



Manual

on Fundamental Rights in EU Funding

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Introduction

The **Charter of Fundamental Rights of the European Union**, which is binding for the EU institutions and, when they are implementing EU law, Member States, sets out the rights, freedoms and principles that guide the European Union's policies and actions, together with the values set out in the EU Treaties, such as the protection of human dignity, freedom, equality, and solidarity. This manual combines general and practical guidance to ensure that EU-funded activities under shared management align with the Union's commitment to promote and protect fundamental rights. The content of this manual was developed in close consultation with key stakeholders across the European Union, providing a comprehensive and inclusive approach.

Purpose of the manual

The manual is designed to help national authorities, programme authorities, such as managing authorities and monitoring committees, beneficiaries of EU funds, Charter focal points, civil society organisations, human rights defenders and other stakeholders involved in EU funding under shared management to integrate the rights, freedoms and principles of the Charter into their work. The manual supports stakeholders in ensuring compliance with the fundamental rights throughout the lifecycle of EU-funded projects under shared management, from planning to evaluation.

Scope and structure of the manual

The manual is divided into two main parts to address both theoretical and practical needs:

- **Part I** provides a general outline, explaining the Charter of Fundamental Rights and its connection to EU funding. It describes the relationship between the Charter and the Common Provisions Regulation (CPR), focusing on the Horizontal Enabling Condition (HEC) that requires the effective application and implementation of fundamental rights. This section explains how EU funding interacts with the fundamental rights enshrined in the Charter.
- **Part II** offers practical guidance with a fundamental rights-based approach. It is organised by specific rights likely to be impacted by EU funding, such as respect for private life and data protection, equality and non-discrimination, and the right to property. This part provides targeted advice, best practices, and real-life examples in order to help stakeholders address challenges and comply with requirements.

How to use the manual

The manual is intended to be user-friendly and accessible, including for persons with disabilities. Its simple structure allows readers to move easily between theoretical concepts and practical applications. Start with Part I to build a strong foundation, then explore Part II for actionable advice. Practical tools, such as a checklist, case studies, examples and tips, are included throughout to support stakeholders in fulfilling their obligations and promoting fundamental rights in their work.

I

General overview

Chapter 1: The Charter of Fundamental Rights of the European Union

The starting point of this manual is a brief overview of the Charter of Fundamental Rights of the European Union (the Charter). This is helpful to understand the main rights, freedoms and principles enshrined in the Charter, as well as its applicability to EU Funds covered by this manual and those Charter's provisions particularly relevant in the CPR context.



Targeted learning outcomes

At the end of this chapter, you will be able to:

- Understand the relevance of **fundamental rights protection in the EU**.
- Comprehend **how the Charter relates** to both **international and national fundamental rights instruments**.
- Recognise when the **Charter is applicable**, particularly when Member States implement the CPR funds.
- Identify the rights, freedoms and principles enshrined in the Charter and those **most susceptible to being affected** at each stage of the life cycle of CPR funds.
- Recognise **limitations to Charter rights** and how to assess whether they are admissible.

Overview of the Charter

The Charter was initially proclaimed in 2000 and became legally binding with the entry into force of the Lisbon Treaty on 1 December 2009. The Charter is considered a source of primary EU law ⁽¹⁾. This means that secondary EU law, such as regulations and directives, must comply with the Charter and be interpreted in the light of the fundamental rights it enshrines ⁽²⁾.

The Charter contains 50 substantive articles describing the rights, freedoms and principles recognised by the Union as well as four additional articles

¹ Treaty on European Union (TEU), Article 6(1).

² See, e.g., *C-426/16, Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others*, 29 May 2018, paras 80 and 8; *C-391/16, C-77/17 and C-78/17, M and Others*, 14 May 2019, para. 112; *C-203/15 and C-698/15, Tele2 Sverige and Watson and Others*, 21 December 2016, paras. 91 and ff; *C-131/12, Google Spain and Google*, 13 May 2014, para. 68. Moreover, should a legislative act of secondary EU law infringe the provisions of the Charter, the Court of Justice of the European Union (CJEU) can declare it invalid (Article 267, point (b), TFEU) or annul the concerned act, rendering it void (Articles 263 and 264 TFEU). The Commission may also initiate an infringement procedure against a breach of the Charter by a Member State (Article 258 TFEU).

(Articles 51 to 54) that address the Charter's interpretation and application. The rights and principles recognised by the Charter are organised around six themes: dignity (Title I), freedoms (Title II), equality (Title III), solidarity (Title IV), citizens' rights (Title V) and justice (Title VI).

Figure 1. Overview of Charter rights

Preamble	Peace – common values	Universal values	Diversity, etc	Rights more visible	Reaffirms const. and int'l rights	Rights, duties, responsibilities	Rights, freedoms and principles
I Dignity (Articles 1–5)	1 Human dignity	2 Life	3 Integrity of the person	4 Torture; inhuman, degrading treatment	5 Slavery and forced labour		
II Freedoms (Articles 6–19)	6 Liberty and security	7 Private and family life	8 Personal data	9 Marry and found family	10 Thought conscience and religion		
	11 Expression and information	12 Assembly and association	13 Arts and sciences	14 Education	15 Choose occupation and engage in work		
	16 Conduct a business	17 Property	18 Asylum	19 Removal, expulsion or extradition			
III Equality (Articles 20–26)	20 Equality before the law	21 Non-discrimination	22 Cultural, religious and linguistic diversity	23 Equality: men and women	24 The child	25 Elderly	26 Integration of persons with disabilities
IV Solidarity (Articles 27–38)	27 Workers right to info. and consultation	28 collective bargaining and action	29 Access to placement services	30 Unjustified dismissal	31 Fair and just working conditions		
	32 Prohibition of child labour; prot. at work	33 Family and professional life	34 Social security and assistance	35 Health care	36 Access to services of economic interest	37 Environmental protection	38 Consumer protection
V Citizens' rights (Articles 39–46)	39 Vote and stand as candidate to EP	40 Vote and candidate at municipal elections	41 Good administration	42 Access to documents	43 European ombudsman	44 Petition (EP)	45 Movement and residence
VI Justice (Articles 47–50)	47 Effective remedy and fair trial	48 Presump. innocence; right of defence	49 Legality and prop. of offences and penalties	50 Ne bis in idem			
VII General provisions (Articles 51–54)	51 Application	52 Scope and interpretation	53 Level of protection	54 Prohibition of abuse of rights			

Source: FRA

The Charter's substantive part includes two types of provisions – 'rights' and 'principles' ⁽³⁾. Both are **binding**, however:

- **Rights** must be 'respected' and can be directly invoked before courts ⁽⁴⁾. Examples of rights recognised in the Charter include the right to life (Article 2), the right to integrity of the person (Article 3), prohibition of slavery and forced labour (Article 5), the right to liberty and security (Article 6), the right to respect for private and family life (Article 7), protection of personal data (Article 8), the right to property (Article 17), the right to asylum (Article 18), protection in the event of removal (Article 19), the right to fair and just working conditions (Article 31) and the right to an effective remedy and to a fair trial (Article 47).
- **Principles** must be 'observed' and can only be invoked before courts to interpret legislative or executive acts of the Union and the Member States implementing those principles or to rule on the validity of these acts ⁽⁵⁾. Examples of principles recognised in the Charter include the principles of respect for the rights of the elderly (Article 25), integration of persons with disabilities (Article 26), and environmental protection (Article 37).

Other Charter provisions, such as Articles 23 (equality between women and men), 33 (family and professional life) and 34 (social security and social assistance) contain elements of both a right and a principle ⁽⁶⁾. The case-law of the Court of Justice of the European Union (CJEU) can provide further clarity on the qualification of Charter provisions as enshrining rights or principles.

Some rights and principles set out in the Charter are expressly addressed to the institutions, bodies, offices and agencies of the Union (Articles 41 to 44). This means that these are not addressed to the Member States and thus cannot be invoked against the Member States. However, some of them are recognised by the Court of Justice as general principles of EU law ⁽⁷⁾. As such, while not being part of the Charter, these are applicable to the Member States when implementing EU law as general principles of EU law.

Annex I – Overview of Charter resources contains a list of useful resources on all rights of the Charter.

³ Article 51(1) and 52(5) of the Charter.

⁴ See, in this regard, Joined Cases C-569/16 and C-570/16, Stadt Wuppertal v Maria Elisabeth Bauer and Volker Willmeroth v Martina Broßn, 6 November 2018.

⁵ Article 52(5) of the Charter; Explanations relating to the Charter of Fundamental Rights (2007/C 303/02), Explanation on Article 52.

⁶ Explanations relating to the Charter of Fundamental Rights (2007/C 303/02), Explanation on Article 52.

⁷ For example, regarding the right to good administration provided in Article 41 of the Charter, see CJEU, C-225/19 and C-226/19, R.N.N.S. and K.A. v Minister van Buitenlandse Zaken, 24 November 2020, para. 34; C-230/18, PI v Landespolizeidirektion Tirol, 8 May 2019, para. 57.

Applicability

Article 51 of the Charter defines its field of application. According to this Article, the Charter applies to institutions, bodies, offices and agencies of the EU as well as to **Member States only when they are implementing Union law**. According to the CJEU, this means that **Member States** are **bound by the Charter** whenever they **act within the scope of Union law**⁽⁸⁾, which mostly corresponds to situations where Member States transpose, implement, apply or execute EU legal acts⁽⁹⁾.

Article 51 Field of application

1. *The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.*
2. *The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.*

In practice, the CJEU noted that to establish whether the Charter applies, it needs to be determined whether the national legislation or measure concerned is intended to implement a provision of EU law; the nature of the legislation or measure at issue and whether it pursues objectives other than those covered by EU law, even if it is capable of indirectly affecting EU law; and also whether there are specific rules of EU law on the matter or rules which are capable of affecting it⁽¹⁰⁾.

When the Charter applies, as established in Article 51(1), Member States shall respect the rights, observe the principles and promote its application. The reference to Member States shall be understood as covering all emanations of the State, i.e. including central authorities, as well as regional, local and other public authorities⁽¹¹⁾.

⁸ Explanations relating to the Charter of Fundamental Rights (2007/C 303/02), Explanation on Article 51.

⁹ European Union Agency for Fundamental Rights (2018), Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level – Handbook (FRA Handbook, 2020), p. 18 and Chapter 5.

¹⁰ CJEU, C-198/13, Julián Hernández and Others, 10 July 2014, para. 37 (recalling settled case-law); see also: European Commission, Guidance on ensuring the respect for the Charter of Fundamental Rights of the European Union when implementing the European Structural and Investment Funds (2016/C 269/01) (2016 European Commission Guidance), pt. 2.2.2.

¹¹ In this regard, the CJEU has found that "the effects of the principle of the primacy of EU law are binding on all the bodies of a Member State, without, *inter alia*, provisions of domestic law relating to the attribution of jurisdiction, including constitutional provisions, being able to prevent that". CJEU, Case C-824/18, A.B., C.D., E.F., G.H., and I.J. v Krajowa Rada Sądownictwa, 2 March 2021, para. 148.

A consequence of the applicability of the Charter is that individuals may rely on the Charter provisions and national courts must interpret national measures coming under the scope of EU law in conformity with the Charter (and resort to the CJEU for a preliminary ruling where needed. Deriving from the principles of direct effect and supremacy of EU law, whenever the Charter provisions are sufficiently precise and unconditional, the Charter may be applied directly at the national level, setting aside national measures incompatible with it or leading to the creation of rights not foreseen under national law (12)).

Where the Charter does not apply, fundamental rights continue to be guaranteed at national level under the constitutions or constitutional traditions of Member States and international conventions they have ratified. The section 'The Charter and other human rights instruments' addresses the relation between the Charter and national constitutions as well as international instruments, particularly, the European Convention on Human Rights (officially, 'Convention for the Protection of Human Rights and Fundamental Freedoms') (ECHR).

Charter's applicability to the implementation of EU funds

In the context of CPR funds, the reference to Member States in Article 51(1) should be understood as covering managing authorities, intermediate bodies and monitoring committees (more on this in *Roles and responsibilities of main actors*). It also covers beneficiaries when they have been made responsible, by a Member State, for providing a public service under the control of the Member State and enjoy special powers to provide such services (13).

In 2016, the Commission published the European Commission, Guidance on ensuring the respect for the Charter of Fundamental Rights of the European Union when implementing the European Structural and Investment Funds. Even though this guidance referred to the European Structural and Investment Funds (ESI Funds), governed by the former Common Provision Regulation (14), it is still pertinent for the current multiannual financial framework. In it, the Commission explains that the Charter applies in the context of the disbursement of EU funds, as "all the Member States' actions undertaken for the implementation of the applicable regulations fall within

¹² FRA Handbook, 2020, p. 31.

¹³ See 2016 European Commission Guidance, pt. 3.3.

¹⁴ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, OJ L 347, 20.12.2013,
ELI: <http://data.europa.eu/eli/reg/2013/1303/oj>.

the scope of EU law" (15). EU law provisions triggering the application of the Charter can be found in the following EU regulations and directives:

1. The CPR;
2. Fund-specific regulations;
3. Commission delegated and implementing regulations adopted on the basis of the CPR or fund-specific regulations;
4. Other EU regulations and directives, which are applicable to Member States' actions implementing the ESI Funds.

At the same time, however, this does not mean that Member States are automatically implementing EU law when they "hand out support" under the CPR funds (16). As such, whether a national measure adopted in this context is implementing EU law would have to be considered on a case-by-case basis. Importantly, while the implementation of an operation may impact fundamental rights protected by the Charter, in order to conclude that there is an issue of Charter compliance, there should be a sufficient link between the presumed violation and the act falling under EU law.



CJEU case-law

The CJEU case-law on the applicability of EU law and, thus, of the Charter in the context of EU funds is still in development. Notwithstanding, the CJEU has already had the opportunity to clarify the following:

The adoption of a programme manual by a monitoring committee to implement an operational programme setting out the strategy to be carried out with the assistance of EU funds is an act implementing EU law (17). Although the regulations governing the funds concerned did not require that such a manual be drafted, the CJEU considered that the establishment of monitoring committees was a requirement of the regulations governing the funds concerned and that, since the manual intended to apply the operational programme approved in relation to the Funds and programming documents, it must comply with the provisions of the applicable regulations.

In turn, an employment contract to support entrepreneurs which may be financed by structural funds is not, in itself, sufficient to conclude that the dismissal of the employee covered by such a contract is an act implementing EU law that would trigger the application of the Charter (18).

¹⁵ 2016 European Commission Guidance, pt. 2.2.1.

¹⁶ 2016 European Commission Guidance, pt. 2.2.2.

¹⁷ CJEU, *C-562/12, Liivimaa Lihaveis MTÜ v Eesti-Läti programmi 2007-2013 Seirekomitee*, 17 September 2014, para. 65.

¹⁸ CJEU, *C-117/14, Grima Janet Nistnahuz Poclava v Jose María Ariza Toledano*, 5 February 2015, para. 42.

Part II below also lists some of the actions undertaken along the lifecycle of CPR funds that are considered to be implementing EU law.

Limitations on the exercise of the rights and freedoms recognised by the Charter

Article 52(1) regulates the limitations on Charter rights. Before examining its requirements, it should be noted that some rights are absolute and, as such, their scope of protection cannot be limited in any way. The Charter does not indicate which rights are absolute and which are not. Based on the explanations of the Charter, the ECHR and the case-law of the CJEU (19), the following are considered **absolute rights**: human dignity (Article 1), prohibition of the death penalty (Article 2(2)), prohibition of torture and inhuman or degrading treatment or punishment (Article 4), the prohibition of slavery and forced labour (Article 5). This is without prejudice to further clarification from the CJEU.

Most of the rights prescribed in the Charter are not absolute and may be limited in line with the principles set out in Article 52(1) of the Charter. This provision provides that any limitation on the rights and freedoms recognised by the Charter must be prescribed by law, respect the essence of the right or freedom in question, and be proportionate and necessary to achieve an objective of general interest or the protection of the rights and freedoms of others.

Article 52(1) Scope and interpretation

- 1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.*

Building on the text of Article 52(1), the CJEU provides some clarification as to the interpretation of these requirements:

¹⁹ Explanations relating to the Charter of Fundamental Rights (2007/C 303/02), Explanation on Article 52; Article 15 ECHR, Article 3 Protocols 6 and Article 3 Protocol 13, and Article 4 Protocol 7 to the ECHR, ex vi Article 52(3) of the Charter. See also FRA Handbook, 2020, pp. 70-71.

- Limitation must be prescribed by law: this means that the possible restriction must be foreseen in a legal act (either at national or EU level) (20).
- The act must define the scope of the limitation on the exercise of the right concerned, even if in terms which are "sufficiently open to be able to adapt to different scenarios and keep pace with changing circumstances" (21).
- Limitations must respect the essence of the right or freedom in question: that is, whether the limitation calls into question the very substance of the right affected (22).
- Limitations must serve an objective of general interest or the protection of the rights and freedoms of others: this implies that, firstly, the aim to be achieved by the limitation is identified. The CJEU has followed a broad approach when qualifying an objective as legitimate (23). For a limitation to comply with Article 52(1), it must correspond to the achievement of the legitimate aim (24), that is, it must be a suitable means to meet the pursued objective. A right may also be legitimately restricted in order to promote another right.
- Limitations must be necessary: that is, when there is a choice between different measures, the measure that interferes least with the fundamental right at issue must be chosen (26). Limitations must be proportionate: that is, they must not impose a disproportionate and excessive burden on the persons affected by them in relation to the objective pursued. A fair balance must, thus, be struck between the interest of fulfilling the legitimate aim against the interference with the

The European Union Agency for Fundamental Rights has translated this case-law into an 11-question checklist for practitioners to assess compliance with the Charter (25).

²⁰ A legal act foreseeing a restriction on a fundamental right must be, according to the ECtHR, "sufficiently accessible, precise and foreseeable in its application in order to avoid all risk of arbitrariness". See European Court of Human Rights (ECtHR), Application no. 42750/09, *Del Río Prada v Spain*, 21 October 2013, para. 125, quoted by the CJEU, C-528/15, *Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie v Salah Al Chodor and Others*, 15 March 2017, para. 37. See also FRA Handbook, 2020, pp. 71-72.

²¹ CJEU, C-694/20, *Orde van Vlaamse Balies and others*, 8 December 2022, para. 35.

²² CJEU, *Joined cases C-379/08 and C-380/08, Raffinerie Méditerranée (ERG) SpA, Polimeri Europa SpA and Syndial SpA v Ministero dello Sviluppo economico and Others and ENI SpA v Ministero Ambiente e Tutela del Territorio e del Mare and Others*, 9 March 2010, para. 80; C-362/14, *Maximilian Schrems v. Data Protection Commission*, 6 October 2015, para. 94; C-650/13, *Thierry Delvigne v. Commune de Lesparre Médoc and Préfet de la Gironde*, 6 October 2015, para. 48; C-190/16, *Werner Fries v. Lufthansa CityLine GmbH*, 5 July 2017, para. 38; C-293/12 and C-594/12, *Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resources and Others and Kärntner Landesregierung and Others*, 8 April 2014, paras. 38-39.

²³ See, for an overview of objectives considered legitimate by the CJEU and corresponding caselaw, FRA Handbook, 2020, p. 74, footnote 178.

²⁴ See, for example, CJEU, C-351/22, *Neves 77 Solutions SRL v Agentia Națională de Administrare Fiscală – Direcția Generală Antifraudă Fiscală*, 10 September 2024, para. 86; C-72/15, *PJSC Rosneft Oil Company v Her Majesty's Treasury and others*, 28 March 2017, para. 148; C-548/09 P, *Bank Melli Iran v Council of the European Union*, 16 November 2011, para. 114.

²⁵ See FRA Handbook, 2020, pp. 67-79

²⁶ CJEU, C-134/15, *Lidl GmbH & Co. KG v Freistaat Sachsen*, 30 June 2016, para. 33; C-283/11, *Sky Österreich GmbH v Österreichischer Rundfunk*, 22 January 2013, para. 50.

fundamental right at issue ⁽²⁷⁾). This is also the case where there are conflicting rights ⁽²⁸⁾.



In the context of the CPR funds...

National acts implementing EU law may limit fundamental rights set out in the Charter as long as these are not absolute rights. However, national authorities (and beneficiaries, where applicable) must ensure that such limitation passes the test of Article 52(1), taking into account the guidance of the CJEU. Annex II – Checklist provides a helpful tool for this endeavour.

The Charter and other human rights instruments

Article 52(3) Scope and interpretation

3. *In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law from providing more extensive protection.*

Article 52(3) of the Charter sets out that where the rights recognised by the Charter correspond to rights provided in the **European Convention on Human Rights** (ECHR), including its protocols, they should be considered as having the same meaning and scope, without, however, preventing EU law from providing more extensive protection. This ensures the necessary consistency between the rights contained in the Charter and the corresponding rights guaranteed by the ECHR, while allowing a greater degree of fundamental rights protection in the EU.

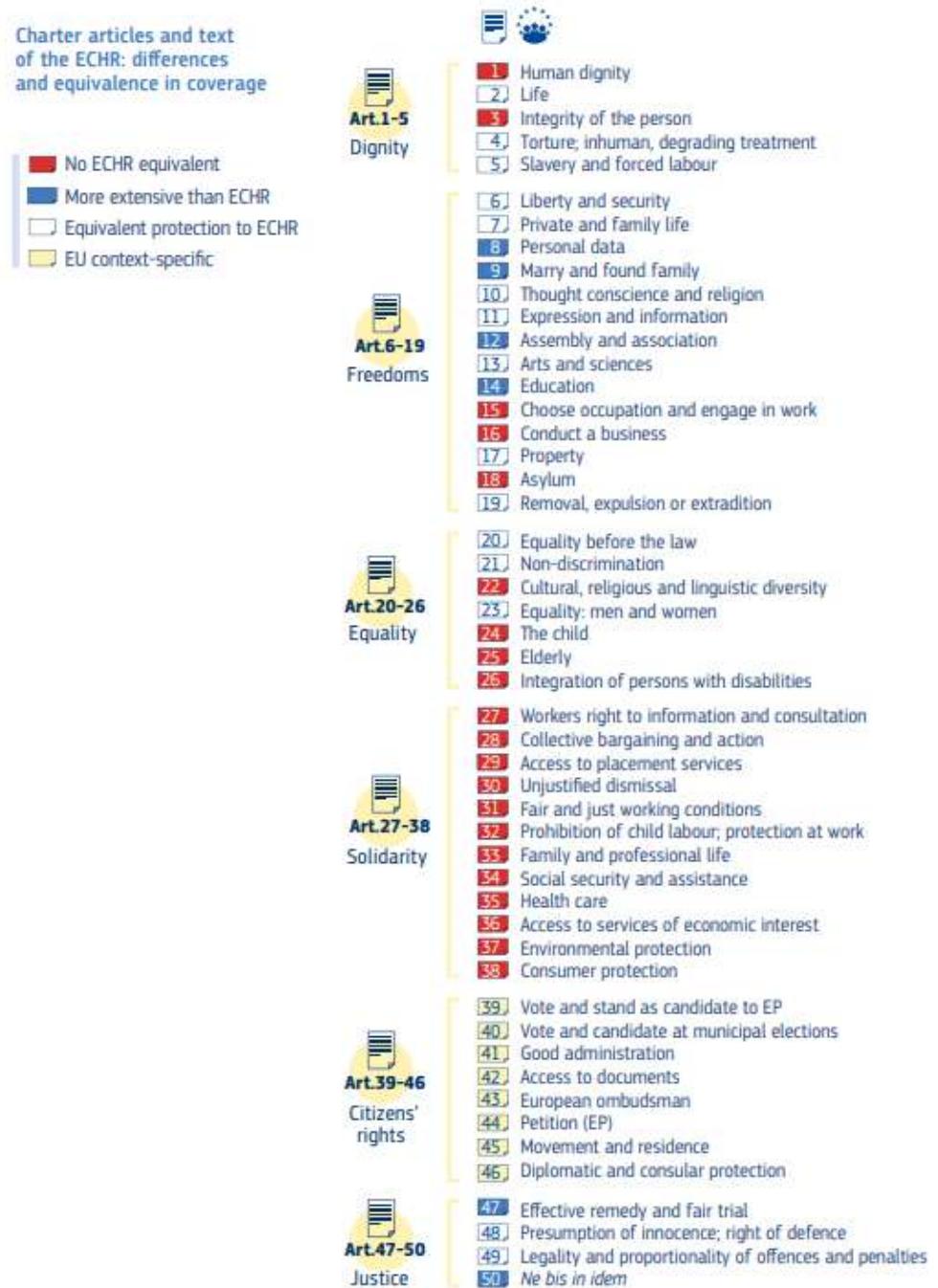
In practice, this means that, when interpreting the rights guaranteed by the Charter, the corresponding rights guaranteed by the ECHR, as interpreted by the European Court of Human Rights (ECtHR), must be taken into account as the minimum threshold of protection ⁽²⁹⁾.

²⁷ CJEU, *C-131/12, Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González*, 13 May 2014, para. 81.

²⁸ CJEU, *C-283/11, Sky Österreich GmbH v Österreichischer Rundfunk*, 22 January 2013, para. 60; *C-275-06, Productores de Música de España (Promusicae) v Telefónica de España SAU*, 29 January 2008, paras. 65-66.

²⁹ See, for example, CJEU, *C-432/23, Ordre des avocats du barreau de Luxembourg v Administration des contributions directes*, 26 September 2024, para. 48; *C-694/20, Orde van Vlaamse Balies and others v Vlaamse Regering*, 8 December 2022, para. 26; *C-528/15, Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie v Salah Al Chodor and others*, 15 March 2017, para. 37.

Figure 2. Comparison between Charter and ECHR rights



Source: FRA (2020) *Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level – Guidance*

The reference to meaning and scope in Article 52(3) of the Charter includes authorised limitations, which should be the same as those laid down by the ECHR for corresponding rights. This means that the legislator, in laying down

limitations to Charter rights corresponding to ECHR rights, must comply with the same standards fixed by the ECHR (30).

Article 53 of the Charter addresses the relation of the Charter with international law instruments recognising human rights more broadly. It requires that the Charter be interpreted in a way that does not restrict or adversely affect rights recognised by **international agreements** to which the Union or all the Member States are party (31).

Article 53 Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Currently, the Union is a party to two human rights conventions: the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) (32), to which all Member States and the EU itself are parties (33), and the Council of Europe's Istanbul Convention, to which the EU acceded in 2023 (34). The implementation and application of the UNCRPD is also a horizontal enabling condition under the CPR (Article 15(1) and Annex III CPR).

Concerning the relation with fundamental rights provided at the national level, Article 53 states that the Charter should not be interpreted in a way that restricts or adversely affects rights recognised by **Member States' constitutions**. However, while national authorities and courts remain free to apply higher national standards of protection of fundamental rights, these cannot compromise the protection afforded by the Charter or the effectiveness of EU law (35). For example, the CJEU considered that, in view of the principle of primacy of EU law, Member States are not allowed to

³⁰ Explanations relating to the Charter of Fundamental Rights (2007/C 303/02), explanation on Article 52; FRA Handbook, 2020, pp. 77-78.

³¹ A list of human rights international agreements to which the Union or all Member States are parties is available in the EU Fundamental Rights Information System (EFRIS) database of the European Union Agency for Fundamental Rights at <https://fra.europa.eu/en/databases/efris/data-dashboards#pdf-4>.

³² United Nations Treaty Collection, 15. Convention on the Rights of Persons with Disabilities, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en (24 September 2024).

³³ See Council of the European Union, (2010/48/EC) Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities, OJ L 23, 27.01.2010, ELI: [http://data.europa.eu/eli/dec/2010/48\(1\)/oj](http://data.europa.eu/eli/dec/2010/48(1)/oj).

³⁴ See Council Decision (EU) 2023/1075 of 1 June 2023 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to institutions and public administration of the Union (ST/5514/2023/INIT), OJ L 143I, 2.6.2023, ELI: <http://data.europa.eu/eli/dec/2023/1075/oj>.

³⁵ CJEU, *C-399/11, Stefano Melloni v Ministerio Fiscal*, 26 February 2013, para. 60.

invoke an infringement of their constitution to disapply EU legal acts which are fully in compliance with the Charter⁽³⁶⁾. At the same time, it should be noted that Article 52(4) of the Charter also establishes that constitutional traditions common to Member States should be taken into account when interpreting Charter rights that result from such traditions.

Article 52(4) Scope and interpretation

4. *In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.*



In the context of the CPR funds...

Where the national constitution protects the same rights as the Charter, national authorities still need to assess Charter compliance where the act at issue is considered to be implementing EU law. That is, it is not sufficient that the authorities assess only such acts in light of the national constitution.

Charter's provisions with particular relevance within CPR funds (brief presentation)

All Charter provisions are applicable to Member States when implementing EU law, with the exception of Articles 41 to 44. Consequently, all Charter rights should be considered in the context of CPR funds.



Horizontal principles

Article 9 of the CPR sets out **horizontal principles** in the application of the CPR, notably, the **respect for fundamental rights and compliance with the Charter** in the implementation of the CPR funds. In addition, Article 9 of the CPR mandates Member States to ensure that **equality between men and women, gender mainstreaming and the integration of a gender perspective** are taken into account and promoted throughout the preparation, implementation, monitoring, reporting and evaluation of programmes. Member States are also bound to take appropriate steps to **prevent any discrimination based on gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation** during the preparation, implementation, monitoring, reporting and evaluation of programmes. In particular, **accessibility for persons with disabilities** shall be taken into account throughout the preparation and implementation of programmes. Finally, the objectives of the funds shall be pursued in line with the objective of promoting **sustainable development**, taking into account the UN Sustainable Development Goals, the Paris Agreement and the 'do no significant harm' principle, and respecting the Union environmental *acquis*. As such, national authorities, besides having to ensure that these Charter rights are not

³⁶ CJEU, *C-399/11, Stefano Melloni v Ministerio Fiscal*, 26 February 2013, para. 58.

breached in the context of the CPR funds' implementation, must take action to promote them and prevent any violation.

Without prejudice to other rights also being susceptible to being affected in the context of CPR funds, certain rights and principles of the Charter may be identified as being particularly prone to potentially being affected in the context of CPR funds. These may broadly be divided into two categories:

1. Charter rights more prone to be affected by the actions of national authorities in the context of the CPR funds and at any stage of the funds' life cycle (in this manual referred to as 'cross-cutting rights'); and
2. Charter rights more prone to be affected by the actions of national authorities or beneficiaries in connection with the funded operations ('operation-related rights').

Table 1. below provides an overview of the classification of selected Charter rights under these two categories. Notwithstanding, this classification should be understood as indicative and serving only the purpose of helping the reader of this manual understand where a certain right may be more prone to be affected in this context, without excluding other possible scenarios. In the same vein, the list of rights under each category should be understood as non-exhaustive. **Table 1.** also indicates where some of these rights are further explained in the manual.

Table 1. Classification of selected Charter rights for the purpose of this manual

Cross-cutting rights	Operation-related rights
Article 7 ('respect for private and family life'); Article 8 ('protection of personal data'); Article 11 ('freedom of expression and information'); Article 20 ('equality before the law'); Article 21 ('non-discrimination'); Article 22 ('cultural, religious and linguistic diversity'); Article 23 ('equality between women and men'); Article 25 ('the rights of the elderly'); Article 26 ('integration of persons with disabilities'); Article 37 ('environmental protection'); Article 47 ('right to an effective remedy and to a fair trial'); Article 48	Article 5 ('prohibition of slavery and forced labour'); Article 12 ('freedom of assembly and of association'); Article 14 ('right to education'); Article 16 ('freedom to conduct a business'); Article 17 ('right to property'); Article 18 ('right to asylum'); Article 19 ('protection in the event of removal, expulsion or extradition'); Article 24 ('the rights of the child'); Article 31 ('fair and just working conditions')

(‘presumption of innocence and right of defence’)	
In this manual: See Part II, <u>Chapter 2: CPR funds</u>	In this manual: See Part II, <u>Chapter 3: Operation-related rights</u>



Useful sources and further reading

European Union Agency for Fundamental Rights, [EU Charter of Fundamental Rights and Charterpedia](#)

European Union Agency for Fundamental Rights, [EU funds: Ensuring compliance with fundamental rights, 2023](#)

Court of Justice of the European Union, [Fact sheet - Field of application of the Charter of Fundamental Rights of the European Union, 2021](#)

European Union Agency for Fundamental Rights, [Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level, 2020](#)

European Commission, [Guidance on ensuring the respect for the Charter of Fundamental Rights of the European Union when implementing the European Structural and Investment Funds \(2016/C 269/01\)](#)

European Parliament, [Fact Sheets on the European Union, The Charter of Fundamental Rights, 2017](#)

Key messages

The Charter applies to Member States (including central authorities, regional or local bodies and public organisations, as well as beneficiaries, under certain conditions) when they are implementing EU law.

In the context of the disbursement of CPR funds, Member States' actions undertaken for the implementation of the applicable regulations fall within the scope of EU law and, thus, the Charter applies.

Limitations on Charter rights are not admissible when such rights are absolute. In other cases, restrictions are subject to the requirements set out in Article 52(1) of the Charter.

