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## **A Guide to Applying the New Obligatory Charter Conditionality**

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## Introduction

Based on the Ombudsman's report "The role of national human rights institutions in compliance with fundamental rights in the implementation of European Union funds: The situation of Latvia" (hereinafter – the Report)<sup>1</sup>, the Ombudsman has developed guidelines for a more successful implementation of fundamental rights in activities financed by the European Union (EU) funds in Latvia (hereinafter – the Guidelines).

The **purpose** of these Guidelines is to provide practical information on how the institutions involved in the implementation of EU funds could improve respect for fundamental rights for activities related to the EU funds.

The recommendations set out in the Guidelines stem from the implementation of horizontal principles of the already existing system established in Latvia (hereinafter – HP EI) and the EU Charter of Fundamental Rights (hereinafter – the Charter).

**Sources** of guidance – the Report; information on the practice of other EU Member States – Slovakia, Poland, Cyprus, and Croatia – in the implementation of EU funds in their respective EU Member States; information from the EU Fundamental Rights Agency study on the implementation of fundamental rights under EU funds<sup>2</sup>; discussion between the Ombudsman's Office, the EU Agency for Fundamental Rights, and the responsible institutions of Latvia in November 2023. The following responsible institutions participated in the discussion: Ministry of Finance, Ministry of Economy, Ministry of Education and Science, Ministry of Welfare (MoW), Ministry of Justice (MoJ), State Chancellery, Ministry of Health, Ministry of Environmental Protection and Regional Development, Ministry of Agriculture, Central Finance and Contracting Agency. The invited social partners did not participate in the discussion.

The information contained in the guidelines on practices in other countries is organised into two categories:

- a) interesting facts – information that could be the subject of discussions on the adoption of a similar practice in Latvia;
- b) useful information – information that would be worth introducing also in Latvia.

The guidelines are divided into **four sections**. The first section highlights the main aspects of findings of the report in Latvia on balancing the implementation of EU funds and fundamental rights. The

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<sup>1</sup> [The role of national human rights institutions in compliance with fundamental rights in the implementation of European Union funds: The situation of Latvia](#). Ombudsman, 2023

<sup>2</sup> EU Fundamental Rights Agency study project "Mainstreaming fundamental rights in the EU funding cycle: The role of national human rights institutions and equality bodies." 2023. Project 1: Not yet published.

second, third and fourth sections contain information on the different phases of the EU funds, respectively the preparatory, implementation and evaluation phases. Each of these sections/phases contains information on the practices of other countries, as well as activities that the responsible institutions of Latvia should or should not implement in each of the phases to ensure respect for fundamental rights within the framework of EU funds.

## 1. Fundamental rights aspects in the implementation of European Union funds in Latvia

In drawing up the Report, the Ombudsman<sup>3</sup> found that the following system has been established in Latvia in respect of fundamental rights in the process of implementing EU funds:

- a) non-governmental organisations representing fundamental rights and/or non-discrimination related areas are included in the Monitoring Committee;
- b) developed guidelines for the implementation of HP EI (hereinafter referred to as HP EI Guidelines). HP EI Guidelines also include the principles of the Charter;
- c) identify two authorities responsible for implementing horizontal principles – the Ministry of Welfare and the Ministry of Justice (responsible for the implementation of the Charter);
- d) the HP EI Guidelines state that HP EI's impact on lines of activity, programmes and projects is direct, indirect and has no impact by providing for a number of points for project evaluation in each of these categories. This means that in certain cases a project may be rejected or asked for clarification if it does not comply with the principle of non-discrimination;
- e) training on HP EI based on HP EI Guidelines is provided.
- f) HP EI is included in the project application forms;
- g) initial impact assessment (annotations) of draft legislation requires the inclusion of information on impacts on human rights, gender equality, equal opportunities and rights of persons with disabilities.
- h) a dispute settlement mechanism is provided both before and after the conclusion of the contract.

At the same time, it was found that in Latvia there is **NO**:

- a) an effectively functioning Monitoring Committee. The non-governmental organisations raised the following issues: too many stakeholders which does not look serious because everyone decides on everyone, but in fact no one decides anything; a huge number of documents, in a difficult language; greater human resources on the part of NGOs are needed in order to be able to effectively work in the Monitoring Committee; pre-preparation is required to be a member of the Monitoring Committee. As information is currently being provided, the Monitoring Committee is not in a position to ascertain whether the principle of non-discrimination is respected in all directions of action horizontally.

