



# THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN ENSURING RESPECT FOR FUNDAMENTAL RIGHTS IN THE USE OF EU FUNDS

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## About this publication

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## TABLE OF CONTENTS

<b>List of abbreviations.....</b>	<b>4</b>
<b>Summary.....</b>	<b>5</b>
<b>1. Introduction .....</b>	<b>8</b>
<b>2. Implementation of EU funds: challenges and opportunities for fundamental rights.....</b>	<b>9</b>
<b>3. The role of NHRIs in ensuring respect for fundamental rights in the management of EU funds.....</b>	<b>23</b>
<b>4. Critical success factors .....</b>	<b>30</b>
<b>5. Conclusion .....</b>	<b>33</b>

## List of abbreviations

CDC	'Central Coordination Unit' (Directorate) at Ministry of Finance of Bulgaria
Charter	Charter of Fundamental Rights of the European Union
CPD	Commission for Protection against Discrimination
CRPD	Convention on the Rights of Persons with Disabilities
EC	European Commission
EFSU	European Shared Management Funds
EU	European Union
FRA	European Union Agency for Fundamental Rights
ISUN	Information system for management and monitoring of EU funds in Bulgaria
MLSP	Ministry of Labour and Social Policy of Bulgaria
MoI	Ministry of the Interior of Bulgaria
MRDPW	Ministry of Regional Development and Public Works of Bulgaria
NGOs	Non-governmental organisations
NHRIs	NHRIs
OP	Operational programme

## Summary

The main challenges related to ensuring respect for fundamental rights in the use of EU funds and recommendations for solutions could be summed up as follows:

### AT CENTRAL GOVERNMENT LEVEL

Finding	Recommendation
From 2023, all functions for the overall organisation, coordination and control of the system for managing EU funds are concentrated in the Ministry of Finance. The transfer of such a large volume of work from the administration of the <i>Council of Ministers</i> to a directorate (CDC) within the <i>Ministry of Finance</i> , where it will be carried out jointly with the functions of a coordination unit for bilateral programmes from other donors, <sup>1</sup> raises the question of the capacity of this unit to carry out its coordination functions with sensitivity to fundamental rights.	Improving knowledge and sensitivity on fundamental rights among experts in the new units coordinating EU funds in Bulgaria within the <i>Ministry of Finance</i> . This, together with providing the units with sufficient and specialised human resources, would contribute to a more effective implementation of the horizontal enabling conditions related to the respect of fundamental rights.
National human rights institutions (NHRIs) are not actively involved in the process of planning programme periods and evaluating the ending ones, which could prevent large-scale violations of fundamental rights (as in the case of deinstitutionalisation).	At the planning stage, the two bodies could review the programming and the Partnership Agreement. The Ombudsman, with its institutional analytical capacity and extensive experience in dealing with fundamental rights complaints, could carry out programme evaluations or review such evaluations from a fundamental rights perspective so as to avoid replication of the same problems in subsequent funding cycles.
The guidelines and checklists for compliance of the EU funding system with the EU Charter and the CRPD formally comply with the EC requirement, but their effective implementation in practice could be hampered by several factors, namely 1) they do not reflect the specificities of the national fund management system and the sensitivity of the authorities to fundamental rights; 2) they link activities and stages of the funding cycle to certain rights, which may limit the authorities' ability to identify violations of rights outside the list; and 3) no process exists for removal of irregularities.	The guidelines may be revised with the active involvement of NHRIs with practical experience in dealing with fundamental rights complaints. Coordinating and managing authorities can be trained to be familiar with EU Charter and to relate fundamental rights to specific practical situations that may arise within the scope of each programme. The CDC should prepare a regular analysis of the implementation of the 'horizontal enabling conditions' related to the rights and adjust its guidance to the results of this analysis. Build a database of reference material on the application of the EU Charter and the UN CRPD in public policies, focusing on concrete examples of their scope and applicable law.

<sup>1</sup> For example, the National Recovery and Sustainability Plan (NRSP), the European Economic Area (EEA) Financial Mechanism (EFM) and the Norwegian Financial Mechanism (NFF), and projects under the Swiss-Bulgarian Cooperation Programme (SBCP). For more information, see the [Ministry of Finance website](#).

<b>Finding</b>	<b>Recommendation</b>
Complaint mechanisms are not very well known and visible to beneficiaries and end-users of EU-funded activities.	The CDC could publicise the complaints mechanism better, especially through the communication component of the EU programmes and the available system of information centres.
<b>Finding</b>	<b>Recommendation</b>
The rules for the composition of monitoring committees have not changed significantly since the previous programming period. They have been widely criticised by civil society because of the imbalance and the representation procedure, where state bodies constitute an absolute majority. The NGO sector and NHRIs are under-represented or subject to a representation procedure. Many of the committee members partake in multiple programmes. On the one hand, this is understandable as the composition is statutory and the participating bodies and organisations sometimes do not have the resources to cover participation in all programmes. On the other hand, it limits the range of decision-makers regarding the use of EU funding.	Legislation on the composition of monitoring committees could be amended to offer a more balanced distribution of participants and pluralism of views. There are several approaches that have been suggested by NGO representatives, including an equal distribution between state institutions and NGOs with a "golden vote" held by a NHRI.
<b>Finding</b>	<b>Recommendation</b>
A Committee for Control over the Management of EU Funds is established in each National Assembly to exercise parliamentary control over the activities of the Government in the programming, management and control of funds from all programmes co-financed by EU funds. None of the activities mentioned, however, concern fundamental rights issues.	The Committee for Control over the Management of EU Funds can play a more active role in ensuring fundamental rights compliance by monitoring the work of coordinating and managing authorities. The ability to discuss and act on letters, alerts, complaints and objections received concerning EU-funded instruments could be strengthened by also focusing on the issue of fundamental rights. It would be useful to strengthen the sensitivity of the members of the Committee for Control over the Management of EU Funds on fundamental rights to enhance its effectiveness.

## AT THE LEVEL OF MANAGING AUTHORITIES AND MONITORING COMMITTEES

<b>Finding</b>	<b>Recommendation</b>
Managing authorities find it difficult to establish whether a complaint received constitutes a violation of fundamental rights, including for those managing 'rights sensitive' programmes'.	NHRIs can be particularly helpful in developing support materials and providing training tailored to the specificities of each programme. The need for practical training on how to put the EU Charter and CRPD Compliance Guidelines into practice is mentioned repeatedly in the study. This will enable the authorities to have a more

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detailed and in-depth knowledge of fundamental rights and could identify which aspects of their work may involve violations.

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## AT THE LEVEL OF NHRIs

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### Finding

According to the NGO sector, during the implementation phase of the programmes in the previous cycle, the different complaint mechanisms (both general, such as courts and human rights bodies, and specific - within the managing authorities), combined with the lack of clarity on who should be approached by people who identified fundamental rights problems, left the impression that the complaint procedures were not effective. Despite the introduction of a complaints mechanism in the new programming period, there is no evidence that this situation has changed significantly.

### Recommendation

Complaints mechanisms should be made more visible to the public, especially at the local level. This should rather take the form of awareness-raising campaigns conducted jointly by NHRIs and the managing authorities or the CDC.

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### Finding

NHRIs lack the capacity to cover the new functions arising from the reformed mechanisms for the operation of the programmes in the new programming period and the introduction of the horizontal enabling conditions covering the EU Charter and the CRPD.

### Recommendation

NHRIs should be included in the EU funding cycle under a clearly defined mechanism that ensures their effective functioning. This means that both financial and human resources are needed to undertake these functions, and a set of (internal) rules to enable the effective use of these resources. Some respondents suggested the creation of specialised units within these bodies to deal mainly with EU funds issues, including monitoring, complaints handling, analysis and evaluation, etc. Staff in such specialised units need additional training on how the funds operate in Bulgaria. Local ombudspersons, on the other hand, can be included in the network of institutions and organisations ensuring the effective use of EU funds in line with the EU Charter and the CRPD.

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### Finding

Not all decisions of NHRIs under general complaints mechanisms are binding. Their implementation is not always effectively monitored.

### Recommendation

There is a need for a mechanism to implement the decisions or recommendations of NHRIs, for example if they concern financial sanctions related to access to EU funding. One of the proposed options is to do this by providing additional resources to the authorities for follow-up.

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## 1. Introduction

This report has been developed in the framework of the project *"Supporting National Human Rights Institutions in monitoring fundamental rights and rule of law aspects related to fundamental rights"*, which aims to strengthen the role of these institutions in the implementation of the EU Charter of Fundamental Rights (EU Charter) at national level in Bulgaria, Croatia, Cyprus, Latvia, Poland, Slovakia and Slovenia. The project is being implemented by the European Union Agency for Fundamental Rights (FRA) together with NHRIs in the seven EU Member States and the European Network of NHRIs (ENNHRI). For Bulgaria, it is implemented by the Ombudsman of the Republic of Bulgaria.

The project aims to strengthen the role of national human rights institutions (NHRIs) in the promotion and protection of fundamental rights and the rule of law. This is planned to happen including through institutional advice, support and capacity building on EU law, with a focus on EU Charter. This report is intended as a means to this end. The project also envisages to strengthen the capacity of NHRIs to monitor fundamental rights and the rule of law by increasing their engagement with relevant EU mechanisms that support fundamental rights and the rule of law at national level. Also, the project aims to develop the capacity of the NIHR to monitor compliance with the EU Charter in the absorption of EU funds as foreseen by the Regulation on the Common Provisions for the shared management of eight EU funds with Member States and regions (Common Provisions Regulation).<sup>2</sup>

The report builds on the structure and data of a previous FRA study in the framework of the project *"Providing technical assistance to national authorities with human rights competences involved in the assessment of the compliance of EU funds with the EU Charter and the Convention on the Rights of Persons with Disabilities"*,<sup>3</sup> which covered eight EU Member States, namely Bulgaria, Estonia, Finland, France, Germany, Greece, Portugal and Croatia. Bulgaria is one of the countries participating in both projects, which allows to track the development of mechanisms for the implementation of the *horizontal enabling conditions for the effective implementation of the EU Charter of Fundamental Rights* and the *Convention on the Rights of Persons with Disabilities (CRPD)* before and after the start of the 2021-2027 programming period of the *European Funds for Shared Governance*.