Where the national constitution protects the same rights as the Charter, national authorities still need to assess Charter compliance where the act at issue is considered to be implementing EU law. National authorities and courts remain free to apply higher national standards of protection of fundamental rights as long as these do not compromise the protection afforded by the Charter or the effectiveness of EU law.

While all Charter provisions are applicable to Member States when implementing EU law, certain rights are more likely to be affected in the context of programmes or projects financed by CPR funds.



Self-assessment

- What is the relevance of the Charter in the context of CPR funds?
- When does the Charter apply in the context of CPR funds?
- What limitations on rights are admissible under the Charter?
- How does it relate to international and national human rights instruments?

Chapter 2: CPR funds

Before we delve deeper into how the application of the Charter of Fundamental Rights can be further ensured and enforced in EU-funded projects, it is helpful to understand the basics of the EU funds covered by this manual – what they are, how they are managed, their life cycles, and who the key actors and their responsibilities are.



Targeted learning outcomes

At the end of this chapter, you will be able to:

- Understand the objectives of **CPR funds** and what they have in common.
- Understand the **mechanisms** and **processes** by which **EU funds** are **managed** and **distributed**.
- Assess various **organisations' roles** within the **lifecycle** of **CPR funds**.
- Identify the **key actors** and their **responsibilities** across the lifecycle of CPR funds.

The term 'CPR funds' refers to eight EU funds that are (primarily) managed by the European Commission and Member States together. These funds follow a single rulebook – Regulation (EU) 2021/1060, which lays down common provisions known as the 'CPR'. The CPR complements fund-specific regulations ⁽³⁷⁾ and sets out common financial rules for the planning, financial management, monitoring and control of the eight funds under shared management. It also sets out common provisions for the programming of the four cohesion-related funds (the Cohesion Fund, European Regional Development Fund, European Social Fund Plus and Just Transition Fund) and the European Maritime, Fisheries and Aquaculture Fund, the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy ⁽³⁸⁾.

Together, CPR funds represent around a third of the EU budget. All Member States can benefit from these funds, with some exceptions ([Figure 3](#)).

³⁷ Fund-specific regulations refer to the regulations containing provisions that only apply to individual CPR funds. For more information, please refer to [Figure 3](#)

³⁸ European Commission: https://commission.europa.eu/funding-tenders/find-funding/funding-management-mode/common-provisions-regulation_en.

Figure 3. Overview of CPR funds (39)



Source: Ramboll (2025)

³⁹ 2018 prices. Sources: for the ERDF and CF – Multiannual Financial Framework 2021-2017, for the JTF – Regulation (EU) 2021/1056 Art. 3-4, for the ESF+ – Regulation (EU) 2021/1057 Art. 5, for the EMFAF – Regulation (EU) 2021/1139 Art. 4, for the AMIF Regulation (EU) 2021/1147 Art. 10, for the ISF – Regulation (EU) 2021/1149 Art. 7, and for the BMVI Regulation (EU) 2021/1148 Art. 7



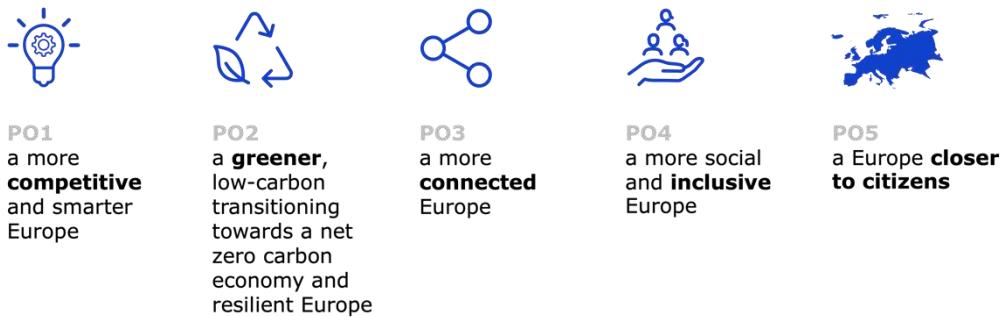
Links to the relevant regulations in your language

CPR (⁴⁰)	ERDF (⁴¹)	CF (⁴¹)	JTF (⁴²)	ESF+ (⁴³)	EMFAF (⁴⁴)	AMIF (⁴⁵)	ISF (⁴⁶)	BMVI (⁴⁷)
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Source: Ramboll (2025)

While each CPR Fund has its own specific objectives, **the largest share of the budget** (ERDF, ESF+, CF and EMFAF) **supports five overarching policy objectives (POs)**:

Figure 4. Policy objectives



Source: Ramboll (2025) based on the CPR, Art. 5

AMIF, BMVI and ISF each have their own policy objectives, as defined in their respective fund-specific regulations. AMIF's policy objective is "to contribute to the efficient management of migration flows and to the implementation, strengthening and development of the common policy on asylum and the common immigration policy" (⁴⁵), BMVI's policy objective is "to ensure strong and effective European integrated border management at

⁴⁰ Regulation (EU) 2021/1060 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, OJ L 231, 30.6.2021, ELI: <http://data.europa.eu/eli/reg/2021/1060/oj>.

⁴¹ Regulation (EU) 2021/1058 on the European Regional Development Fund and on the Cohesion Fund (ERDF and CF Regulation), OJ L 231, 30.6.2021, ELI: <http://data.europa.eu/eli/reg/2021/1058/oj>.

⁴² Regulation (EU) 2021/1056 establishing the Just Transition Fund (JTF Regulation), OJ L 231, 30.6.2021, ELI: <http://data.europa.eu/eli/reg/2021/1056/oj>.

⁴³ Regulation (EU) 2021/1057 establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013 ("ESF+ Regulation"), OJ L 231, 30.6.2021, ELI: <http://data.europa.eu/eli/reg/2021/1057/oj>.

⁴⁴ Regulation (EU) 2021/1139 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004 (EMFAF Regulation), OJ L 247, 13.7.2021, ELI: <http://data.europa.eu/eli/reg/2021/1139/oj>.

⁴⁵ Regulation (EU) 2021/1147 establishing the Asylum, Migration and Integration Fund (AMIF Regulation), OJ L 251, 15.7.2021, ELI: <http://data.europa.eu/eli/reg/2021/1147/oj>.

⁴⁶ Regulation (EU) 2021/1149 establishing the Internal Security Fund (ISF Regulation), OJ L 251, 15.7.2021, ELI: <http://data.europa.eu/eli/reg/2021/1149/oj>.

⁴⁷ Regulation (EU) 2021/1148 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy (BMVI Regulation), OJ L 251, 15.7.2021, ELI: <http://data.europa.eu/eli/reg/2021/1148/oj>.

the external borders" (47) and ISF's policy objective is "to contribute to ensuring a high level of security in the Union, in particular by preventing and combating terrorism and radicalisation, serious and organised crime, and cybercrime, by assisting and protecting victims of crime, as well as by preparing for, protecting against and effectively managing security-related incidents, risks and crises" (46). Finally, the JTF helps regions and people tackle the social, economic and environmental impacts of transitioning to the EU's 2030 energy and climate targets and achieving climate neutrality by 2050, as set out in the Paris Agreement (42).

Shared management in the context of the CPR

CPR funds are managed jointly by the European Commission and national and regional authorities. This management mode is known as '**shared management**' and is one of the three ways in which EU funds are managed (Table 2).

Table 2. Management modes of programmes funded by the EU budget

Direct management	Shared management	Indirect management
EU funding is managed directly by the European Commission.	The European Commission and national and regional authorities jointly manage the funding.	EU funding is managed by the European Commission, and some execution tasks are delegated to partner organisations such as the EIB, international organisations or some national agencies (e.g., Erasmus+ national agencies).

Under shared management, actions are planned jointly between the European Commission and Member States: "*Member States are responsible for implementing the actions and reimbursing expenditure to beneficiaries, while the Commission monitors implementation, reimburses Member States and is ultimately accountable for the budget (48).*"

While roles and responsibilities will be explained in more detail in '*Roles and responsibilities of main actors*', to understand how shared management works in practice, consider the example of the ERDF.

⁴⁸ EUR-Lex, Summary of Regulation (EU) 2021/1060

Table 3. Example of shared management

European Commission	National authorities
<p>Put forward a proposal for the regulations (e.g. the CPR and fund-specific regulations), which are then negotiated and adopted through the ordinary legislative procedure by the co-legislators, and which serve as the legal basis for fund distribution and management for the relevant programming period.</p>	 Contribute to the regulatory framework through participation in the Council of the European Union, national parliaments' opinions to the Commission proposal, etc. Click here to see how decisions are made in the EU
 Approve partnership agreements for ERDF, the ESF+, the Cohesion Fund, the JTF and the EMFAF.	 Draw up a partnership agreement setting out the national strategy and investment priorities for using the funds in line with EU objectives and rules.
 Approve programmes.	 Develop programmes for a specific region (or the entire country) or thematic goal, translating the broad strokes of the overarching strategic vision into concrete interventions ⁽⁴⁹⁾ .
 Monitor implementation and reimburse expenditure, examine accounts etc.	 Designated authorities projects, progress, verify expenditure, send payment applications to the Commission and submit accounts to the Commission as part of the assurance packages, covering the preceding accounting year and including <i>inter alia</i> a 'management declaration' certifying that the expenditure declared complies with EU rules, etc.

⁴⁹ Annex V of the CPR provides a template for programmes supported by the ERDF (investment for jobs and growth), ESF+, the Cohesion Fund, the JTF and the EMFAF.



Review implementation and evaluation reports and assess the fund overall.

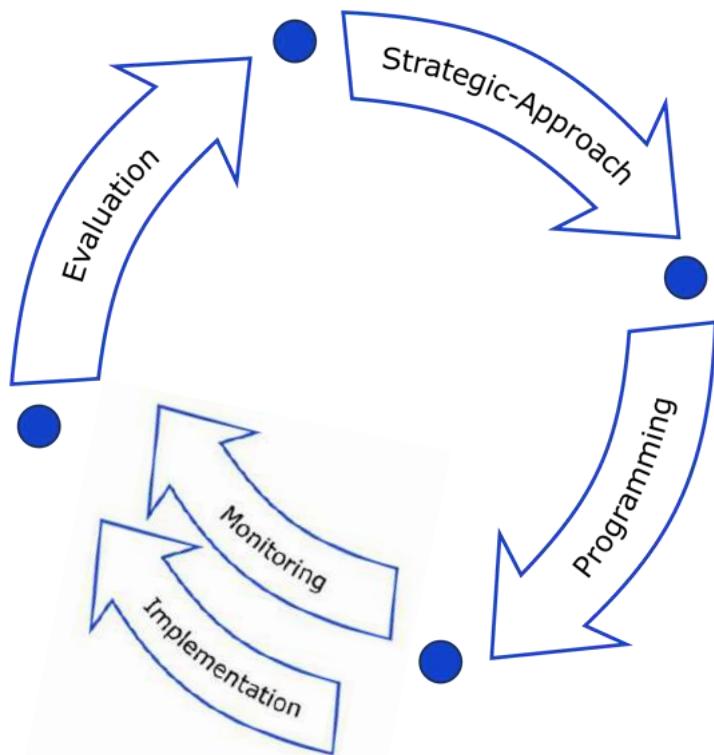


Draw up **implementation and evaluation reports** for programmes and submit them to the Commission.

Source: Ramboll (2025)

Life cycle of CPR funds

The deployment of CPR funds follows a structured process composed of five main phases. The following section will outline these phases in broad strokes, while the next section will provide a more detailed explanation of each phase, and the key actors involved.



1. **Strategic approach:** In the case of Cohesion Policy Funds (see [Figure 3. Overview of CPR funds](#) () and the EMFAF, Member States negotiate a partnership agreement with the European Commission, which sets out the strategic orientation and the arrangements for using the funds. The partnership agreement contains, *inter alia*, the selected objectives, and a preliminary financial allocation among them and among categories of regions (53). In the partnership agreement, **Member States can already include a summary of the assessment of the fulfilment of enabling conditions**. One of them relates to the Charter and plays a key role in ensuring respect for the Charter in the context of CPR funds. It will be explored more in detail in Chapter 3.

In phase 1, Member States **organise a partnership** with relevant stakeholders who will be involved in the preparation of the partnership agreement and throughout the preparation, implementation and evaluation of programmes (50).

The partnership is set up in accordance with the European code of conduct on partnership (51) which includes, amongst other things:

- Guidance on the procedures for the selection on relevant and representative partners (including where relevant bodies responsible for promoting fundamental rights (52)),
- Minimum procedural requirements for meaningful and transparent consultations in the preparation of partnership agreements and programmes,
- Partners' involvement throughout the lifecycle of CPR funds.
- Strengthening of the partners' institutional capacity to engage.

⁵⁰ CPR, Article 8(4), and Commission Delegated Regulation (EU) No 240/2014 of 7 January 2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds

⁵¹ CPR, Article 8(4), and Commission Delegated Regulation (EU) No 240/2014 of 7 January 2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds

⁵² Further details on how relevant partners are involved at the programming stage are discussed in Part II of the training manual

⁵³ CPR, Articles 10-14.

**Useful resources**

[Click here to see the PA concluded by your country](#)



For example, the Italian partnership agreement selected several policy objectives (PO), including PO4 – *'A more social and inclusive Europe implementing the European Pillar of Social Rights'*, as tackling youth unemployment was identified as a key challenge: in 2019, the share of young people 'Not in Education, Employment, or Training' (NEETs) averaged at 12.6% in the EU, while in Italy it was significantly higher at 22.2%. Similarly, a need to improve the level of skills and reduce school dropout was identified. With respect to enabling conditions, the Italian partnership agreement contains a summary of the assessment of fulfilment of enabling conditions in Section 11 (⁵⁴).

2. **Programming:** Member States prepare detailed programmes indicating how they plan to use the funds and submit them for approval to the Commission⁵⁵.



For example, in Italy, one of the seven programmes developed to support PO4 is the '*National Programme Youth, Women and Jobs*'. The Programme, managed by the Italian Ministry of Labour and Social Policies, allocates national and ESF+ resources across different priorities. One of them is '*Facilitating young people's entry into the job market*' and relevant actions include incentives for hiring, business-oriented training and tutoring to support young people in their job search (⁵⁶). Another national programme developed under the same policy objective, i.e. the '*Schools and Skills Programme*' managed by the Italian Ministry of Education and Merit, allocates ESF+ and ERDF budgets across priorities, such as inclusive and effective education systems.

**Links to programme documents in your country**

[Cohesion Policy Funds](#)

[EMFAF](#)

[AMIF](#)

[ISF](#)

[BMVI](#)

A few differences exist between programmes depending on which CPR funds support them. These relate to whether programmes can be supported by more than one fund (Cohesion policy Funds can support multi-fund programmes, while other funds have separate single-fund programmes) (⁵⁷), programme content (although all programmes must outline their strategies and objectives, specific content requirements vary)

⁵⁴ Repubblica Italiana, Accordo di Partenariato 2021-2027.

⁵⁵ CPR, Title III

⁵⁶ Italian Ministry of Labour and Social Policies <https://www.lavoro.gov.it/temi-e-priorita/europa-e-fondi-europei/focus/pagine/pn-giovani-donne-e-lavoro>.

⁵⁷ CPR, Article 25. EMFAF, AMIF, ISF and BMVI have single-fund programmes.

(⁵⁸), and enabling conditions. HECs apply across CPR funds and policy objectives, while Thematic Enabling Conditions (TECs) apply to ERDF, ESF+ and CF resources in support of some specific objectives.

As will be explained in more detail in Chapter 3, **at programme approval stage**, even if the Commission does not agree with a Member State's assessment of enabling conditions, the Commission must approve the programmes if it concludes that the programmes fulfil the requirements set out in the CPR. However, if the enabling conditions are not fulfilled at the time of the approval of the programme, the Commission will not reimburse related expenditures in the payment claims for expenses incurred during the implementation of the programme. **Non-reimbursement of expenditure** applies to programmes or specific objectives of programmes concerned by the non-fulfilment of the enabling condition. Expenditure will not be reimbursed until the Member State introduces modifications or explains which remedying measures will be put into place to respect the enabling condition, and the Commission has informed the Member States of the fulfilment of the enabling condition.

3. **Implementation:** During this phase, **managing authorities** establish criteria for the selection of projects which must, among other things, comply with the Charter (⁵⁹) and **select projects**. Sometimes, managing authorities set up intermediary bodies to do so and act as a link with the beneficiaries (⁶⁰). In some cases, the selection of projects happens via calls for proposals where potential beneficiaries submit projects for consideration. In other cases, intermediate bodies or implementing authorities manage the funds. Additionally, managing authorities carry out a series of tasks related to **programme management**, such as conducting 'management verifications' to confirm compliance with applicable laws, programme guidelines and conditions for support, checking that beneficiaries receive funding, and ensuring that effective and proportionate anti-fraud measures and procedures are in place, preventing and detecting irregularities, and drawing up a yearly management declaration that provides assurance to the Commission that the managing authority has fulfilled its responsibilities in overseeing the programme (⁶¹).

⁵⁸ CPR, Art. 22

⁵⁹ CPR, Article 73

⁶⁰ CPR, Article 71

⁶¹ CPR, Article 74 and 98

**Useful resources**

[Click here to see some examples of projects funded in your region](#)



For example, the implementing authority of Italy issued a public notice under their schools and skills programme inviting schools to submit applications for funding to support sports, music, theatre and recreational activities aimed at promoting social inclusion during the summer months, when Italian schools are closed for an extended period ⁽⁶²⁾. In contrast, under the 'National Programme for Youth, Women, and Jobs', the priority area focused on facilitating young people's entry into the job market and the National Institute for Social Security (INPS) was designated as an intermediary body to manage the 'NEET Incentive' project. The project provides financial support to employers who hire young NEETs, and employers can directly request the incentive on the INPS website ⁽⁶³⁾.

3. **Monitoring:** Before the implementation phase, Member States must establish an effective **internal control framework**, incorporating risk management, internal control activities, information and communication systems, and monitoring activities. Then, this framework is regularly reviewed and updated. They also establish **procedures for handling complaints** and effective means of redress for beneficiaries and third parties ⁽⁶⁴⁾. Detailed rules and templates for the reporting of irregularities are set out in Annex XII of the CPR. Additionally, Member States, in consultation with managing authorities ⁽⁶⁵⁾ set up monitoring committees that monitor the implementation of programmes. Its members are drawn from Member State authorities and intermediate bodies responsible for programme management and representatives of the partners involved in programme implementation ⁽⁶⁶⁾, such as regional, local, urban and other public authorities, and relevant bodies representing civil society, such as environmental partners, non-governmental organisations and bodies responsible for promoting social inclusion, fundamental rights, rights of persons with disabilities, gender equality and non-discrimination ⁽⁶⁷⁾. Representatives of the Commission participate in the work of monitoring committees in a monitoring and an advisory capacity ⁽⁶⁸⁾. The monitoring committee, which meets at least once a year, has several functions, including examining programme progress and fulfilment of enabling conditions, examining progress in implementing operations of strategic importance and identifying issues that affect programme performance ⁽⁶⁹⁾. To facilitate monitoring and evaluation, the Member State (or the managing authority) is required to regularly transmit to the Commission cumulative data for each

⁶² Italian Ministry of Education and Merit. Piano Estate: <https://pn20212027.istruzione.it/avvisi/piano-estate/>

⁶³ Italian Ministry of Labour and Social Policies. Incentivo NEET: <https://www.lavoro.gov.it/pn-giovani-donne-lavoro/progetti/incentivo-neet>

⁶⁴ CPR, Art. 69

⁶⁵ CPR, Art. 38

⁶⁶ CPR, Art. 39

⁶⁷ CPR, Art. 8

⁶⁸ CPR, Art. 39

⁶⁹ CPR, Art. 40

programme (70). Finally, annual performance reviews (in the form of a report or a meeting) are organised between the Commission and each Member State to examine the performance of each programme (71).



For example, regarding the schools and skills programme mentioned above, the Italian Ministry of Education and Merit established a monitoring committee through a decree in February 2023. The committee's rules of procedure, members, and minutes of its meetings are published on the Programme's website (72). Among its members are civil society representatives such as Confindustria (which represents Italian industries and enterprises, as well as CISL, CGIL, UIL, UGL and CONFSAL (major Italian labour unions representing workers' interests).

4. **Evaluation:** Programme evaluations are carried out by the Member States or by managing authorities⁷³, while mid-term and ex post fund evaluations are carried out by the Commission (74). Critical input for these evaluations is collected through a '**performance framework**' set up by each Member State to monitor, report and evaluate programme implementation and overall fund performance. The framework includes outputs and result indicators, which are linked to the applicable specific objectives and provide quantifiable measures of the programme's achievements and progress towards its goals); milestones, which are predefined targets set at specific points in time during the programme's implementation and act as checkpoints to assess progress and ensure that the programme is on track to achieve its objectives; and targets (75).



For example, the independent ex post evaluation of the impact of the ERDF and CF in 2007-13 estimated that every euro of cohesion policy investment in the period 2007-13 would have generated EUR 2.74 of additional GDP by 2023. In terms of areas for improvement, it was found that very few programmes were result-oriented and that the lack of detail of certain legal provisions, coupled with the inexperience of many implementing bodies, led to delays in implementation (76).

Roles and responsibilities of main actors

The deployment of CPR funds involves a coordinated effort across various actors. These include:

⁷⁰ CPR, Art. 42

⁷¹ CPR, Art. 41

⁷² Italian Ministry of Education and Merit, <https://pn20212027.istruzione.it/comitato-sorveglianza/>.

⁷³ CPR, Art. 44

⁷⁴ CPR, Art. 45

⁷⁵ CPR, Art. 16

⁷⁶ European Commission Staff Working Document (2016). Ex post evaluation of the ERDF and Cohesion Fund 2007-13.

- **The European Commission**, notably its Directorate-General for Regional and Urban Policy (for the ERDF and CF), Directorate-General for Employment, Social Affairs and Social Inclusion (for the ESF+) Directorate-General for Maritime Affairs and Fisheries (for EMFAF) and Directorate-General for Migration and Home Affairs (for AMIF, ISF, and BMVI).
- **Individual countries** – primarily Member States, with some exceptions: certain Member States are not part of some funds and/or might not participate in specific funds based on their economic status or regional priorities, and third countries (or their entities) can also benefit from some funds (ERDF, AMIF ⁽⁷⁷⁾, BMVI ⁽⁷⁸⁾, ISF ⁽⁷⁹⁾, EMFAF).
- **National or regional programme authorities**, selected for each programme by the Member States. They are listed on the website of the programme, are usually part of relevant ministries and can be distinguished between managing authorities and audit authorities ⁽⁸⁰⁾.
- **Monitoring committees**, established by the Member States and are composed of a balanced representation of the relevant Member State authorities, intermediate bodies and representatives of local authorities, economic and social partners, bodies representing the civil society, research organisations and universities ⁽⁸¹⁾. Monitoring committees may cover more than one programme ⁽⁸²⁾.
- **Beneficiaries**, which can be public or private bodies, entities with or without legal personality or natural persons, responsible for initiating or both initiating and implementing operations ⁽⁸³⁾.
- **Relevant partners**, which generally include public administrations, regional, local and urban authorities, economic and social partners, relevant bodies representing civil society (environmental partners, NGOs, bodies responsible for promoting social inclusion, fundamental rights, rights of persons with disabilities, gender quality and non-discrimination), research organisations and universities, etc⁽⁸⁴⁾.

The table below shows the main roles and responsibilities of each of these actors, at a given phase of the life cycle of CPR funds.

⁷⁷ AMIF Regulation, Art. 7

⁷⁸ BMVI Regulation, Art. 5

⁷⁹ ISF Regulation, Art. 19

⁸⁰ CPR, Art. 71

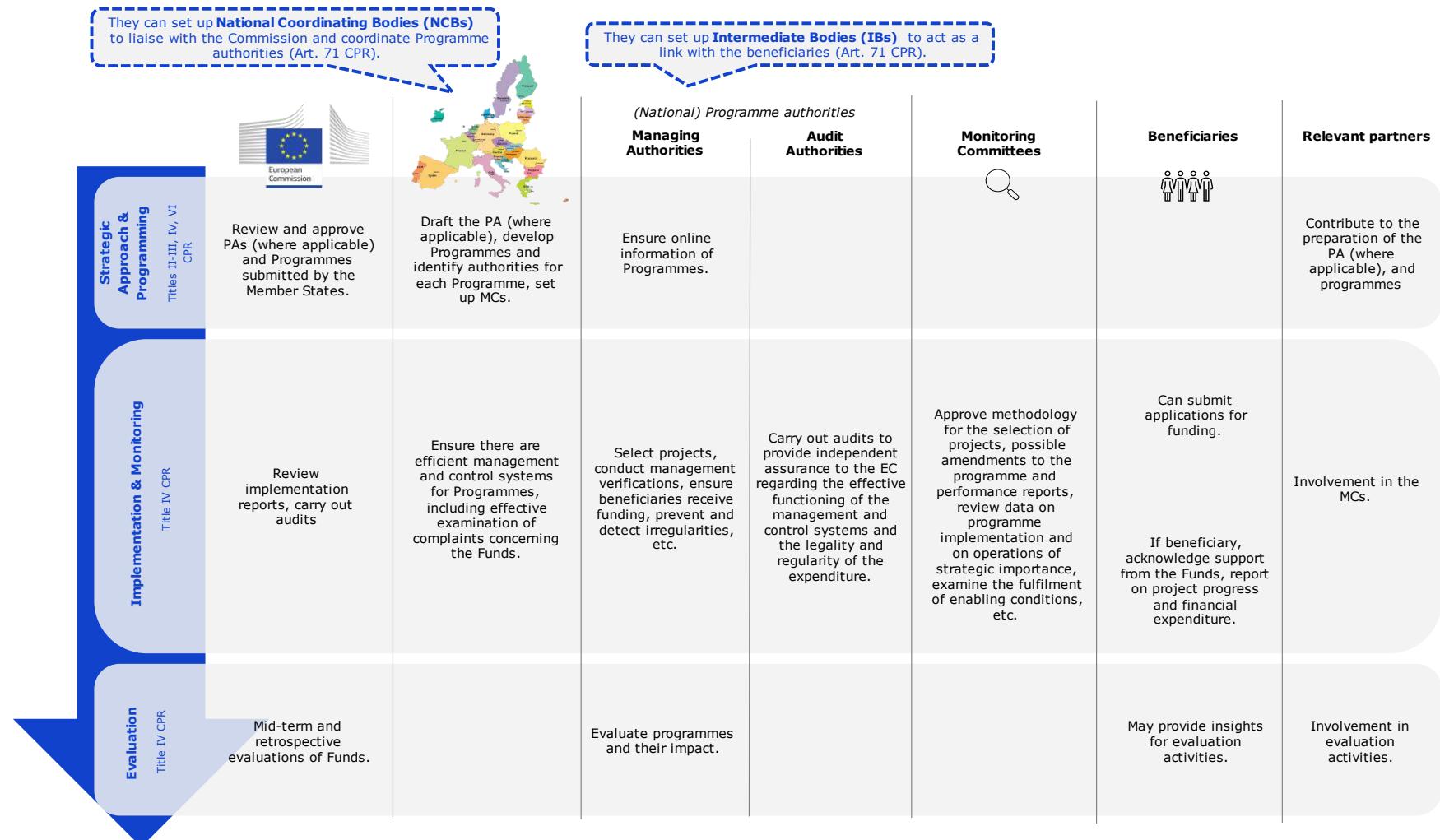
⁸¹ CPR, Art 39

⁸² CPR, Art. 38

⁸³ CPR, Art. 2(9)

⁸⁴ CPR, Art. 8

Figure 5. Main actors, roles and responsibilities



Source: Ramboll (2025)

Key messages

CPR funds include eight EU funds (the ERDF, CF, JTF, ESF+, EMFAF, AMIF, ISF and BMVI), all governed by a unified regulatory framework established by the CPR and the fund-specific regulations.

The management of CPR funds involves close collaboration between the Commission and national and regional authorities. The Commission puts forward a proposal for the CPR and fund-specific regulations, which are negotiated and adopted through the ordinary legislative procedure by the co-legislators, and which serve as the legal basis for fund distribution and management for the relevant programming period. The Commission also approves each country's strategy (as outlined in the partnership agreement) and detailed plans (outlined in the programmes) that are developed by national and regional authorities. These authorities are then responsible for overseeing individual projects, ensuring compliance with the CPR and working alongside the Commission in evaluation activities.

The deployment of CPR funds involves a structured process comprising of four main phases: strategic approach, programming, implementation and monitoring, and evaluation.

The effective deployment of CPR funds relies on the concerted action of several actors at different levels of governance.

Self-assessment

- Could you list the CPR funds and explain why they are referred to as such?
- What does the concept of shared management in the context of EU funding mean?
- How do political strategies translate into concrete actions through CPR funds?
- What are the main actors involved in the deployment of CPR funds?

Chapter 3:

The Charter HEC

In the previous chapter, the manual explained that, during the programming phase of the lifecycle of CPR funds, Member States are responsible for evaluating whether 'enabling conditions' are fulfilled (and will remain so) throughout the programme's lifecycle, and that one of these enabling conditions plays a key role in ensuring respect for the Charter. In this chapter, the manual takes a closer look at enabling conditions and the Charter HEC to understand how they work in practice.



Targeted learning outcomes

At the end of this chapter, you will be able to:

- Understand the concept of enabling conditions and their relevance to the Charter.
- Understand how the respect of the Charter is ensured in CPR funds.

Context

There are two main types of enabling conditions (ECs):

- **Horizontal enabling conditions (HECs):** these listed in Annex III of the CPR, are common to all CPR funds, and each has defined criteria to assess their fulfilment ⁽⁸⁵⁾. The condition that plays a key role in ensuring respect for the Charter is a HEC (more on this below).
- **Thematic enabling conditions (TECs):** these are listed in Annex IV of the CPR, and are specific to the policy objective (see [Figure 4](#) in Chapter 2) and the specific objective selected under the ERDF, the CF ⁽⁸⁶⁾ and/or the ESF+ ⁽⁸⁷⁾. Like HECs, TECs also come with fulfilment criteria ⁽⁸⁸⁾.

⁸⁵ CPR, Art. 15 and Annex III

⁸⁶ Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund, Article 3.

⁸⁷ Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013, Article 4

⁸⁸ CPR Art. 15 and Annex IV

Enabling conditions apply both during the programming phase of CPR funds (or during programme amendments if any) and throughout the entire programming period.

When **preparing a programme**, Member States must assess whether the relevant ECs are fulfilled, meaning all related criteria are met. Both fulfilled and unfulfilled ECs should be listed and fulfilment justified.

The Commission then assesses the programme in accordance with Article 23 of the CPR and may suggest edits ('observations' based on which the Member States are to 'review' the programme). The European Union Agency for Fundamental Rights can support this process⁸⁹.

Within five months of the submission of a programme, the Commission approves it.

When **amending a programme** (e.g. introducing a new specific objective), Member States must assess whether the relevant ECs are fulfilled, meaning all related criteria are met. Both fulfilled and unfulfilled ECs should be listed, and fulfilment justified.

The Commission then assesses the programme amendment in accordance with Article 24 of the CPR and may suggest edits ('observations' based on which the Member States are to 'review' the programme).

Within four months of the submission of a programme, the Commission approves it.

Later, if an enabling condition is not fulfilled, the Member States shall inform the Commission as soon as it considers it fulfilled with a justification of the fulfilment in accordance with Article 15(3) of the CPR. Afterwards, Article 15(4) of the CPR establishes that the Commission shall, as soon as possible and no later than three months, carry out an assessment and inform the Member State whether it agrees. If the Member State disagrees with the Commission's assessment, it has one month to present its observations. Until the enabling condition is considered fulfilled by the Commission, the reimbursement of expenditure linked to relevant operations is put on hold in accordance with Article 15(6) of the CPR (⁹⁰).



For example, the Hungarian government submitted its AMIF programme in May 2022 which was ultimately approved in December 2022. However, the European Commission disagreed with Hungary's assessment of the Charter HEC, asking for commitments to implement corrective actions. Hence, the Commission considered that the

⁸⁹ As per Article 16(4) of the AMID Regulation and Article 13(4) of the BMVI Regulation, the European Union Agency for Fundamental Rights can support the assessment of fundamental rights compliance of the programmes.

⁹⁰ CPR, Art. 15

horizontal enabling condition was not fulfilled until specific measures were taken (91).

