

# The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds

Baseline report prepared by the Office of the Commissioner for Human Rights (Ombudsman) (Poland)



35 YEARS  
COMMISSIONER  
FOR HUMAN RIGHTS  
1988 – 2023

Iceland  
Liechtenstein  
Norway grants



Norway grants

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# Introduction

## Purpose of the report

The purpose of this report is to outline the role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds implementation in Poland. The report aims to explore the national human rights institution's potential role in the reinforcement of the respect of fundamental rights conditionalities in Poland.

**The report presents, in the first place, an overview of the process of implementation of EU funds in Poland**, wherein it describes how the EU funds operate in Poland as well as explains what challenges and opportunities the process has posed for fundamental rights' protection. In the second place, the report **presents national bodies with a human rights remit**, which play a role in ensuring fundamental rights compliance of EU funds. Therein, two main institutions are described: the Commissioner for Human Rights (the Ombudsman), which is the main constitutional body for human rights protection and equality in Poland, and the EU Funds Commissioner together with regional EU Funds Commissioners, i.e. intra-administrative bodies responsible for oversight of interactions between applicants/beneficiaries and institutions implementing EU funds at national and regional levels respectively. The report also **discusses the barriers, challenges and opportunities or the involvement of national bodies with a human rights remit**, including issues of capacity of the bodies themselves. The third part attempts to outline some critical success factors, identified in the course of the research, for the involvement of national bodies with a human rights and/or equality remit in ensuring fundamental rights compliance of EU funds building on the barriers, challenges and opportunities. Finally, the report presents **recommendations on the actual and potential role of national bodies with a human rights remit in the context of EU funds implementation and the newly introduced horizontal condition relating to respect of fundamental rights and the EU Charter of Fundamental Rights**. The recommendations seek to present ways forward for the involvement of human rights bodies in an effective and efficient manner.

## Research process

The report relies mostly on desk research complemented by empirical findings. The desk research consisted of analysis of legal sources such as the Polish Constitution and relevant legal acts, including EU law, on which the functioning of the institutions presented is based on. This allowed to outline the process of implementation of EU funds, as well as to present the scope of activities and competences of the Commissioner for Human Rights, the EU Funds Commissioner and the regional EU Funds Commissioners. Moreover, the desk research involved research and analysis of publicly available sources on the governmental websites, regarding the functioning of EU funds and the activities of the EU Funds Commissioners. Therein, we could access and assess the annual reports published by the institutions.

**The empirical findings were gathered in a two-fold manner.** On the one hand, from the internal know-how of the Commissioner for Human Rights (desk research) the report could outline the functioning of EU funds in Poland and the issues it brings to fundamental rights protection based on the cases brought to the Commissioner for Human Rights in the past. On the other hand, the EU Funds Commissioner and the regional EU Funds Commissioners have been asked to reply to a questionnaire focused on cases the institutions have received, referring to the violation of fundamental rights protected by the EU Charter of Fundamental Rights. We have received responses from the EU Funds Commissioner and from 13 out of 16 EU Funds Commissioners. Nonetheless, the empirical findings gathered from the answers of the institutions constitute a preliminary research outcome which contributes to a better understanding of the challenges and opportunities for the role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds. This point will be developed in our following research through questionnaire addressed to individual officials involved in EU funds implementation.

## EU funds implementation in Poland: challenges and opportunities for fundamental rights

### Overview of the institutional structure of EU funds implementation in Poland

Implementation of EU Funds in Poland falls under the responsibility of the Ministry of Funds and Regional Policy. Its task is to coordinate the implementation of the objectives and set out the general policy defining how and for what the European Funds will be allocated. **The responsibility for the implementation of the funds is split between multiple institutions.** A managing authority is designated for each of the programmes. These authorities are charged with preparation and management of the programmes. The managing authority for national programmes and territorial cooperation programmes is the Minister for Funds and Regional Policy (except for agriculture and fishery programmes). For each of the 16 regional programmes, the management tasks are exercised by the executive board of a respective voivodeship (local self-government entity). Due to the fact that several institutions are therefore charged with allocating the funding from EU budget, a special committee composed of representatives of all managing authorities of the programmes as well as the Ministry of Finance, social and economic partners and representatives of local authorities, has been established within the Ministry for Funds and Regional Policy which coordinates the implementation of EU funds taking into consideration pluralistic interests at stake.

As mentioned above, responsibility for the allocation and control of funds is fragmented between a considerable number of institutions. A major part of these tasks with respect to particular programmes is attributed to managing authorities. Most importantly, these authorities determine and set detailed rules for the operation of the programme and coordinate its implementation including, in particular:

- ensuring that projects are properly implemented within the appropriate fund,
- establishing procedures and criteria for the selection of projects, as well as verifying whether the financed projects meet the requirements set for them, and whether the expenditures declared by beneficiaries have been correctly implemented and paid,
- evaluating and monitoring progress of programme implementation,
- certifying expenditures incurred by beneficiaries, i.e. confirming their correctness and compliance with the national and EU law for the European Commission,

- supporting and organising the work of the programme monitoring committee.

**Managing authorities** are responsible for the implementation of the entire programme, including verification of all projects realised under it. Nonetheless, they often delegate their tasks to other institutions, the so-called intermediate bodies. These are usually entities specialised in the fields financed by a given programme as, for example, the Ministry of the Environment in the case of the infrastructure and environment programme with regard to funds to be allocated to environmental protection. Some of the tasks of intermediate bodies can be, however, delegated by them further to the so-called implementing bodies. The implementing bodies are usually the authorities working closest to the beneficiaries, receiving their applications for funding and signing contracts for conducting projects.

**Another set of institutions has been established for audit and monitoring of EU funds implementation in Poland.** As mentioned before, the control of individual projects and their realisation is exercised, in a major part, within a hierarchical structure including a competent managing authority, an implementing body and an intermediate body. The broader task of control has been attributed to the audit institution which examines the compliance of EU funds implementation with the law. **The audit institution** is responsible for carrying out audits of the functioning of the entire management and control system for the implementation of EU funds. This authority is exercised by the General Inspector of Fiscal Control who performs its tasks in cooperation with the Ministry of Finance and fiscal control offices in the sixteen voivodeships. This structure is separate from the Ministry of Funds and Regional Policy and other administrative organs implementing EU funds but is a part of the central governmental authorities within the executive branch.