In this sense, this report draws on data from the three research phases of the previous FRA study - analysis of official documents and other publicly available sources; interviews with 10 representatives of: 1) governing bodies; 2) NGOs; and 3) national institutions with human rights and equality mandates; and a national roundtable with representatives from the same groups to verify and confirm the findings of the previous phases. This research was conducted during the closure of the 2014-2020 programming period and

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<sup>2</sup> [Regulation \(EU\) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Fair Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and the financial rules applicable to them and to the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for financial support for border management and visa policy, L 231/159.](#)

<sup>3</sup> For more information, see the [FRA website](#).

prior to the signing of the *Partnership Agreement between Bulgaria and the European Commission (EC)* for the next period. At that time, the content of the horizontal enabling conditions for the new period was clear, but the mechanisms for their implementation had not yet been established. Therefore, the views expressed in the report reflect rather the state of monitoring of fundamental rights within the previous funding cycle.

Based on the findings of that study, this report traces the changes in the management of EU funds in Bulgaria in the new period and the approach the country has chosen to ensure effective implementation of the conditions for compliance with the EU Charter and the CSOs, analysing them on the basis of the observations and recommendations of the participants in the previous study. As a result, observations on the role of NHRIs in the new context of implementation of EU funds in Bulgaria in the 2021-2027 cycle are outlined and recommendations for measures that would help ensure more effective implementation of the EU Charter and CRPD at the national level are made. The findings were discussed and validated at two diagnostic events organised by the Ombudsman of the Republic of Bulgaria, with representatives of NGOs and with state institutions, held on 26 and 27 February 2024 respectively.

## 2. Implementing EU funds: challenges and opportunities for fundamental rights

This section includes an overview of the laws, mechanisms and structures through which EU funding operates in Bulgaria in the 2021-2027 programming period, as well as the tools for verifying compliance with the EU Charter and the CRPD. A comparison with the previous programming period is also made, reflecting the views of the participants on the challenges and opportunities for improvement. When discussing issues related to the previous programming period 2014-2020, it should be borne in mind that different rules applied.

During the 2014-2020 period, EU funds operated under two types of mechanisms. In accordance with [Regulation \(EU\) No 1303/2013](#), the *Law on the Management of the European Structural and Investment Funds* governed the management of 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*. At the same time, the *Asylum, Migration and Integration Fund* ([Regulation \(EU\) No 514/2014](#)), the *Internal Security Fund* and the *Instrument for Financial Support for Border Management and Visa Policy* ([Regulation \(EU\) No 514/2014](#)) were not subject to this law, but were implemented in accordance with a national programme and managed by the *Ministry of the Interior (MoI)* through the *International Projects Directorate* and with the *Internal Audit Department* as its audit authority. From the beginning of the 2021-2027 period, the *CPR* ([Regulation \(EU\) 2021/1060](#)), which governs the 2021-2027 programming period, now applies to all the above-mentioned funds.

And in the new funding cycle, the management of EU funds in Bulgaria remained highly concentrated within the Council of Ministers. The main responsible institutions remained almost unchanged:

- **The Council of Ministers** approves the *Partnership Agreement* and the

programmes on the Bulgarian side before they are sent to the European Commission. It determines the institutions that perform the functions of managing authorities, and adopts the secondary legislation under which the funds are managed,<sup>4</sup> including the rules on the composition and functioning of all managing, monitoring and control bodies. In the implementation process, it is assisted by two advisory bodies: *the Coordination Council for the Management of European Union Funds* and the *Coordination Council for the fight against offences affecting the financial interests of the European Union*.<sup>5</sup>

- **The Deputy Prime Minister or the Minister responsible for the overall organisation, coordination and control of the system for the management of European Shared Management Funds (ESMF)** is responsible for the overall organisation, coordination and control of the management of EU funds. This official: represents Bulgaria to the European institutions on the management of these funds; coordinates the process of developing the institutional framework and legislation related to the management of EU funds; coordinates and supervises the management of the programmes. The same official also provides binding methodological guidance to managing authorities on the management of the programmes and coordinates the improvement of administrative capacity at central, regional and local level in the management of EU funds. It is also the body responsible for the existence and functioning of the management and control systems of the programmes in line with the key requirements of *the CPR* described in *Annex XI*,<sup>6</sup> as well as for the effective implementation of visibility, transparency and communication measures in the management of funds. During the 2014-2020 funding cycle, the structure of the Council of Ministers has always included a Deputy Prime Minister for EU Funds Management. Since 2023, this figure has been abolished and its functions are performed by the Minister for Finance.<sup>7</sup> According to the managing authorities, this change does not significantly affect the quality of fund management in the new period.<sup>8</sup>
- **The Secretary of the Treasury** manages financial transfers and sets the rules for making payments, verifying and certifying expenditures, recovering and writing off improper expenditures, and reporting on programs.

From July 2023, the functions of the Minister responsible for the overall organisation,

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<sup>4</sup> For more information, see the [Single Information Portal on the European Structural and Investment Funds](#).

<sup>5</sup> [Law on the Management of EU Funds under Shared Management](#) (SG 51/2022, in force from 01.07.2022, last amended on 8 December 2023).

<sup>6</sup> [Regulation \(EU\) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Fair Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and the financial rules applicable to them and to the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for financial support for border management and visa policy](#), L 231/159.

<sup>7</sup> Ministry of Finance, [Report by Assen Vassilev - Minister of Finance on the Draft Decree of the Council of Ministers on the Establishment of the Institute for Strategic Analyses and Forecasts and on the Adoption of the Rules of Procedure of the Institute for Strategic Analyses and Forecasts](#), 16 June 2023.

<sup>8</sup> Diagnostic event with representatives of state institutions held on 27 February 2024.

coordination and control of the system for the management of EU funds shall be performed by the Minister for Finance. Thus, in practice, all management functions are concentrated in one ministry.<sup>9</sup> There is no evidence that this concentration affects the EU Charter compliance guidelines in the planning and implementation of funded projects. However, in any case, the transfer of such a large volume of work from the administration of the Council of Ministers to a directorate within the Ministry of Finance, where it will be combined with the functions of a coordination unit for programmes from other donors,<sup>10</sup> raises questions about the capacity of this unit to perform its ESFS functions with sensitivity to fundamental rights.

Within the legislature of each National Assembly, a **Committee for the Control of the Management of EU Funds**.<sup>11</sup> During most of the previous programming period, the 44th National Assembly (2017-2021) functioned within which this body was referred to as the "*Committee on European Affairs and Control of European Funds*".<sup>12</sup> Among its powers are to exercise parliamentary scrutiny over the government's activities in the programming, management and control of funds from all programmes co-financed by European Union funds. The Commission also publishes an annual progress report on EU co-financed programmes. However, none of the activities mentioned concern fundamental rights issues. The Rules of Procedure of the *Committee for the Control of the Management of EU Funds*, which operates within the 49th National Assembly, provide for the possibility to discuss and act on letters, signals, complaints and objections received concerning EU-funded instruments. Until the beginning of 2024, this committee had held only one meeting without taking action on fundamental rights issues.

The separate structure in the administration of the minister responsible, which coordinates the actions of the managing authorities, assisting them in the implementation of European and national legislation on the management of EU funds, is **directorate Central Coordination Unit (CDC)**. It also maintains contacts and provides information to the European Commission. The CDC also provides administrative support to the line Minister in the overall organisation, coordination and control of the funds system. The CDC manages a network of 27 information centres which promote the process of absorption of EU funds at local level.<sup>13</sup> It also maintains the *Single Information Portal on the European Structural and Investment Funds*.<sup>14</sup> Together with the managing authorities, the CDC also manages *the Information System for the Management and Monitoring of EU Funds in*

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<sup>9</sup> Council of Ministers, [Decree No. 104 of 21 July 2023 on the establishment of the Institute for Analyses and Forecasts and on the adoption of the Rules of Procedure of the Institute for Analyses and Forecasts](#).

<sup>10</sup> For example, the National Recovery and Sustainability Plan (NRSP), the European Economic Area (EEA) Financial Mechanism (EFM) and the Norwegian Financial Mechanism (NFF), and projects under the Swiss-Bulgarian Cooperation Programme (SBCP). For more information, see the [Ministry of Finance website](#).

<sup>11</sup> This is the name of the committee within the 49th National Assembly. There are differences in the names and powers of the relevant committee in each National Assembly. Because of the political crisis that began in early 2021 and the series of parliamentary elections that lasted until April 2023, there are five National Assemblies during this period, each of which sets up its own committee to oversee the management of EU funds.

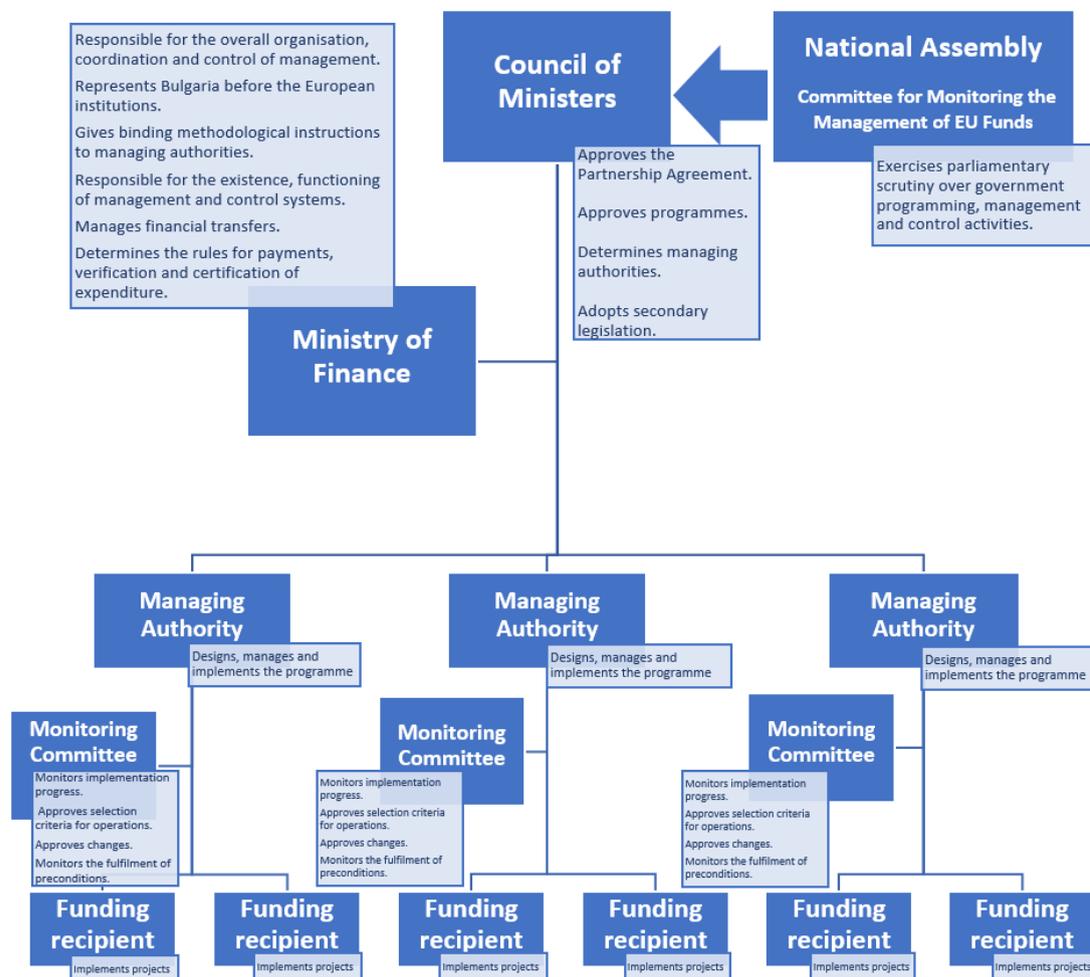
<sup>12</sup> For more information see [the National Assembly archive](#).