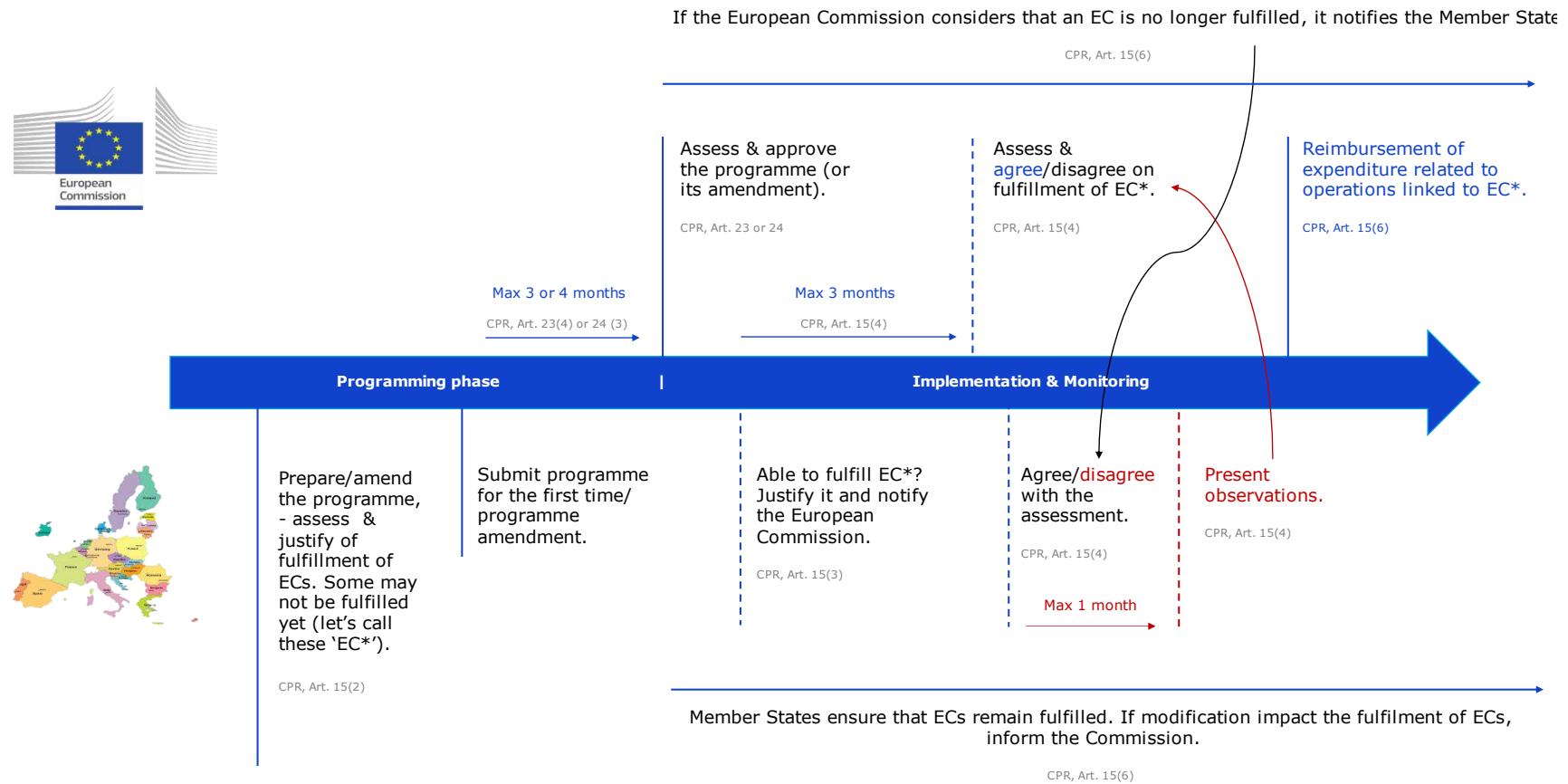
Throughout the programming period, Member States should ensure that enabling conditions remain fulfilled and, if any modification impacts them, promptly inform the monitoring committee (92) and the Commission. Where the Commission suspects that an enabling condition is no longer fulfilled, in accordance with Article 15(6) of the CPR, it sends its assessment to the Member State in question, which has one month to reply, and if the Commission considers that an enabling condition is no longer fulfilled, the reimbursement of expenditure linked to that enabling condition is frozen (**Figure 6**) (93).

⁹¹ European Commission (2022), the implementing decision of approving the programme of Hungary for support from the Asylum, Migration and Integration Fund for the period from 2021 to 2027, available at: https://www.asktheeu.org/en/request/12669/response/52832/attach/67/Document%2033%20C%202022%2010022%20F1%20COMMISSION%20IMPLEMENTING%20DECISION%20EN%20V2%20P1%202472429.pdf?cookie_passthrough=1

⁹² https://ec.europa.eu/regional_policy/sources/policy/communication/dialog/meetings/2023-12/Point6_Implementation_including_Enabling_Conditions.pdf

⁹³ CPR, Art. 15

Figure 6. Enabling conditions during the life cycle of CPR funds



Source: Ramboll (2025)

Requirements

As mentioned above, **one HEC explicitly mentions the Charter** ([Table 4](#)), establishing a key link between CPR funds and the Charter.

Table 4. The Charter HEC

HEC	Fulfilment criteria
Effective application and implementation of the Charter of Fundamental Rights	<p>Effective mechanisms are in place to ensure compliance with the Charter of Fundamental Rights of the European Union ('the Charter') which include:</p> <ul style="list-style-type: none"> i) Arrangements to ensure compliance of the programmes supported by the Funds and their implementation with the relevant provisions of the Charter. ii) 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).

Source: CPR, Annex III

This is a new development compared to the previous programming period. The former CPR included ex ante conditionality for non-discrimination and equality ⁽⁹⁴⁾, meaning that compliance with fundamental rights was assessed only once and was limited to certain rights. In contrast, **the current CPR, through the Charter HEC, requires continuous compliance monitoring and extends conditionality to all fundamental rights enshrined in the Charter.**

Like other HECs, the Charter HEC applies to all CPR funds. Compliance with the Charter HEC and its two requirements at the national level is detailed in Table 12 of the various programmes.

In December 2023, following the assessment of the Member States' programs, the Commission concluded that all but three Member States had

⁹⁴ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006

fulfilled the Charter HEC (⁹⁵). Since then, two of these Member States have been able to take effective remedial actions (⁹⁶). The arrangements put in place to implement the Charter HEC are often transversal, applying to several national programmes.

Key messages

The Charter HEC is a new development compared to the previous programming period. The current CPR, through the Charter HEC, requires continuous compliance monitoring and extends conditionality to all fundamental rights enshrined in the Charter.

The Charter HEC applies both during the programming phase of CPR funds (or during programme amendments, if any), throughout the entire programming period and to all CPR funds.

^{⁹⁵} European Commission, 2023 annual report on the application of the Charter of fundamental rights - Effective legal protection and access to justice (COM(2023) 786 final).

^{⁹⁶} European Commission (2024). Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Funding to promote, protect and enforce fundamental rights 2024 Annual report on the application of the EU Charter of Fundamental Rights

II

Practical application





Targeted learning outcomes

At the end of this part, you will be able to:

- Identify the actions of national authorities in the various stages of CPR funds to which the Charter applies.
- Identify the **rights susceptible to being affected** across the different stages of the CPR funds.
- Understand how **certain rights may be specifically impacted** at the stage of implementation of the national programmes and in the context of the different funds.
- Assess the **actions of national authorities** against their obligations in light of the Charter.
- Assess how existing **good practices** may be reflected or considered in view of improving the arrangements implementing the Charter HEC.

To understand the role of the Charter HEC and how its implementation will contribute to ensuring the effectiveness of the Charter in the context of CPR funds, Part II of the manual will focus on the national level and, thus, the action of managing authorities, monitoring committees and the beneficiaries. Chapter 1 starts by presenting good practices on the implementation of the Charter HEC, covering the first and the second criterion, as well as specific good practices to ensure that operations funded by CPR funds comply with the Charter. Chapters 2 and 3 focus on specific fundamental rights and their effective application in the context of the CPR funds, providing an overview of those rights, zooming in on specific legal provisions to consider and presenting examples of how they may be impacted, as well as relevant good practices and actionable guidance.

Please note that all Charter rights are potentially susceptible to being affected in the context of CPR funds.

Notwithstanding, Part II of this manual focus on certain fundamental rights which **may be identified as showing a higher degree of likelihood to being impacted in the context of CPR funds**. These may broadly be divided into two categories:

1. Charter rights more prone to be affected by the action of the national authorities in the context of CPR funds and at any stage of the funds' life cycle (in this manual referred to as 'cross-cutting rights'); and
2. Charter rights more prone to be affected either by the actions of the national authorities or beneficiaries in connection with the funded operations ('operation-related rights').

Chapter 2 of Part II deals with the cross-cutting rights, while Chapter 3 addresses the operation-related rights.

Chapter 1: Good practices on the implementation of the Charter HEC

This chapter gives an overview of the good practices (97) already implemented across Member States for the implementation of the Charter HEC and, more broadly, to ensure the correct application of the Charter at all stages of the funding process, from drafting of national programmes to evaluation. The good practices presented in this Chapter are complemented by the good practices included in Chapters 2 and 3 on each of the Charter rights specifically covered.

First criterion of the Charter HEC

Arrangements to ensure compliance of the programmes supported by the funds and their implementation with the relevant provisions of the Charter.

In relation to the **first criterion of the Charter HEC**, the arrangements put in place by Member States to ensure that programmes and their implementation comply with the Charter vary in depth and nature across Member States. Based on 2016 guidance from the European Commission, some national authorities (98) and national human rights institutions (NHRIs) developed **handbooks and guiding documents**. These tools provide information on the implementation of the Charter HEC or, more broadly, respect for fundamental rights in the context of CPR funds covering the different stages of the funds' life cycle.

⁹⁷ The good practices mentioned mostly rely on the analysis of Member States' national programmes, complemented by other sources identified through desk research.

⁹⁸ See for instance for France: Agence nationale de la cohésion des territoires et du Ministère de la Cohésion des territoires et des Relations avec les collectivités territoriales, 2023, Guide of good practices on compliance with the Charter of fundamental rights in the ERDF, ESF+, FTJ, FAMI, FSI, IGFV, FEAMPA in France (*Guide de bonnes pratiques sur le respect de la charte des droits fondamentaux dans le FEDER, FSE+, FTJ, FAMI, FSI, IGFV, FEAMPA en France*), available at: <https://www.europe-en-france.gouv.fr/fr/ressources/guide-de-bonnes-pratiques-sur-la-charte-des-droits-fondamentaux-dans-les-programmes>; for Romania: Romanian Ministry of Investment and European Projects (*Ministerul Investițiilor și Proiectelor Europene*), Guide on the application of the EU Charter of Fundamental Rights in implementing EU funds (*Ghid de aplicare a Cartei drepturilor fundamentale a Uniunii Europene în implementarea fondurilor europene nerambursabile*), 2022, available at: <https://mfe.gov.ro/wp-content/uploads/2022/08/0289aed9bcb174a18d17d7badb94816f.pdf>.

Good Practice 1. Guidance

In 2021, the **Irish Human Rights and Equality Commission** published a guidance tool and checklist to assist managing authorities, intermediate bodies and beneficiaries in managing CPR funds. This initiative sets out detailed objectives and methodologies, presented step-by-step, to enable these entities to effectively uphold equality and human rights at all stages of programmes' implementation.

In 2022, the **Polish Commissioner for Human Rights** published a handbook (available in both Polish and English) designed to assist national authorities and intermediary bodies involved in the evaluation and implementation of EU-funded programmes. The handbook is structured to provide clear and practical guidance: Chapter 1 introduces the Charter of Fundamental Rights, explaining its scope, content and interaction with national legal frameworks. Chapter 2 offers practical guidelines for assessing compliance with the Charter during programme implementation. It also includes a detailed checklist to help managing authorities evaluate the proportionality of any limitations on fundamental rights.

In **Italy, Germany and the Netherlands, EU level guidance documents** are used as model rules or condensed sources of information and best practices for the national implementation of the Charter HEC. In these Member States, the European code of conduct on partnership and the Commission guidelines for respecting the Charter of Fundamental Rights of the European Union have been directly incorporated into national practices.

Another common approach consists of strengthening or complementing the institutional capacity of managing authorities **through expert involvement and training** to address the needs of knowledge and expertise on the Charter or assess programmes' impact on fundamental rights.

Good Practice 2. Expert involvement and training

Member States such as **France, Belgium, Malta and Germany appointed trained experts or contact points** entrusted with consultative and coordination functions ⁽⁹⁹⁾. Their role is to support managing authorities in carrying out their tasks by providing legal assessments and advice on Charter compliance matters. In some

⁽⁹⁹⁾ Information resulting from the analysis of Table 12 of selected Member States' programmes on the fulfilment of the Charter HEC.

instances, those bodies are also consulted to develop training modules, project selection criteria or checklists to facilitate managing authorities executing their tasks while increasing transparency and predictability in the interests of beneficiaries.

In **Austria, Croatia and Slovenia**, national authorities **consult NHRI**s and/or **stakeholders** ⁽¹⁰⁰⁾. These specialised stakeholders can participate and provide concrete fundamental rights insights through public or targeted consultations or participation in steering committees. They provide inputs and feedback on programmes' compliance with the Charter and their potential impact on fundamental rights.

Regarding training, the **Croatian equality body**, together with the ESIF managing authority, has developed workshops on fundamental rights and EU funding for intermediary bodies and beneficiaries ⁽¹⁰¹⁾. These workshops include tips and advice to support EU-funds applicants and intermediary bodies' staff members in their compliance approach to fundamental rights and the UNCRPD. Under the current CPR (2021-2027), the Croatian ombudsperson also delivered an introductory training on the Charter and the rights of elderly people, in cooperation with the Croatian Ministry of Regional Development and EU funds ⁽¹⁰²⁾.

Awareness-raising efforts are also worth mentioning. For instance, the European Union Agency for Fundamental Rights regularly organises webinars on the Charter in the context of EU funding, such as the 'Fundamental Rights Platform webinar on ensuring compliance with fundamental rights when using EU funds' ⁽¹⁰³⁾, where FRA presented its latest report entitled 'EU funds: Ensuring compliance with fundamental rights' and discussed its findings with practitioners from different Member States. Also noteworthy is the 'EU CharterXchange', organised yearly and aimed to enhance the application of the Charter through professional insights from various sectors, which, in 2024, included a session on the Charter HEC.

In the context of **programmes' implementation**, in view of ensuring that EU-funded projects respect the Charter, the first step should be **to analyse applications and select projects** under the lenses of fundamental rights compliance. As such, the procedures put in place by the managing authorities and, notably, the selection criteria and methodology drawn up

¹⁰⁰ Information resulting from the analysis of Table 12 of selected Member States' programmes on the fulfilment of the Charter HEC.

¹⁰¹ Equinet (Crowley, N.) (2022), Equality Bodies and the European Structural and Investments Funds Realising a Potential for Change – An Equinet Perspective, pp. 41-42.

¹⁰² Office of the Ombudswoman of Croatia (2023), The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds, available at: <https://www.ombudsman.hr/wp-content/uploads/2024/04/Uloga-nacionalnih-tijela-nadleznih-za-zastitu-i-promicanje-ljudskih-prava-u-osiguranju-uskladenosti-s-temeljnim-pravima-pri-dodjeli-sredstava-EU.pdf>.

¹⁰³ More information here: <https://fra.europa.eu/en/event/2024/fundamental-rights-platform-webinar-ensuring-compliance-fundamental-rights-when-using-eu>.

and verified by the monitoring committees should already allow the identification of projects presenting risks and filter those which do not present sufficient safeguards against Charter breaches.

Good Practice 3. Selection of operations

According to the **Irish Human Rights and Equality Commission guidance tool** mentioned above, the procedure to select applications under a call for proposals includes an application form where information is provided on equality and human rights issues relevant to the proposal and how the applicant proposes to address these and an assessment template to evaluate these selection criteria. Concrete guidance is also provided in this assessment.

Beneficiaries implementing CPR-funded projects should also **share responsibility** to ensure that the operations are Charter-compliant. To that effect, managing authorities should encourage beneficiaries to consider fundamental rights in the design of the project itself. This could include the integration of fundamental rights risk assessments into grant applications, which would be checked by the managing authorities. This would not only alleviate the burden of national authorities but also strengthen CPR-funded projects' compliance with the Charter and project promoters' compliance culture in general.

Good Practice 4. Self-assessment tools

Luxembourg established a Charter compliance assessment during the project selection process. In their application form, project promoters shall provide a self-assessment of their compliance with gender equality, equality and non-discrimination, sustainable development and the Charter in general ⁽¹⁰⁴⁾. According to the user manual for the ESF+ subsidies, an automated verification system ensures the accuracy and consistency of the applicant's statements at the application stage. A template to assess the various rights likely to be affected by the different submitted projects is also being drawn up.

¹⁰⁴ See Section 7 of the Luxembourg model application form 2021-2027, available at: <https://fonds-europeens.public.lu/dam-assets/formulaires/feder/fiche-de-candidature-feder-2021-2027-version-pdf-pour-pre-call-du-23022023.pdf>.

In connection with the above, the provision of **support to beneficiaries** is also considered a good practice.

Good Practice 5. Support to applicants drawing up Charter-compliant projects

To encourage and promote Charter-compliant project proposals, the **Maltese Commission for Rights of Persons with Disabilities (CRPD)** provides support and recommendations to funding applicants prior to the submission of their applications. Project promoters are encouraged to submit their draft application early for review and to discuss compliance with the Commission on the occasion of meetings organised by the managing authority. This support aims to improve projects' compliance with the Charter and the CRPD (105).

The **implementation of operations** is also susceptible to raising fundamental rights issues.

On-site investigations focusing on respect for fundamental rights **and reporting obligations** with the same scope imposed on the beneficiaries secure a proactive commitment to comply with the Charter from beneficiaries but also ensure that potential breaches of fundamental rights are identified and addressed. Monitoring of projects' implementation allows national authorities to better react to fundamental rights breaches and adopt sanctions in a timely manner.

Good Practice 6. Monitoring and sanctioning

In **Germany**, respect for the Charter is a condition for funding and is subject to on-site inspections. In some cases, such as for AMIF, ESF+ or EMFAF-funded operations, proven violations can result in the withdrawal of funding as a sanction (106).

The **Irish Human Rights and Equality Commission's guidance** (see Good Practice 1 above) mentions that grant agreements concluded with CPR fund beneficiaries should provide that the beneficiary is responsible for tracking and annually reporting progress made in addressing the

¹⁰⁵ Equinet (2024), Equality Bodies supporting the EU Charter of Fundamental Rights through their funding activities, p. 4.

¹⁰⁶ See national programmes (AMIF, ESF+ and EMFAF).

equality and human rights issues identified as relevant for the operation.

Similarly, in **Luxembourg**, a reporting mechanism to the managing authority has been implemented. According to the [user guide for potential beneficiaries](#), once selected, beneficiaries are required to report information on the project's implementation, including its impact on fundamental rights to the managing authority every six months. These reports are assessed by a steering committee of the managing authority, which may issue recommendations to address issues identified relating to the Charter. In case of disagreement between the steering committee and the beneficiary on a Charter-related matter, the issue can be taken to the monitoring committee after an auditing procedure by an independent expert.

Second criterion of the Charter HEC

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).

Concerning the **second criterion of the Charter HEC**, among the mechanisms set up to report instances of operations supported by CPR funds breaching the Charter to the monitoring committee, some good practices are already well-established in most Member States.

A common good practice from managing authorities consists of the **involvement of NHRIs and legal experts specialised in fundamental rights** in the work of the monitoring committee. Such practice does not implement the second criterion of the Charter HEC as such, but it increases the legal capacities and efficiency of monitoring committees. As recalled by the European Union Agency for Fundamental Rights, the involvement of NHRIs and legal experts in complaints handling mechanisms, so long as it complies with NHRIs' independence, enhances the national set of complaint mechanisms and legal remedies against fundamental right violations (¹⁰⁷).

¹⁰⁷ European Union Agency for Fundamental Rights (2023), [EU funds: Ensuring compliance with fundamental rights](#), Section 3.4.

Good Practice 7. Specialised expert sitting in the monitoring committee

In line with Articles 8 and 39 of the CPR, some countries, like **Luxembourg, Belgium, Malta** and **Croatia**, involved academic experts or representatives of fundamental rights authorities and institutions in the monitoring committee ⁽¹⁰⁸⁾. This creates synergies and supports the monitoring committee in its decisions related to fundamental rights.

In **Italy**, compliance with the Charter is ensured by a qualified contact point, appointed as a member of the management and control systems of the managing authority by the monitoring committee ⁽¹⁰⁹⁾. It carries out verifications and controls, investigates complaints, liaises with fundamental rights bodies and identifies the corrective and preventive measures to be submitted to the managing authority for a specific procedure consistent with Article 69(7) CPR.

Regarding accessibility of complaint mechanisms, a few Member States opted for a **direct complaint submission mechanism** to the monitoring committee, instead of a mechanism of referral through the managing authority.

Good Practice 8. Accessibility to complaint mechanisms

For instance, in Spain and Slovenia, **an online application form** has been made available to the public, facilitating direct access to the complaint mechanism for breaches of fundamental rights. These forms are accompanied by instructions facilitating both easy access to the complaint mechanism and a user-friendly completion of the form.

Enhancing monitoring committees' **transparency and accountability** is also a key aspect of well-functioning complaint mechanisms. The availability of the monitoring committees' decisions, as well as clear and transparent decisions, give beneficiaries an opportunity to understand how the Charter is interpreted and applies to funding projects, reinforcing the accountability of the monitoring committee.

¹⁰⁸ Information resulting from the analysis of Table 12 of selected Member States' programmes on the fulfilment of the Charter HEC.

¹⁰⁹ See national programmes (JTF, ERDF, AMIF, and BMVI).

Good Practice 9. Transparency and accountability

For instance, in **Slovakia**, information on complaints and decisions on cases of non-compliance with the Charter are compiled in a database by the managing authority for the monitoring committee ⁽¹¹⁰⁾. This facilitates access to information and transparency and provides illustrations and standards on how Charter compliance is assessed by managing authorities.

Key messages

Member States have implemented the Charter HEC by putting in place a variety of arrangements to ensure effective application and implementation of the Charter.

Good practices to implement the first criterion of the Charter HEC include the provision of guidance, expert involvement and training and, more specifically on the implementation of programmes, good practices on the selection of operations and their monitoring.

Good practices to implement the second criterion of the Charter HEC include involvement of fundamental rights' bodies or experts in the monitoring committees, accessibility of the complaints mechanisms and transparency on how complaints are dealt with.

National authorities are invited to assess how existing good practices may be reflected or considered in view of improving the arrangements put in place in their Member States to implement the Charter HEC and, more broadly, to ensure Charter compliance.

¹¹⁰ European Union Agency for Fundamental Rights (2023), [EU funds: Ensuring compliance with fundamental rights](#), Section 3.4.

Chapter 2: Cross-cutting rights

Please keep in mind that all Charter rights are susceptible of being affected at various stages of CPR funds.

This Chapter 2 focuses on those Charter rights that are more likely to be potentially affected by the actions of national authorities in the context of the CPR funds and at any stage of the life cycle of the funds ('cross-cutting rights').

As explained in [Chapter 2: CPR funds](#) of Part I above, the deployment of CPR funds follows a structured process in which managing authorities, monitoring committees and the beneficiaries carry out different roles and responsibilities. Examining the life cycle of the CPR funds, there are a set of fundamental rights that emerge as having a greater potential of being impacted throughout the different phases, notably, programming, implementation and monitoring. This is because both the action carried out by the national authorities in connection with the process of planning and executing the funds' programmes, selecting and monitoring the operations and the programmes, as well as the carrying out of the operations themselves, may be susceptible of interfering with these fundamental rights.

[Table 5](#) provides a more detailed, albeit non-exhaustive, overview of how this set of rights may be affected throughout the funds' life cycle. It lists the relevant action carried out by the relevant actors intervening in the CPR funds in accordance with the Regulation, and corresponding documents, associating specific rights to each action.

The following rights identified as cross-cutting are covered in Chapter 2: Article 7 ('respect for private and family life'); Article 8 ('protection of personal data'); Article 20 ('equality before the law'); Article 21 ('non-discrimination'); Article 22 ('cultural, religious and linguistic diversity'); Article 23 ('equality between women and men'); Article 25 ('the rights of the elderly'); Article 26 ('integration of persons with disabilities'); and Article 47 ('right to an effective remedy and to a fair trial') of the Charter.

The next sections will specifically look into these rights. It provides a brief overview of the rights and presents practical situations where the action of the national authorities or the beneficiaries in the context of CPR funds may affect them.

Table 5. Rights that may be affected throughout the funds' life cycle

	Actor	Relevant action	Relevant documents	Relevant Charter rights/principles
Strategic approach	Member State	Organisation of a partnership	Possible documents concerning arrangements for the partnership in the partnership agreement and other documents concerning the organisation of partnership <i>Articles 8 (Partnership and multi-level governance), 11 (Content of the Partnership Agreement) CPR</i>	Non-discrimination, linguistic diversity, equality between women and men, integration of persons with disabilities
		Preparation and modification of a partnership agreement	Documents related to the partnership agreement and the partnership agreement itself <i>Articles 10 (Preparation and submission of the Partnership Agreement), 11 (Content of the Partnership Agreement), 12 (Approval of the Partnership Agreement), 13 (Amendment of the Partnership Agreement), 18 (Mid-term review and flexibility amount) CPR</i>	Equality before the law, non-discrimination, equality between women and men, integration of persons with disabilities, right to property, environmental protection
Programming	Member State	Preparation and modification of programmes	Documents related to programmes and the programmes themselves <i>Articles 21 (Preparation and submission of programmes), 22 (Content of programmes), 23 (Approval of programmes), 24 (Amendment of programmes) CPR</i>	
Implementation	Member State	Setting up management systems for programmes	Documents establishing a performance framework to allow monitoring, reporting on and evaluating programme performance during the implementation of the programme <i>Article 16 (Performance framework) CPR</i>	Respect for private and family life, protection of personal data, right to an effective remedy and to a fair trial

		<p>Documents containing the rules setting up management and control systems</p> <p><i>Article 69 (Responsibilities of Member States), Annex XVI (Template for the description of the management and control system – Article 69(11)) CPR</i></p> <p>Documents concerning procedures for the verifications of operations, including for ensuring the compliance of operations with the Union policies, and identification of the authorities or bodies carrying out such verifications</p> <p><i>Articles 69 (Responsibilities of Member States) and 72 (Functions of the managing authority) CPR</i></p> <p>Documents concerning procedures concerning the communication to staff of the above procedures, as well as an indication of training organised/provided and any guidance issued</p> <p><i>Article 69 (Responsibilities of Member States), Annex XVI (Template for the description of the management and control system – Article 69(11)) CPR</i></p> <p>Documents concerning procedures used by the intermediate bodies to carry out delegated tasks, and the procedures of the certifying authority to supervise the effectiveness of the tasks delegated to the intermediate bodies</p> <p><i>Article 69 (Responsibilities of Member States) CPR</i></p> <p>Documents concerning procedure on reporting and correction of irregularities (including fraud) and their follow-up and recording of amounts withdrawn and recovered, amounts to be recovered, irrecoverable amounts and amounts related to operations suspended by a legal proceeding or by an administrative appeal having a suspensory effect</p> <p><i>Article 69 (Responsibilities of Member States), Annex XII (Detailed rules and template for the reporting of irregularities - Article 69(2) and (12)), 98 (Content and submission of accounts), 103 (Financial corrections by Member States) CPR</i></p>	
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		<p>Documents concerning procedures to comply with the obligation to notify irregularities to the Commission</p> <p><i>Article 69 (Responsibilities of Member States), Annex XII (Detailed rules and template for the reporting of irregularities - Article 69(2) and (12)) CPR</i></p> <p>Documents concerning the system for ensuring prompt recovery of public assistance, including Union assistance</p> <p><i>Article 69 (Responsibilities of Member States) CPR</i></p> <p>Documents concerning procedures for ensuring an adequate audit trail by maintaining accounting records in computerised form, including amounts recovered, amounts to be recovered, amounts withdrawn from a payment application, amounts irrecoverable and amounts related to operations suspended by a legal proceeding or by an administrative appeal having a suspensory effect, for each operation, including the recoveries resulting from the application of Article 65 of the CPR on the durability of operations</p> <p><i>Article 69 (Responsibilities of Member States) and Annex XVI (Template for the description of the management and control system – Article 69(11)) CPR</i></p> <p>Documents concerning procedures for the supervision of the functions delegated by the managing authority</p> <p><i>Article 71 (Programme authorities) CPR</i></p> <p>Documents concerning procedures for drawing up and submitting payment applications</p> <p><i>Article 91 (Payment applications), 97 (Suspension of payments), and Annex XXIII (Template for payment applications – Article 91(3)) CPR</i></p> <p>Documents concerning the procedure by which payment applications are drawn up and submitted to the Commission</p>	
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II Practical application

		<i>Articles 92 (Specific elements for financial instruments in payment applications) and 93 (Common rules for payments) CPR</i>	
Member State or managing authority	Setting up evaluation procedures and plans	<p>Documents concerning the procedures to produce and collect the data necessary for evaluations</p> <p><i>Article 44 (Evaluations by the Member State) CPR</i></p> <p>Evaluation plan</p> <p><i>Article 44 (Evaluations by the Member State) CPR</i></p>	<p>Respect for private and family life, protection of personal data, non-discrimination</p> <p>+ Rights potentially affected by the operations</p>
Managing authority	Programme management	<p>Documents concerning procedures for a system to collect, record and store in computerised form data on each operation necessary for monitoring, evaluation, financial management, verification and audit, including, where applicable, data on individual participants and a breakdown of data on indicators by gender when required</p> <p><i>Article 72 (Functions of the managing authority), Annex XVII (Data to be recorded and stored electronically on each operation – point (e) of Article 72(1)) CPR</i></p> <p>Documents concerning arrangements in place to access any information on operations, necessary for the purpose of drawing up and submitting payment applications, including the results of management verifications and all relevant audits</p> <p><i>Article 72 (Functions of the managing authority) CPR</i></p>	<p>Respect for private and family life, protection of personal data, equality before the law, non-discrimination, equality between women and men, integration of persons with disabilities, right to property</p>
		<p>Documents concerning the procedures by which applications for reimbursement are received from beneficiaries, verified and validated, and by which payments to beneficiaries are authorised, executed and accounted for</p> <p><i>Articles 72 (Functions of the managing authority) and 75 (Support of the work of the monitoring committee by the managing authority) CPR</i></p>	

		<p>Documents concerning procedures to ensure the provision to the beneficiary of a document setting out the conditions for support for each operation, including procedures to ensure that beneficiaries maintain either a separate accounting system or an adequate accounting code for all transactions relating to an operation</p> <p><i>Article 73 (Selection of operations by the managing authority) CPR</i></p> <p>Documents concerning management verifications</p> <p><i>Article 74 (Programme management by the managing authority) CPR</i></p> <p>Documents concerning procedures for drawing up the management declaration</p> <p><i>Article 74 (Programme management by the managing authority) CPR</i></p> <p>Documents concerning effective and proportionate anti-fraud measures and procedures</p> <p><i>Article 74 (Programme management by the managing authority), Annex XI (Key requirements of management and control systems and their classification - Article 69(1)) CPR</i></p>	
Selection of operations		<p>Documents concerning selection criteria</p> <p><i>Article 73 (Selection of operations by the managing authority) CPR</i></p> <p>Documents setting out the conditions for support for each operation including the specific requirements concerning the products or services to be delivered under the operation, the financing plan, and the time-limit for execution</p> <p><i>Article 73 (Selection of operations by the managing authority) CPR</i></p>	<p>Equality before the law, non-discrimination, linguistic diversity, equality between women and men, integration of persons with disabilities, environmental protection, right to property, safe working conditions</p>

		<p>Documents concerning procedures for appraising, selecting and approving operations and for ensuring their compliance, for the entire implementation period, with applicable rules, including instructions and guidance ensuring the contribution of operations to achieving the specific objectives and results of the relevant priorities in accordance with the provisions of Article 72 and procedures to ensure that operations are not selected where they have been physically completed or fully implemented before the application for funding by the beneficiary</p> <p><i>Articles 73 (Selection of operations by the managing authority), 74 (Programme management by the managing authority) CPR</i></p>	<p>+ Rights potentially affected by the operation</p>
		<p>Notifications of operations of strategic importance</p> <p><i>Article 73 (Selection of operations by the managing authority) CPR</i></p>	<p>Respect for private and family life, protection of personal data, equality before the law, non-discrimination, equality between women and men, integration of persons with disabilities</p>
	<p>Supporting the monitoring committee</p>	<p>Documents concerning procedures to support the work of the monitoring committee</p> <p><i>Article 75 (Support of the work of the monitoring committee by the managing authority) CPR</i></p>	<p>Respect for private and family life, protection of personal data, equality before the law, non-discrimination</p>
	<p>Maintaining and providing access to the list of operations accessible through the single website or website portal</p>	<p>Information on a website or website portal</p> <p><i>Article 49 (Responsibilities of the managing authority), Annex IX (Communication and visibility – Articles 47, 49 and 50) CPR</i></p>	<p>Respect for private and family life, protection of personal data, equality before the law, integration of persons with disabilities</p>

II Practical application

Monitoring	Monitoring committee	Approval of the methodology and criteria for the selection of operations	<p>Documents concerning the methodology and criteria for the selection of operations</p> <p><i>Article 40 (Functions of the monitoring committee) CPR</i></p>	<p>Equality before the law, non-discrimination, equality between women and men, integration of persons with disabilities, environmental protection, right to property, safe working conditions</p> <p>+ Rights potentially affected by the operation</p>
	Member State	Setting up control systems for programmes	<p>Documents concerning procedures to draw up and submit annual and final implementation reports to the Commission, including the procedures for collecting and reporting reliable data on performance indicators</p> <p><i>Articles 41 (Annual performance review), 42 (Transmission of data) and 43 (Final performance report) CPR</i></p>	<p>Respect for private and family life, protection of personal data</p> <p>+ Rights potentially affected by the operations</p>
			<p>Documents concerning arrangements for deducting amounts recovered or amounts to be withdrawn from expenditure to be declared</p> <p><i>Articles 61 (Differentiated treatment of investors) and 98 (Content and submission of accounts) CPR</i></p>	<p>Respect for private and family life, protection of personal data</p>
			<p>National eligibility rules for operational programmes and rural development programmes</p> <p><i>Article 63 (Eligibility) CPR</i></p>	
			<p>Documents concerning the information systems including a flowchart (central or common network system or decentralised system with links between the systems)</p>	

		<p><i>Article 69 (Responsibilities of Member States), Annex XVI (Template for the description of the management and control system – Article 69(11)) CPR</i></p>
		<p>Documents concerning procedures to verify that IT systems security is ensured</p> <p><i>Article 69 (Responsibilities of Member States), Annex XV (SFC2021: electronic data exchange system between the Member States and the Commission – Article 69(9)) CPR</i></p>
		<p>Documents concerning procedures for drawing up the annual summary of the controls carried out, including an analysis of the nature and extent of errors and weaknesses identified in systems, as well as corrective action taken or planned</p> <p><i>Article 77 (Functions of the audit authority) CPR</i></p>
		<p>Documents concerning arrangements for certifying the completeness, accuracy, and veracity of the accounts and that the expenditure entered in the accounts complies with applicable law taking into account the results of all verifications and audits</p> <p><i>Articles 77 (Functions of the audit authority) and 97 (Suspension of payments) CPR</i></p>
		<p>Documents concerning the accounting system used as a basis for certification of expenditure accounts to the Commission</p> <p><i>Article 98 (Content and submission of accounts) CPR</i></p>
		<p>Documents concerning procedures in place for drawing up accounts</p> <p><i>Article 98 (Content and submission of accounts) CPR</i></p>

II Practical application

		Formulating the rules of membership of the monitoring committee	<i>Articles 39 (Composition of the monitoring committee) CPR</i>	Respect for private and family life, non-discrimination, equality between women and men, linguistic diversity
	Monitoring committee	Formulating and adopting its rules of procedures	<i>Article 38 (Monitoring committee) CPR</i>	
		Examination of the communication strategy for the programme and any amendment of the strategy, the criteria for selection of operations	<i>Article 40 (Functions of the monitoring committee) CPR</i>	Protection of personal data, non-discrimination, linguistic diversity, equality between women and men, integration of persons with disabilities
	Audit authority	Carry out audits	Documents on the audit strategy, the annual audit opinion and the annual control report <i>Articles 77 (Functions of the audit authority), 78 (Audit strategy), Annex XIX (Template for the annual audit opinion – point (a) of Article 77(3)) and XX (Template for the annual control report – point (b) of Article 77(3)) CPR</i>	Respect for private and family life, protection of personal data
Evaluation	Member State or managing authority	Carry out programme evaluations	<i>Article 44 (Evaluations by the Member State) CPR</i>	Respect for private and family life, protection of personal data, non-discrimination + Rights potentially affected by the operations

Respect for private and family life

Article 7 Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Essential information:

- Article 7 of the Charter is included under Title II Freedoms (see [Figure 1](#))
- It corresponds to **Article 8 of the ECHR** (see [Figure 2](#))
- It is **not** an absolute right (see [Limitations on the exercise of the rights and freedoms recognised by the Charter](#))

Overview of the right

Article 7 of the Charter recognises the right to respect for private and family life. It protects four interests, namely **private life, family life, the privacy of one's home and of one's communications** in whatever form (electronic or non-electronic). The conditions for limiting the right to respect for private and family life are set out in Article 8(2) of the ECHR and have been developed and interpreted by the case-law of the ECtHR and the CJEU.

