of involving national human rights institutions (NHRIs), ombuds institutions and equality bodies in the governance structures of EU funded programmes such as Monitoring Committees. It is, therefore, unclear for different stakeholders how this envisaged role should be realised in order to improve the fundamental rights compliance of EU funded projects.

**Keywords:**  
**EU funds, fundamental rights, social inclusion, UNCRPD, EU Charter for Fundamental Rights**

This policy brief focuses on the role of NHRBs in assessing the horizontal enabling conditions in the Charter of Fundamental Rights of the European Union (the Charter) and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) compliance of EU funds. The aim of the policy brief is to present some formal and practical possibilities for NHRIs, ombuds institutions and equality bodies

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to contribute to the governance structure of EU funded programmes at all levels (national, regional, local) and address advantages and challenges of their potential roles.

## EU funds and fundamental rights

### **The EU Charter of Fundamental Rights and the UN Convention on the Rights of Persons with Disabilities (UNCRPD)**

The Charter of Fundamental Rights of the European Union (2012/C 326/02) with its rights and principles in relation to dignity, freedoms, equality, solidarity, citizen's rights and justice can be seen as the legally binding document with the purpose to promote human rights at EU level. EU funding streams are seen by the EU Commission as a useful tool not only to enforce, but also to serve, to some extent, as a safeguarding structure on the implementation of the Charter of Fundamental Rights (European Commission, 2020). The funding streams affected by the CPR are mandatorily bound to the compliance with the Charter, which has to be ensured by effective mechanisms. This includes arrangements to ensure compliance of programmes and their implementation as well as reporting arrangements regarding cases of non-compliance and complaints. NHRIs are explicitly mentioned as bodies which are to be included in monitoring committees by the European Commission (CPR, 2021).

The UNCRPD entered into force in 2011 and is the first international human rights treaty the EU became part of. It has been perceived as a potential driver for extensive legislation and policy change in the field of disability within the EU (Quinn & Doyle, 2012). In fact, EU financial instruments play an important role in realising the rights of persons with disabilities across the EU. For the 2014-2020 programming period, the European Structural and Investment Funds (ESIF) Regulations contained provisions that reflected the entry into force of the Convention and enhanced the promotion of equality, non-discrimination, inclusion, and accessibility for persons with disabilities through actions under the Funds. One of the ex-ante conditionalities at that time called for "the existence of administrative capacity for the implementation and application of the United Nations Convention on the Rights of Persons with Disabilities". The fulfilment criteria, linked to this conditionality, included 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 training for staff of the authorities involved in the management of ESI Funds, including in the area of accessibility and arrangements to ensure monitoring the accessibility provision (Article 9) of the UNCRPD throughout the preparation and implementation of the programmes. This has not prevented Member States to use EU funds for the maintenance of residential

institutions with the consent of the European Commission, which was criticized by the UNCRPD Committee (CRPD/C/EU/CO/1), as well as addressed in a complaint to the European Ombudsman and by scholars in a legal memorandum (Quinn et al., 2018). The new CPR with its horizontal and thematic enabling conditions might provide strengthened support for the effective and efficient implementation of the funds for developing family-based and community-based services.

### **Horizontal and thematic enabling conditions in the EU funding period 2021-2027**

**In the EU funding period 2021-27, there is a strengthened mechanism to monitor human rights compliance of projects and programmes**

The CPR for the EU funding period 2021-2027 sets out 'enabling conditions' (horizontal and thematic ones), which are applicable to all funds under the CPR, as well as to all specific objectives. The main difference between the current and the ex-ante conditionalities of the previous funding period is that enabling conditionalities must be fulfilled throughout the preparation, implementation, monitoring, and evaluation of the programming period, while ex-ante conditionalities were only checked at the beginning of the cycle, when partnership agreements were adopted. The introduction of enabling conditions offers a strengthened mechanism to monitor human rights compliance throughout the funding period but raises several questions about its practical implementation and engagement with relevant stakeholders in the process.

*Horizontal enabling conditions* are applicable to all specific objectives and the criteria necessary for the assessment of their fulfilment, including the "Effective application and implementation of the Charter of Fundamental Rights" and the "Implementation and application of the United Nations Convention on the rights of persons with disabilities (UNCRPD) in accordance with Council Decision 2010/48/EC" (CPR, 2021). For the fulfilment of conditionalities, there are detailed provisions on the necessary arrangements in the regulation, such as putting in place a national framework for the implementation of the UNCRPD with measurable goals, data collection and monitoring mechanisms (CPR, 2021). There are also thematic enabling conditions, which present specific requirements, linked to different funds (e.g. European Social Fund+, European Regional Development Fund). There is a list of fulfilment criteria, including, for example, measures to prevent and combat segregation in all policy fields, including through providing adequate income support, inclusive labour markets and access to quality services for vulnerable people, as well as migrants. According to the CPR, EU Member States must assess whether the enabling conditions linked to the selected specific objective are fulfilled, when preparing a programme.