<sup>13</sup> For more information see the [Single Information Portal on the European Structural and Investment Funds](#).

<sup>14</sup> In line with the national communication strategy set out in the Partnership Agreement; for more information see the [Single Information Portal on the European Structural and Investment Funds](#).

Bulgaria (ISUN)<sup>15</sup> - the portal for online application, monitoring, evaluation and control. During the 2014-2020 programming period the unit was part of the administration of the Council of Ministers, but from July 2023 it has been moved to the Ministry of Finance.

Figure 1: Structure of the management of EU funds in Bulgaria



In parallel with the finalisation of the planning phase of the new period (the *Partnership Agreement*<sup>16</sup> and the programmes) and in relation to the implementation of the *horizontal enabling conditions for the effective implementation and delivery of the EU Charter and the CRPD*, the Council of Ministers adopted two measures:<sup>17</sup>

- The first could be called "**ex-ante**" because it aims to prevent violations of fundamental rights in the planning of programmes. It provided managing, control and audit authorities with the *EU Charter Implementation Guidelines* and the *CRPD Implementation Guidelines* so that they can check that all phases of the implementation of the Funds (planning, setting up management and control systems

<sup>15</sup> For more information see [Information System for Management and Monitoring of EU Funds in Bulgaria 2020](#).

<sup>16</sup> European Commission, [Partnership Agreement 2021-2027, approved by the European Commission](#), 6 July 2022.

<sup>17</sup> Council of Ministers, [Decision of the Council of Ministers No. 368 of 25.06.2019](#), amended by RMS No. 272 of 28.04.2022.

and implementation) comply with the rights and principles of these documents. The CDC and the Human Rights Directorate of the Ministry of Foreign Affairs drafted the guidelines on EU Charter, and the Ministry of Labour and Social Policy (MLSP) drafted those on the CRPD. Both documents were endorsed in July 2022.<sup>18</sup> The Managing Authorities report that **they are rather failing to** meet the identified needs<sup>19</sup> (especially of authorities with lower sensitivity to fundamental rights) for a better knowledge of the EU Charter and the CRPD, and the relationship of their rights and principles to specific situations of implementation of the funds.<sup>20</sup>

- The second could be called "**ex post**" as it aims to build a mechanism to respond to identified rights violations through EU funding. Under it, managing authorities would have to report to the *Monitoring Committees specific cases of non-compliance with the EU Charter in operations supported by the Funds*. This possibility becomes a reality with the changes in the legislation governing the management of the Funds and the adoption of the rules of procedure of each Committee. However, these changes are laconic and managing authorities report that this reporting is seen as a formality.<sup>21</sup> **There are no reported cases of non-compliance with the EU Charter in EU-supported operations.**

Participants in the aforementioned FRA survey agree that during the **2014-2020 funding cycle, conditions related to fundamental rights seem to be more of a marginal issue**. The *horizontal principles of gender equality, equity and non-discrimination, and accessibility* were formally present in all programmes. They are also part of all guidelines and manuals for project beneficiaries,<sup>22</sup> and all grant contracts oblige beneficiaries to respect them. However, the prevailing view is that **compliance with them depends solely on the will of the beneficiaries, with no monitoring or ex-post evaluation mechanism**. In addition, there are indications that monitoring and verification bodies sometimes use the principles as a tool to impose additional financial sanctions on some beneficiaries.<sup>23</sup> However, all respondents agree with the **visible positive effect of the accessibility principle**, which they **attribute to the binding nature of the existing EU legal framework** transposed in the *Accessibility and Universal Design Ordinance*.<sup>24</sup> Since the new funding cycle, **respect for fundamental rights has become a prerequisite for EU funding**. The national funds management system has started the process of adapting to the new requirement. As a first step, the Council of Ministers issued

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<sup>18</sup> Council of Ministers, [Order No. B-105, Sofia, 19.07.2022 of the Deputy Prime Minister for EU Funds and Minister of Finance](#).

<sup>19</sup> For more information see Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023.

<sup>20</sup> Diagnostic event with representatives of state institutions held on 27 February 2024.

<sup>21</sup> Diagnostic event with representatives of state institutions held on 27 February 2024.

<sup>22</sup> For example, National Railway Infrastructure Company, [Procedural Manual for the Management and Implementation of Projects under the Operational Programme on Transport and Transport Infrastructure](#) 2014-2020, 11 January 2023.

<sup>23</sup> Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, NHRB 3.

<sup>24</sup> Ministry of Regional Development and Public Works, [Ordinance No. RD-02-20-2 of 26 January 2021 on determining the requirements for accessibility and universal design of the elements of the accessible environment in the urban area and of buildings and facilities](#), 12 February 2021.

a decision,<sup>25</sup> setting out a list of activities, responsible authorities and deadlines for the implementation of the horizontal enabling conditions.

In implementation of this decision, the CDC commissioned experts from the *Ministry of Foreign Affairs* and the *Ministry of Labour and Social Policy* to develop **guidelines and checklists for the compliance of the EU funding system with the EU Charter and the CRPD**.<sup>26</sup> The purpose of these documents is to meet the requirement of Regulation 2021/1060,<sup>27</sup> according to which the State must provide a mechanism for the compliance of programmes supported by the funds and their implementation with the relevant provisions of the EU Charter.

**The guidelines** (together with their three annexes) **introduce the EU Charter in the context of EU funds and explain how managing authorities should ensure that it is respected at each stage of the cycle**. *Annex 1* lists the main stages of the funding cycle, and the bodies that should ensure compliance with the rights, and includes an indicative list of the fundamental rights potentially relevant to each stage. *Annex 2* ('*Checklist for verifying a potential violation of the EU Charter of Fundamental Rights*') proposes a three-stage verification process, including supporting questions to assist this process. *Annex 3* consists of a list of the relevant competent authorities that deal with issues relating to violations of fundamental rights, by group or by individual right.

**The proposed documents formally comply with the EC requirement, but their effective implementation in practice could be hampered** by several factors. First, they repeat almost verbatim similar guidelines published by the EC in 2016<sup>28</sup> to assist Member States in preparing their mechanisms. Thus, **they do not reflect the national specificities of the administrations and there is no evidence that they were prepared following an analysis of their capacity to recognise and respond to fundamental rights concerns**. An example is the lack of clarification of terms such as "proportionality", which would not be common knowledge to professionals administering the funds. Furthermore, the guidelines do not respond to one of the main difficulties registered during the previous period, namely the problem of managing authorities recognising rights (or violations thereof) in practical situations.<sup>29</sup>

In addition, the Guidelines **link different activities and stages of the funding cycle**

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<sup>25</sup> Council of Ministers, Decision No. 272 of 28 April 2022, available only through the information system of the Council of Ministers.

<sup>26</sup> These guidelines were formally published on 1 September 2022 and came into force by Order of the Deputy Prime Minister for EU Funds Management: Deputy Prime Minister for EU Funds and Minister for Finance, [Order No. B-105 of 19 July 2022](#).

<sup>27</sup> [Regulation \(EU\) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on, and financial rules for, the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Fair Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for financial support for border management and visa policy](#), L 231/159, 30 June 2022, Annex 3.

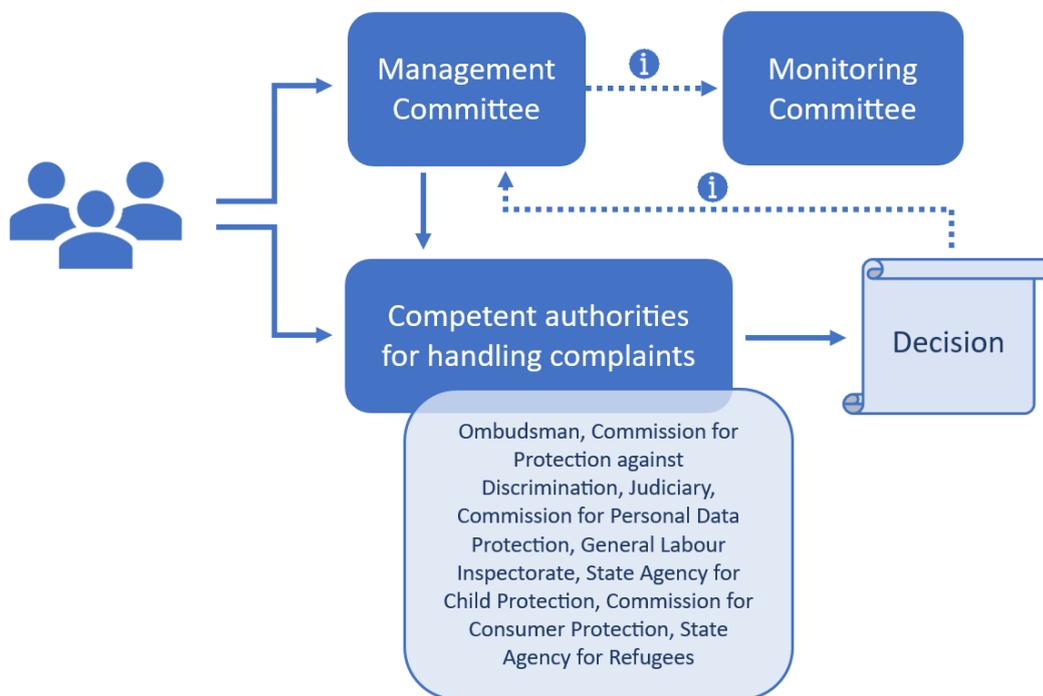
<sup>28</sup> European Commission. [Guidelines to ensure compliance with the Charter of Fundamental Rights of the European Union in the context of the implementation of the European Structural and Investment Funds \("ESI Funds"\)](#), 2016/C 269/01.

<sup>29</sup> Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023.