This right aims to protect the autonomy and human dignity of individuals, by guaranteeing them a secure personal sphere, both online and offline, in which they are free to develop their personalities, to think and to form their opinions without compromising their privacy. The European courts, in particular the ECtHR, have defined the scope of Article 8 broadly. The concept of '**private life**' has been broadly interpreted in the case-law to include respect for one's physical, psychological or moral identity, identity and autonomy, image and reputation. As such, it includes intimate situations, sensitive or confidential information, information that could affect the public's perception of an individual, and even aspects of one's family and professional life and public behaviour. Similarly, the concept of '**home**' is interpreted broadly, for example, it is not limited to a physical space such as one's own home, but may extend to temporary or unconventional spaces, as well as to an individual's professional or business premises.

Practical considerations in connection with CPR funds

In the context of CPR funds, the right to respect for private and family life may be affected at the implementation phase, particularly by rules and documents setting up the management and control systems of programmes or rules regulating the membership of the managing authority or monitoring committee. For example, national rules on the conflict of interest for members of national authorities and beneficiaries applying for funds may

restrict access to national authorities or access to the exercise of certain functions on account of one's private life and family ties. More broadly, the right to privacy may also be affected **during the implementation and monitoring phases** by any action involving information on private and family life. Actions such as information requested by the managing authorities from the beneficiaries or by these from third parties involved in the implementation of an operation or in the context of management verifications, as well as communication between these actors or other types of interaction, may infringe the right to privacy.

Table 5 above lists the different action set out in the CPR which may be more prone to affecting this right. Box 1 below sets out examples of such actions and how it may or not affect the right.

Box 1. Examples of actions affecting the right to respect for private and family life

Conflict of interest requirements for members of the monitoring committee

Based on the general rule on the prevention of conflicts of interest in Article 61 of the EU Financial Regulation ⁽¹¹¹⁾, Article 38(2) of the CPR requires national monitoring committees to adopt rules of procedure provisions regarding the prevention of any conflict of interest. The national rules of procedure governing the establishment and functioning of the monitoring committee state that "*each member of the monitoring committee shall take every necessary precaution to avoid any risk of a conflict of interest relating to economic interests, political or national affinities, family or emotional ties or any other interest, which might influence the impartial and objective performance of his or her functions. To prevent conflict of interests, potential members of the monitoring committee shall be obliged to declare their marital status and indicate whether their spouse has benefitted from EU funds, in which case membership to the monitoring committee shall be refused*". Such a requirement would de facto prevent certain persons from applying for the position of a member of the monitoring committee simply because they are married to someone who has benefited in the past from EU funds, without the need to prove that such a family tie would affect their ability to act with independence, impartiality and objectivity in the current cycle. While the conflict of interest rule requires Member States to put in place a system to detect and prevent such conflicts, an unrebuttable presumption and exclusion as described

¹¹¹ Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast), OJ L, 2024/2509, 26.9.2024, ELI: <http://data.europa.eu/eli/reg/2024/2509/oj>.

above, points to a disproportionate limitation of Article 7 of the Charter as it undermines the right to respect for private and family life while other measures could be put in place in order to prevent irregularities in the disbursement of EU funds.

Documents concerning procedures for ensuring effective and proportionate conflict of interests measures

In the context of a national programme in a Member State, the managing authority has in place a series of measures to prevent fraud and conflict of interests. Such measures include the obligation for staff of the managing authority to request an exemption or declare themselves impeded in situations where there may be a conflict of interest. To that effect, the concerned staff member should complete and sign a declaration of excusal or impediment on the grounds of a conflict of interest. Against this background, a discussion arises within the managing authority on whether the declaration should be accompanied by a document explaining why the staff member is considered to be in a situation of conflict of interest, namely, disclosing the type of relation they have with the applicant/beneficiary. The immediate result of the presentation of such a declaration will be that the concerned staff member will not be involved in any intervention related to the specific operation in relation to which the conflict of interest arises. Considering that the declaration provides proof of the existence of a conflict of interest, the inclusion of information justifying the conflict of interest could be considered disproportionate in light of Article 7 of the Charter.

Management verification on eligible expenses

In the context of a national programme in a Member State, the managing authority has issued guidance clarifying that the following are considered eligible expenses: trainers' fees; costs of other staff assigned to the operation; and remuneration of internal staff (including both hours worked during and outside normal working hours). Following a payment application by the beneficiary, the managing authority conducted a management verification and requested that the beneficiary submit, in view of justifying expenses, payment slips of all employees involved in the project, proof of bank transfer of the remuneration as well as proof that the employee is the holder or beneficiary of the bank account to which payment was made. In view of the objective of the management verification and considering the eligible expenses under this national programme, access by the managing authority to the referred documents seems a justified and proportionate interference with Article 7 of the Charter. Such a limitation could be considered to meet an objective of general interest (e.g. sound financial management of EU funds and transparency of

budgetary expenditure) and could be considered necessary since the managing authority, which does not directly witness the implementation of a national programme, has no other means of verifying the accuracy of the personnel expenses declared by the beneficiary than by requesting the specified documents. Finally, such a requirement may also imply a limitation of the right to the protection of personal data, as enshrined in Article 8 of the Charter, which is further explained below.

Actionable advice

Managing authorities should ensure that measures related to the implementation and monitoring of CPR funds, in particular in the design of management and control systems, conflict of interest rules and monitoring procedures, respect the right to private and family life under Article 7 of the Charter. National authorities are invited to consider how existing measures can be adapted to avoid undue limitations on Article 7 of the Charter, ensuring that limitations – such as those relating to compliance with conflict of interest rules or the collection of data for management verifications – are necessary and proportionate. National authorities are reminded that the right to private and family life may be affected at different stages of the life cycle of CPR funds, requiring safeguards to uphold this fundamental right in line with relevant case-law. Annex II – Checklist provides a practical tool for integrating these considerations into national procedures.



Useful sources and further reading

[Annex I – Overview of Charter resources](#)

Protection of personal data

Article 8 Protection of personal data

1. *Everyone has the right to the protection of personal data concerning him or her.*
2. *Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.*
3. *Compliance with these rules shall be subject to control by an independent authority*

Essential information:

- Article 8 of the Charter is included under Title II – Freedoms (see [Figure 1](#))
- It is closely related to **Article 8 of the ECHR**, but provides more extensive protection, as it covers all types of personal data and data processing, regardless of the relationship and impact on privacy (see [Figure 2](#))
- It is **not** an absolute right (see [Limitations on the exercise of the rights and freedoms recognised by the Charter](#))

Overview of the right

The right to data protection, recognised in **Article 8 of the Charter** and also enshrined in Article 16 of the TFEU, is closely linked to the right to privacy enshrined in **Article 8 of the ECHR**. It requires that the processing of personal data must be lawful, fair and for specific purposes, and that compliance with these requirements is subject to control by an independent authority.

This right is further specified in the **General Data Protection Regulation (GDPR)** ⁽¹¹²⁾ and other EU data protection legislation (e.g. the Law Enforcement Directive (EU) 2016/680⁽¹¹³⁾). The GDPR provides a general legal framework for the protection of personal data that applies to private and public actors processing personal data at national level, including in the context of the implementation of programmes under CPR funds. Although the GDPR is directly applicable in Member States, it leaves national discretion to further specify a limited number of provisions in order to adapt the application of the GDPR. In addition to adopting national laws implementing the GDPR, Member States may also have sectoral and dataset-specific laws governing the processing of personal data in relation to specific sectors, databases, etc. Such laws could already exist pre-GDPR or should have been amended thereafter if they are not in accordance with the GDPR.

The right to the protection of personal data, recognised in Article 8 of the Charter, concerns **any information relating to an identified or identifiable natural person** (Article 4(1) of the GDPR). The scope of protection does not cover data of legal persons; however, in some cases, natural persons could be impacted if the name of the legal person relates to an individual natural person and regardless of whether the data relates to

¹¹² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), ELI: <http://data.europa.eu/eli/reg/2016/679/2016-05-04>.

¹¹³ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, ELI: <http://data.europa.eu/eli/dir/2016/680/oj>.

activities of a personal or professional nature. **Special categories of personal data** (the so-called sensitive personal data) merit specific protection as they are by their nature particularly sensitive, or their processing could create significant risks to fundamental rights and freedoms. Sensitive data are data relating to health, sexual orientation, racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership or genetic or biometric data, which allow or confirm the unique identification of an individual (Article 9(1) of the GDPR).

The GDPR provides a general legal framework for the **processing of personal data**, which is a broad term covering any operation or set of operations (such as collection, recording, organisation, structuring, access, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, linkage, dissemination or otherwise making available, alignment or combination, restriction, and erasure or even destruction) performed by the data controller ⁽¹¹⁴⁾ or the data processor ⁽¹¹⁵⁾ on personal data or sets of personal data, whether or not by automated means (Article 4(2) of the GDPR).

In line with the principle of lawfulness, fairness and transparency (Article 5(1)(a) of the GDPR), the GDPR requires that any kind of processing of personal data must **have a legal basis** under Article 6 of the GDPR. In the case of processing of sensitive data also one of the conditions for lifting the prohibition to process those data under Article 9(2) of the GDPR must be fulfilled. In addition, the **purpose limitation principle** (Article 5(1)(b) of the GDPR) requires that data are collected for specified, explicit and legitimate purposes and are not further processed in a way that is incompatible with the purposes for which they were collected, while the **principle of data minimisation** requires that data collected are adequate, relevant and limited to what is necessary in relation to the purpose (Article 5(1)(c) of the GDPR). Furthermore, the **principle of storage limitation** (Article 5(1)(e) of the GDPR) obliges data controllers to ensure that personal data should not be kept in a form that allows the identification of data subjects for longer than is necessary for the purposes for which those data are processed, while the **principle of accuracy** requires that data should be correct and kept up to date and that all reasonable steps should be taken to promptly delete or rectify inaccurate data (Article 5(1)(d) GDPR). Finally, personal data should be processed in a manner that ensures **appropriate security**, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical and organisational measures (Article 5(1)(f) of the GDPR). The data controller is responsible for and should be able to demonstrate that its

¹¹⁴ A (data) controller is a natural or a legal person, public authority, agency or other body who alone or jointly with others determines the purposes and means of the processing of personal data (Article 4(7) GDPR). In the context of the CPR funds, controllers could be managing or other national authorities, beneficiaries or even monitoring committees.

¹¹⁵ A (data) processor is a natural or a legal person, public authority, agency or other body which processes personal data on behalf of the controller (Article 4(8) GDPR).

personal data processing is in compliance with these principles (Article 5(2) of the GDPR).

Practical considerations in connection with CPR funds

The CPR and other fund-specific regulations include particular provisions on the protection of personal data binding the national authorities in accordance with the right to the protection of personal data in Article 8 of the Charter and the rules of the GDPR.



The right to protection of personal data in the CPR and related legislation

The requirement to ensure compliance with all Charter rights in the context of CPR funds results mainly from two provisions in the CPR: first, Article 9 which establishes the respect for fundamental rights and compliance with the Charter in the implementation of the CPR funds as a horizontal principle; second, the Charter HEC set out in Annex III (ex vi Article 15(1)).

In addition, with regard to the protection of personal data, Article 4 of the CPR provides that Member States may process personal data where necessary to fulfil their obligations under the CPR but must do so **in accordance with the GDPR**. Fund-specific Regulations often contain similar provisions. For example, Article 17(6) of the ESF+ Regulation states that Member States may authorise managing authorities and other competent ESF+ bodies to obtain data from registers, in accordance with Article 6(1)(c) or Article 6(1)(e) of the GDPR, i.e. by laying down in national law a legal obligation or providing a task in the public interest that necessitates such processing of personal data.

Under Article 49(3) of the CPR, managing authorities are required to ensure publication on a dedicated website of the projects/operations selected for support from the CPR funds, including the name of the beneficiary in the case of both legal and natural persons. However, any publication should take into account the requirements for the protection of personal data in accordance with the GDPR (Recital 40 of the CPR). Similarly, Article 24 of the ISF Regulation provides that the visibility of Union funding shall be ensured, except where the release of information is restricted for reasons of personal data protection. This provision is echoed in Article 69(5) of the CPR on the responsibilities of Member States, which in addition states that non-publication could be justified only if EU law or national law precludes such publication, in particular for reasons of protection of the personal data in accordance with the GDPR (Article 69(5) of the CPR). In the same vein, Article 24 of the ISF Regulation and Articles 24 and 28(3) of the BMVI Regulation provide for exceptions to the obligations of visibility of Union funding and publication of information in the mid-term and ex-post evaluations for reasons of personal data protection.

Other relevant provisions governing the processing of personal data in the context of the CPR funds can also be found in the national implementing legislation or partnership agreements of the CPR funds.

In the context of the CPR funds, the right to the protection of personal data may be affected in a myriad of ways, as personal data are collected, stored, transmitted or otherwise used **throughout the entire life cycle of the CPR funds**. Already at the **strategic approach and programming phase**, when drawing up partnership agreements, preparing programmes or setting up the management, monitoring and control systems, Member States should ensure that any envisaged transmission of data between the relevant EU and national authorities and other actors is carried out in compliance with the rules and principles governing the processing of personal data, including the legal basis for such processing and appropriate technical and organisational measures to ensure its security. As the implementation of the projects and operations funded by CPR funds typically involves the processing of personal data, including the collection, access, linkage, reuse, storage and other types of processing of data relating to beneficiaries, project participants, and other natural persons, the right to data protection needs to be ensured during the **implementation phase**. The obligation to ensure the protection of personal data during the implementation phase does not only apply to **beneficiaries**, who primarily collect data to determine participants' eligibility, sharing them with the managing authorities either directly, via intermediate bodies, or through dedicated regional or central databases, but also to all **other individuals or entities processing individuals' personal data, including managing authorities and other national bodies** (e.g. when drawing up and implementing procedures and criteria for the selection of operation to be funded by EU funds, when defining the information required from a potential beneficiary to apply for a grant, when analysing such data to determine whether an operation is eligible for funding, or when checking the conditions for funding set out in the grant agreement). Finally, the protection of personal data must be ensured during the **monitoring and evaluation phase**, where the collection and processing of personal data of project participants, but also non-participants (e.g. for the purpose of counterfactual analysis for the evaluation of operations), to provide statistics, must comply with Article 8 of the Charter and all legal requirements under the GDPR.

Table 5 above lists the different actions provided in the CPR that are likely to affect this right as they involve processing personal data. Box 2 below sets out examples of such actions while Case Study 1 – Article 8 of the Charter focuses on the issues that could occur during the implementation phase and when conducting monitoring and evaluating operations.

Box 2. Examples of actions affecting data protection

Protection of personal data in the context of publishing a list of operations selected for support (names of beneficiaries)

The publication of data on beneficiaries, both legal and natural persons, on programme websites is a legal obligation under EU law (Article 49(3) of the CPR). In the case of natural persons, such publication must be carried out in compliance with the general data protection principles set out in Article 5(1) of the GDPR (116). For instance, as data controllers, managing authorities must ensure that the names of beneficiaries are correctly included in the list and that no personal data other than those specified in EU law are made public unless another valid legal basis for the processing, such as an informed and freely given consent, can be relied upon (117). The publication of additional data would also require the managing authorities to demonstrate that the publication does not go beyond what is necessary and is proportionate to achieve the legitimate aim pursued.

Eligibility requirements for applicants and beneficiaries

In a Member State, the relevant CPR funds implementing legislation provides for eligibility requirements for applicants and beneficiaries, barring applicants who have been convicted in criminal proceedings of offences involving the financial resources of European funds for a period of three years from the date on which the conviction becomes final, unless the sentence imposed foresees a longer period. National rules also bar applicants who hold or have held in the last three years, by themselves or by their spouse, whether or not separated, or by their descendants down to the next generation, capital in a percentage greater than 50% in entities convicted in criminal proceedings for the same offences. In this context, in order to apply for funding, applicants are required to present their criminal record (and that of the legal entity, if applicable), as well as that of their spouses and direct descendants.

In light of the ineligibility requirements, the processing of personal data related to criminal convictions requires further assessment. In line with Article 10 of the GDPR, the processing of personal data relating to criminal convictions and offences requires an explicit legal authorisation based on a law providing for strict safeguards. When implementing the obligation concerning the eligibility requirement, the principle of data minimisation must be taken into account. Requiring the applicant to provide a complete extract from the criminal record would not fulfil the

¹¹⁶ CJEU, C-92/09 and C-93/09, Volker and Markus Schecke GbR and Hartmut Eifert, 9 November 2010.

¹¹⁷ CJEU, C-73/16, Peter Puškár, 27 September 2017.

requirement of being 'limited to what is necessary' for the purpose of the processing, as compliance with the obligation concerning the eligibility requirements could already be satisfied by a simple extract from the criminal record showing proof of non-conviction.

Case Study 1 – Article 8 of the Charter addresses a similar situation of excessive collection of personal data, but relates to the processing of participants' personal data in the implementation phase.

In connection with the examples above, the following good practices and guidance are worth noting.

Good Practice 10. Data protection

Technical measures

The managing authority, beneficiaries and other actors processing the data should ensure the confidentiality, integrity and availability of the data (Article 24(1) of the GDPR). To mitigate data protection risks, technical and organisational measures should be taken to ensure the integrity and confidentiality of personal data during processing, transmission and further storage. For example, pseudonymisation is a safeguard that can be applied by data controllers to meet data protection requirements and demonstrate compliance with data protection principles ⁽¹¹⁸⁾. It ensures that personal data can no longer be attributed to a specific data subject without additional information that is kept separately (Article 4(5) of the GDPR). To avoid processing superfluous data from project participants, the use of pre-defined forms ensuring that the reporting is limited to specific relevant data is a potential solution.

Appointment of a data protection officer and other organisational measures

Under Article 37(1) of the GDPR, public authorities are required to appoint a data protection officer (DPO), which in some cases may be a shared function between several public authorities or bodies. While the managing authorities must always appoint an independent DPO, it is a good practice for the DPO leading the organisation's data protection issues to be an in-house expert with knowledge of the organisation's tasks who can advise on the applicable rules and appropriate

¹¹⁸ For more information on the use of pseudonymisation, please see the EDPB [Guidelines 01/2025 on Pseudonymisation](#), adopted on 16 January 2025 – version for public consultation.

safeguards, assist in responding to data subjects' requests regarding the exercise of their rights, and train other staff on GDPR compliance (119). The managing authority should communicate with data subjects, including on its website, the contact details of its DPO and the procedure for exercising data subjects' rights. The authority should also inform data subjects of their right to complain to the national data protection authority (DPA) and the courts about alleged violations of their rights. An example of good practice is the establishment of a reporting line for the DPO to report to the monitoring committee on any data protection risks in the implementation of the CPR funds, including possible cases of non-compliance and corrective and preventive measures taken (120).

Information on the protection of personal data

The GDPR's transparency requirements require individuals to be informed about the processing of their personal data (current, but also planned further processing) and about their rights in relation to that processing. This should be done both when personal data is collected from data subjects (Article 13 of the GDPR) and when personal data have not been obtained from the data subjects themselves (Article 14 of the GDPR). As the obligation to protect personal data extends to all actors processing data for the purposes of the CPR funds, and as the managing authority does not have direct contact with project participants, it is in its interest to ensure that all requested information has already been provided to individuals by the beneficiaries. A good practice suggested by the French good practice guide (121) is for managing authorities to instruct beneficiaries, when concluding a grant agreement, to respect the protection of personal data and to inform project participants, among other things, about the processing of their personal data and the purposes of such processing (i.e. monitoring, reporting, communication, publication, evaluation, financial management, verifications and audits) by the beneficiaries themselves, but also by the managing authorities, as well as about their right to rectification and erasure of their personal data.

Use of informed estimates for reporting

¹¹⁹ For examples of successful consultation with internal DPOs, see European Commission: Directorate-General for Employment, Social Affairs and Inclusion, Hassan, E., Lundberg, P., Omersa, E., Robson, C. et al., Smart ways to monitor and evaluate the ESF – How to gain access to administrative data while complying with data protection rules – Final report, Publications Office of the European Union, 2023.

¹²⁰ Guide de bonnes pratiques sur la charte des droits fondamentaux dans les programmes européens, 11 May 2023, <https://www.europe-en-france.gouv.fr/fr/ressources/guide-bonnes-pratiques-charte-droits-fondamentaux-programmes-europeens>.

¹²¹ Guide de bonnes pratiques sur la charte des droits fondamentaux dans les programmes européens, 11 May 2023, <https://www.europe-en-france.gouv.fr/fr/ressources/guide-bonnes-pratiques-charte-droits-fondamentaux-programmes-europeens>.

A good practice in projects funded under the CPR is the use of informed estimates for indicator reporting, particularly for data that may include special categories of personal data (e.g. health data concerning disability or data on ethnicity). This approach can reduce or eliminate the need to process those so-called sensitive personal data, provided that methods such as proxies or educated guesses are used instead of sampling, which may still involve personal data collection from participants. The flexibility to choose methods allows managing authorities and beneficiaries to simplify reporting processes and minimising risks to data subjects (¹²²).

Concluding data sharing agreements to support monitoring and evaluation

The Commission's recent report on access to administrative data for the monitoring and evaluation of ESF+ funded projects (¹²³) shows that the reuse of personal data from existing administrative datasets is not possible in all Member States for legal or practical reasons. However, when legally possible, access to administrative data could be facilitated by data sharing agreements between the managing authority, the administrative data holders and the stakeholders who need to access the data (e.g. evaluators).

Seeking advice from the national data protection authority

The GDPR requires Member States to provide for one or more independent DPAs, which, in addition to monitoring and enforcing the application of the GDPR, are also tasked with advising national institutions on legislative and administrative measures and promoting awareness of data controllers and processors' obligations, in accordance with national law. Therefore, if a data protection issue arises in the context of the implementation of CPR funds, it is good practice for managing authorities, beneficiaries and other data controllers and processors to seek advice from the national DPA, which can provide guidance on the application of the GDPR and national data protection legislation.

¹²² European Commission: Directorate-General for Employment, Social Affairs and Inclusion (2023) (Hassan, E., Lundberg, P., Omersa, E., Robson, C. et al.), Smart ways to monitor and evaluate the ESF – How to gain access to administrative data while complying with data protection rules – Final report, Publications Office of the European Union.

¹²³ European Commission: Directorate-General for Employment, Social Affairs and Inclusion (2023) (Hassan, E., Lundberg, P., Omersa, E., Robson, C. et al.), Smart ways to monitor and evaluate the ESF – How to gain access to administrative data while complying with data protection rules – Final report, Publications Office of the European Union.

Actionable advice

Ensuring compliance with the right to the protection of personal data, as set out in Article 8 of the Charter, is essential throughout the entire life cycle of the CPR funds. All data controllers, including managing authorities, beneficiaries, and other national authorities and actors involved in the implementation, monitoring and evaluation of EU-funded programmes and individual operations, must comply with the general data protection principles and other requirements of the GDPR and their national data protection laws. Managing authorities should review and incorporate the good practices outlined in this manual while also consulting relevant guidance from EU bodies (e.g. the European Data Protection Board and the European Data Protection Supervisor), as well as their national DPA, to strengthen safeguards and compliance. [Annex II – Checklist](#) provides a useful tool for integrating these considerations into national procedures and practices, while [Case Study 1 – Article 8 of the Charter](#) offers an example of such a step-by-step approach.

Useful sources and further reading

[Annex I – Overview of Charter resources](#)

Equality and non-discrimination

Article 20 Equality before the law

Everyone is equal before the law

Article 21 Non-discrimination

1. *Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*
2. *Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited*

Essential information:

- Articles 20 and 21 of the Charter are included under Title III – Equality (see [Figure 1](#))
- They correspond to **Article 14 and Protocol 12 of the ECHR** (see [Figure 2](#))
- They constitute principles (see [Overview of the Charter](#)) and are, thus, **not** absolute rights (see [Limitations on the exercise of the rights and freedoms recognised by the Charter](#))

Overview of the rights

The principles of **equality and non-discrimination** are recognised in **Articles 20 and 21 of the Charter**, respectively. The principle of non-discrimination in Article 21(1) of the Charter constitutes a particular expression of the principle of equality which is a general principle of EU law enshrined in Article 20 of the Charter (124). Under these principles, comparable situations must not be treated differently, and different situations must not be treated in the same way unless such treatment is objectively justified (125). Notwithstanding, in view of ensuring full equality in practice, the principle of equal treatment may also justify **positive action**, that is, the adoption or maintenance of specific measures to prevent or compensate for disadvantages linked to a protected ground. Constituting an exception to the prohibition of non-discrimination, these measures must be proportionate to the objectives sought (126), notably, by being limited in time (127).

The list of discriminatory grounds (or 'protected grounds') provided in Article 21(1) of the Charter is non-exhaustive, which means that discrimination based on other discrimination grounds not spelt out in the Charter is also prohibited.

Discrimination may take several **forms**:

- 'Direct discrimination' occurs when "a person is treated less favourably on the basis of 'protected grounds'" (128). Under EU law, 'harassment' is a particular manifestation of direct discrimination consisting of an "unwanted conduct related to a protected ground, with the purpose or effect of violating the dignity of a person and/or if creating an intimidating, hostile, degrading, humiliating or offensive environment" (129).
- 'Indirect discrimination' "occurs when an apparently neutral rule disadvantages a person or a group sharing the same characteristics" (130).
- 'Multiple discrimination' is "discrimination that takes place on the basis of several grounds operating separately" (131).

¹²⁴ CJEU, C-356/12, *Wolfgang Glatzel v Freistaat Bayern*, para. 43.

¹²⁵ CJEU, C-550/07, *P - Akzo Nobel Chemicals and Akcros Chemicals v Commission*, 14 September 2010, paras. 54 and 55.

¹²⁶ CJEU, C-409/95, *Hellmut Marschall v. Land Nordrhein-Westfalen*, 11 November 1997; CJEU, C-407/98, *Katarina Abrahamsson and Leif Anderson v. Elisabet Fogelqvist*, 6 July 2000; CJEU, C-173/13, *Maurice Leone and Blandine Leone v. Garde des Sceaux, ministre de la Justice and Caisse nationale de retraite des agents des collectivités locales*, 17 July 2014.

¹²⁷ European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European non-discrimination law*, 2018 Edition, p. 71.

¹²⁸ *Idem*, p. 43.

¹²⁹ Racial Equality Directive, Art. 2(3); Employment Equality Directive, Art. 2(3).

¹³⁰ European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European non-discrimination law*, 2018 Edition, p. 53.

¹³¹ *Idem*, p. 59.

- 'Intersectional discrimination' is a "situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable and produce specific types of discrimination" (¹³²).



Racial Equality Directive and Employment Equality Directive

Relevant EU law in connection with these principles includes, notably, the Racial Equality Directive (¹³³) which prohibits discrimination based on race or ethnicity in the context of employment, provision of goods and services, welfare system, education and social security, as well as the Employment Equality Directive (¹³⁴), which lays down a framework to combat discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation.

The impact of a particular measure on the rights enshrined in Articles 20 and 21(1) of the Charter often affects also other Charter rights (see Box 3 with examples below).

The principles of equality and non-discrimination underpin other Articles of the Charter covering specific manifestations of these principles.

Article 22 of the Charter recognises **cultural, religious and linguistic diversity**.

Article 22 Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Essential information:

- Article 22 of the Charter is included under Title III – Equality (see Figure 1)
- It has **no ECHR** equivalent (see Figure 2)
- It is **not** an absolute right (see Limitations on the exercise of the rights and freedoms recognised by the Charter)

Respect for cultural and linguistic diversity is also laid down in Article 3(3) of the Treaty on European Union.

Regarding linguistic diversity, the CJEU noted that Member States may take measures to protect and promote their national languages, but such

¹³² Ibid.

¹³³ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive), <https://eur-lex.europa.eu/eli/dir/2000/43/oj>.

¹³⁴ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, <https://eur-lex.europa.eu/eli/dir/2000/78/oj/eng>.

measures must be proportionate to achieve these aims. For example, the CJEU noted that the TFEU precludes "any national measure which, even though applicable without discrimination on grounds of nationality, is capable of hindering or rendering less attractive the exercise by Union nationals of the fundamental freedoms guaranteed by the Treaty" (135).

Article 23 Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Essential information:

- Article 22 of the Charter is included under Title III – Equality (see [Figure 1](#))
- It has **no ECHR** equivalent. However, **Article 14 and Protocol 12 of the ECHR** warrant equivalent protection (see [Figure 2](#))
- It contains elements of both a right and a principle.
- It is **not** an absolute right (see [Limitations on the exercise of the rights and freedoms recognised by the Charter](#))

Article 23 of the Charter prescribes that **equality between women and men** must be ensured in all areas, including employment, work and pay. This is without prejudice to the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 23 of the Charter does not have a direct correspondence in the ECHR. However, the ECtHR has developed a body of caselaw on gender equality derived from Article 14 of the ECHR and Article 1 of Protocol No. 12 (136).



Gender Goods and Services Directive and Gender Equality Directive

Relevant EU law on gender equality includes, notably, the Gender Goods and Services Directive (137), which provides for protection against discrimination on the grounds of sex regarding access to and supply of goods and services, as well as the Gender Equality Directive

¹³⁵ CJEU, C-202/11, *Anton Las v PSA Antwerp NV*, 16 April 2013, para. 20.

¹³⁶ See European Court of Human Rights, Factsheet on Prohibition of Discrimination – [Gender Equality](#), February 2024.