### **The role of partnership in EU funds**

The *principle of partnership* is a key feature in the implementation of the funds, building on the multilevel governance approach and ensuring the involvement



**In previous funding periods, National Human Rights Institutions, equality bodies and ombuds institutions did not play a key role in partnerships at national level to monitor EU funds**

of regional, local, urban and other public authorities, civil society, economic and social partners and, where appropriate, research organisations and universities. NHRBs are covered under Article 3 of the European Code of Conduct on Partnership (ECCP), as “bodies representing civil society, such as environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, gender equality and non-discrimination” (Article 3, ECCP, 2014). There is no evidence in the literature describing the specific involvement of national bodies with a human rights remit in partnerships during previous EU funding periods.

The ECCP continues to be applicable in the 2021-2027 funding period and Member States should organise a comprehensive partnership and prepare their Partnership Agreements accordingly. Partnership, thus, remains an important aspect of shared management, meaning that partners and stakeholders should be involved during the programming, implementation, monitoring and evaluation stages to ensure efficient and effective spending of the funds. It is important to note that it is up to the Member States to decide which specific stakeholders they want to involve in the partnership. Direct involvement in monitoring committees is important to ensure the meaningful and effective participation of key partners during the implementation of the funds. However, this requires resources and administrative capacity that smaller (non-governmental) organisations often lack.

## **Potential entry points for NHRBs into the EU funded programmes for checks and balances**

The following four main stages are part of the process of designing and implementing EU programmes:

- Planning (Development of Partnership Agreements)
- Programming
- Implementation (direct management, shared management, indirect management)
- Monitoring and Evaluation

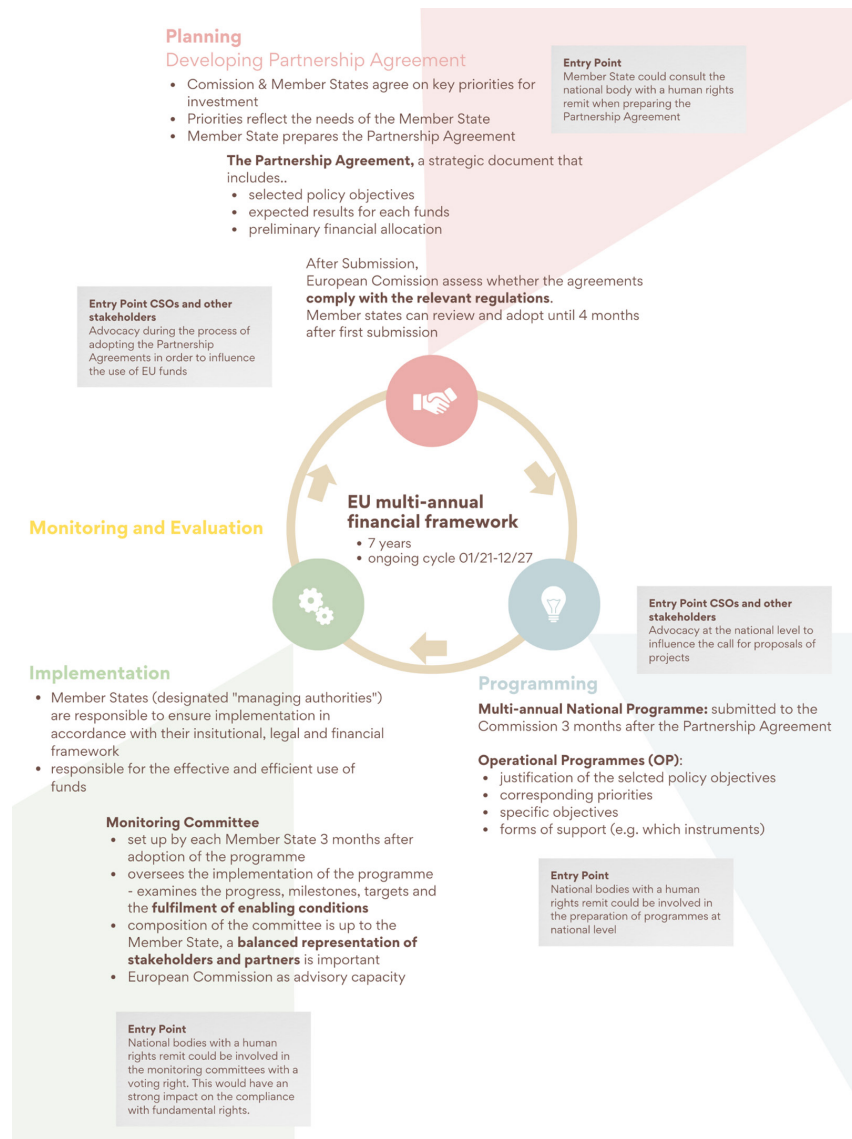
There is no long-standing tradition of involving NHRBs in the governance structures of EU funded programmes in the EU Member States. Experience from previous funding periods has shown that there are deficiencies with the effectiveness of complaints mechanisms and that partnerships lack diversity of stakeholders (European Ombudsman, 2019b). An involvement of NHRBs could provide valuable contributions for enhancing compliance with Charter and UNCPRD rights throughout the funding period, which is reflected in Article 8 (1) of CPR, which should inter alia include “relevant bodies representing civil society, such as environmental partners,

NHRBs could be a valuable source of expertise in several stages of the EU funding cycle

non-governmental organisations, and bodies responsible for promoting social inclusion, fundamental rights, rights of persons with disabilities, gender equality and non-discrimination”. During the programming phase, they could contribute to defining funding priorities in line with the most important human rights issues. As members of the monitoring committees, they could take an active role in the implementation of the programmes and could also contribute to the monitoring and evaluation phase, assessing the effects of the use of EU funds and providing recommendations for improvements.