**to certain rights, which may limit the ability of authorities to identify rights violations outside the list.** For example, according to Annex 1, in the process of preparing programme documents, authorities should monitor for potential violations of 12 rights identified by the Guidelines as being of the highest importance, such as the right to education, equality before the law, etc. Although the list is referred to as non-exhaustive, it may lead to a limitation of checks "[c]oncerned with the aim of facilitating the process and reducing the administrative burden...".<sup>30</sup>

There is no particular change to the complaints procedures, where in the previous period there was a lack of clarity about who should receive and consider such complaints.<sup>31</sup> Although Annex 3 of the Guidelines sets out a list of competent authorities by rights group, **this mechanism remains insufficiently visible to the general public** due to lack of publicity.

Figure 2: Complaints mechanism for fundamental rights violations in the EU funding cycle



Last but not least, all identified violations must be reported to the Monitoring Committees, where the participation of NHRIs and other relevant complaint-handling institutions, without the right to vote, is envisaged solely to ensure effective expertise on the identified cases. In view of the challenges faced by the Monitoring Committees themselves

<sup>30</sup> Deputy Prime Minister for the European Funds and Minister of Finance, [Order No B-105 of 19.07.2022, Guidelines on the implementation of the EU Charter of Fundamental Rights by the management, control and audit bodies of programmes co-financed by the European Regional Development Fund \(ERDF\), the European Social Fund+ \(ESF+\), the Cohesion Fund \(CF\), the Fair Transition Fund \(FTTF\), the European Maritime and Fisheries and Aquaculture Fund \(EMFFA\), the Asylum and Migration Fund \(AMF\), the Internal Security Fund \(ISF\) and the Instrument for Financial Support for Border Management and Visa Policy \(IFRMV\) for the programming period 2021-2027., Page 3](#)

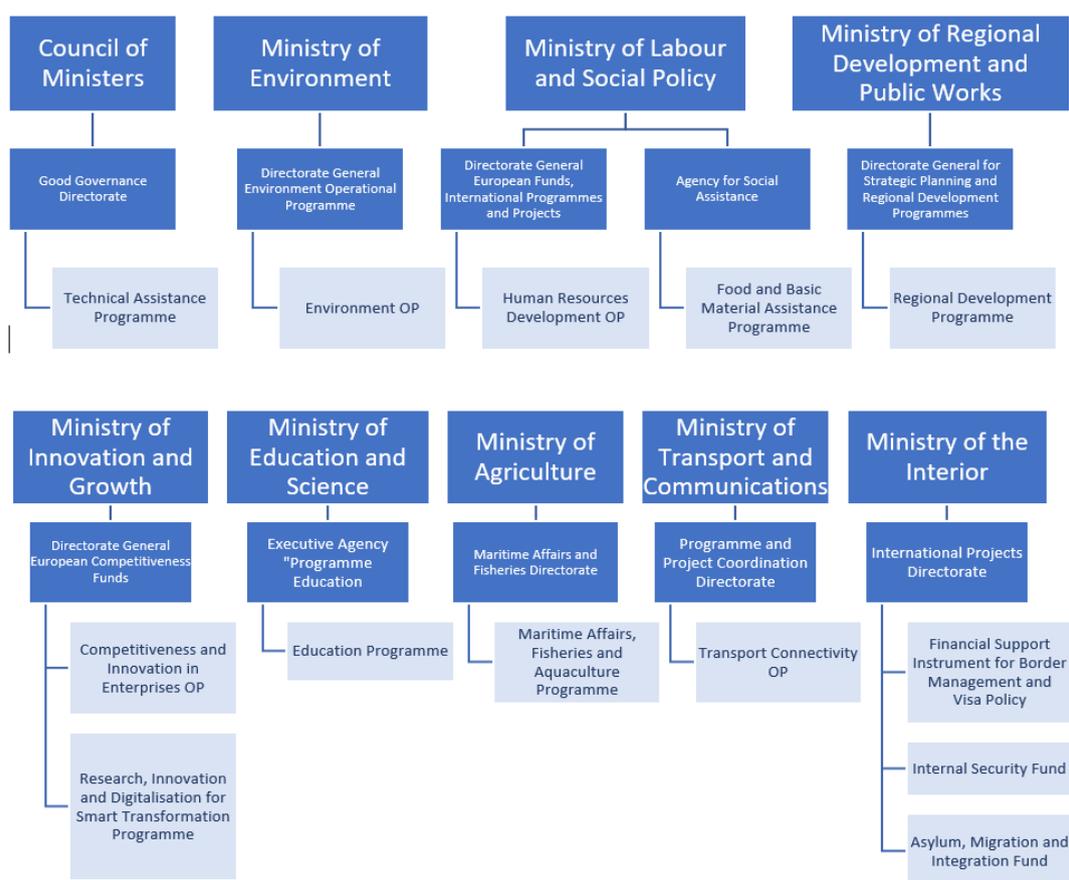
<sup>31</sup> Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023.

(discussed below), the **effectiveness of this mechanism remains questionable**.

In the period 2021-2027. "Technical Assistance", "Environment", "Human Resources Development", "Food and Basic Material Assistance", "Development of Regions", "Research, Innovation and Digitalisation for Smart Transformation", "Competitiveness and Innovation in Enterprises", "Education", "Maritime, Fisheries and Aquaculture Programme", "Transport Connectivity", "Border Management Financial Support Instrument Programme", and "Transport for Europe".

Each programme is managed by a **managing authority appointed by** the Council of Ministers.<sup>32</sup> It is **responsible for its preparation, management and implementation, including the prevention, detection and correction of irregularities**. Usually these are dedicated directorates of the relevant ministries (e.g. Directorate General European Competitiveness Funds of the Ministry of Economy) or executive agencies (*Executive Agency Education Programme of the Ministry of Education and Science for the Education Programme*).

Figure 3: EU funding programmes in the period 2021-2027 and their managing authorities



<sup>32</sup> For the 2021-2027 cycle, the managing authorities have been designated by [MCF No 712 of 6 October 2020, on the designation of the structures responsible for the management, control, accounting, coordination and audit of the programmes co-financed by the ERDF, ESF+, CF, EMDPA, SFD, EAGF, EAFRD, Internal Security Fund, Asylum and Migration Fund and the Instrument for Financial Assistance for Border Management and Visa as part of the Integrated Border Management Fund and the cooperation programmes in which the Republic of Bulgaria participates for the programming period 2021-2027.](#)

At the beginning of each funding cycle, in parallel with the preparation of the *Partnership Agreement*, the managing authorities shall lead the planning of each programme. In this process, they consult the so-called '*thematic working groups*' - bodies bringing together all stakeholders with whom projects are discussed. Finalised projects are also published for public consultation on the government's public consultation portal ([www.strategy.bg](http://www.strategy.bg)). The Council of Ministers regulates the management of EU funds by means of by-laws, the types of information to be published, the documents subject to public consultation and the stakeholders to be consulted.<sup>33</sup> According to the managing authorities, few decisions are left to their discretion without consulting stakeholders.<sup>34</sup>

In the implementation phase, both the Partnership Agreement and each programme have their own **monitoring committees**. The composition of these committees shall be determined by law and further regulated by decree of the Council of Ministers. In the previous cycle, they were tasked with monitoring progress in implementation, discussing and approving any amendments, monitoring the fulfilment of preconditions, approving the selection criteria for operations, etc.

From 2023, the committees have additional functions:

- examine the contribution of the programme to overcoming the challenges identified in the *EU Council's specific recommendations for Bulgaria*, which are related to the implementation of the programme;
- to examine and approve proposals to the *Coordination Council for the Management of European Union funds* ('Съвета за координация при управлението на средствата от Европейския съюз') for projects funded under the relevant programme for which *Integrity Pacts* are to be applied;
- to examine information submitted by the managing authority on cases of non-compliance of operations supported by the programme concerned with the *EU Charter* or with the *CRPD*, as well as on complaints of non-compliance with the *EU Charter* and/or the *CRPD* submitted under the terms and conditions of Bulgarian law.<sup>35</sup>

Regarding the **composition**, the decree lists the types of stakeholders that participate in the committees. In general, these are the **chair, members and observers, the latter having no voting rights**. The following composition is laid down by law:

- heads of managing authorities who chair the committees;
- heads and representatives of the administrations of the managing authorities of all other operational programmes to which the Regulation applies;
- a representative of the *Commission for Protection against Discrimination*;

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<sup>33</sup> Council of Ministers, [Decree No 142 of the Council of Ministers of 2019 on the development of the strategic and programming documents of the Republic of Bulgaria for the management of EU funds for the programming period 2021-2027](#).

<sup>34</sup> Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, NFM 1.

<sup>35</sup> Council of Ministers, [Decision No. 302 of 29 September 2022 on the establishment of Monitoring Committees for the Partnership Agreement and the programmes co-financed by the ESAF for the programming period 2021-2027](#), in force from 1 August 2023.

- the Executive Director of the *State Fund "Agriculture"*;
- the Directors of the *Policy Coordination and Concessions, European Union Coordination and Strategic Planning* Directorates in the Council of Ministers' Administration;
- a representative of the Central Coordination Unit and the Director of the *European Affairs and Policies* Directorate of the Ministry of Finance;
- a representative of the Secretariat of the *National Council for Cooperation on Ethnic and Integration Issues*;
- one representative of each of the institutions responsible for the policies for which the measures of the programme are financed;
- the President of the *National Statistical Institute*;
- representative of the *National Association of Municipalities in the Republic of Bulgaria*;
- one representative each from the regional development councils in the NUTS 2 regions;
- one representative of each of the nationally represented employers', workers' and employees' organisations;
- one representative each of the nationally representative organisations of and for people with disabilities recognised by the Council of Ministers under the *Disability Act*;<sup>36</sup>
- representative of academia;
- one representative each from NGOs working in the fields of "*protection of fundamental rights, equality between men and women, non-discrimination and equal opportunities*",<sup>37</sup> "*social inclusion and integration of marginalised communities*", "*environmental issues*" and "*education, science and culture*";<sup>38</sup>
- up to three representatives of other groups of non-profit public benefit purpose entities relevant to the measures under the programme concerned.<sup>39</sup>

The decree also lists **nine institutions and organisations from which non-voting observers are to be nominated**. These include the ***Ombudsman of the Republic of Bulgaria, a representative of the European Commission and other international financial institutions, a representative of the Public Procurement Agency and other relevant institutions or organisations.***<sup>40</sup>

The rules for the composition of monitoring committees do not change significantly in the new funding cycle. Since the previous period, they have been widely criticised by civil society for two main reasons. One is the **representation procedure**. When forming the committees, the managing authorities launches a call for organisations working in the areas listed. There are individual and organisational criteria that these representatives have to meet - registration under the NGOs Act, two years' experience in the field of

<sup>36</sup> [Persons with Disabilities Act](#), January 1, 2019, as amended January 25, 2023.