¹³⁷ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (Gender Goods and Services Directive), OJ L 373, 21.12.2004, ELI: <http://data.europa.eu/eli/dir/2004/113/oj>.

⁽¹³⁸⁾, which guarantees equal treatment on grounds of sex in matters of pay, occupational social security schemes and access to employment, vocational training and promotion and working conditions.

Practical considerations in connection with CPR funds

Certain provisions of the CPR and fund-specific regulations specifically convoke the application or consideration of the principles of equality, non-discrimination and gender equality, notably enshrining them as horizontal principles.



The principles of equality and non-discrimination in the CPR

The requirement to ensure compliance with all Charter rights in the context of CPR funds results mainly from two provisions in the CPR: first, Article 9, which establishes the respect for fundamental rights and compliance with the Charter in the implementation of the CPR funds as a horizontal principle; second, the Charter HEC set out in Annex III (ex vi Article 15(1)).

In addition, the CPR explicitly refers to the **principles of non-discrimination and gender equality** as horizontal principles to be ensured throughout the life cycle of CPR funds. It requires, in Article 9(3) CPR, that "Member States and the Commission take appropriate steps to prevent any discrimination based on gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the preparation, implementation, monitoring, reporting and evaluation of programmes". As for gender equality, Article 9(2) CPR requires that Member States and the Commission "ensure that equality between men and women, gender mainstreaming and the integration of a gender perspective are taken into account and promoted throughout the preparation, implementation, monitoring, reporting and evaluation of programmes".

In the context of **programming**, the CPR establishes that each programme shall set out, for each specific objective, actions safeguarding equality, inclusion and non-discrimination (Article 22(3)(d)(iv)). In the **evaluation** of programmes, the criteria considered by the Member State or the managing authority may cover other relevant criteria such as inclusiveness and non-discrimination (Article 44(1)).

¹³⁸ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (Gender Equality Directive), OJ L 204, 26.7.2006, ELI: <http://data.europa.eu/eli/dir/2006/54/oj>.

As for the **selection of operations**, Article 73(1) of the CPR binds managing authorities to establish and apply criteria and procedures which are non-discriminatory and ensure gender equality.

In addition to the Charter HEC, the CPR further establishes TECs applicable to ERDF, ESF+ and the Cohesion Fund (cf. Article 15(1) and Annex IV CPR). In particular, the **TECs** connected with Policy Objective 4 'A more social and inclusive Europe implementing the European Pillar of Social Rights' (Article 5(1)(d) CPR) are relevant in this regard.

Fund-specific provisions

In line with Policy Objective 4, the ESF+ Regulation establishes specific objectives of the ESF+ which also aim at counter-acting discrimination and fostering inclusion (Article 4(1), notably, points (c), (h), (j), (l) and (m)).

Pursuant TO Article 6 of the ESF+ Regulation, Member States and the Commission shall support specific targeted actions to promote the horizontal principles referred to in Article 9(2) and (3) of the CPR. In the same vein, Article 6 of the AMIF Regulation establishes that Member States and the Commission shall ensure the integration of the gender perspective and that gender equality and gender mainstreaming are taken into account and promoted and shall take appropriate steps to exclude any form of discrimination prohibited by Article 21 of the Charter throughout the Fund's life cycle. The BMVI Regulation sets out, in Article 4, that actions funded under the instrument shall be implemented in full compliance with the rights and principles enshrined in the Union acquis and the Charter and with the Union's international obligations as regards fundamental rights, in particular by ensuring compliance with the principles of non-discrimination.

Without prejudice to the specific obligations to consider the principles of equality, non-discrimination and/or gender equality, these principles may be affected by several actions of the national authorities throughout the different phases of the CPR funds. However, it should be emphasised that many projects funded by CPR funds, particularly those under the ESF+ or AMIF, target vulnerable populations or specific groups in view of favouring their integration and social inclusion, thus operating positive discrimination.

Box 3. Examples of actions affecting equality and non-discrimination

At programming phase

The rules governing the granting of aid from the ERDF published by a regional government set out that the main language to be used for grant applications is the regional language. Although this rule could be seen as promoting a regional language and, thus, linguistic diversity in line with Article 22 of the Charter, the fact that it favours the regional language in comparison with others raises the concern of constituting an unjustified discrimination under Article 21 of the Charter. In their analysis of Charter compliance, national authorities should consider that while their action may promote one right, it may negatively affect another.

Case Study 2 – Article 23 of the Charter addresses a situation affecting gender equality in the programming phase.

At the project selection phase

In the context of an AMIF funded programme, the national authorities published a call for proposals to fund action promoting the social inclusion of migrants in an irregular situation. The call for proposals lists the eligible beneficiaries, expressly excluding confessional organisations. In lack of a justification for such differential treatment, such an exclusion does not seem to comply with the conditions of Article 52(1) of the Charter and would, thus, constitute a breach of Article 21 on non-discrimination, further affecting the excluded applicants' freedom of religion (Article 10). In such a situation, the monitoring committee should, thus, carefully analyse Charter compliance and reject the approval of the criteria in case the concerns are confirmed.

In the context of an ESF+ funded programme, the national authorities published a call for proposals to fund action tackling long-term unemployment. One of the applications submitted proposes to carry out an initiative to combat long-term unemployment by focusing on actions at the local level and using community-based solutions targeting people who have been unemployed for over a year, assessing their skills and aspirations, matching them with community needs and creating a job that addresses these needs. The managing authority is concerned that the restriction of the universe of beneficiaries to people unemployed for over one year may constitute unjustified discrimination. However, such discrimination should be considered in light of the legitimate goal of combating long-term unemployment. In that light, the threshold of only one year of unemployment to be able to benefit from the initiative does not seem disproportionate.

At the monitoring phase

In the context of a national programme in a Member State, implementing a policy objective envisaging the promotion of innovative and smart economic transformation, the national authorities selected a

specific objective of 'enhancing growth and competitiveness of SMEs', with the output 'SMEs supported to create jobs and growth for both women and men'. As women in the Member State were under-represented in business start-ups and as SME owners, operations targeting SMEs and social enterprises boosting participation of women were favoured for funding. The programme established specific indicators allowing regular sex-disaggregated monitoring to assess the support provided, beneficiaries' needs and the progress achieved. This approach favours gender equality in the implementation of national programmes (139).

In connection with the examples above, the following good practices and guidance are worth noting, without being exhaustive.

Good Practice 11. Equality and non-discrimination

Monitoring of progress on horizontal principles, including gender equality

The **federal state of Lower Saxony, Germany**, has developed a common platform to monitor progress on horizontal principles, including gender equality. This platform allows the coordination of programmes, notably, in view of promoting activities towards reducing gender inequality. As part of this initiative, a pilot project was implemented which included actions to "make communication gender sensitive, while ensuring that data considering the lived realities of women and men were collected and reported to the monitoring committee" as well as coordination activities involving "discussions on evaluation findings related to equal opportunities for women and men", namely, how "funding disbursement may advance gender equality, such as the need to avoid approving funding that could potentially contribute to, or maintain, negative structural disadvantages for women" (140).

Monitoring of implementation of programmes

Although referring to the previous programming cycle, it is worth noting that, in **France**, the ERDF and ESF Operational Programmes establish sex-disaggregated indicators to measure the participation of women

¹³⁹ Based on the 'Hypothetical case study: addressing identified gender equality gaps in an Operational Programme', EIGE (2020), Gender Budgeting: Step-by-step toolkit - Guidance for mainstreaming gender into the EU Funds, p. 42.

¹⁴⁰ *Idem*, p. 43.

and men. The use of such indicators facilitates gender mainstreaming throughout programme implementation as it unveils where further efforts are necessary to advance gender equality (141).

Selection of operations

In **Sweden**, the Swedish ESF council (*Svenska ESF-rådet*), managing authority for the ESF+, has established the following selection criteria relating to the CPR horizontal principles:

- Applicants must identify challenges in the problem analysis based on equality, accessibility and non-discrimination.
- The project objectives should be based on identified challenges linked to gender equality, accessibility and non-discrimination.
- Applicants must describe how the chosen methods and approaches relate to the perspectives of equality, accessibility and non-discrimination.

In this connection, the website of the ESF+ in Sweden includes guidance to applicants, with examples of situations problematising the impact on the horizontal principles.

In **Belgium**, "all calls for proposals must explain how the project will contribute to gender equality" (142). Gender equality has a significant weight in the project selection process. To assist applicants in this regard, information initiatives are organised and a practical guide on how to assess and integrate gender aspects in projects was published.

In **France**, a guidance document for managing authorities has been developed, elaborating on the human rights defender's (the national human rights institution) guide on non-discrimination principles. This guidance identifies the different risks of discrimination entailed at each step of the funding process and includes a model clause to be inserted in operators' application forms to get their formal commitment to abide by the Charter if selected. The model clause is drafted as follows: "*If selected, the beneficiary has read and agrees to respect the Charter of Fundamental Rights and in particular the principles of non-discrimination of project participants, protection of their personal data, equality between men and women, integration of disabled people and protection of the environment.*"

In **Latvia**, the ministry of welfare published guidelines to support the managing authorities of the ISF, the BMVI and the AMIF as well as beneficiaries in implementing the horizontal principle of 'equality, inclusion, non-discrimination and respect for fundamental rights'. This

¹⁴¹ Idem, p. 73.

¹⁴² EIGE, Gender Budgeting: Step-by-step toolkit - Guidance for mainstreaming gender into the EU Funds (2020), p. 77.

manual explains the content of the rights and how managing authorities can support and promote equality throughout the funding process. These guidelines also provide a list of criteria for the selection of projects ensuring compliance with the Charter.

Actionable advice

In conclusion, the good practices presented cover the implementation of programmes and how to monitor progress on equality and non-discrimination, as well as the selection of operations in line with the Charter. national authorities are invited to consider how such good practices can be reflected in their national procedures to adopt and implement programmes supported by CPR funds. Notwithstanding, national authorities are reminded that Articles 20 to 23 of the Charter are susceptible to being affected at any stage of the life cycle of CPR funds and, as such, should put in place arrangements, procedures and/or practices to consider these, along with all Charter provisions. national authorities should also keep in mind that the use of CPR funds may promote positive action. Annex II – Checklist constitutes a starting point for this endeavour.

Case Study 2 – Article 23 of the Charter provides an example of a situation affecting Article 23 and a step-by-step illustration of how to effectively address it in line with the Checklist. national authorities are also encouraged to consider existing guidance, such as the one presented in **Box 4** below.

Box 4. Guidance on gender budgeting

The European Institute for Gender Equality (EIGE) has published the toolkit '[Gender Budgeting: Step-by-step toolkit - Guidance for mainstreaming gender into the EU Funds](#)' (2020), which aims to assist managing authorities in the EU to apply gender budgeting tools in the processes of the EU funds under shared management. Although predating the adoption of the current CPR, it already refers to the proposed CPR and relevant obligations which remained in the final text.



Useful sources and further reading

[Annex I – Overview of Charter resources](#)

Integration of persons with disabilities and rights of the elderly

Article 26 Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

Essential information:

- Article 26 of the Charter is included under Title III – Equality (see [Figure 1](#))
- It has **no ECHR** equivalent (see [Figure 2](#))
- It constitutes a principle (see [Overview of the Charter](#)) and is, thus, **not** an absolute right (see [Limitations on the exercise of the rights and freedoms recognised by the Charter](#))

Overview of the right

Article 26 of the Charter establishes the integration of persons with disabilities as a principle. Article 26 of the Charter expressly recognises the right of persons with disabilities to benefit from measures intended to promote their independence, social and occupational integration and participation in the life of the community. It aims, therefore, at further including persons with disabilities in society and at fostering their autonomy. The rights of persons with disabilities are also protected in another vein by the Charter, notably, by its Article 21 which prohibits discrimination on the grounds of disability (see above [Equality and non-discrimination](#)).

Article 26 does not have a correspondent under the ECHR, with the ECtHR framing breaches of rights of persons with disabilities under different convention articles (such as Article 3 on the prohibition of torture, Article 8 on the right to respect for private and family life, or Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention on non-discrimination) (143).

Relevant in this regard is the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) (144). The UNCRPD was adopted on 12 December 2006 and is the first human rights convention to which the EU has become a party (145). As per Article 1, the purpose of the UNCRPD is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity. Particularly noteworthy in this context is Article 19 of the UNCRPD, which recognises the equal right of all persons with disabilities to live in the community with choices equal to others and mandates Member States to take effective and appropriate measures to facilitate their full enjoyment of this right and their full inclusion and participation in the community.

In 2017, the European Parliament, the Council and the Commission, together proclaimed the European Pillar of Social Rights. The Pillar consists of 20 principles on which the EU should build upon "towards a strong social Europe that is fair, inclusive and full of opportunity in the 21st century". Principles 17 and 18 are directed at promoting the inclusion of people with disabilities and at ensuring access to affordable long-term care services of good quality, in particular homecare and community-based services.



Deinstitutionalisation

Deinstitutionalisation is a "process that provides for a shift in living arrangements for persons with disabilities, from institutional and other segregating settings to a system enabling social participation where services are provided in the community according to individual will and preference" (146). This is in line with Article 19, point b., UNCRPD that establishes that Member States shall take effective and appropriate measures to ensure that "[p]ersons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion

¹⁴³ See European Court of Human Rights, Factsheet on Health – Persons with disabilities and the European Convention on Human Rights, October 2024.

¹⁴⁴ Convention on the Rights of Persons with Disabilities, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>.

¹⁴⁵ The Convention was signed by the European Community in 2007 and approved in 2009. See Council of the European Union, (2010/48/EC) Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities.

¹⁴⁶ UN General Assembly (2014), Thematic study on the right of persons with disabilities to live independently and be included in the community, A/HRC/28/37, 12 December 2014, para. 25.

in the community, and to prevent isolation or segregation from the community". In this connection, the Committee on the Rights of Persons with Disabilities recommends a shift to community-based care (147). Such a shift entails not only the closing of institutions but the provision of services in the community that may prevent the need for institutional care altogether (148).

Also relevant in this connection is the EU acquis on accessibility for persons with disabilities.



EU law on accessibility

Relevant EU law on accessibility includes the Web Accessibility Directive (149) of 2016, which obliges websites and mobile applications of public sector bodies to meet a minimum standard of accessibility; the European Accessibility Act (150), which improves cross-border trade between Member States of the EU in accessible products and services (such as computers, check-in machines, smartphones or banking services); and the revised Audiovisual Media Services Directive (151), which obliges the Member States to ensure that media services provided under their jurisdictions are made continuously and progressively more accessible to persons with disabilities. Also relevant is the 2014 Public Procurement Directive (152) establishing rules for public procurement which mandates Member States to consider accessibility when procuring works, supplies or services related to public websites and applications.

Article 25 The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

¹⁴⁷ United Nations, Committee on the Rights of Persons with Disabilities, [General comment No.5 on Article 19 - the right to live independently and be included in the community](#), 27 October 2017.

¹⁴⁸ See European Union Agency for Fundamental Rights (2018), [From institutions to community living for persons with disabilities: perspectives from the ground](#), p. 14.

¹⁴⁹ Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies, OJ L 327, 2.12.2016, ELI: <http://data.europa.eu/eli/dir/2016/2102/oj>.

¹⁵⁰ Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services, OJ L 151, 7.6.2019, ELI: <http://data.europa.eu/eli/dir/2019/882/oj>.

¹⁵¹ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, OJ L 303, 28.11.2018, ELI: <http://data.europa.eu/eli/dir/2018/1808/oj>.

¹⁵² Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, 28.3.2014, ELI: <http://data.europa.eu/eli/dir/2014/24/oj>.

Essential information:

- Article 25 of the Charter is included under Title III – Equality (see [Figure 1](#))
- It has **no ECHR** equivalent (see [The Charter and other human rights instruments](#))
- It constitutes a principle (see [Overview of the Charter](#)) and is, thus, **not** an absolute right ([Limitations on the exercise of the rights and freedoms recognised by the Charter](#))

Closely related to Article 26 is **Article 25 of the Charter** on the rights of the elderly. Article 25 of the Charter establishes a principle directed at promoting a dignified and independent life for elderly people, as well as their social and cultural (including political) participation in the community's life.

Practical considerations in connection with CPR funds

The CPR and other fund-specific regulations include particular provisions on integration of persons with disabilities binding the national authorities and the beneficiaries.

**The principle of integration of persons with disabilities in the CPR**

The requirement to ensure compliance with all Charter rights in the context of CPR funds results mainly from two provisions in the CPR: first, Article 9 CPR, which establishes the respect for fundamental rights and compliance with the Charter in the implementation of the CPR funds as a horizontal principle; second, the Charter HEC set out in Annex III CPR (ex vi Article 15(1)).

In addition, the CPR also establishes accessibility for persons with disabilities as a **horizontal principle** to be ensured, particularly throughout the preparation and implementation of programmes (Article 9(3) CPR).

Further to the Charter HEC, Annex III of the CPR lists the implementation and application of the UNCRPD as a **horizontal enabling condition** (cf. Article 15(1) CPR).

The fulfilment criteria of this enabling condition are the following:

A national framework to ensure implementation of the UNCRPD is in place that includes:

1. Objectives with measurable goals, data collection and monitoring mechanisms.

2. Arrangements to ensure that the accessibility policy, legislation and standards are properly reflected in the preparation and implementation of the programmes.

3. Reporting arrangements to the monitoring committee regarding cases of non-compliance of operations supported by the Funds with the UNCRPD and complaints regarding the UNCRPD submitted in accordance with the arrangements made pursuant to Article 69(7).

In the context of the selection of operations, under **Article 73(1) of the CPR**, the criteria and procedures established and applied by managing authorities shall ensure accessibility to persons with disabilities.

Moreover, for the ERDF and the ESF+, Annex IV of the CPR (cf. Article 15(1)), under Policy Objective 4, 'A more social and inclusive Europe implementing the European Pillar of Social Rights', establishes two **TECs** which fulfilment criteria entail the shift from institutional to family- and community-based care (TECs 4.4 and 4.6).

Fund-specific provisions

In line with Policy Objective 4, the ESF+ Regulation establishes specific objectives of the ESF+, which aim at promoting accessibility to education and training and to affordable services, including the services that promote access to housing and person-centred care including healthcare for persons with disabilities (Article 4(1), points (f) and (k)).

The principle on the integration of persons with disabilities may be particularly affected throughout the implementation of funds whenever the accessibility of the criteria and procedures established and applied by managing authorities are not accessible to persons with disabilities. Moreover, it is likely to be affected whenever the selection criteria do not allow to triage projects breaching that right.

Box 5. Examples of action affecting the rights of persons with disabilities

Selection of operations

Under an ERDF-funded regional programme, the managing authority prepared the selection criteria for a call for project proposals envisaging the rehabilitation of public buildings. Accessibility of persons with disabilities was listed as a selection criterion, with the applicants being required to describe how they would ensure compliance with accessibility standards. Such an approach contributes to ensuring respect for Article 26 of the Charter.

At monitoring phase

Under a national programme financed by the ESF+, a specific objective is envisaged for 'supporting long-term care of persons with disabilities' which, among others, aims at funding initiatives supporting the autonomy and active participation in the community of persons with disabilities. In order to monitor the implementation of the programme, a set of indicators is provided, including the number of closed-down institutions, the number of newly-developed housing options that allow people to live in their own homes in the community and the capacity of new or improved community-based services (other than housing). These indicators are in line with an approach favouring the deinstitutionalisation of persons with disabilities in line with Article 26 of the Charter.

See also [Case Study 3 – Article 26 of the Charter](#).

In connection with the examples above, the following good practices and guidance are worth noting, without being exhaustive.

Good Practice 12. Ensuring accessibility and promotion of rights of persons with disabilities

Accessibility of the procedure and interaction with the public administration

In **France**, the guide on good practices on the Charter in relation to EU funds (*Guide de bonnes pratiques sur la charte des droits fondamentaux dans les programmes européens*) expressly mentions that particular attention will be paid to the legibility and accessibility of documents relating to the publication of calls for projects and refers to

the standards applicable to the public administration regarding the provision of customised support.

Selection of funded projects

In **Slovakia**, calls for proposals will include a Checklist for barrier-free accessibility of buildings as a mandatory annex. This Checklist constitutes a technical aid for the monitoring of projects (153).

Specialised support

In **Malta**, the **Commission for the Rights of Persons with Disability** supports applicants on matters related to equality and inclusion of persons with disabilities when preparing their applications. It provides feedback and recommendations for improvements on applications during meetings organised by the managing authority on fundamental rights and the inclusion of persons with disabilities (154).

Actionable advice

National authorities are reminded that Articles 25 and 26 of the Charter are susceptible to being affected at any stage of the life cycle of CPR funds and, as such, should put in place arrangements, procedures and/or practices to consider these, along with all Charter provisions. In particular, accessibility of the procedures should be ensured throughout the whole lifecycle of the CPR funds. Moreover, national authorities should make sure that CPR funding is not awarded to projects that do not respect the rights of persons with disabilities. National authorities are invited to consider how the good practices listed can be reflected in their national procedures to adopt and implement programmes supported by CPR funds. Case Study 3 – Article 26 of the Charter provides an example of a situation affecting Article 26 and a step-by-step illustration of how to effectively address it in line with Annex II – Checklist. National authorities are also encouraged to consider existing guidance, such as the one presented in Box 6 below.

Box 6. Guidance on programming and on selection of operations in view of promoting independent living and deinstitutionalisation

Bridge EU has coordinated and drafted with input from the Association Institute for Independent Living, Validity, and European Network on Independent Living, the publication 'Ensuring Independent Living

¹⁵³ Presentation by the Director of the Department of horizontal principles of the Slovak Ministry of Labour, Social Affairs and Family SR, 2nd Annual EU Charter Xchange, 'The EU Charter horizontal enabling condition in practice'.

¹⁵⁴ Equinet (2024), Equality Bodies supporting the EU Charter of Fundamental Rights through their funding activities, p. 4.

and Deinstitutionalisation – Criteria for the assessment of EU funded call for proposals and projects in the 2021/2027 period'

(2023) proposing a set of assessment criteria to support the relevant authorities to check the consistency of the measures of the call for proposals and projects and, thus, ensure that measures supported by EU funds in the 2021-2027 programming period contribute to independent living and inclusion in the community, in compliance with EU and Member State obligations under international and EU law.

The European Expert Group on the Transition from Institutional to Community-based Care (155) has also developed a Checklist to help ensure that EU funds in the 2021-2027 programming period contribute to independent living and inclusion in the community. Although directed at desk officers of the Commission responsible for EU funds programmes, the Checklist is also a relevant tool for national authorities to consider.



Useful sources and further reading

[Annex I – Overview of Charter resources](#)

Environmental protection

Article 37 Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Essential information:

- Article 37 of the Charter is included under Title IV – Solidarity (see Figure 1)
- It has **no ECHR** equivalent (see Figure 2)
- It constitutes a principle (see Overview of the Charter) and is, thus, **not** an absolute right (see Limitations on the exercise of the rights and freedoms recognised by the Charter)

Overview of the right

Article 37 of the Charter establishes environmental protection as a principle. It requires that a high level of environmental protection is integrated into the policies of the EU. This Article is closely linked to Article 35 of the Charter, which establishes the principle of health care and requires

¹⁵⁵ Formerly known as the Ad Hoc Expert Group on the transition from institutional to community-based care, the EEG is a coalition of stakeholders gathering people with care or support needs as well as service providers, public authorities and intergovernmental organisations. More information available here: <https://deinstitutionalisation.com/european-expert-group/>.

that a high level of human health protection be ensured in all EU policies and activities. This is because it is considered that it is not possible to achieve a high level of protection of human health without a high level of environmental protection (156).

Article 37 of the Charter does not have a direct correspondence with the ECHR, however, the ECtHR has developed a body of case-law on environmental matters derived from the fact that the exercise of certain ECHR rights may be undermined by the existence of harm to the environment and exposure to environmental risks (157).



EU law on environmental protection

The **European Green Deal**, launched in 2019, consists of a package of policy initiatives aiming to lead the EU to a green transition in order to reach climate neutrality by 2050. In the context of the European Green Deal, multiple pieces of legislation were adopted, including the European Climate Law (158), which sets out a binding objective of climate neutrality in the EU by 2050; changes to the Emissions Trading System Directive (159), last amended in 2023, which sets a system of cap-and-trade of emissions for specified sectors; and the creation of a carbon border adjustment mechanism (160), which seeks to put a fair price on the carbon emitted during the production of carbon-intensive goods that are entering the EU.

Practical considerations in connection with CPR funds

Certain provisions of the CPR and fund-specific regulations include provisions setting out that EU funds should be used in a manner that contributes to the achievement of EU environmental goals.



The principle of environmental protection in the CPR

The requirement to ensure compliance with all Charter rights in the context of CPR funds results mainly from two provisions in the CPR:

¹⁵⁶ CJEU, C-626/22, *C.Z. and Others v Ilva SpA in Amministrazione Straordinaria, Acciaierie d'Italia Holding SpA, Acciaierie d'Italia SpA, intervening parties: Regione Puglia, Gruppo di Intervento Giuridico – ODV*, 25 June 2024, para. 72.

¹⁵⁷ See European Court of Human Rights (April 2024), *Environment and the European Convention on Human Rights*.

¹⁵⁸ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999, OJ L 243, 9.7.2021, ELI: <http://data.europa.eu/eli/reg/2021/1119/oj>.

¹⁵⁹ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, OJ L 275, 25.10.2003, ELI: <http://data.europa.eu/eli/dir/2003/87/oj>.

¹⁶⁰ Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism, OJ L 130, 16.5.2023, ELI: <http://data.europa.eu/eli/reg/2023/956/oj>.

first, Article 9 which establishes the respect for fundamental rights and compliance with the Charter in the implementation of the CPR funds as a horizontal principle; second, the Charter HEC set out in Annex III (ex vi Article 15(1)).

In addition, Article 9 of the CPR also establishes as a **horizontal principle** that the "objectives of the Funds shall be pursued in line with the objective of promoting sustainable development as set out in Article 11 TFEU, taking into account the UN Sustainable Development Goals, the Paris Agreement and the "do no significant harm" principle and that 'the objectives of the Funds shall be pursued in full respect of the Union environmental *acquis*" (Article 9(4)).

Further to the Charter HEC, the CPR further establishes **thematic enabling conditions** applicable to ERDF and the Cohesion Fund (cf. Article 15(1) and Annex IV CPR). In particular, the thematic enabling conditions connected with Policy Objective 2, 'A greener, low-carbon transitioning towards a net zero carbon economy and resilient Europe by promoting clean and fair energy transition, green and blue investment, the circular economy, climate change mitigation and adaptation, risk prevention and management, and sustainable urban mobility', (Article 5(1)(b) CPR) are relevant in this regard.

Fund-specific provisions

Specifically on the JTF, Article 5 of the CPR provides that "[t]he JTF shall support the specific objective of enabling regions and people to address the social, employment, economic and environmental impacts of the transition towards the Union's 2030 targets for energy and climate and a climate-neutral economy of the Union by 2050".

Article 2 of the JTF Regulation states that "the JTF shall contribute to the single specific objective of enabling regions and people to address the social, employment, economic and environmental impacts of the transition towards the Union's 2030 targets for energy and climate and a climate-neutral economy of the Union by 2050".

The ERDF and CF Regulation also provides that the ERDF should promote sustainable development and address environmental challenges and contribute to projects in the field of environment (Articles 2 and 6 ERDF Regulation).

The principle of environmental protection may be affected in a myriad of ways throughout the life cycle of CPR funds, from the **strategic approach and programming** phase, particularly when preparing programmes, at the **implementation** stage, in connection with the selection of operations to be funded, and at the **evaluation** stage.

Box 7. Examples of action affecting the principle of environmental protection

Monitoring of operations

In the context of an ERDF programme with the objective of supporting the green transition, funding has been awarded to a project envisaging the setting up and operation of a wind farm in a Member State. The conditions for supporting the operation set out that, during the construction phase, the beneficiary must report on environmental protection, including the impact on biodiversity conservation. Once the wind farm is operational, the beneficiary must also report on environmental benefits, namely, how much green energy is produced and the levels of CO2 reduction achieved measured against a traditional coal-fired power plant. These requirements allow the managing authority to keep track of the execution of the project and its environmental impacts.

In connection with the examples above, the following good practices and guidance are worth noting, without being exhaustive.

Good Practice 13. Environmental protection

Involvement of other public authorities

In **Cyprus**, the managing authority/intermediate bodies act in cooperation with the ombudsman and other national public services responsible for ensuring the compliance of national policies with EU laws and policies in view of ensuring compliance of each programme with the Charter throughout all its stages. National public services and relevant bodies participate both in consultations on the preparation of funded programmes as well as in the implementation of the programmes. More specifically, the Cypriot Department of Environment of the Ministry of Agriculture, Rural Development, and the Environment, assesses the compatibility of programmes to the national and EU principles and legislation for the protection of the environment and the implementation of the 'do no significant harm' principle and issues a compatibility certificate.

Evaluation of the programme

The plan for the evaluation of the Portuguese programme 'Sustentável 2030' sets out that the selection of the evaluations to be carried out will be based on criteria such as the response to specific needs and the

intended use of the evaluation, knowledge gaps – areas that are less known or less evaluated in the past – about the effects of the interventions or how these effects are produced, the relevance of the policies (financial allocation, expected results and impacts) or the degree of innovation of the interventions. In addition to the evaluations, the plan also provides for studies to support the implementation of the supported interventions. External experts will be involved in the evaluations and studies to support the implementation provided for in the plan and the managing authority will set up mixed or internal teams to promote the involvement of the programme structure in the evaluation process. Finally, the results of the evaluations will be publicised in order to promote the training of the different players and public debate. Communication will be strengthened throughout the evaluation process, with a communication approach developed for each evaluation.

Actionable advice

National authorities should ensure that the principle of environmental protection is observed throughout the lifecycle of CPR funds. Notably, arrangements, procedures and/or practices should be put in place to guarantee that programmes promote sustainable development and are in line with the EU acquis and that these are evaluated against adequate targets and indicators. At the implementation stage, national authorities should ensure that projects supported by CPR funds also observe the principle in Article 37 and contribute to its promotion, namely, by including environmental criteria as part of the selection process and by rejecting funding to projects that do not meet these environmental criteria, such as those with unmitigated ecological damage. If negative environmental impacts are identified during the project's implementation, funding should be suspended and/or the beneficiaries required to take action to mitigate those impacts. If appropriate, environmental experts should be involved in the monitoring of programmes and operations. National authorities are invited to consider how the good practices listed above can be reflected in their national procedures to adopt and implement programmes supported by CPR funds. Annex II – Checklist constitutes a helpful tool to identify limitations on rights and whether these are justified.



Useful sources and further reading

[Annex I – Overview of Charter resources](#)

Right to an effective remedy and to a fair trial

Article 47 Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Essential information:

- Article 47 of the Charter is included under Title VI – Justice (see [Figure 1](#))
 - It corresponds to **Article 6 and to Article 13 of the ECHR** (see [Figure 2](#)), but awards more extensive protection
 - It is **not** an absolute right (see [Limitations on the exercise of the rights and freedoms recognised by the Charter](#))
-

Overview of the right

Article 47 of the Charter recognises the right to an effective remedy and to a fair trial. It corresponds, in part, to **Article 6 and to Article 13 of the ECHR**. Article 47 of the Charter, however, is broader than Article 6 ECHR as the latter guarantees access to a court only for civil claims and in criminal procedures, while the former provides for the right to an effective remedy and to a fair trial in all domains, including administrative procedures (¹⁶¹). Furthermore, Article 47 of the Charter requires that legal aid be made available to those who lack sufficient resources when needed to ensure effective access to justice, while Article 6(3)(c) ECHR explicitly only provides for free legal assistance in criminal cases. Notwithstanding, the ECtHR has extended this right to civil proceedings under Article 6(1) ECHR (¹⁶²). On the other hand, Article 47 of the Charter is more protective than Article 13 ECHR, as it requires that everyone whose rights and freedoms guaranteed by the law of the EU are breached has access to an effective judicial remedy.

Article 47 of the Charter affirms access to justice as the ultimate guarantee of the effectiveness of all rights guaranteed by the Charter. This accounts for the fact that the CJEU has insisted on the protection of this right as a fundamental means to safeguard all specific substantive rights.

Access to justice, as enshrined in Article 47 of the Charter, has three main dimensions. First, it requires the establishment and maintenance of a specific

¹⁶¹ FRA Handbook, 2020, p. 29.

¹⁶² The ECtHR has recognized that the right to a fair trial may require the provision of legal aid also in civil cases, depending on the circumstances of the case. See ECtHR, *Airey v. Ireland* (6289/73), 9 October 1979; ECtHR, *McVicar v. United Kingdom* (46311/99), 7 May 2002.

institutional structure; independent and impartial courts and tribunals previously established by law must be at the disposal of right-holders. Second, adequate and open procedures should be created, guaranteeing “fair and public” hearings before these courts and tribunals, in which due process is observed, and which are decided within a reasonable time. Third, economic means should be deployed to guarantee equal and effective access to legal counsel. This, in essence, ensures justice is accessible for all right-holders, independently of their material resources.

