



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR EMPLOYMENT, SOCIAL AFFAIRS AND INCLUSION
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES
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DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

The Directors-General

Brussels

EMPL.G.1/MR/cc (2022) 705557

Subject: Horizontal enabling condition on the effective application and implementation of the Charter of Fundamental Rights

Dear Deputy Secretary-General,

Our discussions on the Partnership Agreements and programmes for 2021-2027 in the framework of the EU Funds and instruments under shared management governed by the Common Provisions Regulation (hereafter ‘CPR’)¹ are in full swing.

Proclaimed 20 years ago², the Charter of Fundamental Rights of the European Union (hereafter ‘Charter’) sets out the personal, civil, political, economic and social rights that everyone in the EU should enjoy in the context of the application of EU law.

Member States are bound by its provisions when they are implementing EU law³. This is also reflected in the CPR, which stipulates that Member States and the Commission shall ensure respect for fundamental rights and compliance with the Charter of Fundamental Rights of the European Union in the implementation of the Funds.⁴

In addition, the CPR requires that Member States ensure, throughout the programming period, the continuous fulfilment of the enabling conditions, including the horizontal enabling condition on the “Effective application and implementation of the Charter of

¹ [Regulation \(EU\) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy](#)

² Article 6(1) of the Treaty on the European Union

³ Article 51(1) of the Charter

⁴ Article 9(1) CPR

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Fundamental Rights.”⁵ This is a new enabling condition for the 2021-2027 programming period, and as a result, our services have received numerous questions from Member States, other EU institutions and the civil society on its application and interpretation. The objective of this letter is to provide further details on how Member States can ensure the fulfilment of this horizontal enabling condition.

The fulfilment of the enabling condition will be monitored throughout the entire implementation process from the preparation of the programmes to their completion.

Failure to fulfil the requirement of a horizontal enabling condition will lead to non-reimbursement by the Commission of the expenditure submitted by Member States (with the exception of operations that contribute to the fulfilment of the corresponding enabling condition).⁶

This horizontal enabling condition requires in the Commission’s view *inter alia*:

- Arrangements to ensure compliance of the programmes supported by the Funds and their implementation, with the relevant provisions of the Charter. Member States will need to demonstrate in their programmes that the arrangements are effective in ensuring Charter compliance and will cover all stages of preparation and implementation of programmes. Member States should also indicate the role and tasks of the different authorities and bodies in relation to effectively ensuring compliance of the programme with the Charter and explain how it is ensured that these authorities and bodies have the relevant expertise.
- 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. The managing authorities should clearly identify who will provide the information to the monitoring committee, the frequency of the reporting and the scope of information that will be reported.

To achieve this, Member States may consider the following:

- Develop an EU Charter checklist or other tools to help the relevant authorities and bodies ensuring compliance with the Charter. The 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’)⁷ may provide a good source of inspiration.
- Involve bodies which will provide assistance and expertise on fundamental rights matters, such as National Human Rights Institutions, Equality bodies and civil society organisations. This would help ensuring that proper expertise is provided at all phases of programme implementation.

⁵ Annex III CPR

⁶ Article 15(5) CPR

⁷ 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’): [EUR-Lex - 52016XC0723\(01\) - EN - EUR-Lex \(europa.eu\)](#). This guidance is also relevant for HOME Funds (AMIF, BMVI and ISF) even though those were not covered by the 2021-2020 CPR.

The Commission will analyse the Member State's self-assessment of the fulfilment of this horizontal enabling condition. In this context, it will in particular assess whether the mechanisms and arrangements put in place would be able to address any substantiated potential risks that might jeopardise the ability of the Member State to effectively ensure compliance with the Charter in the Funds' management and implementation. To that end, when conducting its own assessment, the Commission will also take due account of well-substantiated complaints, infringement proceedings, rule of law reports, as well as judicial decisions when those are directly linked to the management and implementation of the CPR Funds or have a bearing on the Member State's ability to ensure compliance with the Charter in that area.

In the case where the enabling conditions are not fulfilled at the submission of the programme, the Member State should take the necessary steps in order to ensure the fulfilment as soon as possible.

Finally, the analysis by the Commission services of the Member States' self-assessment of the fulfilment of this (and other) horizontal enabling condition(s) is without prejudice to any action by the Commission under other Union law instruments.

We encourage all Member States to proceed swiftly with their self-assessment of how they comply with this horizontal enabling condition. Our services remain at your disposal for assistance in the programming and any questions that you may have in this regard.

Yours faithfully,



Joost KORTE



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