Independently of the audit structures described above, the general monitoring and review tasks are performed by so-called monitoring committees established individually for each of the programmes. The committees are established similarly to the general monitoring committee and are composed of representatives of the government, local authorities and social and economic partners. Such committees are essentially charged with:

- systematic check of the progress of the programme implementation,
- analysing issues that may affect the achievement of the objectives set out in the programme,
- consulting and approving changes to the programme,
- establishing criteria for the assessment of the projects.

## **Charter compliance mechanisms in the structural setting of EU funds implementation**

### **Legal framework (including guidelines and program documents)**

According to the self-assessment report relating to the horizontal condition of respect of the Charter of Fundamental Rights of the European Union when implementing the European Struc-



tural and Investment Funds, drafted by the Ministry of Funds and Regional Policy<sup>1</sup>, each institution which, within the scope of its mandate, performs the tasks at any stage of programme implementation they supervise, is responsible for the application of the Charter and is required to analyse the compliance of the implementation of operations financed from EU funds with the latter. There is no explicit legal basis for this obligation and specific detailed guidelines or Charter arrangement at the current stage of development of the EU funds implementation framework. Some duties concerning monitoring of compliance with the EU Charter of Fundamental Rights are mentioned in the Minister's guidelines on monitoring committees in brief and general terms<sup>2</sup>. There is no such reference, however, in the guidelines concerning the selection of individual projects or the general reference to Charter conditionality and other horizontal principles is included in the Partnership Agreement in two separate Chapters (6 and 9). The Agreement includes also self-assessment regarding the Charter conditionality and respect of rights of persons with disabilities as for May 2022 and states that both of them met. The document does not, however, describe in detail the specific requirements or detailed framework of Charter conditionality implementation.

What is important, in the self-assessment of the Charter conditionality, presented by the Ministry of Funds and Regional Policy in February 2023, most of the information refers to future or planned activities or to documents that have not yet been officially adopted. **Some of the managing authorities have already adopted their own self-assessment documents as well**<sup>3</sup>. What is quite unsettling, in the final document the Ministry referred to the Protocol nr 30 to the EU Treaty and stated that it excluded the competence of the CJEU and domestic courts to declare national legal or administrative acts as not compliant with the Charter, which may call into question the overall effectivity of the Charter conditionality framework. In the light of the jurisprudence such a statement raises significant legal doubts<sup>4</sup>.

Despite the above observations, references to the horizontal principles, in general, are present in some of the key horizontal documents, most extensively in the guidelines on the implementation of equality principles<sup>5</sup>. **The document lays down in detail general requirements and recommendations regarding, for example, men-women equality, non-discrimination on other grounds and inclusion.** What is worth noting, the document mentions the Charter and the Convention on the Rights of Persons with Disabilities, but in two points only: the first mention reaffirms the general obligation to respect these acts in the course of EU funds implementation, and the second reference is included as a recommendation for managing authorities to include a separate criterion concerning this obligation for the purposes of the work of monitoring committees. This, in consequence, does not refer in detail to other stages of EU funds implementation and the content of the Charter, judging by the letter of the document, it might seem to be reduced only to equality principles. It also shows that at the current stage there is a blatant disproportion between the

<sup>1</sup> Report of 6th February 2023 (submitted to the European Commission).

<sup>2</sup> [https://www.funduszeuropejskie.gov.pl/media/111136/Wytyczne\\_dotyczace\\_KM\\_na\\_lata\\_2021-2027.pdf](https://www.funduszeuropejskie.gov.pl/media/111136/Wytyczne_dotyczace_KM_na_lata_2021-2027.pdf)

<sup>3</sup> [https://www.rpo.malopolska.pl/download/program-regionalny/FEM-2021-2027/zapoznaj-sie-z-prawem-i-dokumentami/fundusze-europejskie-dla-malopolski-2021-2027/2022-12-05/09\\_szczegolowa\\_samoocena\\_KPP.pdf](https://www.rpo.malopolska.pl/download/program-regionalny/FEM-2021-2027/zapoznaj-sie-z-prawem-i-dokumentami/fundusze-europejskie-dla-malopolski-2021-2027/2022-12-05/09_szczegolowa_samoocena_KPP.pdf)

<sup>4</sup> See the case law of the Court of Justice of the European Union; judgment of 21st December 2011 in case C-411/10, N.S. v. Secretary of State for the Home Department and C-493/10, M.E. and others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform; judgment of 24th in case C-619/18, Commission v. Poland, para. 53 and judgment of 19th November 2019 in joined cases C-585/18, C-624/18 i C-625/18, A.K. (Independence of the Disciplinary Chamber of the Supreme Court).

<sup>5</sup> <https://www.funduszeuropejskie.gov.pl/media/113155/wytyczne.pdf>

Charter conditionality and other horizontal principles when it comes to key horizontal documents concerning EU funds. It is also reflected in the fact that contrary to the equality principles the Charter conditionality as such has not yet been reflected in a separate horizontal document. Some of the planned documents may help remedy this problem.

As for the cooperation with NHRIs and civil society organizations in the preparation of the above-mentioned documents it should be stated **that civil society organisations have been included in the work of the Committee on the Partnership Agreement**. During the first meeting of the Committee on the Partnership Agreement, the civil society organisations' representatives have, however, voiced complaints towards the Ministry regarding the lack of cooperation in the process of drafting the self-assessment report as well as the lack of access to the documents. They shared their feedback on both procedural aspects on the functioning of the Committee on the Partnership Agreement, the formation and participation rules of the sub-committees as well as their substantive concerns regarding the enforcement of the horizontal principles particularly in regard to the compliance with the Charter of Fundamental Rights and the Convention on the Rights of Persons with Disabilities. Civil society organisations have also expressed their interest in cooperation with the Commissioner for Human Rights on the issues relevant to the functioning of the Committee on the Partnership Agreement and the compliance of EU funds with the Charter of Fundamental Rights in Poland, which cooperation, however, has not yet been developed.

Notwithstanding the above, as a general rule, the competent authorities (including NHRIs) and civil society organizations specialized in the field of fundamental rights protection and non-discrimination actions should, as mentioned explicitly in the Minister's guidelines on partnership principle, be involved in the process at all the stages of EU funds implementation, including in the process of design and evaluation of given programmes via monitoring committees<sup>6</sup>. The document contains a robust set of provisions. However, in key areas, some of them might be formulated in vague terms. Especially the procedural framework of inclusion and selection of external organizations (CSOs) should provide for more transparency and openness guarantees. The key horizontal documents reaffirm the obligations of partnership and representation included in art. 4 para. 1 of the Commission Delegated Regulation no. 240/2014 but do not develop them further.