Practical considerations in connection with CPR funds

Regarding the application of Article 47 in the context of CPR funds, the right to an effective remedy and to a fair trial (due process) needs to be ensured throughout all procedures which are put in place to give effect to the provisions of the CPR, fund specific rules or its delegated or implementing acts ⁽¹⁶³⁾. Article 47 of the Charter plays an important role in regard to the CPR’s procedural aspects. Administrative decisions taken by managing authorities and monitoring committees must be challengeable in court to allow access to justice and the legal review of decisions affecting the rights of beneficiaries or interested parties. Effective remedies and access to judges indeed ensure the enforceability and effectiveness of other fundamental rights. It is, thus, essential in ensuring compliance with the Charter as required by Article 9(1) of the CPR and the Charter HEC, in particular, its second criterion.

Box 8. Example of action affecting the right to an effective remedy and to a fair trial

At the programming and implementation phase

See
Case Study 4 – Article 47 of the Charter

At the implementation phase

A national legislation complementing the CPR sets out that the managing authorities’ decisions on applications can be either of (i) complete or partial approval, (ii) non-approval or (iii) approval subject to fulfilment of certain requirements. The law further establishes that all decisions must be reasoned. However, the managing authority for a programme funded by several CPR funds has instituted a practice of providing reasoned decisions only in the cases where the application is rejected. Such practice, besides going against the national law requirement establishing that all decisions must be reasoned,

¹⁶³ 2016 European Commission Guidance, pt. 3.2.

effectively precludes the right of the applicants to present their case before the managing authority and curtails their right of defence before courts. Such a practice should, thus, be abandoned.

In connection with the examples above, the following good practices and guidance are worth noting, without being exhaustive. It should be noted that Article 69(7) CPR requires Member States to make arrangements to ensure the effective examination of complaints concerning the Funds. The scope, rules and procedures concerning those arrangements are determined by Member States in accordance with their institutional and legal framework. Pursuant to the same provisions, complaints cover any dispute between potential and selected beneficiaries with regard to the proposed or selected operation and any disputes with third parties on the implementation of the programme or operations thereunder, irrespective of the qualification of means of legal redress established under national law. The good practices highlighted in the box below relate to the accessibility and user-friendliness of such complaints' mechanisms.

Good Practice 14. Access to complaints mechanisms in the context of the funds

Complaint mechanisms to report breaches of the Charter to the managing authority pursuant to Article 69(7) of the CPR

In **Slovenia**, the administrative complaint mechanism is broadly available to any interested party for the ESF+. Complaints can be submitted electronically or by post through a complaint form. An explanation notice available on the managing authority's website provides additional details on the procedure as well as links to other competent authorities authorised to handle sector-specific complaints or legal remedies, such as *inter alia*, data protection, consumer protection, market inspectorates and constitutional court remedies.

Similar online forms have been developed in Spain and France.

As mentioned in Chapter 1 above, the second criterion of the Charter HEC requires that Member States put in place 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). As such, the good practices presented in Second criterion of the Charter HEC are also relevant to note here.



Actionable advice

The planning and disbursement of funds under shared management involve adopting administrative decisions by the national authorities. In this connection, the selection of projects for funding and, conversely, the rejection of applications, considering their susceptibility to affecting the expectations of the applicants, are particularly relevant. National authorities should ensure that applicants and beneficiaries have access to complaints mechanisms and remedial action as appropriate. Decisions affecting rights and freedoms guaranteed by the law of the EU must be challengeable before a court. National authorities are invited to assess whether the arrangements put in place fully respect Article 47 and, in that regard, to consider how the good practices listed can be reflected in their national procedures to adopt and implement programmes supported by CPR funds. [Case Study 4 – Article 47 of the Charter](#) provides an example of a situation affecting Article 47 and a step-by-step illustration of how to effectively address it in line with [Annex II – Checklist](#).

Key messages

Although all Charter rights are susceptible to being affected in the context of CPR funds, certain Charter rights are more prone to potentially be affected by the action of the national authorities in the context of the CPR funds and at any stage of the funds' life cycle.

National authorities should carefully consider these rights throughout the different stages of the funds, from programming to evaluation.

National authorities are invited to consider Table 5 along with the explanations, examples and good practices listed in this Chapter 2 to assist in the identification of how their actions may affect Charter rights, how to mitigate such risks, what preventive action can be put in place and how to address eventual breaches.

National authorities are reminded to consider other rights not presented in Chapter 2.

[Annex II – Checklist](#) may serve as a particularly helpful tool to identify the Charter rights at stake and to assess whether a specific limitation is admissible.

Chapter 3: Operation-related rights

Following the review of cross-cutting rights, Chapter 3 of the manual focuses on rights that may be affected either by the actions of national authorities or beneficiaries in the context of funded operations ('operation-related rights').

At the stage of implementation of national or regional programmes, the main action that managing authorities and monitoring committees undertake includes the **development of the methodology and criteria used for the selection of operations**, the **selection of the operations** and the **management verification** (see [Table 4](#) above). All these actions may have an impact on the rights, principles and freedoms enshrined in the Charter, be it positive or negative. At the same time, the **actual execution of funded operations** by the beneficiaries may also impact the rights, principles and freedoms enshrined in the Charter.

While any Charter right may be affected by the above-mentioned actions regardless of the underlying subject matter at stake (e.g. the right to property or the different rights affected in the context of labour exploitation), it is important to note that the implementation of **specific CPR funds** may potentially affect particular Charter rights owing to the subject matter of these funds. For example, considering the main objective of each CPR fund as presented in [Figure 3](#) above, it can be concluded that operations funded by the **AMIF, ISF and BMVI**, may be more prone to raising fundamental rights concerns related, notably, to Articles 18 and 19 of the Charter, which respectively enshrine the right to asylum and the protection in the event of removal, expulsion or extradition, while operations funded by the **ESF+** may be more prone to affecting Articles 14, 23, 25 and 26, which respectively enshrine the right to education, equality between men and women, the rights of the elderly or integration of persons with disabilities. National authorities should be particularly attentive to these subject-specific rights in the context of project selection, project implementation and monitoring to ensure such funds are not used in violation of the Charter.

Please keep in mind that all Charter rights are susceptible to being affected at the various stages of CPR funds.

In connection with the above, in addition to the explanations in Chapter 1 on some Charter rights which are also relevant here (see **Equality and non-discrimination** and **Integration of persons with disabilities and rights of the elderly**), this Chapter will touch upon selected Charter rights which should be particularly considered in connection with the selection or implementation of the operations funded by CPR funds.

Labour related rights

Article 5 Prohibition of slavery and forced labour

1. *No one shall be held in slavery or servitude.*
2. *No one shall be required to perform forced or compulsory labour.*
3. *Trafficking in human beings is prohibited.*

Essential information:

- Article 5 of the Charter is included under Title I – Dignity (see [Figure 1](#))
- The prohibition of slavery in Article 5(1) corresponds to **Article 4(1) of the ECHR**. The prohibition of forced labour in Article 5(2) corresponds to **Article 4(2) of the ECHR** (see [Figure 2](#))
- The prohibition of slavery and forced labour is an absolute right (see [Limitations on the exercise of the rights and freedoms recognised by the Charter](#))
- Solidarity rights in Title IV of the Charter are **not** absolute rights

Overview of the rights

Article 5 of the Charter prohibits all forms of slavery, servitude and forced labour and explicitly forbids **trafficking in human beings**, reflecting the EU's commitment to uphold human dignity and combat labour exploitation.

The prohibition of slavery in Article 5(1) of the Charter corresponds to **Article 4(1) of the ECHR**. This constitutes an absolute right which allows for no derogations under the ECHR (ex vi Article 15 ECHR).

The prohibition of forced labour in Article 5(2) of the Charter corresponds to **Article 4(2) of the ECHR**, which contains the same wording. Consequently, 'forced or compulsory labour' is also an absolute right, which in line with the 'negative' definitions contained in Article 4(3) of the ECHR does not include:

- work required to be done in the ordinary course of detention imposed in accordance with the provisions of Article 5 ECHR ('right to liberty or security') or during conditional release from such detention;
- service of a military character or, in the case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
- service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- work or service as part of normal civic obligations.

As neither the Charter nor the ECHR defines 'forced labour', the existing definition at the supranational level is relevant to note. Article 2 of the

Forced Labour Convention (¹⁶⁴) of the **International Labour Organization (ILO)** defines forced labour as “*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily*”.

Article 5(3) of the Charter takes account of recent developments in organised crime and prohibits **trafficking in human beings**, without providing a definition.

Trafficking in human beings is however defined in Article 2 of the **Anti-Trafficking Directive** (¹⁶⁵) as “*The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation*”.

Trafficking in human beings is a complex crime which has **three constitutive elements**:

- the act (recruitment, transportation, etc.);
- the means (use of threat of force or other forms of coercion, abduction, etc.); and
- the purpose of exploiting the victim (sexual exploitation, labour exploitation, etc.).

The ECtHR has developed a large body of case-law in relation to both forced labour (¹⁶⁶) and trafficking (¹⁶⁷).



ILO indicators

ILO indicators can help identify forced labour and trafficking in human beings. For example, the ILO has developed 11 indicators of forced labour (¹⁶⁸) that capture key elements of the definition of forced labour, focusing on the involuntariness of the work performed. The ILO operational indicators of trafficking in human beings (¹⁶⁹), on the other

¹⁶⁴ ILO Forced Labour Convention, 1930 (No 29),

https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029.

¹⁶⁵ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0036>.

¹⁶⁶ See, for example, ECtHR, *Siliadin v. France* (73316/01), 26 July 2005.

¹⁶⁷ See, for example, ECtHR, *Chowdury and Others v Greece* (21884/15), 30 March 2017.

¹⁶⁸ ILO Indicators of Forced Labour,

https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_203832.pdf.

¹⁶⁹ ILO Operational indicators of trafficking in human beings, https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105023.pdf.

hand, include four sets of indicators for adult and child victims of trafficking for labour and sexual exploitation.

Even if a violation of workers' rights does not amount to forced labour or trafficking in human beings, it could still result in a violation of other labour rights set out in **Title IV 'Solidarity' of the Charter**, for example, the right to fair and just working conditions (Article 31).

This title, which includes **Articles 27-38**, underlines the importance of solidarity and socioeconomic rights and principles, many of which have their roots in the Council of Europe's European Social Charter. In particular, it seeks to safeguard workers' rights, including the right to information and consultation within the undertaking (Article 27), the right of collective bargaining and action, including the right to strike (Article 28), the right of access to placement services (Article 29), the protection in the event of unjustified dismissal (Article 30), the right to fair and just working conditions (Article 31), the prohibition of child labour and the protection of young people at work (Article 32), family and professional life (Article 33), and the entitlement to social security and social assistance (Article 34).



Labour exploitation and the Employer Sanctions Directive

Exploitation of workers' rights can range from less serious violations of labour law, which may result in administrative or civil sanctions, to more severe violations, which may amount to a violation of labour rights under Chapter IV – Solidarity or a violation of other Charter rights ⁽¹⁷⁰⁾, in particular forced labour, slavery or trafficking in human beings, prohibited under Article 5 of the Charter. The concept of **labour exploitation** should therefore be understood as a continuum ⁽¹⁷¹⁾. Labour exploitation can affect all sectors, but is often more prevalent in those relying heavily on migrant workers or seasonal workers coming from other Member States or third countries.

Under the **Employer Sanctions Directive** ⁽¹⁷²⁾, which provides for minimum standards on sanctions and measures against employers of irregularly residing third country nationals, labour exploitation can be understood in the context of particularly exploitative working conditions. Article 2(i) of the Employer Sanctions Directive defines

¹⁷⁰ For example, the right to human dignity in Article 1, the prohibition of inhuman or degrading treatment or punishment in Article 4, the prohibition of slavery and forced labour in Article 5, the right to liberty and security in Article 6, the prohibition of discrimination based on any grounds in Article 21, the right to move and reside freely within the territory of the Member States for EU citizens in Article 45(1), and the right to an effective remedy in Article 47.

¹⁷¹ Council of Europe, *Trafficking for the purpose of labour exploitation: new HELP online training module*, 9 November 2021, based on Skrivankova, K., *Between Decent Work and Forced Labour – Examining the continuum of exploitation*, Joseph Rowntree Foundation, York, 2010, p. 19.

¹⁷² Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ L 168, 30.6.2009, ELI: <http://data.europa.eu/eli/dir/2009/52/oj>.

particularly exploitative working conditions as “*working conditions, including those resulting from gender based or other discrimination, where there is a striking disproportion compared with the terms of employment of regularly employed workers which, for example, affects workers’ health and safety, and which offends against human dignity*”.

Practical considerations in connection with CPR funds

The prohibition of slavery and forced labour is prone to be affected in the context of the implementation of operations where funding is being used by companies and employers to promote specific EU sectors or industries. This is often the case in the context of programmes funded by the ERDF. The ERDF is the largest cohesion fund and aims to strengthen economic, social, and territorial cohesion by reducing disparities between regions. It supports investments in labour markets, economies and the green and digital transition to promote balanced and inclusive regional development across the EU.

The execution of operations under the ERDF often relies on workers hired by the beneficiaries, as elaborated under CJEU’ judgement, Liivimaa Lihaveis MTÜ v Eesti-Läti programmi 2007-2013 Seirekomitee (case C-562/12).

CJEU’s judgement, Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary (case 222/84).

CJEU’s judgement, JK Otsa Talu OÜ v Põllumajanduse Registrite ja Informatsiooni Amet (PRIA), (case C-241/07).

Opinion of Advocate General Jääskinen in Liivimaa Lihaveis MTÜ v Eesti-Läti programmi 2007-2013 Seirekomitee (case C-562/12).

FRA Charterpedia, Article 47 – Right to an effective remedy and to a fair trial, National Constitutional Law.

Case Study 5 – Articles 5 and 31 of the Charter. The risk of labour rights violations and exploitation is particularly high in certain sectors, such as construction, agriculture and horticulture, road transport, domestic care and meat processing, which are price-competitive and face significant labour shortages.

In connection with the issues presented in the case study, the following good practices and guidance are worth noting.

Good Practice 15. Labour-related rights

Promoting compliance and combating exploitative subcontracting practices

Labour exploitation is recurrent in (long) chains of subcontracting, often involving private recruitment agencies (¹⁷³). Managing authorities could take preventive measures when operations occur in the sectors most prone to labour exploitation and where subcontracting practices are most common. For example, when designing and applying appropriate selection procedures and criteria for the selection of operations, managing authorities could include a criterion that a previous conviction for a criminal offence related to labour rights would be grounds for exclusion from a selection procedure.

Managing authorities could also require applicants to provide a list of all potential subcontractors, including temporary recruitment agencies, with whom they intend to work. In addition, applicants could be required to provide detailed documentation on working conditions in their subcontracting chains and to commit to robust due diligence procedures to prevent labour exploitation.

Finally, a clause in the grant agreements between the managing authority and a beneficiary could stipulate that violations or indicators of potential violations by the beneficiary and its subcontractors could lead to financial sanctions.

Actionable advice

Respect for labour-related rights under Article 5 and Solidarity Title IV of the Charter must be upheld throughout the implementation of CPR-funded operations, particularly in sectors prone to labour exploitation, such as construction, agriculture and road transport, and where third country

¹⁷³ European Commission: Directorate-General for Employment, Social Affairs and Inclusion (2024) (Andriescu, M., Buckingham, S., Broughton, A., De Wispelaere, F. et al.), Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU – The situation of temporary cross-border mobile workers and workers in subcontracting chains, <https://data.europa.eu/doi/10.2767/531736>.


Useful sources and further reading

[Annex I – Overview of Charter resources](#)

workers are employed. Managing authorities should incorporate robust safeguards, such as those presented as good practices in this manual, into their selection and monitoring procedures to prevent forced labour, exploitative subcontracting and other violations of workers' rights. Given the complexity of labour exploitation, managing authorities are also encouraged to refer to relevant EU and international guidance, including ILO indicators. Finally, the [Case Study 5 – Articles 5 and 31 of the Charter](#) provides a step-by-step illustration of how to effectively assess and mitigate risks in line with the [Annex II – Checklist](#).

Right to asylum, protection in the event of removal, expulsion or extradition, and others

Article 18 Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties').

Essential information:

- Article 18 of the Charter is included under Title II – Freedoms (see [Figure 1](#))
- It does not have an **ECHR** equivalent (see [Figure 2](#))
- It is **not** an absolute right (see [Limitations on the exercise of the rights and freedoms recognised by the Charter](#))

Overview of the rights

Article 18 of the Charter recognises the right to asylum. To ensure those in need of international protection have their right to asylum guaranteed in the EU, asylum seekers who are seeking protection must be able to lodge an application for asylum and have that application examined (174).



Asylum legislation

¹⁷⁴ CJEU, C-808/18, *Commission v. Hungary*, 17 December 2020, para. 102

In practice, the Asylum Procedures Directive (175) – to be replaced by the Asylum Procedure Regulation (176) – aims to promote the application of Article 18 of the Charter (see Recital 62 of the Asylum Procedures Directive and recital 108 of the Asylum Procedure Regulation) and foresees some safeguards to ensure its respect. It foresees the right to access to the asylum procedure (see Article 8 Asylum Procedures Directive and Chapter III Section I Asylum Procedure Regulation) and requires that asylum applications be examined objectively, impartially and on an individual basis (see Article 10 of the Asylum Procedures Directive and Article 34 of the Asylum Procedure Regulation).

As the risk of harm upon removal is frequently assessed through an asylum application, denying access to asylum procedures can, in some situations, lead to removals that do not respect the protections set out in **Article 19 of the Charter**.

Article 19 Protection in the event of removal, expulsion or extradition

1. *Collective expulsions are prohibited.*
2. *No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.*

Essential information:

- Article 19 of the Charter is included under Title II – Freedoms (see [Figure 1](#))
 - Article 19(1) corresponds to **Article 4 of Protocol No. 4 ECHR**, while Article 19(2) relates also to **Article 3 ECHR** (see [Figure 2](#))
 - It is **not** an absolute right
-

Article 19 of the Charter prohibits collective expulsions and protects everyone from being removed to a country where they would be at risk of being subjected to the death penalty or ill-treatment.

Denying the right to asylum, notably through practices such as summarily returning a migrant back to the country from which they crossed a border irregularly without assessing whether that would place them at harm (known as 'pushback practices'), is associated with further fundamental rights'

¹⁷⁵ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (Asylum Procedures Directive), <https://eur-lex.europa.eu/eli/dir/2013/32/oj/eng>.

¹⁷⁶ Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (Asylum Procedure Regulation), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1348>.

violations, notably, **the right to life** or **the prohibition of torture** (Articles 2 and 4 of the Charter) which allow no derogation.

Essential information:

- Articles 2 and 4 of the Charter are included under Title I – Dignity (see [Figure 1](#))
 - Article 2 corresponds to **Article 2 ECHR**, while Article 4 corresponds to **Article 3 ECHR** (see [Figure 2](#))
 - Article 4 is an **absolute** right, while Article 2 is **not** absolute but is non-derogable (¹⁷⁷)
-

In this connection, the ECHR has found that returning a migrant who expressed their wish to apply for asylum at a border check or at an airport to the country where they came from or to a third country without allowing them to access the asylum procedure constituted a violation of the asylum seeker's rights under the ECHR (¹⁷⁸).

¹⁷⁷ Article 2(2) of the ECHR provides situations where deprivation of life shall not be regarded as inflicted in contravention with that provision (i.e. when it results from the use of force which is no more than absolutely necessary in defence of any person from unlawful violence, in order to effect a lawful arrest or to prevent the escape of a person lawfully detained or in action lawfully taken for the purpose of quelling a riot or insurrection). However, this is not to say that this right, with the scope set out under the ECHR, may be derogated as this is not admissible under Article 15(2) of the ECHR, except in respect of deaths resulting from lawful acts of war.

¹⁷⁸ See, for example, ECtHR, *M.K. and Others v. Poland* (40503/17, 42902/17 and 43643/17), 23 July 2020; ECtHR, *Ilias and Ahmed v. Hungary* (47287/15), 21 November 2019; ECtHR, *S.S. and Others v. Hungary* (56417/19 and 44245/20), 12 October 2023.



Reception Conditions Directive

In connection with Article 18 of the Charter, it should be noted that the reception of asylum seekers in the EU is regulated by the Receptions Conditions Directive (179), the recast of which (180) will start applying in 2026. Conditions of reception facilities should thus comply with the provisions of this Directive as well as with the Charter.

The conditions of reception of asylum seekers also involve the application of other Charter rights, including the right to human dignity (Article 1 of the Charter), the prohibition of torture (Article 4 of the Charter), the right to liberty (Article 6 of the Charter), the right to private and family life (Article 7 of the Charter) and the right to protection of personal data (Article 8 of the Charter).

Practical considerations in connection with CPR funds

AMIF, ISF and BMVI may be used to fund border management operations, to support migration management activities, including the construction and maintenance of reception facilities, or more broadly to fund operations contributing to preventing and combating crimes. In this connection, the action most likely to affect the right to asylum, protection in the event of removal, expulsion or extradition, and other related rights in the context of CPR funds consists of the selection and monitoring of the implementation of operations. In fact, due to the fundamental rights' sensitivity of such operations, the action of the managing authorities and monitoring committees plays a crucial role in ensuring that only fundamental rights' compliant operations are funded, be it through the procedures put in place prior to the selection of operations, as well as through the measures to monitor implementation.



Fund-specific provisions on fundamental rights connected with the ISF and the BMVI

Under Article 4 of the ISF Regulation, actions funded by the ISF must "be implemented with full respect for fundamental rights and human dignity" and comply, in particular, with the Charter, with EU data protection law and with the ECHR. In the same vein, Article 4 of the BMVI Regulation sets out that "[a]ctions funded under the Instrument shall be implemented in full compliance with the rights and principles enshrined in the Union *acquis* and the Charter and with the Union's international obligations as regards fundamental rights, in particular by

¹⁷⁹ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180, 29.6.2013, ELI: <http://data.europa.eu/eli/dir/2013/33/oj>.

¹⁸⁰ Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection, OJ L, 2024/1346, 22.5.2024, ELI: <http://data.europa.eu/eli/dir/2024/1346/oj>.

ensuring compliance with the principles of non-discrimination and *non-refoulement*".

Box 9. Example of action affecting the right to asylum, protection in the event of removal, expulsion or extradition, and other related rights

At the implementation phase (selection of operations)

Under an ISF national programme's specific objective of strengthening the Member States' capacity to react to criminal offences, a call for proposals was issued to reform one of the country's prisons. In view of ensuring that the cells constructed or reformed with EU funding comply with the relevant international and EU requirements, notably, in what concerns the prohibition of torture and inhuman or degrading treatment or punishment (Article 4 of the Charter), the selection methodology and criteria require that the application for funding includes a detailed description on any works on prison cells and how these comply with the relevant standards on living space per prisoner in prison establishments ([European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) standards](#)). This approach would serve the purpose of preventing a potential violation of Article 4.

Under a BMVI national programme's specific objective of improving the efficiency of asylum application procedures, a call for proposals was issued to acquire technology contributing to that end. An application was submitted proposing the funding of state-of-the-art technology that screens the faces of applicants for asylum and, based on their facial features, pinpoints their provenance and age. This would allow for the partial automation of the analysis of applications. The technology would also be used in the context of asylum interviews with the functionality of detecting facial expressions, which may indicate that the applicant is lying. The managing authority is concerned that such technology could undermine asylum seekers' rights under Article 18 of the Charter and could amount to racial profiling. In that connection, the managing authority requested further information from the applicant, notably a fundamental rights impact assessment of such technology. The action of the managing authority will, thus, contribute to screening potential fundamental rights risks and serve the purpose of selecting operations for funding which are Charter compliant.

See also

[Case Study 6 – Articles 1, 3, 4, 7, 17, 18 and 23 of the Charter](#)

At the monitoring phase

Under a BMVI national programme's specific objective of ensuring the effective management of the external borders of the EU, a Member

State has issued a call for proposals for the acquisition of services supporting border surveillance. An application has been received and awarded involving the deployment of sniffer dogs. Due to the emergence of reports by civil society organisations of the use of dogs in violent border incidents, including in the context of pushbacks, in which migrants have been threatened and even bitten, the managing authority identified the risk of intimidation of migrants and pushbacks, with the associated risk of potential breach of Articles 3 and 18 of the Charter, as a specific risk of this operation to be considered when carrying out management verifications and justifying on-the-spot verification. The approach of the managing authority contributes to ensuring that fundamental rights risks are identified and adequately followed up on.

In connection with the examples above, the following good practices and guidance are worth noting, without being exhaustive.

Good Practice 16. Good practices promoting fundamental rights in the context of the AMIF, ISF or BMVI

Participation of organisations in the area of asylum and migration in monitoring committees

In **Spain**, the BMVI/ISF monitoring committee created in 2023 did not initially include representatives of organisations working in asylum and migration. This has, in the meantime, changed with the admission of a member of civil society organisations in the field of asylum and migration (ECRE-PICUM) (181).

Specific reporting channels

In **France**, any interested party can report a violation of fundamental rights by email or by post to the Charter contact point of the managing authority responsible for DG HOME funds or directly to the national ombudsperson. Depending on the nature of the complaint, the submission is communicated to the ombudsperson or the deontologist of the managing authority. According to the national programmes, those complaints are also communicated to the monitoring committee.

¹⁸¹ ECRE, PICUM (2024), Beyond walls and fences: EU funding used for a complex and digitalised border surveillance system – Study on the use of the Border Management and Visa Instrument during the 2021 – 2027 Multiannual Financial Framework, p. 39.

Actionable advice

The right to asylum and protection in the event of removal, expulsion or extradition are closely related to other Charter rights, such as the right to life and the prohibition of torture and inhuman or degrading treatment, and others. Respect for these rights must be upheld throughout the implementation of CPR-funded operations. National authorities should be particularly attentive to fundamental rights concerns affecting these rights in the context of AMIF, ISF and BMVI funds. Managing authorities should incorporate robust safeguards into their selection and monitoring procedures to prevent violations, notably through fundamental rights impact assessments, as suggested in Case Study 6 – Articles 1, 3, 4, 7, 17, 18 and 23 of the Charter, which further provides a step-by-step illustration of how to effectively assess and mitigate risks in line with Annex II – Checklist. National authorities should also consider incorporating the good practice of including representatives of organisations operating in the field of migration and asylum in the monitoring committees overseeing these funds and ensuring adequate complaint mechanisms are available. Finally, the national authorities are also encouraged to consider existing guidance, such as the one presented in Box 10 below.

Box 10. Guidance on the use of EU funds for the integration of people with a migrant background

The European Commission's Toolkit on the use of EU funds for the integration of people with a migrant background – 2021-2027 programming period, as can be read in the foreword, provides "practical support for public authorities and other relevant stakeholders to design efficient integration measures under the new EU funding programmes for the 2021–2027 period. It gives an overview of how the funds can be used to promote integration in all related policy areas, from education to employment, housing and healthcare". The toolkit includes a specific section on reception of individuals seeking international protection.



Useful sources and further reading

[Annex I – Overview of Charter resources](#)

Right to education

Article 14 Right to education

1. *Everyone has the right to education and to have access to vocational and continuing training.*
2. *This right includes the possibility to receive free compulsory education.*
3. *The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education*

and teaching of their children in conformity with their religious, philosophical, and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Essential information:

- Article 14 of the Charter is included under Title II – Freedoms (see [Figure 1](#))
 - It corresponds to **Article 2 of the Protocol to the ECHR**, but warrants more extensive protection (see [Figure 2](#))
 - It is **not** an absolute right (see [Limitations on the exercise of the rights and freedoms recognised by the Charter](#))
-

Overview of the rights

Article 14 of the Charter enshrines the right to education. It is based on **Article 2 of the Protocol to the ECHR**. Differently from the ECHR, the Charter expressly covers access to vocational and continuing training. Article 14(2) of the Charter enshrines the principle of free compulsory education, implying that each child has the possibility of attending an establishment which offers free education, which is not to say that all establishments providing education are to be free of charge. Article 14(3) of the Charter guarantees the freedom to found public or private educational establishments with respect for democratic principles and in accordance with the national legislation. It also protects the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions, in line with Article 2 of the Protocol to the ECHR.

Practical considerations in connection with CPR funds

In the context of the implementation of CPR funds, the action of national authorities or beneficiaries implementing projects may impact the rights to education, either considered alone or in conjunction with other Charter rights or principles, notably, Articles 20 and 21 on equality and non-discrimination. As explained above, Article 21(1) of the Charter prohibits any discrimination based, namely, on race, colour, ethnic origin or membership of a national minority.

Box 11. Examples of action in connection with operations affecting the right to education

At implementation stage

A national programme funded by the ESF+ foresees the funding of action aiming at counteracting the effects of the interruption of face-

to-face teaching activities due to the COVID-19 pandemic. Under this programme, a call for proposals was issued naming as eligible for support under the fund action envisaging the provision of afterschool support to students to make up for learning gaps. Such an action would be promoting the right to education.

Box 12. Examples of action in connection with operations affecting the right to education together with the principle of non-discrimination

At the implementation stage

In the context of an ESF+ funded programme, a call for proposals was launched under the specific objective of 'Promoting school success and combating inequalities'. The managing authority has received an application from a group of schools proposing a set of actions to promote the success of Roma children in school. One such action involves placing Roma children in separate classes to better address their specific learning needs. The management authority is concerned that such an action may contribute to the discrimination of Roma children in schools in that Member State, violating the right to education and the principle of non-discrimination. It is thus considering rejecting funding for this operation.

Another application received under the same call also envisaged promoting the success of Roma children in school. However, the activities foreseen include the provision of individualised support to children through after-school and extracurricular activities. Such an action would *prima facie* constitute a positive discrimination of Roma children, entailing a positive impact on their right to education.

Actionable advice

The right to education may be particularly affected in the context of ESF+ funded operations, but not only. It may also be affected when taken together with the principles of equality and non-discrimination. Conversely, CPR funded operations may also have a positive impact on this right. National authorities should be particularly attentive to this right when selecting operations to be funded. Annex II – Checklist constitutes a helpful tool in this regard. Finally, the national authorities are also encouraged to consider existing guidance, such as the one presented in Box 13 below.

Box 13. Guidance on the use of EU funds in tackling segregation and promoting integration of migrants

The '[Note on the use of EU Funds in tackling educational and spatial segregation - 2021-2027 programming period](#)' (2022) provides recommendations on the efficient use of EU funds, in particular ESF+ and ERDF in tackling educational and spatial segregation, based on the EU legislative and policy frameworks. Although directed at stakeholders at EU level, it builds on the '[Guidance Note on the use of European Structural and Investment Funds in tackling educational and spatial segregation](#)' (2015), which was directed at Member States. Both documents provide useful guidance to authorities on how to plan calls for proposals, select operations and monitor operations to effectively design and implement investments to address the education and housing needs of marginalised communities. Both also include examples of operations contributing to these objectives.

See also the European Commission's *Toolkit on the use of EU funds for the integration of people with a migrant background – 2021-2027 programming period* in [Box 10](#).



Useful sources and further reading

[Annex I – Overview of Charter resources](#)

Right to property

Article 17 Right to property

4. *Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.*
5. *Intellectual property shall be protected.*

Essential information:

- Article 17 of the Charter is included under Title II – Freedoms (see [Figure 1](#))
- It corresponds to **Article 1 of the Protocol to the ECHR** (see [Figure 2](#))
- It is **not** an absolute right (see [Limitations on the exercise of the rights and freedoms recognised by the Charter](#))

Overview of the right

The right to property is protected by **Article 17 of the Charter**. It covers the right to own both movable and immovable property, which comprises its free use and disposal, including inheritance.

Article 17(1) of the Charter expressly recognises that the right to property is not an absolute right. It may be subject to limitations that are justified by objectives of public interest and in the cases and conditions provided by law which may entitle the right's holder to fair compensation. Failing such requirements, the interference with the right to property should be considered as impinging upon its substance (without prejudice to the other requirements established in Article 52(1) of the Charter).

Practical considerations in connection with CPR funds

The right to property is more prone to be affected in the context of selection and implementation of operations involving the construction of large-scale infrastructures or the conservation of the environment funded, notably, by the Cohesion Fund or the ERDF, as these may entail the expropriation or repurposing of land.

Box 14. Example of an action affecting the right to property**At the implementation stage**

Under a Cohesion Fund national programme, with the specific objective of 'Promoting sustainable urban mobility', the competent managing authority is preparing a call for proposals for the expansion of a metro line. The selection criteria are structured into four parameters: adequacy, capacity to deliver, quality of the operation and impact. As the plans for the expansion of the metro line will necessarily pass through private land, the methodology to evaluate the selection criteria provides that the impact on private property constitutes a specific weighting factor. In that connection, applicants are required to present how they plan to compensate the owners of the land, which may need to be expropriated or otherwise be restricted in its possible use in line

with national and European legislation, including a formula to calculate the compensation due. Such an approach will contribute to ensuring that, even though the right to property is affected by the operation, the limitation respects the essence of the right and is proportionate.

Actionable advice

Useful sources and further reading

[Annex I – Overview of Charter resources](#)

The right to property may be affected particularly in connection with operations involving the construction of large-scale infrastructures, the conservation of the environment and others entailing the expropriation or repurposing of land. National authorities should be particularly attentive to this right when proposing selection criteria and methodology for evaluating applications and emphasise guarantees to prevent limiting this right or, when not possible, adequately compensate the right holder for such a limitation. The [Annex II – Checklist](#) constitutes a helpful tool in this regard.