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<sup>3</sup> [The role of national human rights institutions in compliance with fundamental rights in the implementation of European Union funds: The situation of Latvia](#). Ombudsman, 2023

b) a clear mechanism for resolving disputes directly concerning alleged fundamental rights violations, as well as the regulatory framework, does not explicitly provide for the involvement of third parties in the initiation of complaints if third parties have established that a project financed by EU funds does not comply with fundamental rights principles. This is currently being addressed within the framework of the general complaint handling process provided for in the Ombudsman's Law.

c) no effective system to ensure the actual improvement, if violation of fundamental rights/ non – discrimination principle is detected during the implementation of EU funds.

d) there are no effective solutions where violations of fundamental rights/non-discrimination in the implementation of EU funds are identified.

Lines of action where major improvements are needed:

- a) effectiveness of the Monitoring Committee (2.Preparatory phase).
- b) implementation of HP EI in practice: the establishment of an institutional monitoring structure, the development of guidelines and training on HP EI do not ensure that HP EI is complied with in practice (3.Implementation phase).
- c) better control and real changes are required if errors in HP EI are detected (4.Evaluation phase).

Therefore, in essence, the institutional system for ensuring fundamental rights within the framework of EU funds has been created in Latvia. More attention should therefore be paid to how effectively this system works, whether and what are the obstacles to the functioning of the system and how to remove them. The following sections of this document will point out possible solutions for each of the problems listed above.

## 2. Preparatory phase



**Interesting fact:** In Croatia, the draft Cooperation Agreement between Croatia and the European Commission was coordinated with Croatian human rights institutions.



**Interesting fact:** Croatia has set up an interdisciplinary working group (subcommittee) within the Monitoring Committee, which assesses the implementation of horizontal principles in EU funds. The Monitoring Committee and, consequently, the working group (subcommittee) also include national human rights institutions.



**Interesting fact:** In Slovakia there is a separate Department of Horizontal Principles, while in Latvia there is 2,5 loads in the MoW on this matter, and in the MoJ – 1 load on the Charter.



**Interesting fact:** In the Czech Republic, NGOs have called for clear criteria for the participation of NGOs in the Monitoring Committee. So far, it has not been clear how NGOs are addressed.



**Interesting fact:** Finnish authorities suggested that the authorities involved in each phase of the implementation of EU funds should issue a checklist with information that is relevant for that phase and which needs to be checked.

Given that the NGO sector<sup>4</sup> was critical of receiving prior information on the activities of the Monitoring Committee, **the Managing Authority** (in Latvia) would need to:



Inform NGOs, at the same time as the invitation to participate in the Monitoring Committee, of the activities that need to be taken further in order to be present in the Monitoring Committee.



Establish a practical material/lecture for NGOs on the work of the Monitoring Committee, the work of the subcommittees, processes and procedures, requirements for NGOs (i.e., participation in the work of subcommittees), document review requirements, in addition to finding information on

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<sup>4</sup> [The role of national human rights institutions in compliance with fundamental rights in the implementation of European Union funds: The situation of Latvia](#). Ombudsman, 2023

specific projects, so that NGOs without experience in the Monitoring Committee can start their work quicker and more successfully.



Train NGOs on their participation in the Monitoring Committee based on the above-mentioned material. During the training there is an opportunity to discuss additional questions that NGOs might have.



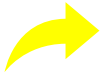
Examine the possibility of financing NGO representatives from the technical budget. This can also be discussed at EU level.



Critically assess the functioning of the Monitoring Committee so that it is not formal but effective.



### 3. Implementation phase



**Interesting fact:** The guidelines and instructions drawn up by the Managing authority in Poland are **legally binding** on other institutions that implement and evaluate EU funds.



**Interesting fact:** In Cyprus, the Managing/Responsible institution is obliged to submit a draft programme for recommendations on compliance with the Charter to the human rights institution.



**Interesting fact:** Finland's competent authorities suggested that the institutions involved in each phase should issue a checklist with information that is relevant for a given phase and which needs to be checked.

Although the HP EI Guidelines have been developed in Latvia, it is not certain that the responsible institutions and institutions involved in the implementation of EU funds are implementing them in practice. There is also the impression that project applicants are not aware of them and do not know that additional points can be obtained in projects concerning non-discrimination.<sup>5</sup>

MoW and MoJ as authorities responsible for implementing fundamental rights and the Charter could evaluate the possibility to:



Monitor how the HP EI Guidelines are implemented in practice.