<sup>37</sup> From 2023, the area of fundamental rights protection is a new requirement compared to the previous funding cycle.

<sup>38</sup> Council of Ministers, [Decision No. 302 of 29 September 2022 on the establishment of Monitoring Committees for the Partnership Agreement of the Republic of Bulgaria and for the programmes co-financed by the ESAF for the programming period 2021-2027](#), in force from 1 August 2023, Art. 13.

<sup>39</sup> Council of Ministers, [Decision No. 302 of 29 September 2022 on the establishment of Monitoring Committees for the Partnership Agreement of the Republic of Bulgaria and for the programmes co-financed by the ESAF for the programming period 2021-2027](#), in force from 1 August 2023, Art. 13.

<sup>40</sup> Council of Ministers, [P.M. No. 302 of 29.09.2022 on the Establishment of Monitoring Committees for the Partnership Agreement of the Republic of Bulgaria and for the Programmes co-financed by the European Social Fund for the programming period 2021-2027](#), in force from 1 August 2023, Article 13, item 6.

activity, experience in developing, implementing, monitoring or evaluating strategies, programmes, policies or projects, a clean criminal record, etc.<sup>41</sup> The approved representatives from each group then select one representative who usually participates in the committee meetings. If there is disagreement within the groups, the rules provide for a draw of lots.<sup>42</sup> Some groups of organizations select the most active of these. Others that cannot easily agree take turns. **Some committee members interviewed in the 2014-2020 period who were elected on this basis (mostly from NGOs) said that they found it difficult to speak on behalf of the other organisations they represented, as they could not always be sure that these organisations shared their views.**

The second main reason for criticism is **imbalance**. Civil servants form an absolute majority on the monitoring committees. Thus, in practice, **it is impossible to vote on a decision that is not supported by the state**. Some **NGO** respondents **said they consider their participation in the committees during the 2014-2020 period to be pointless**, as their presence only confirms government decisions.<sup>43</sup> NGOs also consider that the **EC representatives** (non-voting observers) in these committees **are their most valuable support** as the **government usually agrees with what the EC proposes**.

A close look at the composition of the monitoring committees for all programmes shows that **many of the committee members are repeated across programmes**. This is understandable on the one hand, as the composition of the committees is defined by law and the participating bodies and organisations sometimes do not have the resources to cover participation in all programmes. But on the other hand, it limits the range of people who make decisions on the implementation of EU funding in different areas. Different practices are also observed with regard to reserve members (people who replace the titular members when they are prevented). Some members have three alternates (e.g. the Human Resources Development Programme) while in other programmes there are not even nominated titular members (e.g. the representative of the North Central Regional Development Council in the Enterprise Competitiveness and Innovation Programme).

Moreover, according to all respondents, in practice the **composition of the Monitoring Committees** (both in the previous and in the new funding cycle) largely **replicates that of the thematic working groups for programme planning**.<sup>44</sup>

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<sup>41</sup> Council of Ministers, [Decision No. 302 of 29 September 2022 on the establishment of Monitoring Committees for the Partnership Agreement of the Republic of Bulgaria and for the programmes co-financed by the ESAF for the programming period 2021-2027](#), in force from 1 August 2023, Art. 15.

<sup>42</sup> Council of Ministers, [Decision No. 302 of 29 September 2022 on the establishment of Monitoring Committees for the Partnership Agreement of the Republic of Bulgaria and the programmes co-financed by the ESAF for the programming period 2021-2027](#), in force from 1 August 2023, Annex II.

<sup>43</sup> For example, Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, CSO 1, participants in National Diagnostic Roundtable. The Economic and Social Council of the Republic of Bulgaria to the National Assembly is of the same opinion, as seen in Economic and Social Council of the Republic of Bulgaria, [Opinion on the Partnership Agreement and its programmes for the programming period 2021-2027](#), May 2021, p. 5.

<sup>44</sup> For example, Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, NFM 1.

With the 2021-2027 programming period and in relation to Art. 69 (7) of the CPR, according to which countries must put in place mechanisms to ensure the **effective handling of complaints in relation to the Funds**, the Monitoring Committees are given a new function - to examine information on cases of non-compliance of operations supported by the programme concerned with the EU Charter or the CRPD, as well as on complaints concerning non-compliance with the EU Charter or the CRPD submitted under the terms and conditions of the Bulgarian legislation.<sup>45</sup>

According to the *EU Charter Implementation Guidelines* (Charter Guidelines),<sup>46</sup> the managing authority should be aware of cases of non-compliance with the Charter relating to EU funds. It must keep up-to-date systematic information on them. This information should be reported to the monitoring committee of the relevant programme, including:

- Number of identified cases of non-compliance with the EU Charter as a result of the verification steps;
- Current status of identified cases of non-compliance with the EU Charter;
- affected rights arising from the EU Charter;
- consequences of non-compliance with fundamental rights;
- corrective/preventive/follow-up measures to be taken to ensure compliance with the EU Charter and to avoid similar occurrences in the future.

Infringements identified by the Managing Authority through the verification system under the Guidelines shall undergo a further verification and/or correction procedure and those for which information has been received from citizens or other external sources shall be referred to the competent authorities at national level listed in Annex 3. The authorities are then invited to a meeting of the Committee and the results of their actions are discussed.

In practice, the Committees perform this function formally and there are no reported cases as of early 2024.<sup>47</sup> Given that the Committees meet once a year, this function is not expected to have anything beyond an informative role. By **January 2024, most programmes' committees had held one meeting at which they had only adopted internal rules and codes of conduct. It is noteworthy that these internal programme documents are almost identical for all programmes.**<sup>48</sup> For example, the internal rules of the Monitoring Committee of the Human Resources Development 2021-

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<sup>45</sup> Council of Ministers, [PM No. 302 of 29.09.2022 on the Establishment of Monitoring Committees for the Partnership Agreement of the Republic of Bulgaria and for the Programmes co-financed by the ESF for the programming period 2021-2027](#), in force from 1 August 2023, Art. 15.

<sup>46</sup> For more information, see [Guidelines on implementing the EU Charter of Fundamental Rights](#).

<sup>47</sup> There are indications, however, that the monitoring committees do not associate problems encountered in their practical work of approving operations with their duty to ensure respect for fundamental rights. An example of this is the transcript of the second meeting of the Monitoring Committee of the Human Resources Development Programme, where, when discussing the Support for Vulnerable Families procedure (the so-called SAFE mechanism), it was mentioned that people without identity documents were particularly vulnerable and at the same time unable to benefit from assistance under the programme. However, this fact is not associated with a violation of fundamental rights and there is no reaction from the Committee. For more information, see [Transcript of the Second Meeting of the HRDP SC, 23 November 2023](#), page 74.

<sup>48</sup> For example, [the documents from the first meeting of the Development of Regions Programme](#).

2027 programme<sup>49</sup> and of the Technical Assistance programme<sup>50</sup> have an identical structure and similar provisions, such as unanimity in decision-making. The internal rules repeat verbatim the new committees' new function and the codes of conduct do not mention it.

During implementation, both in the previous and in the new programming period, the managing authorities have a leading role in designing documents for discussion with stakeholders, the working principle being rather consultative.

In addition, **some stakeholders have more direct access to the decision-making process.** For example, in 2014-2020, the government further consulted the *National Association of Municipalities in the Republic of Bulgaria*, trade unions and employers' organisations, as well as nationally representative organisations of people with disabilities,<sup>51</sup> before proposing various policies, legislation or draft operational programmes. **These documents are thus tailored more to the needs of these organisations than to the public good, as they should be, the NGO sector believes.**

Once the programmes' measures have been approved by the committees, the managing authorities launch calls for selection procedures in which potential beneficiaries compete by submitting project proposals. Funding may also be allocated through direct award procedures, *under* which certain national bodies may be invited to submit proposals. Managing authorities shall make advance, interim and final payments on the basis of a request from the beneficiary. Prior to interim and final payments, the authorities shall verify them in order to confirm the eligibility of expenditure and the substantive and financial progress of the project. Verification shall be carried out on the basis of documents or on the spot (where applicable).<sup>52</sup>

There are also so-called **"integrated project proposals"** (an activity funded in cooperation by two or more programmes with different managing authorities), which follow specific rules for their implementation.<sup>53</sup> The *Human Resources Development and Regional Development* programmes (formerly *OP Regions for Growth*) implemented such a programme in both the previous and the new funding cycle. Within it, the *Human Resources Development Programme* is the flagship programme as it finances so-called **"soft measures"**<sup>54</sup> for social assistance to marginalised communities, while the *Regional Development Programme* is responsible for building social infrastructure.

The FRA report,<sup>55</sup> which reflects the situation towards the end of the 2014-2020 funding

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<sup>49</sup> For more information see the [programme website](#).

<sup>50</sup> For more information see the [programme website](#).

<sup>51</sup> These organisations are elected by the Council of Ministers and most respondents considered them to be "government friendly".

<sup>52</sup> [Law on the Management of EU Funds under Shared Management](#) (SG No. 51 of 2022, in force as of 1 July 2022, last amended on 8 December 2023), Art. 60-63.

<sup>53</sup> [Law on the Management of EU Funds under Shared Management](#) (SG 51/2022, in force from 01.07.2022, last amended on 8 December 2023).

<sup>54</sup> "Soft measures" are all non-construction activities such as education, staff training, implementation of practices, integration activities, etc.

<sup>55</sup> Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023.

cycle and the process of preparing the next one, focuses on two operational programmes - *OP Human Resources Development* (under the same name in the current cycle) and the *OP Regions for Growth* (now the *Development of Regions Programme*). **These programmes have been most often associated with fundamental rights issues in previous cycles.** They were also the leading EU financial instruments in the **process of deinstitutionalisation of children (including children with disabilities) and adults with disabilities** in Bulgaria under the '*integrated programme*' already described. This process was linked to **a number of concerns about violations of fundamental rights raised by civil society and the Ombudsman.**<sup>56</sup> In addition, some civil society organisations have raised concerns that controversial practices related to deinstitutionalisation are perceived as good and are being replicated in other areas, such as the construction of social housing and complexes.<sup>57</sup> **Cooperation between the two programmes continues in the new programming period.** They are therefore also the focus of this report.

This approach also allows to examine the relationship between the occurrence of fundamental rights problems and the level of awareness of the governing bodies regarding rights. An important difference between the two programmes (and therefore their governing bodies) is the degree of sensitivity to fundamental rights issues.<sup>58</sup> While *the Ministry of Labour and Social Policy* is responsible for drafting and coordinating disability policies as part of its social policy implementation work, and the Minister of Labour and Social Policy is the coordinating mechanism under Article 33(1) of the CRPD, *the Ministry of Regional Development and Public Works (MRDPW)* manages infrastructure projects, mostly at the local level, and is generally not perceived to have intersections with fundamental rights.<sup>59</sup>

A structural feature of the *Ministry of Regional Development and Public Works* is that one of its departments combines two different functions - the preparation of relevant national policies and the planning function for EU funds (in its role as managing authority). Given the strong link between national policy and EU funds, this allows an examination of whether this structural environment has a greater impact on respect for fundamental rights than in ministries where these functions are managed by different units.