## **Institutional setting and relevant compliance mechanisms**

**The managing authorities** decide on the form in which the compliance with the Charter is to be assessed. Each institution is also responsible for ensuring that beneficiaries are adequately informed about the obligation to apply the Charter when implementing a project and for providing information on how to file complaints about any potential violation, by these institutions, of the rights enshrined in the Charter.

In accordance with the solution adopted by the Ministry, **appropriate analysis and examination of incoming complaints** (including those concerning rights covered by the Charter of Fundamental Rights) **shall be carried out in each institution individually**. In addition to that,

<sup>6</sup> [https://www.funduszeuropejskie.gov.pl/media/111917/Wytyczne\\_dotyczace\\_realizacji\\_zasady\\_partnerstwa\\_na\\_lata\\_2021-2027.pdf](https://www.funduszeuropejskie.gov.pl/media/111917/Wytyczne_dotyczace_realizacji_zasady_partnerstwa_na_lata_2021-2027.pdf)

the institutions that have verified the complaint shall, regardless of their findings, notify the complainant on additional possibilities to proceed in order to protect their rights under the Charter and advise them with regard to the institution competent to handle the complaint in accordance with the general system of protection of fundamental rights established within the administrative structure of EU funds implementation. This system does not replace other existing institutions for fundamental rights protection such as the Commissioner for Human Rights or the system of judicial protection (mostly under the administrative judiciary). The mission of general coordination of activities aiming at ensuring compliance with the Charter (such as policy of programmes design and their implementation, monitoring, individual conformity assessment, awareness campaigning and training) has been entrusted to management authorities. In order to ensure consistency of the Charter implementation within the complex structure of EU funds institutions at national level, all managing authorities shall submit to the central monitoring committee annual reports on activities carried out and observations made with respect to it, including information stemming from complaints handling. Each management authority shall appoint a so-called coordinator for compliance with the EU Charter of Fundamental Rights, working in close cooperation with the EU Funds Commissioner and Regional EU Funds Commissioners (internal Charter compliance bodies functioning within the governmental administration structure), as presented herein in the section on the role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds. At the current stage of institutional design of the new Charter compliance mechanisms, the role, precise mandate and scope of activity of the new so-called coordinators for the Charter of Fundamental Rights remain, however, largely unclear, especially with regard to those of EU Fund Commissioners. With reference to some key points for Charter compliance, the framework for selection of individual projects, for instance, does not refer explicitly to the Charter conditionality. At the stage of control there is no such mention either although, given a very broad definition of the term 'irregularity' for the purposes of financial expenditures control, the horizontal principles breaches might possibly be considered as a basis for disqualification of some of them and for reversing the accorded financing.

### **Risk assessment concerning Charter compliance within the EU funds administration and critical issues identified concerning selected EU funds**

The major risk of possible non-application or misapplication of the EU Charter of Fundamental Rights by institutions involved in the implementation of EU funds in Poland seems to be primarily linked with the complexity of the institutional structure of the implementation process. According to the data presented by the Ministry of Funds and Regional Policy concerning the application of the Partnership Agreement<sup>7</sup>, in the past, almost 140 organs were involved in the implementation of EU funds under this agreement. Although these institutions are, in general, organised in a multi-level and hierarchical manner, the diversity of the institutional framework (especially through involvement of regional self-government authorities, recourse to structures

<sup>7</sup> Report of the Ministry of Funds and Regional Policy 'Potencjał administracyjny systemu instytucjonalnego służącego realizacji Umowy Partnerstwa w zakresie Polityki Spójności' [trans. The Administrative Capacity of the Institutional System for the Implementation of the Partnership Agreement Relating to Cohesion Policy], [https://www.funduszeuropejskie.gov.pl/media/114645/raport\\_potencjal\\_30\\_czerwca\\_2021.pdf](https://www.funduszeuropejskie.gov.pl/media/114645/raport_potencjal_30_czerwca_2021.pdf) [23.02.2022], Warsaw, 2022, final section.

of semi-public characteristics such as agencies or state-owned companies and enterprises), combined with rather strict separation of some of the competences of the organs acting at different stages of implementation of the programmes, may hamper effective application of the Charter. This generates, in particular, the risk of so-called responsibility shifting, which can still persist after the implementation of the new guidelines and schemes related to the horizontal condition regarding the respect of the Charter due to the fact that, as they appear, the application of the Charter by a given organ is to be done *within* the competences of the latter. The existence of a separate structure of the Commissioner for EU Funds having a broader mandate may not be a factor which would be sufficiently effective to prevent possible misapplications of the Charter resulting from the division of competences (for example, in cases of claims concerning clauses of a contract on financing for a given individual project in which such claims are very often impossible to be effectively made at further stages of the project realisation as they are considered as belated).

Another risk of the Charter's misapplication in the process of EU funds implementation is related to the fact that, although very pluralistic, the institutional structure of the process is, on the other hand, much centralised within the administrative power under the Ministry of Funds and Regional Policy authority or competent organs of local self-government authorities, with some exceptions made in the area of fiscal control where fiscal authorities are involved. In this regard, it seems that **broadening the scope of the Commissioner for EU Funds' functioning and reinforcing its legal status might constitute a way to reinforce the effective protection of fundamental rights within the discussed structure.** It has to be pointed out that the organ itself is also part of the institutional structure of the Ministry of Funds and Regional Policy and the guarantees of its institutional independence seem not to be sufficient. Some detailed recommendations concerning this point, discussed among other partners of the present project, might be useful. The same applies to the Charter coordinators and other organs which are to be established within the institutions involved in EU funds implementation.

As for preliminary methodological explanation, it has to be underlined that the observations presented above are based mostly on conclusions drawn in the past few years from individual complaints addressed to the Commissioner for Human Rights. Their number and scope are rather limited (20-30 cases annually). The proceedings were mostly initiated by complaints of beneficiaries of agricultural funds (funded within the Common Agricultural Policy) regarding their cases handled by the Agency for Restructuring and Modernisation of Agriculture (established under the Ministry of Agriculture and Rural Development) and Regional Operational Programmes. In these cases, the most frequent problem concerned the above-mentioned responsibility shifting by different organs at subsequent stages of the programme realisation, especially in cases of fundamental rights issues and claims which appeared at the stage of the final clearance of the project or even debt execution resulting from contracts concluded by beneficiaries with the financing institution.