Figure 1 below is a graphical representation of the EU multi-annual financial framework. The grey boxes mark potential entry points for bodies with a human rights remit or civil society organisations to consult, monitor or advocate on behalf of their mandate.

**Figure 1: Entry points for NHRBs and civil society organisations during the EU funding period**



## The potential role and impact of NHRBs involvement in EU funds

When reflecting about the potential role and impact of NHRBs, their mandates and the tasks and duties they carry out are key. National human rights institutions are generally vested with the competence to promote and protect human rights. Their responsibilities include the drafting of opinions, recommendations, proposals and reports on their own initiative, examining draft legislation as well as legislation and administrative provisions in force, and making proposals for initiatives to put an end to human rights violations. NHRIs may also be authorized to receive complaints, and they should maintain consultation with other relevant stakeholders and NGOs. Similar tasks are foreseen for equality bodies with a limitation to the fields of non-discrimination and equality. Current proposals of the European Commission for legislative standards for equality bodies refer to the CPR and to the requirement to involve equality bodies throughout the multi-annual financial framework (European Commission, 2022a; European Commission, 2022b). Most of the bodies, however, see complaints handling as the core field of activities with limited resources for other tasks.<sup>1</sup>

Examples of involvement of NHRBs in previous funding periods include the development of guidelines and practical tools by the European Institute for Gender Equality (EIGE). The toolkits address managing authorities in the Member States but also national equality bodies and make reference to NHRBs (actors working on gender equality) when appropriate (European Institute for Gender Equality, 2020).

Another example is the involvement of the Estonian equality body as a partner organisation in the funding cycle: In this case, the Gender Equality and Equal Treatment Commissioner were involved in the programming of European Structural Fund and organised trainings for public officials involved in gender mainstreaming (European Commission, 2018), or the monitoring activities by NGOs and NHRIs pointing at fields for improvement in the implementation of EU funds, such as a case study conducted by the ERGO Network in 2020 (ERGO Network, 2020).

The involvement of NHRBs in the Monitoring Committees, or in terms of taking up complaints in relation to EU funds has not been very common until now. Moreover, experience has shown that there is need to ensure that representation of NHRBs is acknowledged on an equal footing with other stakeholders within the Partnership, fundamental rights issues are recognised as binding principles rather than 'nice to have's' and recommendations provided by NHRBs in the monitoring and evaluation phase are considered properly.

<sup>1</sup> Shared in the framework of a Conference on the legislative initiative on binding standards for equality bodies, 4 April 2022, organised by VVA Economics & Policy (in cooperation with the European Commission's DG for Justice and Consumers)



## Take-away messages

NHRBs do have a significant role to play in relation to fundamental rights compliance of EU funded programmes under the multi-annual financial framework. They can provide expertise and insights in the actual needs for ensuring the implementation of the rights and principles enshrined in the Charter of Fundamental Rights of the EU and the UNCRPD.

- They should be involved with a strong role in the monitoring committees of the funds in the EU Member States at various levels of governance.
- NHRBs could provide their expertise by ways of trainings for public administrators and other stakeholders involved in the EU funds.
- NHRBs could conduct surveys and research on the level of implementation of Charter and UNCRPD rights throughout the funding period and the impacts of EU funding on the status of fundamental rights in the countries. They could also provide policy recommendations for improvement of policy delivery.
- NHRBs could act as points of reference for CSOs in order to better understand their concerns and transfer these to policy makers in the form of recommendations to monitoring committees.
- NHRIs and equality bodies should take complaints in cases of fundamental rights violations in the implementation of EU funds, and they could proactively raise concerns, if a violation is already evident in the programming phase.

Main concerns regarding the (effective) involvement of NHRBs in the EU programmes include the limited time and resources, capacities, and knowledge of the staff members in EU funding, the limited mandate of equality bodies and the willingness of public administration to acknowledge NHRBs as equal partners. While funding for general capacity building activities (e.g. under technical assistance budget) is foreseen in the 2021-27 EU funding period, and could be used to enhance the capacities of NHRBs in relation to EU funds, it is up to the Managing Authorities to allocate such funding for those purposes.

The European Commission is aware of the constraints when it comes to equality bodies requesting Member States to ensure the resources necessary to perform all its (future) tasks. To realise increased human rights conditionality of EU funds and meaningful involvement of NHRIs in this process, in addition to resources, there is also a need to raise awareness of all relevant stakeholders as well as of civil society and on the side of recipients of EU funds about this obligation, and about its practical implications. This will require funding, commitment, and a participatory approach from the side of programming authorities as well as the European Commission and its funding departments.

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