According to the managing authorities, **respect for fundamental rights is not a priority for any of the operational programmes** in the 2014-2020 cycle.<sup>60</sup> Although they exist as cross-cutting principles, **all groups of respondents unanimously**

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<sup>56</sup> A detailed overview of the publications outlining the main issues related to the funding process has been prepared in preparation for the FRA report [EU funds: Ensuring compliance with fundamental rights](#), published on 19 November 2023.

<sup>57</sup> For example, Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, CSO 1.

<sup>58</sup> According to interviewees from Doichinova, M. [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds.](#)

<sup>59</sup> According to interviewees cited in Doichinova, M. The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria, 19 December 2023, NFM 3, NFM 4, и CSO 2.

<sup>60</sup> For example Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, NFM 1.

**assessed compliance as formal.** According to the managing authorities, in the *Human Resources Development* programme, where **fundamental rights** seem to be most visible, they **are most often discussed in the implementation of policies related to people with disabilities and children.** It is NGOs, not the equality body, that have raised such discussions, interviews show.

In the current 2021-2027 period there is no indication of major changes in the way the programmes operate. Although the *Partnership Agreement* states that "[i]nvestments under all policy objectives will ensure respect for fundamental rights and compliance with the Charter of Fundamental Rights of the European Union, the cross-cutting principles of gender equality, non-discrimination (on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation) and accessibility at all stages of programming and implementation",<sup>61</sup> and the Deputy Prime Minister for EU Funds has already endorsed the "*Guidelines for the Implementation of the EU Charter of Fundamental Rights*",<sup>62</sup> **it remains unclear whether the measures taken effectively remove obstacles for managing, monitoring and auditing authorities to recognise and effectively address situations of concern for fundamental rights.** The CDC, as the coordinating body for EU funds, should produce an analysis of the effectiveness of this mechanism, taking into account both the number of complaints received under it and an external assessment of the ability of the authorities to recognise and address fundamental rights problems in the different areas of funding. For this to be possible, it is necessary that fundamental rights are among the priorities of the CDC in the first place. As mentioned above, within the Ministry of Finance, the capacity of the unit to undertake fundamental rights functions remains unclear.

Once the programmes are exhausted, the managing authority hires external evaluators to analyse their effectiveness. Each programme has an evaluation plan, agreed with the European Commission, setting out what will be evaluated. As a rule, these plans only include individual policy initiatives, such as the deinstitutionalisation of children or social economy measures, rather than evaluations of whole programmes. The subcontractors carrying out the evaluations select a sample of activities and assess them against certain criteria, including horizontal enabling conditions. These evaluations are used as feedback for the next programming cycle. In addition, each managing authority publishes an annual progress report for the programme under its responsibility.

### **3. The role of NHRIs in ensuring respect for fundamental rights in the management of EU funds**

This section provides an overview of the powers and activities of NHRIs in Bulgaria, highlighting their role in the implementation of EU funding during both the previous and the current programming period. Finally, attention is drawn to the challenges the bodies face in this role.

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<sup>61</sup> [Partnership Agreement](#), page 28.

<sup>62</sup> Deputy Prime Minister for EU Funds and Minister of Finance, [Order No B-105, Sofia 19.07.2022](#)

During the 2014-2020 cycle, **national authorities with human rights competence were dealing with complaints related to fundamental rights in the framework of their general complaints mechanisms**. Interviewees from both such bodies assessed the number of such complaints in the context of EU funds as statistically insignificant. Fundamental rights concerns over the 2014-2020 funding cycle, as described in official and unofficial sources, are similar in number. In addition to concerns related to the process of deinstitutionalisation of children and children with disabilities, some of which date back to the previous cycle 2007-2013,<sup>63</sup> there are also concerns related to the *OP Regions for Growth*, according to which the social housing complexes built under the programme reproduce the segregation approach applied by deinstitutionalisation. The construction of these complexes has repeatedly met with both the reluctance of people in need to move into them and the disapproval of local communities to accept them. During the interviews, another problem was identified, namely the unequal access of some municipalities to *OP Environment* funds, which deprives their residents of access to running water.

In Bulgaria **there are two main national bodies with competence in human rights** - the national equality body *the Commission for Protection against Discrimination (CPD)* and the *Ombudsman of the Republic of Bulgaria*. Both serve as a monitoring mechanism under Article 33(2) of the CRPD - the Monitoring Board, on a rotating basis.

**The Commission for Protection against Discrimination** - the equality body in Bulgaria - is a semi-judicial body that establishes cases of direct and indirect discrimination against natural persons and in certain cases against legal persons.<sup>64</sup> It consists of nine members (five of whom are elected by Parliament and four appointed by the President), assisted by an administration. The members sit in three- and five-member panels to determine whether there has been a case of discrimination. In addition, the CPD collects evidence, offers mediation, prosecutes cases and ensures compliance with any coercive administrative measures it may impose. The CPD also carries out analytical and preventive activities according to its resources. International and non-governmental organisations often criticise the anti-discrimination system in Bulgaria and specifically the CPD for the need to strengthen the enforcement of national legislation in this area.<sup>65</sup>

The CPD is represented in all the bodies of the EU funds that advise and take decisions on the preparation and implementation of all operational programmes - the thematic working groups and monitoring committees, both in the previous and in the new funding cycle. In this capacity it has the opportunity to advise programmes on avoiding discrimination in funding processes at all levels. In practice, however, the study shows that the CPD is not very visible and productive in this role. While in the previous programming period some of the managing authorities interviewed were not sure whether it was present in the committees (e.g. *OP Regions in Growth* in the previous cycle), NGO representatives rather felt that it was inactive<sup>66</sup> or discouraged from actively intervening (due to being part of

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<sup>63</sup> These are described in a preliminary report that informed the FRA report [EU funds: Ensuring compliance with fundamental rights](#), published on 19 December 2023.

<sup>64</sup> [Protection from Discrimination Act](#), 30 September 2003.

<sup>65</sup> See, for example, Bulgarian Helsinki Committee, [Human Rights in Bulgaria in 2019](#), 29 June 2020, p. 87. and Council of Ministers, Action [Plan for the Implementation of the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities 2021-2026](#), 12 February 2021.

<sup>66</sup> Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental](#)

the minority in the monitoring committees).<sup>67</sup> **The managing authorities, in turn, took this passivity as a sign that they had done their job well, and therefore the CPD had no reason to intervene.**<sup>68</sup>

CPD representatives interviewed in 2022 did not appear to be very familiar with the EU funding process in 2014-2020 and committed to working to effectively prevent discrimination within this process. Rather, their engagement seemed to be focused on seeking opportunities to add the CPD as a beneficiary of funds for activities to prevent discrimination and promote equality. This will happen in 2023, in the framework of the new programming period, where the CPD is a direct beneficiary of the project *"Improving the prevention of discrimination in the labour market through the modernisation and strengthening of the CPD"*.<sup>69</sup> Within the framework of the project, the CPD is expected to 1) strengthen its capacity to comply with the EU Charter and the CPRD enabling conditions and 2) conduct an information campaign to make employers aware of the enabling conditions.<sup>70</sup>

FRA's survey data for the previous funding cycle suggests that the CPD also faces internal obstacles to effective intervention in fund oversight. First, the nine members of the CPC are assigned as lead members of the thematic working groups/monitoring committees for all programmes according to their personal profiles. This is an ancillary function to their core work in the CPD, which they find extra burdensome (not least because they are not paid for it).<sup>71</sup> When they are unable to fulfil their functions on the monitoring committees due to other commitments/events, they authorise members of the administration to attend on their behalf. However, this substitution is linked to the substitutes' uncertainty to be active without the confirmation of the holders. Thus, in practice, if they had found it necessary to intervene, they should have discussed the matter with the nine-member CPD board, which would have authorized them.<sup>72</sup> As a result, the members of the CPD also seem to have more influence in the monitoring committees because of the public image resulting from their status.<sup>73</sup>

**The Ombudsman**, on the other hand, is an independent national human rights institution, acting under rules laid down in a specific law.<sup>74</sup> The institution is also accredited with the highest UN "A" status under the Paris Principles as a National Human Rights Institution. It oversees the implementation in Bulgaria of the European Convention for Human Rights,

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[rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, CSO 2.

<sup>67</sup> Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, CSO 1.

<sup>68</sup> Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, NFM 1.

<sup>69</sup> For more information see the [CPD website](#).

<sup>70</sup> Ministry of Labour and Social Policy, Human Resources Development Programme, [First regular meeting of the Human Resources Development Programme Monitoring Committee, 27 April 2023: Transcript](#), pp. 95-98.

<sup>71</sup> Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, NHRB 1.

<sup>72</sup> Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, NHRB 2.

<sup>73</sup> One respondent interviewed for FRA's study, who is a high-ranking government official and had professional contacts with other members of committees prior to his participation, admitted that he used these contacts to persuade other members in face-to-face meetings to vote for their proposals.

<sup>74</sup> [Ombudsman Act](#), 23 May 2003 (amended 6 October 2023).

EU Charter, UN CRPD, UN Convention on the Rights of the Child, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the UN Convention on the Elimination of All Forms of Discrimination against Women. The Ombudsman also performs the functions of the National Preventive Mechanism in accordance with the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002.

The Ombudsman (and their deputy) are elected by Parliament for a 5-year term. They have a complaints mechanism for rights violations, by mediating between the administration and the persons concerned, and by recommending how to remedy the violations. In 2022, 15,189 complaints were received by the Ombudsman and 31,900 people signed petitions to the institution.<sup>75</sup>

Until the end of the 2014-2020 period, the Ombudsman is not involved in and has no contact with the EU funding cycle. In its work under the general complaints mechanism, it deals with infringements related to EU-funded projects (concerning products or services created with EU funds), but it usually has no mechanism to establish whether the complaint it reviews is related to EU funds or not, as complainants rarely share information about the source of funding of what they are complaining about. According to the institution, this is an additional obstacle to its involvement in the process, in addition to the lack of a legal basis for the Ombudsman's involvement in monitoring and planning in the previous period.

In general, the participation of one of the two national human rights bodies in all monitoring committees/working groups and the isolation of the other body was a political decision taken at the beginning of each of the previous programming periods. However, none of the respondents made any suggestion as to the rationale for this decision.