Key messages (Chapter 3)

Although all Charter rights are susceptible of being affected in the context of CPR funds, certain Charter rights are more prone to potentially be affected either by the actions of the national authorities or beneficiaries in connection with the funded operations. This is without prejudice to cross-cutting rights also being affected specifically in connection with the funded operations.

The implementation of specific CPR funds may potentially affect particular Charter rights owing to the subject matter of these funds.

National authorities should carefully consider these rights when developing the methodology and criteria used for selecting operations and conducting management verifications. Conversely, beneficiaries should consider these rights when planning and carrying out the funded operations.

National authorities are invited to consider [Table 5](#) along with the explanations, examples and good practices listed in this Chapter 3 to assist in the identification of how their actions, particularly in the context of selection and implementation of operations, may affect Charter rights, how to mitigate such risks, what preventive action can be put in place and how to address eventual breaches.

National authorities are reminded to consider other rights not presented in Chapter 3.

[Annex II – Checklist](#) may serve as a particularly helpful tool to identify the Charter rights at stake and assess whether a specific limitation is admissible.

Annexes

Annex I – Overview of Charter resources

Charter of Fundamental Rights of the European Union

Title I – Dignity

Article 1 Human dignity

- European Union Agency for Fundamental Rights, EU Charter of Fundamental Rights, [Article 1 – Human dignity](#)

Article 2 Right to life

- European Union Agency for Fundamental Rights, EU Charter of Fundamental Rights, [Article 2 – Right to life](#)
- European Court of Human Rights, [Guide on Article 2 – Right to life](#), last updated in August 2024

Article 3 Right to the integrity of the person

- European Union Agency for Fundamental Rights, EU Charter of Fundamental Rights, [Article 3 – Right to integrity of the person](#)
- European Court of Human Rights, [Factsheet on Health](#), September 2024.

Article 4 Prohibition of torture and inhuman or degrading treatment or punishment

- European Union Agency for Fundamental Rights, EU Charter of Fundamental Rights, [Article 4 – Prohibition of torture and inhuman or degrading treatment or punishment](#)
- European Court of Human Rights, [Guide on Article 3 – Prohibition of torture](#), last updated in August 2024

Article 5 Prohibition of slavery and forced labour

- European Union Agency for Fundamental Rights, EU Charter of Fundamental Rights, [Article 5 - Slavery / Forced Labour](#)
- European Court of Human Rights, [Guide on Article 4 – Prohibition of slavery and forced labour](#), last updated in August 2024
- European Court of Human Rights, [Factsheet on Slavery, servitude and forced labour](#), October 2024
- European Court of Human Rights, [Factsheet on Work-related rights](#), March 2024
- European Union Agency for Fundamental Rights, [How workplace inspectors can protect third-country workers' rights: Training manual](#), November 2024
- European Commission, [Together Against Trafficking in Human Beings](#), last updated in April 2024
- [ILO Indicators of Forced Labour](#), 2012
- [ILO Operational indicators of trafficking in human beings](#), revised version of September 2009
- European Migration Network, [Interpretation and distinction between labour exploitation in the context of trafficking in human beings and](#)

[particularly exploitative working conditions under the Employers Sanctions Directive, 2022](#)

Title II – Article 6 Right to liberty and security

Freedoms

- European Union Agency for Fundamental Rights, EU Charter of Fundamental Rights, [Article 6 – Right to liberty and security](#)
- European Court of Human Rights, [Guide on Article 5 – Right to liberty and security](#), last updated in August 2024

Article 7 Respect for private and family life

- European Union Agency for Fundamental Rights, EU Charter of Fundamental Rights, [Article 7 – Respect for private and family life](#)
- European Court of Human Rights, [Guide on Article 8 – Right to respect for private and family life](#), last updated in August 2024
- European Court of Human Rights, [Factsheet on mass surveillance](#), June 2024

Article 8 Protection of personal data

- European Union Agency for Fundamental Rights, EU Charter of Fundamental Rights, [Article 8 – Protection of personal data](#)
- European Union Agency for Fundamental Rights, [Handbook on European data protection law](#), 2018 edition
- European Court of Human Rights, [Factsheet on Personal data protection](#), February 2024
- European Court of Human Rights, [Guide to the Case-Law of the European Court of Human Rights – Data protection](#), last updated in August 2024
- European Union Agency for Fundamental Rights, Charter case studies – Trainer's manual, Publications Office of the European Union, 2022, [Case study 7 – Amateur Journalism on Youtube: Data Protection and Information Society](#)
- European Commission: Directorate-General for Employment, Social Affairs and Inclusion, Hassan, E., Lundberg, P., Omersa, E., Robson, C. et al., [Smart ways to monitor and evaluate the ESF – How to gain access to administrative data while complying with data protection rules – Final report](#), Publications Office of the European Union, 2023
- Opinions and guidance from the EU data protection authorities, the [European Data Protection Board \(EDPB\)](#), its predecessor the Article 29 Working Party (WP29), as well as from the [European Data Protection Supervisor \(EDPS\)](#) (182).

Article 9 Right to marry and right to found a family

- European Union Agency for Fundamental Rights, EU Charter of Fundamental Rights, [Article 9 – Right to marry and right to found a family](#)

¹⁸² See, in particular, EDPS [Guidelines on assessing the proportionality of measures that limit the fundamental rights to privacy and to the protection of personal data](#), 2019; EDPS [Assessing the necessity of measures that limit the fundamental right to the protection of personal data: A toolkit](#), 2017; EDPB [Guidelines 5/2020 on consent under Regulation 2016/679](#), 2020; EDPB [Guidelines 1/2024 on processing of personal data based on Article 6\(1\)\(f\) GDPR](#), 2024; EDPB [Guidelines 7/2020 on the concepts of controller and processor in the GDPR](#), 2021; and EDPB [Guidelines 1/2025 on Pseudonymisation \(public consultation version\)](#), 2025.

- European Court of Human Rights, [Guide on Article 12 – Right to marry](#), last updated in August 2024

Article 10 Freedom of thought, conscience and religion

- European Union Agency for Fundamental Rights, EU Charter of Fundamental Rights, [Article 10 – Freedom of thought, conscience and religion](#)
- European Court of Human Rights, [Guide on Article 9 – Freedom of thought, conscience and religion](#), last updated in August 2024
- European Court of Human Rights, [Factsheet on Freedom of religion](#), August 2023

Article 11 Freedom of expression and information

- European Union Agency for Fundamental Rights, EU Charter of Fundamental Rights, [Article 11 – Freedom of expression and information](#)
- European Court of Human Rights, [Guide on Article 10 – Freedom of expression](#), last updated in August 2022

Article 12 Freedom of assembly and of association

- European Union Agency for Fundamental Rights, EU Charter of Fundamental Rights, [Article 12 – Freedom of assembly and of association](#)
- European Court of Human Rights, [Guide on Article 11 – Freedom of assembly and association](#), last updated in August 2024

Article 13 Freedom of the arts and sciences

- European Union Agency for Fundamental Rights, EU Charter of Fundamental Rights, [Article 13 – Freedom of the arts and sciences](#)

Article 14 Right to Education

- European Union Agency for Fundamental Rights, EU Charter of Fundamental Rights, [Article 14 – Right to education](#)
- European Union Agency for Fundamental Rights and Council of Europe, [Handbook on European law relating to the rights of the child](#), 2022 edition
- European Union Agency for Fundamental Rights and Council of Europe, [Handbook on European non-discrimination law](#), 2018 Edition
- European Court of Human Rights, [Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights – Right to education](#), last updated in August 2024
- European Court of Human Rights, [Factsheet on Prohibition of Discrimination – Roma and Travellers](#) (pp. 29-32), October 2024

Article 15 Freedom to choose an occupation and right to engage in work

- European Union Agency for Fundamental Rights, EU Charter of Fundamental Rights, [Article 15 – Freedom to choose an occupation and right to engage in work](#)

Article 16 Freedom to conduct a business

- European Union Agency for Fundamental Rights, EU Charter of Fundamental Rights, [Article 16 – Freedom to conduct a business](#)

Article 17 Right to property

- European Union Agency for Fundamental Rights, EU Charter of Fundamental Rights, [Article 17 – Right to property](#)
- European Court of Human Rights, [Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights – Protection of Property](#), last updated in August 2024

Article 18 Right to asylum

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Annex II – Checklist

Step 1: Identifying the action

- 1. Which specific action or measure raises the risk of impacting Charter rights?**
- 2. Who is the stakeholder conducting this action/measure (e.g. managing authority, monitoring committees, beneficiaries)?**
- 3. Can this action be considered as an action implementing EU law?**

See Part I, Chapter 1, Applicability and Charter's applicability to the implementation of EU funds

- a) Does the action/measure relate to an obligation set out under:**
- The CPR,
 - Fund-specific regulations,
 - Commission delegated and implementing regulations adopted on the basis of the CPR or Fund-specific Regulations, or
 - Other EU regulations and directives, which are applicable to Member States' actions implementing the ESI Funds?
- b) If it does not, can it still be considered an action implementing an obligation in EU law?**
- If yes, then the Charter applies.
 - If no, the Charter does not apply. The analysis under this C checklist ends here. This does not mean that the fundamental rights issues raised by the action/measure identified should not be addressed, but rather that it should be dealt with by national authorities within the framework of national law.

See Table 5, on II Practical application of the manual provides relevant information on some rights potentially affected in the context of disbursement of CPR funds. Although non-exhaustive, it includes relevant information that may be helpful in the identification of the rights potentially affected.

Step 2: Identifying the affected right

- 4. If the Charter applies, which rights are impacted?**

See Part I, Chapter 1, [Limitations on the exercise of the rights and freedoms recognised by the Charter](#).

5. What type of rights are they?

Is it an absolute or non-absolute right?

Step 3: Analysing the impact of the action or measure

This step aims at identifying, for all different stakeholders concerned, any positive impacts (promotion of fundamental rights) or negative impacts (limitation of fundamental rights)

6. Is the impact of the action or measure under consideration on the rights identified positive or negative?

NB: Should the analysis reveal that the action or measure would have no impact on fundamental rights, or only positive impacts on fundamental rights, there is no need for further analysis under this checklist. The analysis ends.

If you identify negative impacts, consider the following:

a) The right at stake is an absolute right:

- If it is concluded that the examined action or measure limits an absolute right, it should be discarded at this stage since absolute rights may not be limited and a further analysis under this checklist is not needed. The analysis ends.

b) The right at stake is not an absolute right?

- If it is concluded that the examined action or measure limits a non-absolute right, follow the next steps of this checklist.

Note: Action/measures may affect one right negatively while impacting another positively. Both situations should be considered. Question 7.c) is particularly relevant in that connection.

7. Is the limitation justified in the light of Article 52(1) of the Charter?

See Part I, Chapter 1,
Limitations on the
exercise of the rights and
freedoms recognised by
the Charter.

- a) Is the interference provided for by law, in a clear and predictable manner?**
- b) Does it respect the essence of the right impacted?**
- c) Does it genuinely meet an objective of general interest of the Union or to protect the rights and freedoms of others?**
NB: This step should identify which objective of general interest or to protect the rights and freedoms of others.
- d) Is it necessary to achieve the desired aim?**
NB: This step should examine if the measure is appropriate and effective for attaining the objective pursued without going beyond what is necessary to achieve it.
- e) Is it proportionate to the desired aim?**
 - If all the answers to the above questions are affirmative, the limitation may be considered justified.
 - If one of the answers to the questions above is negative, the limitation is unjustified and thus breaches the right as protected by the Charter.

Annex III – Case studies

Case Study 1 – Article 8 of the Charter

Potential breaches of personal data protection in the implementation phase

Background information

This case study discusses data protection issues throughout the lifecycle of a programme funded by the JTF. It presents a fictional scenario in which there could be a violation of the right to data protection of individuals, in this case of jobseekers. It also discusses how the managing authority should handle personal data in its communication with beneficiaries and throughout the management of the programme from a procedural perspective.

Description of the situation

A traditional mining region in a central eastern Member State was moving away from lignite mining and coal-fired energy, which was officially phased out by the end of 2023. This left many workers without jobs and facing an uncertain future. Most of the mining workers have been working in the sector for over 20 or even 30 years. They are completely unfamiliar with the job search landscape and have no idea how to find new employment. The ministry of labour, the national programme authority, has prepared a programme in cooperation with the national managing authority, which was approved by the Commission under the JTF.

This programme focuses on providing training and career guidance to help redundant mining workers find employment in new green energy sectors such as electrical installation, solar panel installation and the like, thus helping them navigate the job market. Several private legal entities (i.e. beneficiaries) have been awarded funding for operations such as practical training sessions that teach job seekers how to communicate their skills and strengths, how to prepare a CV and/or cover letter, how to train for an interview, and advice on how to acquire new skills relevant to a specific job. In order to participate in the training, one of the beneficiaries requires participants to provide information on their contact details, ethnic origin, employment history, health/disability status and data on their income for the last six months, supported by their bank statement.

Throughout the implementation of the programme, the managing authority monitors the implementation of each operation and checks the progress, financial expenditure and performance of the projects. In the grant agreements, the managing authority is granted free and full access to all project documentation held by the beneficiaries. In addition, Annex III of the

JTF Regulation (EU) 2021/1056 sets out specific common output and result indicators necessary for monitoring the use of funds. These also include indicators that ask for personal data on participants, some of which must be disaggregated by gender.

As part of the promotional activities, the ministry of labour asked the beneficiaries to send them photographs showing the project activities. Such photos, which allowed the identification of jobseekers, were published on the social media of the beneficiaries implementing the projects and shared both with the relevant ministry and managing authority.

Key issues

These operations/projects, which fall under the programme funded by the JTF, inevitably require the beneficiaries to collect certain data from jobseekers in order to understand their wider context and needs. Some of this data is required to be reported to the managing authorities to enable them to monitor the operations in accordance with the grant agreements. In addition, photographs of participants are taken and shared with the national authorities for promotional purposes.

The first question that arises is whether such actions are connected with the disbursement of CPR funds and thus constitute the implementation of Union law within the meaning of Article 51 of the Charter.

The second question is which activities amount to the processing of personal data and would therefore trigger the application of the GDPR and the right to the protection of personal data.

Analysis

Step 1: Identifying the action

- 1. Which specific action or measure raises the risk of impacting Charter rights?**
- 2. Who is the stakeholder conducting this action/measure (e.g. managing authority, monitoring committees, beneficiaries)?**

The following actions raise the risks of impacting the Charter:

- Activities of the ministry of labour and the managing authority related to the implementation of the programme (design and application of appropriate selection procedures and criteria, preparation of calls for proposals and selection of projects, conclusion of grant agreements, etc.).
- Activities of the beneficiaries related to the collection of participants' personal data (processing of data for the purpose of conducting training, reporting to national authorities, taking and sharing of photographs, etc.).

- Activities of the ministry of labour and the managing authority in relation to the monitoring of operations.
- Any other exchange of data (e.g. sharing of photographs) between beneficiaries and other national authorities, such as the Ministry of Labour and the managing authority.

3. Can this action or measure be considered as an implementation of EU law and thus fall within the scope of application of the Charter?

The requirement to respect the Charter is binding on beneficiaries, managing authorities and other stakeholders involved only when they act within the scope of EU law. Most of the actions described above fall within the scope of 'implementing the EU law'. The rules in the CPR require and subsequently allow Member States to process personal data (Article 4), in particular when drawing up the programming documents and setting up the management, monitoring and control systems, and when implementing the programmes together with the beneficiaries. For example, when managing authorities are granted access to project documents, including personal data, held by beneficiaries on the basis of the individual grant agreements, or when they establish the indicators for monitoring the use of funds in accordance with Article 12 and Annex III of the JTF Regulation (EU) 2021/1056 and receive data on participants on the basis of these indicators, they act within the scope of the CPR and thus within the scope of EU law. Similarly, when beneficiaries process personal data of participants in order to report data on the indicators, they are acting within the scope of EU law. Finally, the broad wording of Article 4 of the CPR ensures that even the taking of photographs for promotional purposes could be interpreted as falling within the scope of EU law, as communication activities related to the disbursement of EU funds are listed as a possible purpose for the processing of personal data under the CPR. In all these cases, beneficiaries, managing authorities and other national authorities should ensure compliance with the Charter.

Step 2: Identifying the affected fundamental rights

4. If the Charter applies, which fundamental rights are impacted?

Activities and actions of beneficiaries and national authorities, including managing authorities, raise the risk of affecting **the right to protection of personal data in Article 8** of the Charter of project participants, which is closely linked to the right to privacy enshrined in Article 7 of the Charter.

In order for this right to be affected, the data in question should first be classified as **personal data**. Data such as contact details, workers' employment history, skills profile, educational background, and, in some cases, information on their unemployment status, family, health/disability and economic status, and photographs of project participants, are personal data. Information on health or disability is a special category of personal

data (i.e. sensitive data). Sensitive data are data relating to health, sexual orientation, racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, or genetic or biometric data of an individual (Article 9(1) of the GDPR) and may even include data that could unintentionally reveal one of these aspects, such as attendance at a particular school or dietary preferences that could reveal a persons' religious beliefs, etc. Photographs are only covered by the definition of biometric data if they are processed using specific technical means that allow the unique identification or authentication of a natural person (e.g. facial recognition) (Article 4(14) of the GDPR). In addition, participants may also provide beneficiaries with other data in their CV or motivation letter that is not requested or needed for the purpose of the training.

The GDPR provides a general legal framework for **processing personal data**. Data processing means any operation or set of operations which is performed on personal data or sets of personal data, whether or not by automated means (Article 4(2) of the GDPR). This is a broad definition that covers not only the collection of personal data on the part of beneficiaries, but also any other operation involving personal data, including access, storage, review or any other action on the part of the managing authority and other national authorities that monitor the implementation of projects, check their progress, financial expenditure and performance. Finally, the issue of sharing of data between beneficiaries and other national authorities, such as the ministry of labour and the managing authority, must comply with the applicable data protection rules. This applies regardless of whether the data is shared on the basis of the grant agreement or on the basis of subsequent requests, such as the sharing of photographs for promotional activities.

5. What type of rights are they?

The right to protection of personal data is **not absolute** and Article 52(1) of the Charter entails a detailed balancing test on the basis of which limitations to the rights can be justified.

Step 3: Analysing the impact of the action or measure

6. Is the impact of the foreseen action or measure under consideration on the rights identified positive or negative?

As mentioned above, EU legislation (e.g. CPR, JTF Regulation (EU) 2021/1056) requires and allows managing authorities, other national authorities and beneficiaries to collect and share personal data of project participants and other individuals. Such data processing may therefore have a negative impact on the right of such individuals to the protection of their personal data.

7. Is the limitation justified in the light of Article 52(1) of the Charter?

a) Is the interference provided for by law, in a clear and predictable manner?

In the case at hand, the limitation on the right to the protection of personal data comes from the fact that EU law provides a broad legal basis for the processing of data. For example, Article 4 of the CPR allows Member States (e.g. managing authorities and other national authorities) to process personal data whenever necessary for the purpose of carrying out their respective obligations under this Regulation, in particular for monitoring, reporting, communication, publication, evaluation, financial management, verifications and audits and, where applicable, for determining the eligibility of participants. Finally, the combined reading of the CPR and the JTF Regulation (EU) 2021/1056 requires beneficiaries to process personal data of participants in order to be able to report data on the indicators.

However, it is questionable whether the interference is provided in a clear and predictable manner. Although not mentioned in the description of the situation, the 'clear and foreseeable' standard could also be met if the interference is further specified in the national implementing legislation.

Important to note is also that the GDPR requires that any kind of processing of personal data must be lawful, meaning that it **must have a legal basis** under Article 6 of the GDPR (processing of sensitive data must also be based on one of the conditions for lifting the ban in Article 9(2) of the GDPR). National authorities could be authorised to process data of project participants either on the basis of a legal obligation (Article 6(1)(c) of the GDPR) or on the basis of a task carried out in the public interest or in the exercise of official authority vested in them (Article 6(1)(e) of the GDPR), which must be laid down in national and/or EU law as specified in Article 6(3) of the GDPR. Similarly, beneficiaries should also base their processing on one of the permitted legal bases. In addition to the legal obligation (Article 6(1)(c) of the GDPR, beneficiaries could legitimise their processing on the basis of the consent of jobseekers (Article 6(1)(a) of the GDPR) or on the basis of their legitimate interests which are not overridden by the rights of those jobseekers (Article 6(1)(f) of the GDPR). When relying on consent, such consent must be freely given, specific, informed and unambiguous (Article 4(11) of the GDPR). As consent must be obtained in a transparent and fair manner, jobseekers should be informed of the purpose of the filming through a specific privacy notice and should give their active consent in advance, which they can also withdraw at any time without adverse consequences (Article 7 of the GDPR).

Where data are collected for additional purposes, such as the distribution of promotional material, which are not necessary for the

implementation of projects, all stakeholders concerned (i.e. beneficiaries and national authorities) should establish a legal basis for such processing. This could be, for example, consent combined with a transparent privacy notice explaining the purpose of the processing.

b) Does it respect the essence of the right impacted?

The rules laid down in the CPR and the JTF Regulation (EU) 2021/1056 still respect the essence of the right to the protection of personal data. For example, Article 4 of the CPR clearly states that the processing of personal data should be in accordance with the rules of the GDPR, which means that individuals should also be granted specific rights (such as the right of access, the right to object, and others) and have a remedy against unjustified interference (such as the right to complain to the national data protection authority).

c) Does it genuinely meet an objective of general interest of the EU or to protect the rights and freedoms of others?

The exercise of monitoring and evaluation of public expenditure could be considered an objective of general interest required by Articles 8 and 52(1) of the Charter. The CJEU has repeatedly held that interference with the right to the protection of personal data may be justified if it serves a clear, legitimate and proportionate public interest.

d) Is it necessary to achieve the desired aim?

e) Is it proportionate to the desired aim?

Any limitation on the protection of personal data should be necessary and proportionate. According to the GDPR, personal data may only be processed for a specific, explicit and legitimate purpose and may not be further processed in a manner that is incompatible with the purposes for which they were collected (see Article 5(1)(b) of the GDPR on the **purpose limitation principle**). In addition, the **principle of data minimisation** requires national authorities to collect only data that is adequate, relevant and limited to what is necessary in relation to the purpose (Article 5(1)(c) of the GDPR).

This means that national authorities, such as the ministry of labour and the managing authority, should only have access to those parts of the project documentation and the data necessary to fulfil their monitoring tasks. Although the necessity and proportionality assessment of the processing should be assessed when the legislation defining a task or obligation of a national authority is adopted, national authorities should also take these principles into account when drafting the programming documents and not request or access more data than necessary. Similarly, beneficiaries should collect only the data necessary to implement their projects and to report on the use of funds. Any superfluous data shared by the participants should be deleted immediately. **Data on the applicant's financial situation and bank**

details, as well as on their ethical origin, do not appear to be necessary to participate in the training. Therefore, collecting such excessive data would not pass the balancing test in Article 52(1) of the Charter and would thus violate the participants' right to the protection of their personal data.

To mitigate data protection risks, techniques such as pseudonymisation could be used to protect data and reduce the risk of misuse or inadvertent disclosure while still meeting the monitoring needs of the programme.

Learning takeaways

The case study highlights critical data protection challenges and good practices for handling personal data in the implementation of EU-funded programmes. Key takeaways highlight the importance of respecting the GDPR, which regulates the right to the protection of personal data as enshrined in Article 8 of the Charter.

Managing authorities and other national authorities should identify the specific grounds for processing personal data, based on either a legal obligation or a task in the public interest, which must be laid down in national and/or EU law. In light of the requirements in Article 52(1) of the Charter, such legislation should be foreseeable, clear, detailed and publicly accessible. Similarly, beneficiaries should also base their processing on one of the permitted legal bases and should only collect data that are adequate, relevant and limited to what is necessary in relation to the purpose of the processing.

Further reading

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Case Study 2 – Article 23 of the Charter

Gender equality under CPR funding

Background information

This case study discusses gender equality issues that may arise in the disbursement of ESF+ funds. It presents a hypothetical scenario in which the application of national law can lead to results that do not foster gender equality in the context of a programme aiming to support the reskilling of older workers.

Description of the situation

In a Member State, unemployment of older persons has been increasing, among others, due to the fact that older workers may not have the necessary skills to engage in work in new green and digital sectors. Aiming to reduce unemployment among older persons, foster their integration in society through work, as well as address the needs of the new employment sectors, a national programme under the ESF+ provides, as a specific objective, the provision of training and career guidance to older workers.

Under the programme, the pursuit of this specific objective will cover action envisaging the provision of training and guidance to older workers (not less than 50 years old) but not yet of retirement age. In the concerned Member State, however, the retirement age for men was set at 60 years, while the retirement age for women was between 53 and 57 years, depending on the number of children they had. As the programme took into account, for the purpose of affording training and guidance, the national age of retirement, this meant women would have less time to apply for the reskilling programme, even if they would like to work beyond the minimum age of retirement.

Key issues

National law provides for a difference in treatment between men and women regarding the minimum age of retirement. This difference has an impact on who can benefit from reskilling support funded by the ESF+. In view of the principle of equality between women and men, enshrined in Article 23 of the Charter, a few key issues arise. First, whether the Charter applies, and second, if it does, whether such a difference in treatment complies with the Charter in the case at hand.

The analysis of the case study follows the steps set out in [Annex II – Checklist](#).

Analysis

Step 1: Identifying the action

1. **Which specific action or measure raises the risk of impacting Charter rights?**
2. **Who is the stakeholder conducting this action/measure (e.g. managing authority, monitoring committees, beneficiaries)?**

In this case, the specific action raising the risk of impacting Charter rights is the national programme under ESF+, which provides restricted access to some female beneficiaries, possibly targeted by operations under a specific objective due to the reference to 'retirement age'. The programme is prepared by national authorities.

3. **Can this action or measure be considered as an implementation of EU law and thus fall within the scope of application of the Charter?**

The requirement to respect the Charter is binding on managing authorities and other involved stakeholders only when they act within the scope of EU law. When national authorities determine the national age of retirement, they are not acting within the scope of EU law and are thus not bound by the Charter (although they remain obliged to respect human rights in line with their own Constitution and their other international human rights obligations, including the respect of the ECHR).

Member States are considered to act in the scope of EU law when adopting acts or drawing up documents resulting from an obligation included in the CPR, or any of its delegated or implementing acts, notably, when drawing up programmes under Articles 21 and following of the CPR. Thus, when drawing up such documents, Member States must ensure that their content is in compliance with the provisions of the Charter. In the case at hand, the potential limitation arises from the national programme when considered in light of the applicable national law (i.e. the notion of retirement age). Consequently, managing authorities and other national authorities should ensure compliance with the Charter in these cases, including when deciding who will benefit from the support offered by the funded programme.

Step 2: Identifying the affected fundamental rights

4. **If the Charter applies, which fundamental rights are impacted?**

The difference in treatment between women and men in the context of the ESF+ funded programme providing reskilling support for older workers raises the risk of impacting equality between women and men, as enshrined in Article 23 of the Charter.

5. **What type of rights are they?**

Article 23 prescribes that gender equality must be ensured in all areas, including employment. At the same time, however, the Article establishes that such equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex. Thus, the text of the Article acknowledges that certain differences in treatment between women and men will comply with the Charter, showing that this is not an absolute right. Any such difference, however, must respect the essence of Article 23 of the Charter and comply with what is prescribed in Article 52(1) of the Charter, which regulates the arrangements to assess limitations on Charter rights.

Step 3: Analysing the impact of the action or measure

6. Is the impact of the action or measure under consideration on the rights identified positive or negative?

As noted above, the specific objective drawn up by the managing authorities interpreted in light of the applicable national legislation, provides different access to training and reskilling for women and men. This difference may lead to operations on training and reskilling being funded to which women will have restricted access to than men. It can thus have a negative impact on equality between women and men.

7. Is the limitation justified in the light of Article 52(1) of the Charter?

a) Is the interference provided for by law, in a clear and predictable manner?

In the case at hand, the limitation comes from the fact that national law prescribes a different retirement age for women and men. The interference is thus prescribed in law.

b) Does it respect the essence of the right impacted?

The objective of setting a lower retirement age for women, further dependent on the number of children a woman has raised, is to provide an advantage to women in view of the fact that they often exercise the role of main carer for children as well as for other family members, which may have a detrimental effect on their professional career. This objective is thus in line with the text of Articles 23 and 52(1).

In the context of having access to reskilling funded by the ESF+, however, this law, enacted in a different context with the goal of giving women an advantage regarding retirement in a situation where they are in a different position than men, limits the possibility of women who wish to work beyond minimum retirement age accessing reskilling opportunities. As women can still benefit from the programme,

however, it cannot be said that the limitation goes against the essence of the right impacted

c) Does it genuinely meet an objective of general interest of the Union or to protect the rights and freedoms of others

The aim of the funded programme, as mentioned above, is to reduce unemployment among older persons, foster their integration in society through work, as well as address the needs of the new employment sectors. In this context, female and male older workers wishing to continue working are in a comparable situation, yet a woman may not be able to benefit from reskilling support (because of her gender and the number of children she raised), whereas a man of the same age may be able to benefit from it. This result further goes against the ESF+ Regulation (EU) 2021/1057, which, in Article 6, establishes that "Through the ESF+, Member States and the Commission shall aim to increase the participation of women in employment as well as conciliation between working and personal life, combat the feminisation of poverty and gender discrimination in the labour market and in education and training." Thus, while in the context of retirement, the different treatment afforded to women and men aim to recognise that women and men of the same age may be in a different situation, in the context of accessing reskilling opportunities, the difference in treatment does not seem to pursue any specific objective of general interest, but, instead, goes against the objectives set by the programme.

Consequently, in this specific case, it is incompatible with European Union law and the principles of equal treatment and non-discrimination for retirement age, for the purposes of granting reskilling support for older workers, to be determined differently depending on the gender of the applicant and, in the case of female applicants, on the number of children they raised. A solution in this case could be to make the programme accessible to all older workers between the ages of 50 and 60, regardless of their gender and the associated retirement age.

Learning takeaways

This case shows that while different treatment in national law may be justifiable for the purposes identified in the national context, the application of such law in the context of funds may be incompatible with the principle of equality between men and women. In this case, for the purpose of retirement, it could be justifiable to set different ages for men and women and to determine the age of retirement for women according to the number of children raised. For the purpose of reducing unemployment among older persons willing to work, fostering their integration in society through work as well as addressing the needs of the new employment sectors, however, such differentiation could not be justified.

Further reading

CJEU's judgement *Blanka Soukupová v Ministerstvo zemědělství* (C-401/11).

European Union Agency for Fundamental Rights (2022), Charter case studies - Trainer's manual, Case study 3 – Retirement age.

European Institute for Gender Equality (2020), Gender Budgeting: Step-by-step toolkit, Tool 8: Tracking resource allocations for gender equality in the EU cohesion policy funds.

Case Study 3 – Article 26 of the Charter

Integration of persons with disabilities under CPR funding

Background information

This case study discusses the principle of integration of persons with disabilities. It presents two fictional scenarios of the implementation of CPR funds, raising concerns about respecting this principle. The two scenarios aim at illustrating one situation where the Charter applies and one where it does not. The case study also shows how Charter rights and principles should be interpreted in line with other human rights obligations, such as the UNCRPD, which is relevant in the present case.

Description of the situation

Situation A: Under a national programme financed by the CF, a call for grants was issued under the programme's specific objective of 'supporting energy efficiency in residential care units', which, among other, aims at supporting measures to better insulate buildings and reduce energy expenditure of facilities.

Social care institution A, which provides daycare activities for children and adults with disabilities, applied for this grant to address the building's problematic heating situation, including through better insulation of the façade and replacing windows. It was awarded around EUR 425 000.

Later, news reports emerged uncovering suspicions of ill-treatment of the users of the daycare offered by social care institution A. One of the responsible officials of the managing authority is concerned that the funded operation is not Charter compliant and questions whether it thus warrants a reaction from the managing authority.

Situation B: Under a national programme financed by the ESF+, a call for grants was issued under the programme's specific objective of 'supporting long-term care of persons with disabilities', which, among other, aims at funding initiatives supporting the autonomy and active participation in the community of persons with disabilities. The managing authority prepared the selection criteria for awarding the grants. In view of targeting funding, the selection criteria included a limitation on the eligibility for funding to operations conducted by and within a residential institution. In the discussion of the selection criteria in the monitoring committee, a member of the monitoring committee raised the issue of the compatibility of this limitation with Article 26 of the Charter.

Key issues

The first issue raised by the case study relates to the application of EU law and, thus, of the Charter.

Both situations concern rights of persons with disabilities protected, notably, by Article 26 of the Charter. While the first situation deals with potential ill-treatment of residents of social care institution housing children and adults with disabilities, the second situation relates to the (de)institutionalisation of persons with disabilities.

The two situations refer to different moments of implementation of the programmes and correspond to different roles and responsibilities of the relevant authorities. The first situation refers to the role of the managing authorities in the context of project monitoring, while the second refers to the role of the monitoring committee in approving the criteria used for the selection of operations.

The analysis of the case study follows the steps set out in [Annex II – Checklist](#).