Another type of problems has been observed as regards EU Funds for Innovation and other related funds for investments in the area of infrastructure or public services. In 2022, the Commissioner for Human Rights received a considerable number of complaints concerning the programme

of investments in the development of high-speed Internet connection infrastructure in areas with poor Internet access (financed under the programmes managed by the Digital Poland Project Centre [*Centrum Projektów Polska Cyfrowa*] established under the Chancellery of the Prime Minister in order to realise the objectives of the National Recovery Plan and Digital Europe Programme). The general design of the programmes managed by the institution allowed for considerable discretion of private companies realising committed projects without sufficient accountability guarantees towards secondary beneficiaries of the project (inhabitants of concerned areas), the impossibility of individual application or the lack of individual complaints handling procedures concerning cases of omission of certain properties and households in the coverage of the investment. This group of cases has been mentioned here to take the note, in particular, of the potential risks related to involvement of semi-public, semi-private or private entities in the process of EU funds implementation with relation to the scope of the Charter application and the lack of sufficient mechanisms for its protection by all such entities regardless of their legal status. In the Commissioner's view, the issue has been scarcely discussed, however it is regularly recurrent in cases handled by the Office of the Commissioner.

Notwithstanding the preceding observations, **the data gathered in the preliminary research present also potential success factors for effective application of the Charter in the implementation process.** According to the above-mentioned report, in the first and second trimester of 2022 the institutions involved in the implementation of EU funds managed to organise training and educational courses for almost half of their staff (7402 out of 15212 officers). This can be seen as solid evidence of considerable training capacity of these institutions which might be deployed for dissemination of knowledge and experiences concerning the application of the Charter. Another success factor may be identified in the system of guidelines and instructions prepared by the Ministry of Funds and Regional Policy and binding on the institutions involved in EU funds implementation at various stages. Provided that they are elaborated in a reliable and appropriate way, in close cooperation with the Commissioner for EU Funds and in consultation with the Commissioner for Human Rights and other institutions, social partners and NGOs with human rights remit, they can serve as a potential strong top-bottom tool reinforcing the awareness and effective application of the Charter by the competent administration. The use of such binding guidelines could help to effectively execute recommendations issued by national institutions with a human rights remit, including the Commissioner for Human Rights.

## **The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds**

### **The Commissioner for Human Rights**

The Commissioner for Human Rights (Ombudsman) is a constitutional body for the protection of fundamental rights and freedoms in Poland (NHRI), which is organisationally independent of other public authorities. The Constitution specifies that the mission of the Commissioner is to uphold the freedoms and rights of individuals and citizens, as set out in the Constitution and in other normative acts, whilst the scope and manner of the Commissioner's activities are determined by law. At the same time, the Constitution expressly mentions the power of the Commissioner to submit motions to the Constitutional Tribunal to examine the compliance of laws and other acts with the Constitution. Among the powers indicated in the Act of 15 July 1987 on the Commissioner for Human Rights (consolidated text: Journal of Laws of 2023, item 1058) is the possibility to control the actions of all public authorities and private entities if they perform any public services. The Commissioner may take up a case on an individual request or on his or her own initiative. The possibility of submitting a request to the Commissioner for aid in protecting one's freedoms or rights violated by public authorities constitutes a constitutional right of every person protected under Article 80 of the Constitution.

In the context of requests relating to matters falling within the scope of the implementation of EU funds by Polish public authorities and by their subsidiaries, the Commissioner's powers to inspect administrative proceedings, including individual ones, are most relevant. The Commissioner has the right to request relevant explanations and access to case files, to participate in such proceedings on the same footing as a public prosecutor, and to submit pleadings in such proceedings, defending fundamental rights and freedoms at all stages of the proceedings. The Commissioner also has the power on his own to request that administrative proceedings be instituted by competent administrative authorities in accordance with the law. At the end of administrative proceedings, the Commissioner may also independently file complaints with the administrative court and participate in administrative court proceedings at all stages, including the possibility to file cassation complaints to the Supreme Administrative Court and recourse to other extraordinary remedies. These powers allow the Commissioner to intervene effectively in individual cases where fundamental rights and freedoms allegedly have been violated as a result of the actions of bodies and organisational units responsible for the implementation of programmes financed by EU funds in Poland.



In accordance with the broad definition of the Commissioner's mandate in the Constitution, the catalogue of fundamental rights and freedoms that are taken into account by the Commissioner also includes the EU Charter of Fundamental Rights and other provisions and general principles of EU law. In his or her activities, the Commissioner is obliged to ensure that these principles, rights and freedoms are respected. In addition to individual interventions, this duty is also exercised on a general plane in the form of general communications addressed to the relevant bodies, indirect legislative initiatives, court litigation and motions to the Constitutional Court, in a situation the infringement identified is of a systemic nature. The Commissioner's recommendations are not legally binding and require, for their implementation, the cooperation of other public authorities. In addition to such activities, the Commissioner's duty is to monitor and report on the state of observance of fundamental rights and freedoms in Poland, including respect to equal treatment principle, which is reflected in the annual information presented by the Commissioner to the Sejm and the Senate of the Republic of Poland and in other thematic reports published by the Office of the Commissioner. The Commissioner also regularly undertakes consultation, educational and promotional activities in the field of protection of fundamental rights and freedoms. In the context of the implementation of programmes financed from EU funds in compliance with the provisions of the EU Charter of Fundamental Rights, the activities and results planned within the framework of the project carried out in cooperation with the EU Agency for Fundamental Rights, aimed at strengthening the mechanisms for compliance with the Charter of Fundamental Rights in the Member States, taking into account the specific role of national institutions for the protection of fundamental rights and freedoms (NHRIs), will be of significant importance.

**The data gathered so far indicate that the number of cases concerning EU funds handled by the Office of the Commissioner for Human Rights oscillates around 20-30 annually** (without complaints concerning agricultural funds). These cases have been initiated mostly on the basis of individual complaints submitted by citizens, usually beneficiaries of EU programmes financed or co-financed from EU budget. As highlighted already in the previous section of this report, the major issues for the systemic compliance of EU funds implementation processes with the Charter in individual stages result from the lack of sufficient evaluation of programmes and individual contract projects at the design stage of these programmes and, in the majority of cases, problems and inaccuracies are revealed only at the stage of execution of project contracts and clearance of funding. In these cases, it is usually already too late to take steps which would allow for full and effective application of the Charter, including not only the right to good administration (Article 41 of the Charter). However, in many of the discussed cases the Commissioner for Human Rights has decided to use its legal competences and he participated in or initiated relevant administrative proceedings and has been filing actions and appeals in the concerned individuals before administrative courts, including initiation of cassation proceedings before the Supreme Administrative Court.