To assess whether and how many draft legislative acts in the initial impact assessment (annotations) are included in the substance of information pursuant to Paragraphs 9.8, 9.9, 9.20 and 9.21 of Cabinet Regulation No 617 of 7 September 2021 on Procedures for Initial Impact Assessment of Draft Legislative Act.



The Ombudsman in the verification procedure (inspection case) No. 2022-55-26D found systemic direct and indirect gender-based discrimination in the use of EU funds, recommending

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<sup>5</sup> Opinion expressed by NGOs in procurement by the Ministry of Culture on the situation of Roma in Latvia. September 2023

preventing this. The Ministry of Education and Science took into account the recommendation, however, initially, the draft provision of the specific support objective 1.1.1 “Strengthening research and innovation capacity and introduction of advanced technologies into the common R & D system” of the European Union Cohesion Policy Programme 2021-2027 for the period 1.1.1.9 “Post Doctoral Research” did not assess the impact of the draft regulation on gender equality, although the draft regulations directly concerned ensuring gender equality. Such information was included following repeated instructions from the Ombudsman. Although one example does not indicate a systemic problem, it is necessary to carry out an analysis of the regulatory enactments and their annotations to ascertain the correct implementation of the above-mentioned Cabinet regulations.



Include in training on HP EI Guidelines bad examples observed in practice; examine the possibility of inviting the Ombudsman who could provide practical insight into the assessment of discrimination and fundamental rights in EU fund projects.

## 4. Evaluation phase



**Interesting fact:** In Croatia, complaints and cases concerning alleged violations of the UN Convention on the Rights of Persons with Disabilities will be examined by the Anti-Discrimination Coordinator and reported to the Monitoring Committee once a year. A similar system will also be developed on the EU Charter of Fundamental Rights, which will involve human rights institutions in dealing with alleged violations.



**Interesting fact:** In Cyprus, the human rights institution acts as a complaint mechanism for alleged violations of the Charter. If the human rights institution detects a violation, but it is not remedied, then the human rights institution may apply to the Managing Authority to take appropriate action.



**Interesting fact:** In Cyprus, the current screening mechanisms for EU funds focus more on the overall assessment of the programmes than on their compliance with the Charter or the UN Convention.



**Interesting fact:** Finland's competent authorities suggested that the institutions involved in each phase should issue a checklist with information that is relevant for a given phase and which needs to be checked.



**Useful information:** In Cyprus, the human rights institution informs the Monitoring Committee of received submissions on possible fundamental rights violations within the implementation of EU funds.



**Useful information:** The Responsible Institutions in Cyprus, within the scope of their competence (in Latvia those would be MoW and MoJ), assess whether certain directions and actions comply with national and EU principles and regulatory framework.

**Managing authority could consider possibility:**

Once a year to invite the Ombudsman to inform the Supervisory Committee of the irregularities detected in the implementation of EU funds in the field of fundamental rights (if any) during the reporting period.



To provide for a redress mechanism where anyone (including third parties) can turn to if there are suspicions of fundamental rights violations under EU funds.



To establish an effective mechanism for correcting fundamental rights-related errors resulting from the implementation of EU funds. For example, if accessibility for persons with disabilities is found not to be ensured in a project financed by EU funds, the error must be corrected within the framework of national funding.

**Managing authority, MoW and MoJ could consider possibility:**

Based on the information provided by the Ombudsman to the Monitoring Committee on fundamental rights violations within the framework of EU funds, to make the necessary improvements to the HP EI Guidelines or other regulatory enactments; provide training or prevent errors that have arisen so that similar situations do not recur in the future.

**Responsible authorities could consider possibility:**

To assess the possibility of providing qualitative, non-quantitative feedback on the implementation of the planned tasks of the EU funds framework in the context of fundamental rights.

**Ombudsman could consider possibility:**

Once a year to summarise and provide information to the Monitoring Committee on irregularities detected in the use of EU funds.



To examine applications for alleged violations of fundamental rights within the framework of EU funds.

## Literature used

1. The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds. Baseline report prepared by the Office of the ombudswoman of Croatia. Zagreb, May 2023.
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5. EU Fundamental Rights Agency. Mainstreaming fundamental rights in the EU funding cycle. 2023.