Analysis

Situation A:

Step 1: Identifying the action

- 1. Which specific actions or measures raise the risk of impacting Charter rights?**
- 2. Who is the stakeholder conducting this action/measure (e.g. managing authority, monitoring committees, beneficiaries)?**

The fundamental rights concerns relate to suspicions of ill-treatment of the residents in the social care institution, thus referring to the actions of the beneficiary of the fund.

- 3. Can this action or measure be considered as an implementation of EU law and thus fall within the scope of application of the Charter?**

The action at stake in Situation A refers to the suspected ill-treatment of the users by the institution. However, the connection with EU law in this situation relates to the use of CPR funds to improve the heating efficiency in the institution. The sheer fact that a given infrastructure has been financed by the Union does not mean that the Member State implements EU law within the meaning of Article 51 of the Charter, also with regard to the establishment using that infrastructure. As regards the operation of the social care institution and hence the treatment of its users, there seems to be no connection with any obligation set out under the CPR, nor under other obligations of EU law. As a consequence, the treatment of the users of the social care institution cannot be considered as a situation implementing Union law within the meaning of Article 51 of the Charter, the latter thus not being applicable to the case at hand.

Notwithstanding, it should be noted that the reports of ill-treatment of the users of the daycare should be addressed as Member States are obliged to respect human rights in line with their own Constitution and their other international human rights obligations, including the respect of the ECHR.

As such, although there is not an issue of Charter compliance, as it is not applicable to this specific situation, this does not mean that national authorities should not take action to address the fundamental rights' concerns raised by the news reports. Which form this will take is, however, left for the Member States.

As the Charter does not apply to the fundamental rights' concerns raised in situation A, there is no need to analyse the remaining questions for reflection in that connection.

Situation B:

Step 1: Identifying the action

- 1. Which specific actions or measures raise the risk of impacting Charter rights?**
- 2. Who is the stakeholder conducting this action/measure (e.g. managing authority, monitoring committees, beneficiaries)?**
- 3. Can this action or measure be considered as an implementation of EU law and thus fall within the scope of application of the Charter?**

See on the Charter's applicability, Chapter 1, Part I, [Charter's applicability to the implementation of EU funds](#) and [Table 5](#) above.

The fundamental rights' concerns relate to the preparation of the selection criteria for awarding the grant, thus referring to the action of the managing authority.

Step 2: Identifying the affected fundamental rights

- 4. Which fundamental rights are impacted?**
- 5. What type of rights are they?**

The fundamental rights concerns raised relate to the potential funding of operations favouring the institutionalisation of persons with disabilities, affecting Article 26 of the Charter on the integration of persons with disabilities. This Article enshrines a principle.

For the distinction between the rights and principles included in the Charter, see Chapter 1, Part I, [Overview of the Charter](#).

It is not an absolute right and, thus, may be limited in line with the principles set out in Article 52(1) of the Charter.

Step 3: Analysing the impact of the action or measure

6. Is the impact of the action or measure under consideration on the rights identified positive or negative?

The potential interference to Article 26 of the Charter raised in Situation B relates to the limitation of the eligibility for funding to operations conducted by and within a residential institution. This restriction of operations potentially funded to operations conducted by and within a residential institution seems to favour an approach to care for persons with disabilities involving their institutionalisation.

7. Is the interference justified in the light of Article 52(1) of the Charter?

a) Is the interference provided for by law, in a clear and predictable manner?

As to the first point, there is no information as to whether the limitation is provided for by law.

b) Does it respect the essence of the right impacted?

Regarding the second point, Article 26 of the Charter expressly recognises the right of persons with disabilities to benefit from measures intended to promote their independence, social and occupational integration and participation in the life of the community. The limitation seems, thus, to affect the essence of the principle as it favours an institutionalisation approach, rather than one promoting the independence and life in the community of persons with disabilities.

In this regard, it is also important to note that the UNCRPD binds both the EU and Member States. Article 19 UNCRPD obliges Member States to take effective and appropriate measures to facilitate full inclusion and participation in the community of persons with disabilities, including by ensuring that they "have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community" (Article 19(b)). In this connection, the Committee on the Rights of Persons with Disabilities recommends a shift to community-based care (¹⁸³). Deinstitutionalisation is a "process that provides for a shift in living

¹⁸³ United Nations, Committee on the Rights of Persons with Disabilities, [General comment No.5 on Article 19 - the right to live independently and be included in the community](#), 27 October 2017.

arrangements for persons with disabilities, from institutional and other segregating settings to a system enabling social participation where services are provided in the community according to individual will and preference" (184). Long-term care for persons with disabilities should, according to the relevant human rights standards, be community-based.

c) Does it genuinely meet an objective of general interest of the Union or to protect the rights and freedoms of others?

The limitation aims at targeting the funding awarded to operations supporting long-term care of persons with disabilities in view of reinforcing their autonomy and active participation in the community. As such, the limitation purportedly serves the objective of promoting integration of persons with disabilities under Article 26 of the Charter. Notwithstanding, the limitation does not constitute a suitable means to achieve such an objective, as it supports an approach favouring institutionalisation of persons with disabilities, which is not in line with Article 26 and international recommendations.

d) Is it necessary to achieve the desired aim?

In line with the explanation to the previous question, the limitation is not considered necessary to the desired aim as it does not correspond to the measure interfering the least with the right that it intends to promote.

e) Is it proportionate to the desired aim?

Also, in line with the explanations to the previous questions, the limitation cannot be considered proportionate as it does not strike a fair balance between its aim and the interference with Article 26 that it purportedly intends to promote.

As such, the funding of initiatives supporting the autonomy and active participation in the community of persons with disabilities only in institutional care settings constitutes a limitation to Article 26, which does not pass the test of Article 52(1) of the Charter. The inclusion of such a selection criterion thus breaches Article 26. Faced with this situation, the monitoring committee should not approve the selection criteria proposed by the managing authority.

¹⁸⁴ UN General Assembly (2014), *Thematic study on the right of persons with disabilities to live independently and be included in the community*, A/HRC/28/37, 12 December 2014, para. 25.

Learning takeaways

This case shows that there should be a sufficiently close link between the fundamental rights concerns raised and the funds applied for/used to elicit the application of the Charter at the national level pursuant to Article 51(1).

The interpretation of Charter rights should also consider other human rights law instruments, particularly when these are binding for the EU or Member States. Particularly relevant to understand Article 26 of the Charter is Article 19 of the UNCRPD and related soft law. Long-term care for persons with disabilities should, according to the relevant human rights standards, be community-based.

Further reading

European Ombudsman, Cases [417/2018/JN](#), [1233/2019/MMQ](#) and [OI/2/2021/MHZ](#).

Case Study 4 – Article 47 of the Charter

Right to an effective remedy under CPR funding

Background information

This case study illustrates the importance and implications of the right to an effective remedy in the context of decisions refusing project funding.

Description of the situation

In the context of a programme aiming at promoting territorial cooperation between two regions, the rules governing the decision-making process leading to projects' approval or rejection shall be detailed in a 'programme manual' established by the managing authority. This programme manual sets out that the decision to approve a project shall be taken by the managing authority. The programme manual expressly prescribes that "the decisions of the managing authority on selection of operations for funding are final and not appealable". The manual also provides that rejected applicants shall receive a letter from the managing authority stating the grounds for rejection. According to the managing authority, those letters are merely "technical documents" that are part of the programme's decision-making process.

Against this background, a cooperative applies for the programme's subsidies. The project passes the preliminary steps of the selection process before being rejected by the decision of the managing authority at the financial stage. The cooperative receives a rejection letter refusing to disburse fund money from the managing authority and tries to challenge it before national courts. Based on the programme manual rules, the action is ultimately dismissed by the courts of first instance and appeal as inadmissible.

Key issues

The key issue in this case study relates to the lack of effective remedies for applicants to act against the managing authority's decisions refusing to grant funding. The programme rules leave applicants without any possibility to resort to courts against the managing authority's refusal to disburse EU fund money. As such, the case study problematises whether the lack of challengeable act is a breach of the applicants' right to an effective remedy, as enshrined in Article 47 of the Charter.

The analysis of the case study follows the steps set out in the [Annex II – Checklist](#).

Analysis

Step 1: Identifying the action

1. Which specific actions or measures raise the risk of impacting Charter rights?

In this scenario, the project selection process, as set out in the programme manual, generates a decision affecting the possibility for the applicant to access EU funds. This decision is qualified by the programme manual itself as not liable to be challenged before a judge.

2. Who is the stakeholder conducting this action/measure (e.g. managing authority, monitoring committees, beneficiaries)?

In this case, the managing authority is the national authority tasked with drawing up the programme manual, setting out the decision-making rules and refusing to finance the applicant's project.

3. Can this action or measure be considered as an implementation of EU law and thus fall within the scope of application of the Charter?

In this scenario, the limitation arises from the rules set out in the programme manual and the individual decision refusing to award funding resulting from the application of those rules.

Articles 72 and 73 of the CPR require the managing authority to establish selection procedures and criteria in line with the principles laid down in Article 73, and to select operations within this framework to implement national programmes.

In this scenario, the programme manual lays down the rules on the selection process and criteria, and the contested decision results from the concrete application of those rules to a given application. It follows that the risks for fundamental rights in this case relate to the implementation of the managing authority's obligations under the CPR.

Therefore, the Charter applies.

Step 2: Identifying the affected fundamental rights

4. Which rights are impacted?

In this case, the applicable rules in the programme manual prevent the applicant from challenging the managing authority's decision affecting its situation before a competent jurisdiction.

Article 47 of the Charter protects the right to access to justice. This provision covers, *inter alia*, the right to an effective remedy before a tribunal.

To ensure this right is upheld, Article 19(1) TEU requires the Member States to provide sufficient remedies to ensure effective legal protection in the fields covered by EU law. This includes the right to seek judicial review of the legality of a public authority's decision affecting one's rights and obligations that must be upheld within the EU, acknowledged by the CJEU's case-law as a general principle of EU law.

In this case, the provision of the programme manual qualifying the managing authority's decision as a "non-challengeable act" deprives the applicant of any means to act before a court. Indeed, based on the manual, national courts are bound to dismiss the action even though these acts have an adverse effect on the applicants' access to funding. This results in the applicant being denied any procedural means to challenge the managing authorities' refusal to disburse EU funds or the grounds justifying such refusal.

Access to a tribunal and the right to an effective remedy are, therefore, affected.

5. What type of rights are they?

Article 47 of the Charter does not expressly exclude limitations. However, according to Article 52(4) of the Charter, in so far as the rights of the Charter correspond to rights guaranteed by the ECHR, their meaning and scope shall be the same as those laid down in said Convention, without prejudice to more extensive protection granted by EU law.

Article 47 of the Charter reflects the content of Article 6(1) of the ECHR. The latter provision allows limitations. At the EU level, there is no provision or mechanism ensuring a more extensive protection of this right in the present context.

It follows that Article 47 is a non-absolute right which can be limited.

Step 3: Analysing the impact of the action or measure

6. Is the impact of the action or measure on the rights identified positive or negative?

By setting out that the managing authority's administrative decision affecting the applicants' situation cannot be challenged, the programme manual deprives the applicants of any challengeable act which could be challenged before a judicial authority. This **limits fund applicants' access to justice**.

7. Is the limitation justified in the light of Article 52(1) of the Charter?

a) Is the interference provided for by law, in a clear and predictable manner?

The programme manual is created by the managing authority itself. According to CJEU case-law, this does not equate to law. Thus, the problematic rules of the programme manual in this case cannot be considered as "provided by the law" within the meaning of Article 52 of the Charter.

b) Does it respect the essence of the right impacted?

The provision of the programme manual prevents applicants from challenging the managing authority's final decision refusing an application for funding. Nothing in the present case suggests that any alternative remedy is accessible to applicants being denied funding at an earlier or ulterior stage of the procedure. Hence, the essence of Article 47 is impaired.

c) Does it genuinely meet an objective of general interest of the Union or to protect the rights and freedoms of others?

Although the manual does not set out specific objectives, it can be envisaged that this non-challengeable act aims at streamlining procedures and hastening the decision-making process while reducing the administrative burden and potential backlog of frequent actions against the managing authority's decisions.

d) Is it necessary to achieve the desired aim?

It can be considered that limiting the number of remedies against may contribute to a certain reduction of the judicial and administrative backlog for both national courts and the managing authority. However, nothing in the present case suggests that the managing authority's or national courts' workload would be significantly affected by possible remedies against the managing authority's decision. Similarly, there is no indication that this fast-tracking objective would not be achieved by other less constricting means.

e) Is it proportionate to the desired aim?

The programme manual denies the right to access to justice. Indeed, applicants cannot challenge the final decision, or any other act, to argue against the legality of the managing authority's decision before an independent jurisdiction. As such, it is disproportionate to the legitimate objective pertaining to fast-tracking the project's selection process. This measure leads to the applicant's definitive exclusion from the funding process without any possibility to argue against the legality of the managing authority's decision, where more limited restrictions would have achieved the same objective with a more limited impact on fundamental rights.

It follows from above that the national programme manual constitutes an unjustified breach of the right to access to justice, which cannot be justified

Learning takeaways

Article 47 of the Charter plays an important role in the CPR's procedural aspects. Administrative decisions taken by managing authorities and monitoring committees must be challengeable in court to allow access to justice and the legal review of decisions affecting beneficiaries or interested parties reporting breaches of fundamental rights. Effective remedies and access to judges indeed ensure the enforceability and effectiveness of other fundamental rights. When considering procedural aspects of the funding process, national authorities must bear in mind the need to reconcile the pursuit of efficiency in the disbursement of funds with the full protection of the rights granted to natural and legal persons through effective judicial remedies.

Further reading

CJEU' judgement, *Liivimaa Lihaveis MTÜ v Eesti-Läti programmi 2007-2013 Seirekomitee* (case C-562/12).

CJEU's judgement, *Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary* (case 222/84).

CJEU's judgement, *JK Otsa Talu OÜ v Põllumajanduse Registrite ja Informatsiooni Amet (PRIA)*, (case C-241/07).

Opinion of Advocate General Jääskinen in *Liivimaa Lihaveis MTÜ v Eesti-Läti programmi 2007-2013 Seirekomitee* (case C-562/12).

FRA Charterpedia, Article 47 – Right to an effective remedy and to a fair trial, *National Constitutional Law*.

Case Study 5 – Articles 5 and 31 of the Charter

Fundamental rights concern in the context of a grant under the ERDF to a company selected to build and operate a battery recycling facility

Background information

This case study discusses how to ensure the respect of the fundamental rights of migrant workers at the implementation phase. It presents a hypothetical scenario in which labour exploitation, in particular violations of the prohibition of forced labour and the right to fair and just working conditions, could occur. It also discusses good practices on how the managing authority could monitor the beneficiary's implementation of the project.

Description of the situation

A Member State has launched a call for proposals for projects that involve research into and development of technologies for the recycling of lithium-ion batteries and catalysts, with the recovery of strategic metals. The project selected amounts of EUR 100 million with the ERDF contributing EUR 70 million. Throughout the implementation of the project, the national managing authority monitors the implementation of the operation and checks the progress, financial expenditure and performance of the project. In the grant agreement, the managing authority is granted free and full access to all project documentation held by the beneficiary.

A local company (Company A), the beneficiary, has been selected by the Member State to construct and later to operate a Li-ion battery and autocatalyst recycling facility. The construction phase, funded by the ERDF contribution, includes the construction of battery and catalyst recycling facilities and refineries, as well as offices and energy and communication infrastructure, along with a wastewater treatment plant. The construction phase has started and is expected to take two years. More than 500 workers are working on the construction site. Company A has engaged a local construction contractor (Company B) to carry out the first phase of construction. Company B has further engaged several subcontractors, including a temporary recruitment agency (Company C) that provides construction workers. A large proportion of the construction workers come from other Member States, but also from third countries.

The responsible managing authority decided to conduct a management verification. During the verification, the authority received reports from a civil society organisation (CSO) that the temporary recruitment agency (Company C) has provided construction workers from Latin America and that they were subjected to forced labour conditions and exploitation, such as retention of passports, very little or no pay for very long working hours,

deductions from wages to cover high recruitment fees and accommodation, but also the lack of a contract. On the basis of the report, the managing authority decided to carry out an on-the-spot verification, which confirmed the findings of the report and revealed that the accommodation provided by the recruitment agency was in unsanitary and degrading conditions. The managing authority also found poor working conditions, such as a lack of warning signs around the construction site and a lack of personal protective equipment.

Key issues

The first issue raised by the case study relates to the application of EU law and, thus, of the Charter, in particular in relation to Companies B and C, which are not beneficiaries of EU funds.

Secondly, this case study also provides examples of how the managing authority can ensure respect for fundamental rights and compliance with the Charter in the implementation of EU funds when it becomes aware of potential breaches of the Charter in relation to specific operations.

Analysis

Step 1: Identifying the action

1. **Which specific action or measure raises the risk of impacting Charter rights?**
2. **Who is the stakeholder conducting this action/measure (e.g. managing authority, monitoring committees, beneficiaries?)**

The fundamental rights concerns relate to the actions of the beneficiary (Company A) that is the recipient of the grant and responsible for the execution of the project, including the construction, and that the construction is carried out without any violations of the Charter rights.

In addition, the actions of the other companies involved (Companies B and C) might also be relevant, as their actions are financed by EU funds, albeit indirectly through the beneficiary. However, the quality of the accommodation provided by the recruitment agency (Company C) is not an activity that falls under the construction of the facilities and appears unconnected to the ERDF-funded operation.

Finally, this case study also discusses what kind of activities the managing authority could undertake in relation to the monitoring of the operations, in particular when the authority becomes aware of violations of fundamental rights by receiving reports from a CSO alleging potential violations of the Charter. managing authorities have a general duty to ensure that the implementation of CPR fund does not breach the Charter.

The analysis of the case study follows the steps set out in [Annex II – Checklist](#).

3. Can this action or measure be considered as an implementation of EU law and thus fall within the scope of application of the Charter?

The requirement to respect the Charter is binding on managing authorities and other involved stakeholders only when they act within the scope of EU law.

In this case, funds are granted to Company A for the construction of the recycling facilities and refineries, offices, and a treatment plant. Actions of the beneficiary (Company A) fall within the scope of the application of the Charter. For example, the lack of warning signs around the site and the lack of personal protective equipment are the responsibility of the main contractor on the construction site and, as they could be imputed to the beneficiary, would fall within the activities financed by the ERDF and thus be linked to EU law.

Although the actions of the other companies involved (Companies B and C) may violate some of the Charter's rights, the Charter can only apply to those actors who have been made responsible for providing a public service under the control of a Member State and who, for that purpose, have special powers beyond those, which result from the normal rules governing relations between individuals ⁽¹⁸⁵⁾ (i.e. Company A as the beneficiary).

As a result, the activities of the sub-contractors (a construction company, Company B, and a temporary recruitment agency, Company C) do not fall within the scope of the Charter. The fundamental rights assessment based on the checklist for these actors stops here. However, this does not exclude their liability under national constitutional rules and other EU and national rules prohibiting labour exploitation. In addition, liability rules based on national contract law and contractual agreements with the beneficiary may require them to respect and comply with the Charter rights during the implementation of ERDF-funded operations. Consequently, the national labour inspectorate may investigate the matter for violations of national labour law rules or violations of national constitutional rights of workers and/or such acts could constitute a breach of the contract between Company A and its subcontractor Company B.

With regard to the actions of the managing authority, all national measures taken to ensure the application and effectiveness of the EU law (e.g. sanctioning, remedies and enforcement) qualify as "implementation of Union law" ⁽¹⁸⁶⁾. This means that actions taken by managing authorities to monitor and consequently ensure the enforcement of the CPR, the ERDF Regulation or other delegated and implementing regulations adopted on the basis

¹⁸⁵ 2016 European Commission Guidance, pt. 2.2.1.

¹⁸⁶ See European Union Agency for Fundamental Rights, Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level, 2018, p. 54.

thereof, or other EU rules applicable to their actions in the implementation of the ERDF, fall within the scope of EU law.

Step 2: Identifying the fundamental rights affected

4. If the Charter applies, which fundamental rights are impacted?

The construction activities of the beneficiary and other construction companies involved in the implementation of the operation raise the risk of affecting a number of labour-related Charter rights:

Prohibition of slavery and forced labour (Article 5 of the Charter) – Several indicators show that workers may be subject to forced or compulsory labour, in particular the retention of passports, the lack of employment contracts, the deduction of recruitment fees from wages, poor wages and excessive working hours. Furthermore, third-country workers may be even more vulnerable than workers from other Member States, particularly if their work permits are conditional on having a job or if they are irregular migrants. In addition, the payment of a recruitment fee may indicate debt bondage and, together with the retention of the passport and the lack of a contract, there is also a risk of trafficking for labour exploitation, as these actions could be means of coercion.

The right to fair and just working conditions (Article 31 of the Charter) – Little pay or no pay, as well as long working hours, are indication of unfair working conditions. The same applies to failure to comply with occupational health and safety rules. If the accommodation provided by the employer is in unsanitary or degrading conditions and the cost of the accommodation to the worker is part of the employment, then the conditions are covered by the notion of fair and just working conditions.

5. What type of rights are they?

The prohibition of slavery and forced labour in Article 5 of the Charter is an absolute right, which means its scope cannot be limited in any way.

The right to fair and just working conditions in Article 31 of the Charter is not formulated as an absolute right and may be limited subject to the principles set out in Article 52(1) of the Charter.

Step 3: Analysing the impact of the action or measure

6. Is the impact of the foreseen action or measure under consideration on the rights identified positive or negative?

Although the performance of the actions contributed to Companies B and C could violate the prohibition of slavery and forced labour in Article 5 of the

Charter, which is an absolute right, and the right to fair and just working conditions in Article 31 of the Charter, which is not formulated as an absolute right, this case study does not discuss possible consequences for the disbursement of EU funds, as the actions of the subcontractors (Companies B and C) fall outside the scope of 'implementation of Union law'.

Actions that could be attributed to the beneficiary (Company A) should however be assessed further. The lack of warning signs around the site and personal protective equipment could limit the workers' right to fair and just working conditions under Article 31 of the Charter.

On the other hand, the management verification conducted by the managing authority as part of its management and control responsibilities to ensure compliance with the Charter throughout the implementation of EU-funded programmes has a positive impact on the rights at stake.

7. Is the limitation justified in the light of Article 52(1) of the Charter?

a) Is the interference provided for by law, in a clear and predictable manner?

Failure to provide safety signs and personal protective equipment not only contravenes specific EU Directives (see OSH Framework Directive 89/391/EEC and other specific directives) and Member States' occupational health and safety legislation, but also undermines the fundamental rights enshrined in Article 31 of the Charter, which guarantees working conditions that respect the health, safety and dignity of workers. The beneficiary's actions were, thus, not lawful (on the contrary, Company A violated the prescribed health and safety rules).

Since the answer to the first sub-question under question seven of the checklist is negative, the conclusion may already be drawn that the limitation cannot be justified in the light of Article 52(1) of the Charter and thus breaches the relevant Charter rights. As such, there is no need to continue the analysis.

Learning takeaways

The case study highlights the complexity in sectors where the beneficiary uses contractors and subcontractors for the implementation of a funded activity. Where the application of the Charter at national level is linked to the implementation of EU law, and where there is a link between the fundamental rights' concerns raised and the funds applied for/used, the managing authority should assess the impact on labour-related Charter rights of all those involved in performing the activity. If violations or potential violations of the Charter in relation to labour rights are revealed, this will not only result in non-compliance with the conditions of the grant, but may also result in potential violations of national legislation or international human

rights obligations. Consequently, the managing authority must coordinate and/or inform the relevant national authorities, even if the impacts do not fall within the scope of the managing authority.

Violations of the Charter may result in sanctions stipulated in the agreement with the beneficiary and financial correction as envisaged under the ERDF, but violations, or indications of potential violations, should also be reported by the managing authority to the relevant national authorities, such as the labour inspectorate, because it may involve violations of national legislation and the Member State's international human rights obligations, such as the ECHR, because the Member State has a duty to protect the rights covered by these obligations.

Further reading

Information on the [Polish battery recycling facility to help establish a comprehensive collection and processing system](#).

Case Study 6 – Articles 1, 3, 4, 7, 17, 18 and 23 of the Charter

Fundamental rights concerns in the context of EU funded reception facilities

Background information

This case study discusses several fundamental rights concerns in relation to the funding of a reception facility for migrants and asylum seekers under the AMIF. It presents a hypothetical scenario with the aim of emphasising the risks that can arise in this connection and what the authorities may do to minimise and address such risks.

Description of the situation

Under the previous programming period, the construction and operation of a reception and identification centre for migrants was funded in one of the EU's external border countries under the AMIF. The operations specifically covered by the fund included:

1. the sustainable design, construction and management of a reception and identification centre;
2. dignified, up-to-standard reception conditions; and
3. fast, fair and effective procedures, notably as concerns the identification, registration, security checks, vulnerability assessments, asylum and return processes as applicable in the individual cases.

Once set up, a civil society organisation (the CSO) operating in the centre raised concerns regarding the living conditions in the reception and identification centre. On the capacity of the centre, the CSO denounced that the number of living containers was insufficient to house all residents, with single men being housed together in larger containers with no privacy being ensured.

Concerning safety requirements, the lack of asphalted paths was pointed out as the mud resulting from heavy rains in the winter and the steep slope crossing the centre promoted a fall hazard. In addition, the gas heaters provided under a 'winterisation campaign' were identified as constituting significant fire hazards.

In terms of safety and privacy, the containers where people were housed did not include locks from the inside, which was pointed out in internal reports of the centre management as a factor associated with reports of theft of personal property.

The lack of suitable lighting, in particular in the toilets' area, as well as the unsuitable number of functioning toilets, was also pointed out as a

determinant factor in connection with incidents of sexual and gender-based violence especially targeting girls.

Moreover, the centre's remote location impacted the asylum seekers' access to services, notably, legal assistance to navigate the asylum procedures.

Under the current programming period, the AMIF national programme sets out specific objectives for the improvement of conditions in reception centres and the strengthening of the services provided in these centres. In this context, the managing authority is preparing a call for proposals aiming at increasing the capacity of the centre and improving its conditions. The call prescribes as eligible costs of the operation, among others, the acquisition of services for: the construction of 600 additional places to tackle overcrowding; asphalting the main paths of the centre; the installation of additional prefabricated modules for toilets; a low fire risk heating system in the containers; and a regular and affordable bus service between the centre and the closest town.

Having received the methodology and selection criteria prepared by the managing authority, the monitoring committee is concerned that it does not account for the possible fundamental rights' impact of the potential operations and suggests that the applications should include in the description of the proposed operation a risk assessment on possible fundamental rights' impacts and that the impact of the operation on fundamental rights is provided as a selection criteria weighting 30%.

Key issues

This case study deals with the fundamental rights concerns arising from the operation of a reception and identification centre and the role of managing authorities in designing the calls for proposals in compliance with the Charter.

The analysis of the case study follows the steps set out in [Annex II – Checklist](#).

Analysis

Step 1: Identifying the action

- 1. Which specific action or measure raises the risk of impacting Charter rights?**
- 2. Who is the stakeholder conducting this action/measure (e.g. managing authority, monitoring committees, beneficiaries)?**

The preparation and discussion of the specific methodology and selection criteria applicable to the call for applications risks indirectly impacting Charter rights, as it will be the basis for the analysis and selection of operations. The operations themselves raise the risk of impacting fundamental rights, particularly those of migrants and asylum seekers housed in the reception centre. The case study problematises what the monitoring committee can do in connection with the approval of the

methodology and criteria used for the selection of operations drawn up by the managing authority.

3. Can this action or measure be considered as an implementation of EU law and thus fall within the scope of application of the Charter?

The requirement to respect the Charter is binding on managing authorities and monitoring committees only when they act within the scope of EU law. Situations such as the one described above, where the managing authorities draw up the selection criteria and methodology for awarding the grants and the monitoring committee approves such criteria, relate to obligations set out under the CPR and, thus, fall within the scope of 'implementing the EU law'. As such, EU law and, thus, the Charter apply and both the managing authority and monitoring committee should ensure compliance with the Charter.

Step 2: Identifying the fundamental rights affected

- 4. Which fundamental rights are impacted?**
- 5. What type of rights are they?**

As a result of the situation above, the reception centre presents significant shortcomings amounting to important breaches of the fundamental rights of the residents. Such concerns relate to, besides the right to asylum, the right to respect for private life, physical and mental integrity, property and gender equality (corresponding to Articles 3, 7, 17, 18 and 23 of the Charter). The poor reception conditions are susceptible to violating human dignity and the prohibition of torture and inhuman or degrading treatment (Articles 1 and 4 of the Charter).

Human dignity constitutes the 'real basis of fundamental rights' from where it derives that the other Charter rights cannot be used to harm the dignity of another person (see Explanations on the Charter). The prohibition of torture constitutes an absolute right not allowing for derogations. All other rights referred to in the previous paragraph are not absolute.

The actions of the managing authority and the monitoring committee, through the preparation and approval of the selection criteria and methodology, intend to address the situation that is giving rise to the breaches and prevent further violations.

Step 3: Analysing the impact of the action or measure

- 6. Is the impact of the action or measure under consideration on the rights identified positive or negative?**

The selection criteria and methodology do not constitute a limitation on the affected rights. To the contrary, the design of the selection criteria and methodology envisage addressing the situations giving rise to the breaches and preventing further violations.

Firstly, the call provides as eligible costs of the operation the acquisition of services with the following purposes:

- The construction of 600 additional places.

As mentioned in the description of the situation, the CSO has denounced a situation of overcrowding in the centre, with the number of living containers being insufficient to house all residents, resulting in single men having to be housed together in larger containers. Such a situation impacted the right to respect for private life (Article 7 of the Charter) and was also susceptible to affecting the residents' physical and mental integrity (Article 3(1) of the Charter). As such, the increasing capacity of the centre is expected to have a positive impact on these rights, addressing the existing concerns.

- Asphalting the main paths of the centre.

As mentioned in the description of the situation, the CSO reported safety concerns associated with the mud resulting from heavy rains in the winter and the steep slope crossing the centre. Such a situation impacted the residents' right to physical and mental integrity (Article 3(1) of the Charter). As such, asphalting the main paths of the centre will expectedly have a positive impact on this right, addressing the existing concerns.

- The installation of additional prefabricated modules for toilets.

As mentioned in the description of the situation, the CSO reported that the number of functioning toilets was not sufficient and contributed to an enhanced risk of incidents of sexual and gender-based violence especially targeting girls. This impacted the female residents' right to physical and mental integrity (Article 3(1) of the Charter). Thus, the installation of additional prefabricated modules for toilets is expected to contribute to addressing this concern.

- A low fire risk heating system in the containers.

As mentioned in the description of the situation, the CSO also pointed out that the gas heaters provided under a 'winterisation campaign' constituted significant fire hazards, thus constituting a risk factor to the residents' safety and physical integrity (Article 3(1) of the Charter). As such, funding a low fire risk heating system in the containers shall contribute to mitigating such risk.

- A regular and affordable bus service between the centre and the closest town.

As mentioned in the description of the situation, the centre's remote location was further indicated as impacting the residents' access to legal assistance

to navigate the asylum procedures, thus being susceptible to affecting their right to asylum (Article 18 of the Charter). The reinforcement of regular and affordable bus services could constitute, in this regard, an appropriate mitigation measure.

Notwithstanding the above, some of the fundamental rights concerns identified by the CSO are not addressed by the call for proposals, namely, the fact that the containers where people were housed did not include locks from the inside affecting the residents' right to privacy (Article 7 of the Charter) and being also susceptible of affecting their right to property (Article 17 of the Charter). The lack of suitable lighting, in particular in the toilets' area, is also not addressed whereas this constitutes a risk factor impacting on particularly the female residents' right to physical and mental integrity (Article 3(1) of the Charter).

However, in order to ensure that the funded operations are fundamental rights' compliant, the monitoring committee suggests that the applications include in the description of the proposed operation a risk assessment on possible fundamental rights' impacts and that the impact of the operation on fundamental rights is provided as a selection criteria weighting of 30%. Such an approach will contribute to ensuring that applicants not only address the risks already identified, but that others may be identified and adequate measures targeting these are put forward. The attribution of a significant weight to the fundamental rights risk assessment attaches a greater importance to this exercise, which the managing authority will monitor and accordingly penalise, in the evaluation of applications, those which do not sufficiently fulfil this selection criteria.

Taken together, such measures will contribute to promoting conditions consistent with the obligation to respect and protect human dignity enshrined in Article 1 of the Charter and the prohibition of inhuman or degrading treatment under Article 4 of the Charter. Thus, the impact of the action at stake is positive. As such, there is no need to continue the analysis.

Learning takeaways

This case study illustrates how the funding of a reception facility for migrants and asylum seekers funded by the AMIF may give rise to several and significant fundamental rights concerns. The managing authorities and the monitoring committees fulfil a crucial role in ensuring that CPR funds are not funding operations breaching Charter rights. Notably, fundamental rights' risk assessments constitute an adequate tool to measure the possible impact of potentially funded operations on Charter rights.

Further reading

European Ombudsman, Case [OI/3/2022/MHZ](#) and [1598/2020/VS](#)



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