Regardless of the actions mentioned above, more general and broader actions of a systemic character (not only concerning individual proceedings) have been less frequent, except for a few recommendations addressed to competent Ministries and the Parliament concerning relevant legislative amendments. The Commissioner for Human Rights, however, has not cooperated with the Commissioner for European Funds and has not received any kind of communication from this in-

stitution so far. It is worth noting that there are also no legal provisions providing for the obligation to undertake such cooperation. At the same time, it seems that such cooperation in practice could contribute to a more effective and systemic implementation of the Charter in Poland in the area of EU-funded programmes.

Referring again to the issue of the data on the actions taken up by the Commissioner in the field of EU funds implementation, it is to be noted that internal collection of such data has not been fully adequate and systemic. The situation is expected to change with the implementation of the provisions of Regulation 2021/1060 (criterion 1 of the enabling condition on the Charter), according to which the Monitoring Committees should receive information on: complaints concerning non-compliance with the provisions of the Charter and cases of non-compliance of operations supported by EU funds with the provisions of the Charter (findings of infringements). The Office of the Commissioner for Human Rights, as agreed during the consultation meetings with the Ministry for Funds and Regional Policy, will ensure, within the framework of its complaint recording system an appropriate designation for complaints submitted with regard to the implementation of EU funds and Charter infringement claims. Summary reports concerning this group of complaints shall be submitted annually by the Office of the Commissioner to the Ministry of Funds and Regional Policy, starting with the future report for 2023.

## **Other national institutions with a human rights remit**

### **National EU Funds Commissioner**

The EU Funds Commissioner (pol. Rzecznik Funduszy Europejskich), established under the Ministry of Funds and Regional Policy, is the official body responsible for supporting the individuals interested in EU funds, in particular the beneficiaries, project participants and petitioners in their interactions with bodies responsible for implementing EU funds. The EU Funds Commissioner receives and analyses motions explaining problems and outlining proposals for improvements in the implementation of the operational programmes. The national operational programmes the Commissioner oversees are: Smart Growth, Infrastructure and Environment, Knowledge Education Development, Digital Poland, Eastern Poland, Technical Assistance and European Territorial Cooperation. The Commissioner also provides explanations regarding the motions, as well as reviews the procedures applied in the operational programme and formulates proposals for improvements to the institutions. The EU Funds Commissioner does not hold administrative, prosecutive or court proceedings, nor does it hold appeal proceedings. It also does not provide advice on how to receive funds for projects.

With regard to the EU Charter of Fundamental Rights, **the role of the EU Funds Commissioner is focused on complaints concerning the enforcement of the Charter.** In case of suspicion that an operational programme realised by a management institution, or certain activities of a management institution related to the implementation of an operational programme, are incompatible with the EU Charter of Fundamental Rights, an individual has the right to submit a complaint to the EU Funds Commissioner. In analysing the complaint, the Commissioner may ask the managing



institution for explanations regarding whether the right or freedom stemming from the Charter is not respected despite the managing institution's declaration in the application for funding. Subsequently, the Commissioner presents their findings to the managing institution. In case of a violation of a provision of the Charter the Commissioner informs the complainant about possibilities for further action, such as filing a complaint to the Human Rights Officer, National Labour Inspectorate, Patient Ombudsman or court. In case of a violation of binding legal rules, the EU Funds Commissioner also informs relevant law enforcement bodies. The same procedures apply in the case the EU Funds Commissioner receives a complaint through the European Commission. Overall, the EU Funds Commissioner is obliged to review the compliance of operational programmes and activities of their management institutions within 2 months since they were filed. In special cases, this deadline may be extended. However, the individual filing the motion or the complainant have to be duly informed about the extension.

The EU Funds Commissioner has published reports on its activity for each of the years 2018-2021. **According to the reports, in 2021 the EU Funds Commissioner received 119 motions/complaints** (a 37% decrease compared to 2020 when they received 189 motions/complaints). In 2019, the number of the motions/complaints was 185 and in 2018 it was 135. Based on the motions/complaints, the EU Funds Commissioner has issued recommendations to relevant bodies – in 2021 15 recommendations were issued, in 2020 – 17, in 2019 – 21 and in 2018 – 15. The reports discuss examples of motions/complaints concerning delays in proceedings, incorrect organisation or issues regarding the level of treatment by the officials, which may fall under the rights protected under the right to good administration (Article 41) or the right to an effective remedy (Article 47) of the Charter of Fundamental Rights. None of these reports, however, have mentioned the Charter or the rights guaranteed by it.

In the course of the research, we reached out to the EU Funds Commissioner asking whether they had received any motions or complaints based on the Charter, and if yes, how they were dealt with. The EU Funds Commissioner replied that they had not received any motions or complaints based on the Charter.

## Regional EU Funds Commissioners

The management authorities of each regional operational programme have also appointed a regional EU Funds Commissioner. They are present in every voivodeship and thus there are 16 regional EU Funds Commissioners. The regional EU Funds Commissioners function under the Voivodeship Marshalls' Offices and support the national EU Funds Commissioner by decentralising the system of complaints handling. The complaints filed with a regional EU Funds Commissioner also may concern various issues related to the enforcement of the EU Charter of Fundamental Rights such as the right to good administration (Article 41) or the right to an effective remedy (Article 47), as the issues falling under the responsibility of a regional EU Funds Commissioner may relate e.g. to .:

- lengthy and untimely proceedings and procedures;

- undue organisation of procedures such as the call for proposals, the evaluation of grant applications, the assessment of payment requests, checks, etc.; and
- unclear or missing information;
- excessive or unreasonable requirements;
- issues regarding the level of service and treatment;
- obstacles related to the use of EU funds;
- proposals for changes and improvements in the implementation of the regional operational programmes;
- other types of notifications regarding difficulties.

The regional EU Funds Commissioners work use the network of the European Funds Information Points also existing in every voivodeship. At present there are 39 information points, i.e. the Central Information Point located in Warsaw, 16 Regional Information Points and 22 Local Information Points.

The regional EU Funds Commissioners have also published reports on their activities for each of the past years. The reports are available on their websites and describe the issues they have been working on and solutions they seek to implement. In the course of the research, we reached out to each of the regional EU Funds Commissioners asking whether they had received any motions or complaints based on the Charter and if yes, how they were dealt with. By the time of writing this information [last updated:17/05/23] we had received 13 replies (out of 16). While most of the replies stated that the respective Commissioners did not deal with cases concerning the EU Charter, 4 have described cases which related to the application of the Charter.