With the start of the new programming period and the introduction of the horizontal enabling conditions, the need to involve the Ombudsman in the process became obvious to the managers of EU funds in Bulgaria. In 2022, the European Ombudsman will have a role to play. The Central Coordination Unit has held discussions on how the Ombudsman institution can become involved in the funding cycle in the new period. As a result, changes were made to the by-laws<sup>76</sup> to secure a seat for a representative of the institution on the *Partnership Agreement Monitoring Committee* and the Programme Monitoring Committees. Participation in the latter is not, however, mandatory, and in all committees the institution's representatives participate without voting rights.<sup>77</sup>

In both the previous and the new programming period, there are a number of **obstacles**,

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<sup>75</sup> Ombudsman of the Republic of Bulgaria, [Annual Report on the Activities of the Ombudsman of the Republic of Bulgaria in 2022](#), 12 April 2023.

<sup>76</sup> Council of Ministers, [Decision No. 302 of 29 September 2022 on the establishment of Monitoring Committees for the Partnership Agreement of the Republic of Bulgaria and the programmes co-financed by the ESAF for the programming period 2021-2027](#), in force from 1 August 2023.

<sup>77</sup> Council of Ministers, [PM No. 302 of 29.09.2022 on the Establishment of Monitoring Committees for the Partnership Agreement of the Republic of Bulgaria and for the Programmes co-financed by the European Social Fund for the programming period 2021-2027](#), in force from 1 August 2023, Art. 9.

## **challenges and opportunities for the involvement of national human rights bodies in the funding cycle.**

First, the general perception of respondents regarding the previous 2014-2020 cycle is that NHRIs are not actively involved in the funding process. While the Ombudsman was never intended to be involved at any stage, the CPD, although involved in all consultative bodies, does not appear to be visible and effective in this role.

The rules of the *Council of Ministers* for the work of monitoring committees and thematic working groups have been cited as a major obstacle to the participation of the ombudsman in the funds management process in previous funding cycles. Following the changes in the regulatory framework, this situation has changed, but the role of the institution remains marginal due to the non-binding nature of its participation and the lack of voting rights in the committees in which it is involved. The Ombudsman continues to deal with complaints from citizens and legal entities about non-compliance with their rights within the framework of her statutory powers, as in the previous period. The most significant of the otherwise few differences is that, under the new guidelines, complaints relating to the management of EU funds must be discussed at meetings of the relevant monitoring committees.

The Ombudsman is a well-known complaints mechanism and has the authority of an independent body dealing with fundamental rights issues. This public image is largely due to the current and former Ombudsmen's activism on sensitive issues such as disability rights, access to basic services, etc., on which they repeatedly appear in the media and in political life. The bodies responsible for managing EU funds could take advantage of this public image of the Ombudsman to promote the conditions relating to fundamental rights and the mechanisms for respecting them during the new funding cycle. The Ombudsman's expertise could have been useful in drawing up guidelines and checklists for programme managers to monitor compliance with enabling conditions under the new programming period. With its in-depth practical knowledge and experience of dealing with fundamental rights complaints, the institution could also be involved in the training of managing authorities and beneficiaries, as well as in the evaluation of programme results.

With regard to the CPD, the study shows that the anti-discrimination mechanism has been repeatedly criticised both by NGOs,<sup>78</sup> and by the international community,<sup>79</sup> which has called for its strengthening. In addition to the excessive workload of its staff and insufficient funding, the CPD is burdened with cumbersome internal procedures and a lack of professional commitment to effectively carry out its role in relation to monitoring the funding cycle.

Another challenge, identified unanimously by NGO representatives both in the previous and in the new funding cycle, is that the executive branch manages the process of absorption of EU funds in a practically authoritarian way. According to NGOs, there is also

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<sup>78</sup> For example, see Bulgarian Helsinki Committee, Human [Rights in Bulgaria in 2019](#), 29 June 2020, p. 87.

<sup>79</sup> Council of Ministers, Action [Plan for the Implementation of the Concluding Recommendations of the UN Committee on the Rights of Persons with Disabilities 2021-2026](#), 12 February 2021.

a lack of political will to change the way the advisory bodies - monitoring committees and thematic working groups - function. This conclusion applies not only to EU funds, but also to the general mechanism for consultation in public policy-making in general. Although by law most decisions should be taken after public consultation or collectively in committees or working groups, NGOs and human rights bodies point out that the authorities often perceive consultation formally and that consultative bodies are constituted in such a way that representatives of the executive dominate in numbers. In the words of one civil society representative interviewed, NGOs currently act as a mechanism to confirm decisions already taken by the government.<sup>80</sup> National and local authorities predictably share the perception that committees work well.<sup>81</sup>

Furthermore, at the level of central government, the **understanding and awareness of the importance of fundamental rights is not the level** that civil society organisations and human rights bodies believe it should be, even though formally fundamental rights are a priority at the national level. The same conclusion seems to be valid at local level, where municipalities are the main implementing partners of EU funds and respect for fundamental rights in the 2014-2020 cycle is largely left to their discretion. Although this study does not focus on the situation at local level, indications of this appear repeatedly.<sup>82</sup> For example, local authorities do not seem to recognise the importance of having complaints procedures in place for fundamental rights violations within the new cycle and do not consider it necessary to involve human rights bodies in the funding cycle.<sup>83</sup>

According to the NGO sector, during the implementation phase of the programmes in the previous cycle, the different complaint mechanisms (both general ones such as courts and human rights bodies, and specific ones within the managing authorities), combined with the lack of clarity about who people should approach when they identify fundamental rights problems, left the impression that the complaints procedures were not effective.<sup>84</sup> National and local authorities were of the opposite view, believing that the procedures worked well and that the lack of complaints was due to there being no fundamental rights issues that could be reported. Furthermore, low public awareness of what in practice constitutes a violation of a fundamental right, and of how EU funds work, further reduces the opportunities for the public to make wider use of this mechanism. There is no indication that this situation will change with the adoption of the Guidelines on the implementation of the EU Charter of Fundamental Rights and the Guidelines on the implementation of the CRPD.<sup>85</sup>

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<sup>80</sup> Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, CSO 1.

<sup>81</sup> Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, CSO 2; NFM 1; NFM 2.

<sup>82</sup> For more information see Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023.

<sup>83</sup> Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, CSO 2.

<sup>84</sup> For example, see Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, CSO 1.

<sup>85</sup> Diagnostic event with representatives of state institutions held on 27 February 2024 and diagnostic event with representatives of NGOs held on 26 February 2024.

**The lack of coordination between the different national bodies competent to deal with complaints** (Central Coordination Unit, Audit Office, fund managers, local authorities, NHRIs, courts, etc.) is also cited as a reason for the lack of information on who people should contact in case of a fundamental rights problem. Therefore, in many cases, the persons concerned write to all the institutions they know about, which leads to considerable effort to research and determine the competence and forward correspondence. This also creates conditions for duplication of effort, although no indications of this were found during the study.<sup>86</sup> At the beginning of the new programming period, an attempt was made to streamline this mechanism with the drafting of the Guidelines for the implementation of the EU Charter of Fundamental Rights, and in particular with Annex 3,<sup>87</sup> which provides a list of competent authorities per group of fundamental rights. However, it is not clear what effect this optimisation would have had without further efforts to ensure that the public is adequately informed about their rights and the mechanisms for reporting potential violations in the context of EU funding.

Another obstacle is that **not all decisions of NHRIs under the general complaints mechanisms are binding**<sup>88</sup> and **their implementation is not always effectively monitored**. In this sense, there is a need for a mechanism to enforce their decisions or recommendations, for example if they concern financial sanctions related to access to EU funding. One of the proposed options is to do this by providing additional resources to the authorities for follow-up. Instead, the government has opted for the approach of monitoring implementation by obliging managing authorities to record breaches and discuss them publicly with the relevant bodies at monitoring committee meetings. It remains to be seen whether this approach will be effective in practice.

Another significant obstacle in the 2014-2020 programming period relates to the managing authorities, which generally do a good job of handling complaints up to the point where they have to assess whether the potential infringement brought to their attention affects fundamental rights. Most of them find it **difficult to establish whether a complaint received constitutes a violation of fundamental rights**, including those managing "rights sensitive" programmes. This is due to the fact that, although they are familiar with the EU Charter as a document, the staff of the managing authorities find the rights "abstract"<sup>89</sup> and cannot relate or recognise them in real situations. In the new programming period, the government has chosen a different approach by commissioning the Central Coordination Unit, the Human Rights Directorate in the Ministry of Foreign Affairs and the managing authorities to produce a "Checklist for verifying a potential violation of the EU Charter of Fundamental Rights",<sup>90</sup> to help managing authorities

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<sup>86</sup> Given that the Ombudsman receives complaints whose link to EU funds is unknown, such a situation is very likely.

<sup>87</sup> Approved by Deputy Prime Minister for EU Funds and Minister of Finance, [Order No. B-105, Sofia 19.07.2022](#). Available online at the [Single Information Portal on the European Structural and Investment Funds](#).

<sup>88</sup> Only the decisions of the CPD are binding by law, while the Ombudsman can only make recommendations for the elimination of violations.

<sup>89</sup> Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, CSO 2, NFM 1.

<sup>90</sup> Annex 2 of the Guidelines for the implementation of the EU Charter of Fundamental Rights,

recognise violations of fundamental rights, including by offering them sample questions to help the process of verifying actions and documents for compliance with the fundamental rights of the EU Charter. However, these documents still do not make links between rights and specific situations, especially in the context of EU funding, which calls into question their effectiveness to address this obstacle.<sup>91</sup> In this respect, it would have been appropriate to involve the NHRIs - the Ombudsman and the CPD - in the process of drafting these documents, whose practical experience of dealing with complaints would have been particularly useful, both for drafting the guidelines and for training representatives of the managing authorities.

The lack of independent quality assessment through the lens of fundamental rights protection has emerged as a reason for the replication of bad practices from some policy areas to others. The Ombudsman institution and the CPD could be involved in a future analysis of the quality of EU funds from a fundamental rights perspective. In this respect, reports should analyse how EU funding has made a difference to people's lives, rather than looking only at quantitative indicators, as for example in the case of deinstitutionalisation or social housing. At the same time, respondents felt that people involved in the design of policies (or programmes) should not also be able to participate in their evaluation. In this sense, the Ombudsman is most often mentioned as the appropriate body to carry out such evaluations, as it is an independent institution and has the necessary analytical capacity, which are the two characteristics for evaluators mentioned as most important by most respondents to the survey.

## 4. Critical success factors

This section highlights the factors that would contribute to a more effective participation of the Ombudsman Institution and the CPD, as two human rights bodies, in the activities financed with EU funds during the programming period 2021-2027. These were suggested by various participants in the previous FRA study and are not always shared by other participants. Where there is a difference of opinion, this is noted.

