

Discussion on “EU funds and human rights” (event organised by Latvian Ombudsman)

Robert-Jan Uhl, 29 November 2023

Fundamental rights enabling condition

- New Common Provisions Regulation requires:
- Respect for Charter as horizontal enabling condition (effective ‘Charter arrangement’ in place, system in place to send complaints to monitoring committee)
- Respect for CRPD as horizontal enabling condition (measuring arrangement, accessibility arrangement in place, system in place to send complaints to monitoring committee)
- Partnership with civil society, national bodies (Article 8) throughout the programming period (“multilevel governance principle” & “bottom-up approach”)
- Effective complaints mechanisms in place (Article 69 (7))

Thematic enabling conditions on fundamental rights

Policy objectives in CPR (Annex IV):

1. a smarter and more competitive Europe;
2. a zero carbon economy;
3. a more connected Europe;
4. a more social and inclusive Europe

Annex IV CPR provides criteria for assessment of the fulfilment of these conditionalities

Thematic enabling conditions (2)

The fourth policy objective (Article 5(1)(d) CPR (“a more social and inclusive Europe”)) contains thematic enabling conditions on (see Annex IV CPR):

- active labour market policies
- gender equality
- the education and training system
- social exclusion & poverty reduction
- Roma inclusion
- health & long-term care

Measures in case of non-adherence

- If the horizontal enabling conditions (HECs) are not fulfilled:
- Commission will not reimburse expenditure declared by the Member State for the purposes of support from a CPR-funded programme *until the conditions are fulfilled*.
- Not *ex ante* conditions but HECs must remain fulfilled *throughout the entire programming period*.
- Significant resources: e.g. cohesion policy funds are about 1/3 of all EU spending

Fundamental rights risks & EU funds

- Allegations of spending in violation of Charter
- Rights of persons with disabilities (e.g. funding of institutions, accessibility)
- Migration (e.g. funding of migrant detention facilities, pushbacks)
- Roma (e.g. school segregation)
- Data protection (e.g. excessive data collection by passenger records systems funded by EU)
- To note: whole Charter applies, more attention to EU spending (rule of law conditionality), so more cases likely to come up

Upcoming FRA report on EU funds & fundamental rights

- FRA's work on EU funds focuses on national bodies with a human rights remit (as described in Art. 8 CPR) and their potential role at each stage of the funding cycle
- Desk research, interviews and roundtables organised by FRANET partners
- Discussions with EU/national officials, CSOs, national bodies
- Research at EU level and in **Bulgaria, Croatia, Estonia, Finland, France, Germany and Portugal**
- NHRI reports, report from **Greece** from Norway Grants project
- Input from NHRIs from: **Croatia, Cyprus, Latvia, Poland, Slovakia, Slovenia**
- Civil society roundtable
- Final product: guidance ensuring fundamental rights compliance in EU funds (publication **11-13 December 2023** at CharterXChange)

Findings: participation

- More scope for participation at early stages (partnership agreement, programming phase)
- Lack of participation in monitoring committees
- Lack of meaningful participation (technical nature of work, etc.) in MCs
- More scope for involvement in evaluations

Findings: capacity

- Lack of capacity on the Charter of the relevant national authorities
- Lack of arrangements to refer to expertise
- Insufficient resources for NHRIs/EBs to deal with EU funds as additional task
- Insufficient capacity of civil society

Findings: complaints mechanisms

- Complaints against funding of operations that (allegedly) violate fundamental rights challenging
- Difficult to obtain a binding decision
- Access to CJEU difficult due to lack of standing
- Complaints to Commission depend on its position on the issue
- National complaints inaccessible, not sufficiently advertised
- National complaint mechanisms insufficiently independent, lacking in fundamental rights expertise

FRA Opinions: Participation

- Member States (MS) should encourage active participation at all stages of the programming period
- MS should ensure meaningful participation in the monitoring committees
- MS should ensure proper use of indicators & evaluations on the Charter
- COM should promote Code of Conduct on Partnership
- More communication, coordination at national level between relevant actors
- More avenues for referrals to expertise by independent fundamental rights bodies

FRA Opinions: Capacity

- More training and guidance for national officials
- More training and guidance for beneficiaries
- More capacity, resources for NHRIs, EBs, civil society

FRA Opinions: Complaint mechanisms

- More transparency for complaint mechanisms
- Sufficient FR expertise available for complaint bodies
- Independent review should be possible
- Ratification OP CRPD

Takeaways for NHRIs and equality bodies: participation (1)

- Share **expertise**, recent findings, data and relevant reports; readiness to advise throughout the programming period.
- Assist Member States in mainstreaming fundamental rights into the **selection criteria** for EU funded projects
- Advise authorities on **data** that can be used in developing and feeding indicators/indicator frameworks (evaluations)
- Participate in the work of relevant **monitoring committees** in a capacity which does not compromise their independence

Takeaways: participation (2)

- Provide relevant data, studies and other materials to those charged with conducting **reviews and evaluations**
- Monitor whether **performance reviews** carried out annually take fundamental rights issues into account/contribute to these
- carry out specific **studies** on effectiveness in evaluations

Takeaways: capacity

- Assist with **training** of officials and beneficiaries of EU funds
- Develop or review **guiding material** on fundamental rights such as checklists, handbooks or factsheets for officials and beneficiaries.
- When being given roles in the context of the EU funds, remind the authorities of hard and soft **law standards** requiring sufficient capacity
- Recall the possibility for Member States to fund **technical assistance** to reinforce the capacity of independent fundamental rights bodies

Takeaways: complaints mechanisms

- **Train** staff in managing authorities in how to deal with complaints in line with fundamental rights principles.
- Act as **point of reference for CSOs** to analyse their experience, concerns and complaints
- **Monitor** the effectiveness, accessibility and independence of complaint mechanisms
- Serve as complaint mechanism for Charter or CRPD related complaints in the context of EU funds

Thank you!

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