Firstly, the EU Funds Commissioner for **Kujawsko-Pomorskie voivodeship** stated that although none of the complaints received by the office explicitly and directly mentioned the Charter, a number of complaints could be qualified as referring to the right to good administration as protected under Article 41 of the Charter. Namely, out of 130 motions received by the institution in total during the six years of its functioning, 24 could be qualified as such. The EU Funds Commissioner for Kujawsko-Pomorskie voivodeship, however, did not elaborate on what the cases concerned specifically. Finally, the office also confirmed its commitment to the Charter.

Secondly, the EU Funds Commissioner for **Warmińsko-Mazurskie voivodeship** informed us of one case related to the Charter. It concerned a complaint following the lack of response to an application for funding a project by an institution organising the bid competition at the stage of formal verification. The complainant claimed the formal verification was excessive and had in fact touched upon substantive matters of the project, which in their opinion violated the right to equal treatment and non-discrimination protected by the Charter. Nonetheless, the complaint was dismissed on the basis that the assessment done by the organising institution did not exceed its legal grounds.

Thirdly, the EU Funds Commissioner for **Opolskie voivodeship** stated that their office had not received any complaints regarding the violation of the EU Charter of Fundamental Rights. However, they shared that the Marshall's Office of the Opolskie voivodeship received one complaint regarding EU funds and the violation of fundamental rights at the end of 2022. The petitioner filed a motion to exclude the town of Nysa from the possibility to receive EU funds in the 2021-2027 financial perspective due to the fact that the town of Nysa was enforcing a resolution which contained provisions considered discriminatory by the Supreme Administrative Court in light of the Polish Constitution, the European Convention for Human Rights and the United Nations Convention on the Rights of the Child. Namely, the resolution stipulated priority to receive childcare funding for biological and adoptive parents who are married and jointly raise at least 2 children and, depending on children's age, one or both parents are active on the labour market. Consequently, the resolution excluded single parents raising children as well as couples raising children in informal partnerships. The funds' management institution requested the mayor of Nysa to take a stance on the issue and commissioned an external legal expert opinion concerning the potential exclusion of the town of Nysa from the 2021-2027 financial perspective due to the discriminatory provisions of the childcare resolution. Finally, the EU Funds Commissioner for Opolskie voivodeship confirmed their commitment to the enforcement of EU Charter of Fundamental Rights and mentioned they were working on designing the criteria for projects' selection. The criteria were to assess also the projects' compliance with the Charter in terms of the implementation method, project scope and the applicant.

Fourthly, the EU Funds Commissioner for **Dolnośląskie voivodeship** replied that their office had not received any complaints regarding the violation of the EU Charter of Fundamental Rights so far. Nonetheless, in regard to the office's use of the Charter, they stated that in order to fulfil one of the fundamental principles they had established a uniform procedure clarifying the obligations of each of the institutions engaged in the implementation of the operational programmes in terms of their accordance with the EU Charter of Fundamental Rights. The procedure should be applied both at the stage of filing applications for funding and at the stage of realising the programmes. It further involves verifying, monitoring, preparing and reporting on suspected non-compliance of projects with the Charter. The latter should be reported directly to the partner institution, implementing institution, managing institution and the EU Funds Commissioner, who shall analyse and decide upon the motion. In case of non-compliance with the Charter the motion should be reported to the relevant authority i.e. the Commissioner for Human Rights, the National Labour Inspectorate, the Patient's Rights Commissioner or the relevant law enforcement agency. The managing institution should prepare an annual report listing all projects non-compliant with the Charter for the monitoring committee to review and decide upon further actions.

### **Coordinators for Compliance of EU Funds with the Charter of Fundamental Rights at the Managing Authorities**

According to the self-assessment report relating to the horizontal condition of respect of the Charter of Fundamental Rights of the European Union in implementing the European Structur-

al and Investment Funds, drafted by the Ministry of Funds and Regional Policy<sup>8</sup>, each institution which, within the scope of its mandate, performs the tasks at any stage of programme implementation they supervise, is responsible for the application of the Charter and is required to analyse the compliance of the implementation of operations financed from EU funds with the latter. The managing authorities decide on the form in which the compliance with the Charter is to be assessed. Each institution is also responsible for ensuring that beneficiaries are adequately informed about the obligation to apply the Charter when implementing a project and for providing information on how to file complaints about any potential violation, by these institutions, of the rights enshrined in the Charter.

In accordance with the solution adopted by the Ministry, appropriate analysis and examination of incoming complaints (including those concerning rights covered by the Charter of Fundamental Rights) shall be carried out in each institution individually. In addition to that, the institutions that have verified the complaint shall, regardless of their findings, notify the complainant on additional possibilities to proceed in order to protect their rights under the Charter and advise them with regard to the institution competent to handle the complaint in accordance with the general system of protection of fundamental rights established within the administrative structure of EU funds implementation. This system does not replace other existing institutions for fundamental rights protection such as the Commissioner for Human Rights or the system of judicial protection (mostly under the administrative judiciary).

The mission of general coordination of activities aiming at ensuring compliance with the Charter (such as policy of programmes design and their implementation, monitoring, individual conformity assessment, awareness campaigning and training) has been entrusted to management authorities. To ensure consistency of the Charter implementation within the complex structure of EU funds institutions at national level, all managing authorities shall submit to the central monitoring committee annual reports on activities carried out and observations made with respect to it, including information coming from complaints handling. Each management authority shall appoint a so-called coordinator for compliance of EU Funds with the Charter of Fundamental Rights, working in close cooperation with the EU Funds Commissioner and Regional EU Funds Commissioners (internal Charter compliance bodies functioning within the governmental administration structure).

As the Coordinator for Compliance of EU Funds with the Charter of Fundamental Rights at the Managing Authority has not yet been commonly established across the managing institutions, it remains unclear how the body will function. Certainly, they need to be well trained on the compliance of EU funds with the Charter for Fundamental Rights. Moreover, it is important to establish a clear division of competences and/or cooperation mechanisms between the Coordinators and the EU Funds Commissioners.

<sup>8</sup>Report of 6th February 2023 (submitted to the European Commission).

## **Outline of barriers and opportunities for the involvement of national bodies with a human rights remit**

Several factors could contribute to a successful involvement of national bodies with a human rights and/or equality remit in ensuring fundamental rights compliance of EU funds.

The **first** one to mention seems to be the awareness of the national bodies with a human right remit themselves involved in ensuring compliance of EU funds with fundamental rights. When analysing the types of actual and potential human rights violations the above-mentioned national bodies work on, they can fall under the scope of application of the EU Charter of Fundamental Rights, such as the right to good administration or access to an effective remedy. However, the national bodies rarely realise that they are dealing with EU Charter violations, which is evidenced by their failure to mention it in the reports on their activity and in their responses to the questionnaires. Awareness of the individuals' rights and public authorities' obligations stemming from the EU Charter is necessary to provide adequate protection and effective remedies. Therefore, raising awareness as to what rights the EU Charter protects with regard to procedures relevant for EU funds and their beneficiaries constitutes the first critical success factor.