Different groups of respondents generally differed in their assessment of **at which stages the two bodies would engage most effectively**. The general perception of NGO representatives is that the involvement of the bodies would be most productive during the planning and evaluation phases of the programming periods. At the planning stage, the two bodies could review what is planned and prevent in advance large-scale violations of fundamental rights (as in the case of deinstitutionalisation). The Ombudsman, with its institutional analytical capacity and extensive experience in handling fundamental rights complaints, could carry out programme evaluations or review such evaluations from a fundamental rights perspective so as to avoid replication of the same problems in subsequent funding cycles. On the other hand, the CPD stresses the importance of awareness-raising campaigns and anti-discrimination training among fund managing authorities and beneficiaries as a preventive measure. Managing authorities and local authorities are rather sceptical about the positive effect such involvement could have on

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available online on the [Single Information Portal on the European Structural and Investment Funds](#).

<sup>91</sup> Diagnostic event with representatives of state institutions held on 27 February 2024.

the respect of fundamental rights, as they consider the mechanisms put in place in the 2014-2020 cycle to be a sufficient guarantee. In the new programming period, the Ombudsman has remained excluded from the planning phase and can participate in monitoring committees without voting rights. The CPD, for its part, has been able to partially realise its notion of success by obtaining funding under the Human Resources Development Programme to run a similar campaign, but among a limited target group. As of the beginning of 2024, there is no information on training conducted for managing authorities and beneficiaries on fundamental rights issues.

One of the success factors that seems to have a positive effect relates to the **structures of the governing bodies**. This is reflected in the close link between the national policy-making process and the priorities described in the EU-funded programmes. The approach of having the fund management and policy making functions within the same unit (the ministry) seems to work well as, in addition to the close link between the two functions, the lessons learned from the EU funding cycle can more directly lead to policy changes when needed. This is the case of the Department of Regional Development and Public Works, which received a 'warning' from public disapproval of its social housing projects (and from the subsequent audit report) and changed its policy-making principle from a top-down to a community-led one.

Both managing authorities and NHRIs highlight the need for more specific guidance from the European Commission on what to look for when checking compliance with horizontal conditions in the new funding cycle. Despite the manuals and checklists already developed on compliance with the EU Charter and CRPD, repeatedly mentions the **need for practical training** on how to apply these instruments in practice.

Governing bodies should have **a more detailed and in-depth knowledge of fundamental rights in order to be able** to identify which aspects of their work may be linked to fundamental rights violations, and to be able to identify such violations among the complaints they receive. According to the participants in the national diagnostic roundtable held in the framework of the previous FRA study, national authorities with competence in the field of human rights could conduct training in this respect.<sup>92</sup> Representatives of the managing authorities of the funds also point to the need for such training, as they recognise that for them fundamental rights are an abstract concept and they do not know how these rights relate to the concrete activities they encounter in their daily work.

The composition of the Monitoring Committees should have been defined in such a way that there was pluralism of views and **sufficient opportunities to hear the representatives of the non-governmental sector and human rights bodies**. This could have been achieved, for example, by applying the 'golden vote' principle, whereby a national human rights and/or equality institution would have a veto.<sup>93</sup> Other participants felt that the role of the bodies in the committees, as it currently exists, should be

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<sup>92</sup> Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, p. 21.

<sup>93</sup> Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, CSO 1.

strengthened, with them being more involved in discussions.<sup>94</sup> The close expertise of these bodies would allow them to add value to these discussions. Although changes in the composition of the committees already appointed is possible, such changes require political will.

**Complaints procedures and mechanisms**, especially after the innovations of the new funding cycle, should be accessible and well publicised to avoid complaints being made to several institutions at the same time. There should be even clearer guidelines to show where any complaint of a violation of fundamental rights should go.

NHRIs should be included in the EU funding cycle under a clearly defined mechanism that should ensure their effective functioning. This means that both **financial and human resources** are needed to undertake these functions, and **a set of (internal) rules** to enable the effective use of these resources. Such a mechanism should define the roles of the actors involved in order to avoid the problem of representation as seen in the case of the CPD during the previous programming period (described in the previous section). Some respondents suggested the creation of **specialised units** within these bodies to deal mainly with EU funds issues, including monitoring, complaint handling, analysis and evaluation, etc. Staff in such specialised units would need additional training on how the funds operate in Bulgaria.<sup>95</sup> The two bodies are finding different ways to get support to increase their capacity to respect fundamental rights in the context of EU funding. While the CPD has received funding from the Human Resources Development Programme, the Ombudsman has engaged in training under the EEA and Norway Funds, including under the project under which this report has been prepared.

Last but not least, EU funding should be subject to **independent evaluation**.<sup>96</sup> Several respondents mentioned the Ombudsman as particularly suited to this function. NHRIs could alternatively review programme evaluations through a fundamental rights lens and add recommendations based on their observations, according to other respondents.<sup>97</sup> In any case, it is important that evaluators have not been involved in any of the previous stages of the funding cycle. Experts or organisations that have participated in thematic working groups or monitoring committees should not be allowed to carry out evaluations. Furthermore, evaluations should not be quantitative and partial, which some respondents felt they mostly are,<sup>98</sup> but should carry out a comprehensive qualitative analysis of how the funds have changed people's lives. This approach will enable more effective targeting of funds in subsequent funding cycles. Fund Managing Authorities consider that the

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<sup>94</sup> Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, CSO 3.

<sup>95</sup> For example, see Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, NHRB 3.

<sup>96</sup> Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, CSO 1; CSO 3.

<sup>97</sup> Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, NFM 1.

<sup>98</sup> For example, see Doichinova, M., [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, CSO 1.

evaluation criteria (within the programmes) are set out in the Partnership Agreement and in the programmes themselves so they contract experts to carry out evaluations against strict criteria that are subject to agreement between the Government and the European Commission.

**NHRIs should also strengthen their work at the local level.** This should rather take the form of awareness-raising campaigns, as survey results show that awareness of fundamental rights at local level is low and local authorities themselves do not recognise the need for NHRIs to be involved in the process of implementing EU funds.

## 5. Conclusion

After Bulgaria's accession to the Union, EU funds have become an increasingly important component of public investment in the country. For 2021, they account for around half of capital investment at national level. This share is even higher at local level, where almost all municipal projects are financed by the EU.<sup>99</sup>

In the context of the growing importance of EU funds for the national economy, access to these resources by legal entities as well as public institutions (as direct beneficiaries or in the framework of competitive procedures) has become a much higher priority for managing authorities than the fundamental rights of end-users. As a result, and in combination with the insufficient level of awareness of fundamental rights in Bulgaria,<sup>100</sup> national (as well as local) authorities rather formally view the horizontal enabling conditions related to respect and protection of fundamental rights (as well as the preconditions in the previous 2014-2020 cycle).

The process of setting national policy priorities and putting them into practice with the support of EU funds was highly centralised in the previous programming period. It was in practice the exclusive responsibility of the government, and consultations within this process are seen as mechanisms to confirm decisions already taken. In the new period, the trend towards centralisation is even more pronounced, with all centrally responsible bodies appearing to be concentrated within a single ministry. Respect for fundamental rights within this process is therefore even more dependent on the central government's awareness of their importance. The European Commission seems to be the only body that can influence decisions at national level. Thus, fundamental rights seem to remain a national priority to the extent that the European Commission requires and ensures that they are.

Civil servants need to have a broader mindset beyond merely respecting and applying restrictively rules and regulations, but rather be able to see opportunities and seek synergies so as not to miss the fundamental rights issues that arise in each case. In the traditionally centralised structures in Bulgaria, people in middle and lower management

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<sup>99</sup> Ganev, P., [The New State Investment Budget](#), Institute for Market Economics, 8 April 2022.

<sup>100</sup> According to the 2019 [Eurobarometer](#), 46% of Bulgarians have heard of the EU Charter of Fundamental Rights. Although close to the EU average, low awareness combined with low levels of reporting (e.g. see FRA, BNSI, CSD, [Key Indicators for Social Inclusion and Fundamental Rights in Bulgaria](#), 21 November 2021) make fundamental rights issues invisible to public authorities.

positions prefer to adhere strictly to the rules rather than take decisions according to the specific situation. This is probably why most interviewed civil servants are unable to share (or refrain from sharing) personal views or recommending new approaches, or even identifying needs.

In this context, the European Commission could provide more specific guidance on what could be perceived as a fundamental rights violation or issue in the context of the thematic areas of the funding programmes and what would be the most effective mechanism to monitor compliance with the EU Charter and the CRPD at the implementation stage of the programmes, according to many national authority respondents.

Both national bodies with human rights competences have a limited role in the EU funding cycle for their own reasons - insufficient capacity to effectively carry out their statutory role, as is the case for example with the CPD, or limited involvement in the process of the funds, as is the case for example with the Ombudsman. The Council of Ministers<sup>101</sup> has already taken steps to reform the working arrangements of the programmes, bringing them somewhat into line with the CPR horizontal enabling conditions. It remains to be seen if the measures taken will be sufficiently effective as per the commitments made.

In the period between the two funding cycles, the two national bodies with a human rights mandate saw their future role as predominantly advisory, primarily in relation to respect for fundamental rights at the programme preparation stage, in order to prevent serious violations. This means that they should participate effectively and productively in the thematic working groups for the development of the programmes, a stage that has already been completed in the 2021-2027 cycle. At the implementation stage, these bodies are seen more as trainers of managing authorities and beneficiaries, which would allow the latter to better understand what practical implications fundamental rights may have in the thematic context of each programme. As of early 2024, there is no information on initiatives through which these bodies could fulfil this role. At the evaluation stage, programmes should include qualitative assessments from a fundamental rights perspective. Such requirements are placed in each programme at the preparation stage. National bodies with competence in the field of human rights may participate in such evaluations or review those already prepared from the position of their competence. There is no information on action taken in this direction either.

Both the CPD and the Ombudsman, in cooperation with the EU Funds Information Centres managed by the Central Coordination Unit, should strengthen their presence at local level in order to reach local authorities and beneficiaries of the funds. Although the CPD has its 23 regional representatives at district level,<sup>102</sup> they are too poorly staffed and underpaid to make a difference at local level.<sup>103</sup> Hence, any form of tripartite cooperation would help raise awareness of rights at the local level and could clarify the complaints process.

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<sup>101</sup> It is worth noting that, as a result of the political crisis, several governments have changed over the past years, each with their own ideas on how the process can function most effectively.

<sup>102</sup> For more information see the [CPD website](#).

<sup>103</sup> Doichinova, M. [The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds: FRANET national research in Bulgaria](#), 19 December 2023, NHRB 2.

## About this publication

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