The **second** critical success factor we identified is the issue of data gathering. Namely, the national bodies with a human rights and/or equality remit, ensuring fundamental rights compliance of EU funds and having realised that they are dealing with such a case, should take a note of that and reflect it in their annual activity reporting. It is vital for the purpose of spreading awareness, also among potential future petitioners whose rights might be violated and who would be seeking help. Connected to data gathering is appropriate reporting on the cases concerning fundamental rights compliance of EU funds. Such reporting is also necessary for the purposes of identification of the main recurrent problems and risks concerning particular rights enshrined in the Charter, which is crucial for the national bodies with a human rights remit to adequately determine their internal policies concerning actions destined to boost fundamental rights protection.

**Thirdly**, it is very important to highlight, on the basis of past recommendations concerning similar issues, that in order to ensure fundamental rights compliance of EU funds implementation processes it is crucial for the national bodies with a human rights remit, involved in the proceedings, to be independent and accountable. Only without any interference from other public authorities (i.e. the government) can they make full use of their competences with regard to fundamental rights protection. While some national bodies concerned have a constitutionally guaranteed mandate of independence, others are directly under the government. In the latter case, both formal and factual independence of such bodies are at risk, with little chance for a neutral perception by individuals. Concerning the EU Funds Commissioner, the establishment of a body responsible for supporting individuals in their contacts with bodies responsible for implementing EU fund should be regarded as positive. Given the yearly numbers of motions and/or complaints submitted to the EU Funds Commissioner one can deduce that individuals have a lot of questions, problems and suggestions regarding the functioning of the operational programmes and the activities of the institutional managers. Nonetheless, a potential challenge for the EU Funds Commissioner could be its lack of institutional independence. As a body functioning within the Ministry of Development

Funds and Regional Policy, the EU Funds Commissioner is selected by the Minister. According to the Ministry's website, the recently selected EU Funds Commissioner has been chosen in an "external competitive selection process". However, it remains unclear what that process entailed.

The regional EU Funds Commissioners support the national EU Funds Commissioner through decentralising the work and working closely with the petitioners. They tackle regional and local problems in their voivodeships. Thus, they potentially should be familiar with the issues and able to address them better at the regional and local level. However, the regional EU Funds Commissioners are also integrated with the regional government administration. This could lead to issues regarding their dependence.

Furthermore, national bodies with human rights remit must possess sufficient resources to be effective and efficient in their work on ensuring fundamental rights compliance of EU funds. As held above, know-how is an important resource. Another one would be human resources capable of dealing with the matters at hand. While it is safe to assume that the staff of the EU Funds Commissioner as well as of the offices of the regional EU Funds Commissioners possess knowledge and expertise in EU funds management, they may not be experts on fundamental rights protection and ensuring funds' compliance with fundamental rights. Meanwhile, the Commissioner for Human Rights deals with a very large number of cases concerning various areas of human rights protection, those related to EU funds being a small, yet significant part. Consequently, given its limited human resources, it may take longer for the Commissioner for Human Rights to reply to individual motions or analyse more general cases. In this regard it is necessary to mention the potential risk of overburdening the Office of the Commissioner for Human Rights due to the newly introduced obligation to inform beneficiaries on the right to complain to the Commissioner without, however, securing more financial resources for the Office for the purposes of greater involvement in the matter. In such cases, the handling of additional complaints from EU funds beneficiaries would need to be done at cost of other fields of the Commissioner's activity.

## **Critical success factors**

Several factors for a successful involvement of national human right institutions in ensuring compliance of EU funds with fundamental rights have been identified.

### **National human rights bodies' own awareness of the Charter and sufficient knowledge about its application**

The first and most important success factor for ensuring respect of the Charter in the EU funds implementation by the national bodies with a human rights remit seems to be their own awareness and knowledge about the Charter of Fundamental Rights and its scope of application. Due to the fact that some rights and freedoms enshrined in the Charter are identical with constitutional rights or rights enshrined in the European Convention of Human Rights many bodies seem to be treating the Charter as a secondary act and tend to limit their references to the national constitutional law

or other legal acts relevant for fundamental rights such as the European Convention for Human Rights. As presented above, the outcomes of our preliminary research suggest that national human rights bodies might not be aware of the fact that they deal with cases within the scope of application of the Charter of Fundamental Rights. Such lack of awareness constitutes a critical barrier to effective ensuring of compliance with the Charter. Thus, further knowledge dissemination actions involving all national bodies with a human rights remit that might potentially deal with cases of the Charter infringements, which can be considerably numerous in Poland, seem crucial as an introductory precondition for any further actions aimed at this objective.

### **The need to implement the Charter of Fundamental Rights and to assess its potential violation at every stage of proceedings**

Based on individual complaints dealt with by the Office of Commissioner for Human Rights, it can be noted that while the systemic compliance with the Charter plays an important role at the stage of designing the project, most problems and inaccuracies appear at the stage of execution of project contracts and their accounting. In such cases it is usually too late to undertake activities which would allow to take the Charter into account, including not only the right to good administration but also other fundamental rights and freedoms. Mechanisms securing the respect of the Charter should therefore be provided for at every stage of EU funds implementation. Both competent authorities and relevant bodies with a human rights remit should have adequate tools to assess the situation of alleged infringement in the general scope of a given case, not only with relation to respective stage of proceedings.

### **The division of roles and responsibilities of institutions in charge of various stages of implementing EU funds in the context of the Charter**

Building upon the previous point, another critical success factor relates to a clear division of responsibilities between various bodies and public institutions in terms of contracting, control and accounting for project contracts. The complexity of status quo makes it difficult for the beneficiaries to effectively raise concerns regarding agreements made with one body at later stages of the project with other bodies. Due to a lack of clear structure and information on jurisdictional divisions between the institutions, beneficiaries often file motions to multiple bodies at once. However, the fact that multiple institutions are responsible for enforcing EU funds and given projects compliance with the Charter leads to so-called responsibility shifting, i.e. a situation where a body, when contacted by a beneficiary refers to a decision of another body engaged at an earlier stage of the process in order to justify its lack of competences to take actions ensuring compliance with the Charter.



**The division of roles and responsibilities is particularly unclear with regard to the relation between the EU Funds Commissioner/regional EU Funds Commissioners and the coordinator(s) for the Charter of Fundamental Rights appointed by each management authority.**

**Access to clear information about individual complaint procedures and other remedies**

Following the problem of institutional complexity of EU funds implementation, more clarity through, for example, informing and explicitly pointing the institution competent for filing motions is crucial for ensuring effective and accountable review as well as providing effective remedies. Furthermore, it should be noted here that informing beneficiaries about their rights, including the right to complain to the Commissioner for Human Rights would further improve compliance of EU funds implementation with the Charter of Fundamental Rights, given the Commissioner's broad competences, including initiation of administrative and judicial proceedings, as well as their constitutionally guaranteed independence.

**Institutional independence and competences of the intra-administrative organs with a human rights remit**

As held above, the EU Funds Commissioner does not possess adequate independence guarantees neither in terms of organisational autonomy nor budget. The only provision regarding the EU Funds Commissioner's independence stipulates that they may not be engaged in tasks which could undermine their independence. Furthermore, it should be noted the EU Funds Commissioner does not possess enough competences to duly conduct investigative proceedings following citizens' complaints, nor competences to offer remedies or participate in administrative or judicial proceedings. In the current state, they do not have sufficient tools to monitor the compliance with the Charter in the implementation of EU funds nor to undertake appropriate interventions. It seems that all national bodies with a human rights remit should enjoy sufficient institutional independence, even if they operate within the administrative structures of the State, and should have sufficient competences allowing for effective control even in cases of lack of cooperation by the organ that has allegedly infringed the complainants' rights.

**Cooperation among national institutions with a human rights remit and other institutions involved in the EU funds implementation**

As mentioned in the previous sections, while the EU Funds Commissioner has not reached out to the Commissioner for Human Rights nor is such cooperation legally mandatory, it should be noted that it could result in a more effective and more systematic approach to the implementation of EU funds in Poland. Such cooperation, nevertheless, should not be limited only to institutions with a human rights remit. As indicated in this report, a closer cooperation with the competent authorities coordinating EU funds implementation can result in concrete realisation of soft law recommendations by them and common design of general policies and guidelines. As it results from



the last experiences of the Office of the Commissioner for Human Rights, institutions with a human rights remit might reach out to other institutions, also at different levels and stages of EU funds implementation. With regard to this, it has to be noted that the pressure resulting from imposing upon national authorities, by the European Commission, the horizontal condition of respect of the Charter has proven to be very effective in improving fundamental rights protection mechanism in a systemic and general scope in the discussed field. The introduction of the obligation of cooperation or consultation of competent implementation authorities with fundamental rights institutions could be very beneficiary in securing regular and systemic overview of fundamental rights compliance.

### **Sufficient financial and human resources of the national institutions with a human rights remit**

Most of the recommendations concerning fundamental rights protection result mostly from individual complaint handling and data gathering, as it is easy to predict every potential critical point for the respect of individuals' rights *a priori*. These activities, however, require a considerable amount of work. Many of the existing national bodies with a human rights remit do not have sufficient resources to deal with individual claims and conduct investigations in a proper and reliable way. Good financial standing of such bodies is also one of the critical success factor for their involvement in further ensuring fundamental rights compliance of EU funds.

### **Separation of competences**

Regardless of the observations and suggestions presented above and concerning national bodies with a human remit, the outcomes of our preliminary research lead to the conclusion that, although it is very pluralistic, the institutional framework of EU funds administration presents little characteristics ensuring the respect of the principle of separation of powers, or separation of competences. Taking this into consideration it seems that – on the basis of previous individual cases handled by the Office of the Commissioner – the more competences are clearly split between separate organs (even within the same administrative structure, and especially with use of hierarchical relations between them allowing for devolutionary remedies) the easier it is to obtain a genuine review of the case in the relevant complaint procedure. At present, legal provisions allow for sharing competences between coordination, management, intermediate and implementing bodies, which can hamper the separation of competences and the principle of legalism as safeguards for fundamental rights of concerned individuals.

## **Conclusions**

Observations presented in this baseline report regarding the involvement of national bodies with a human rights remit are not sufficient and should be strengthened. In the case of Poland, the institutional setting, especially given the status and competences of the Commissioner for Human Rights, seems to provide sufficient potential tools for action, although some reinforcement of such bodies established within the structure of EU funds administration dependent upon the government is necessary. What appears, though, as the most striking and crucial issue is the preliminary conclusion about possible lack of sufficient awareness of these bodies concerning the Charter and its scope of application. Finally, more financial and human resources should be allocated to these bodies in order to secure effective and reliable complaint handling and infringement investigation as a source of data and experiences necessary for further fundamental rights advocacy and policy development.

With regard to administrative institutional setting of EU funds implementation, it appears that there are three key issues that might hamper effective application of the Charter and protection of individuals' rights in their proceedings. As suggested above the inevitable complexity of multi-level organisation of EU funds administration concerning different competences and stages of implementation of programmes and projects funded from EU budget should respect the principle of separation of these competences to a larger extent than it is at present. Secondly, the issue of potential responsibility shifting and limitation of fundamental rights application mandate of the involved administrative organs excluding possibility for general overview of the individual's situation should be eliminated as a serious barrier for effective remedy in case of alleged Charter infringements. Thirdly, institutions involved in EU funds implementation should be aware and actively engaging in ensuring the respect of the Charter within their actions at all stages of the process. This means that the general scheme of EU funds implementation should be translated into concrete mechanisms and checks starting from design of financing programmes to the stage of clearance of individual contracts and projects. At the current state of development and drafting of the key horizontal documents of it, explicit Charter conditionality provisions lack or are formulated only in very general and broad terms.

With relation to both national bodies with a human rights remit and EU funds administration it seems also necessary to highlight the importance of regular and attentive mutual cooperation between these institutions. Such cooperation consisting of consultations and dialogue might lead to a genuinely effective results for fundamental rights protection creating reliable frameworks and procedures. This cooperation should also translate into common sharing of data and experiences as it constitutes a way to fill lacuna in our knowledge regarding the actual application of the Charter in respective countries and issues most crucial for the protection of rights and freedoms enshrined in it. The tasks regarding prevention and complaint mechanisms concerning potential Charter violations, set out by the horizontal requirement of the Charter compliance of EU funds allocation should not translate, in practice, in their delegation to NHRI already working in the area instead of their genuine exercise within the internal structure of the national administration implementing EU funds.





**35 YEARS**  
**COMMISSIONER**  
**FOR HUMAN RIGHTS**  
1988 – 2023

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