



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

The Report is prepared for the Commissioner for Administration and the Protection of Human Rights in the framework of the Commissioner's participation in a Regional Project, funded by the EEA and Norway Grants, that aims to provide support to National Human Rights Institutions of member states of the European Union, in monitoring fundamental rights and the fundamental rights aspects of the rule of law.

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Abbreviations

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| AMIF | European Asylum, Migration and Integration Fund |
| BMVI | Border Management and Visa Instrument |
| CF | Cohesion Fund |
| CPR | Common Provisions Regulation |
| DGG | Directorate General Growth of the Ministry of Finance |
| EFU | European Funds Unit of the Ministry of Interior |
| EMFAF | European Maritime, Fisheries and Aquaculture Fund |
| ENNHRI | European Network of National Human Rights Institutions |
| EPSR | European Pillar of Social Rights |
| ERDF | European Regional Development Fund |
| ESF+ | European Social Fund Plus |
| FRA | Fundamental Rights Agency |
| ISF | Internal Security Fund |
| JTF | Just Transition Fund |
| NHRI | National Human Rights Institution |
| UNCRPD | United Nations Convention on the Rights of Persons with Disabilities |

1. Introduction: EU Funds and the protection of fundamental rights

Public funds, including EU funds, play a key role in ensuring fundamental rights, including a range of social rights, which are promoted and protected, whether directly or indirectly. An important aspect towards that objective is the need to ensure that the relevant authorities do not finance activities that are incompatible with fundamental rights. This requires effective monitoring of the use of funds, in practice. As a result, the EU and its Member States should ensure that no funds deriving from the EU's strategies/programmes are used in a manner that is incompatible with the EU Charter of Fundamental Rights (EU Charter) or the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD or CPRD).¹ However, until recently, no sufficient safeguards were in place for monitoring the fundamental rights compliance of expenditures, comparable to those of the Common Provisions Regulation (CPR),² whether in relation to setting up national monitoring mechanisms or involving statutory national bodies with a human rights or equality remit in such mechanisms.

The purpose of the current Report is to provide analytical guidance on the role of the Cyprus Commissioner for Administration and the Protection of Human Rights in monitoring fundamental rights compliance in the implementation of EU funds in accordance with the new mechanism established under EU law. The role of the Commissioner will be assessed separately in all the different phases of the funding cycle including, the partnership agreement, the programming period, the implementation phase as well as the evaluation period, including the complaint mechanism. Throughout this analysis potential challenges and limits/barriers will be identified in order to then identify ways of overcoming the barriers and work on best practices. Moreover, the analysis will focus on identifying potential opportunities in engaging with the EU funds, such as the positive impact in strengthening equality and non-discrimination in Cyprus.

The methodology adopted in the drafting of the current report, particularly in the analytical guidance provided, comprises of two interrelated research methods. The first one concerns a comprehensive desk research of legal and institutional sources relevant to EU funds policies and procedures. The desk research also includes the assessment of policy reports produced by International and European actors studying the role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds, including their challenges, opportunities and safeguards.

The second research method is more empirical in nature, and includes stakeholder reporting and/or oral testimonies taken directly from personnel/members of staff of the relevant institutions/organisations involved in the EU funds cycle. More specifically, the personnel at the Office of the Commissioner for Administration and the Protection of Human Rights as well as the Commissioner herself, provided information in relation to the specific role of the Commissioner in each stage of the funding cycle. Moreover, direct oral testimonies were

¹ European Union Agency for Fundamental Rights, 'Fundamental Rights Report – 2022' (Luxembourg, 2022) <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2022-fundamental-rights-report-2022_en.pdf> p. 19.

² 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 Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy.

collected by the Managing Authority as well as other relevant actors, such as the Ministry of Justice and Public Order and the Ministry of Labour and Social Insurance.

2. The implementation of EU funds: challenges and opportunities for fundamental rights

The **Directorate General for Growth of the Ministry of Finance (DGG)** is the National Coordination Authority and the Managing Authority for the Cohesion Policy Funds in Cyprus. According to the decision of the Council of Ministers³ the DGG has been appointed as the Managing Authority of the programmes co-funded by the Cohesion Policy Funds of the EU. As the Managing Authority, the DGG bears the main responsibility for the effective and efficient implementation of EU Funds. Among other things, the DGG is responsible for the management and preparation of the Strategic Programming Documents related to the use of the Cohesion Policy Funds allocated to Cyprus.

The Partnership Agreement is a strategic document guiding the negotiations between the Commission and the Member State concerned with the design of programmes under the European Regional Development Fund (ERDF), the Cohesion Fund (CF), the European Social Fund Plus (ESF+), the Just Transition Fund (JTF) and the European Maritime, Fisheries and Aquaculture Fund (EMFAF). In line with Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021, Cyprus shall take into account the relevant country-specific recommendations in the programming of the 2021-2027 cohesion policy funds. This is a prerequisite for improving the effectiveness and maximising the added value of the financial support to be received from the cohesion policy funds, while promoting the coordination, complementarity and coherence between these funds and other Union instruments and funds. The successful implementation of the Recovery and Resilience Facility and cohesion policy programmes also depends on the removal of bottlenecks to investment to support the green and digital transition and balanced territorial development.⁴

The Partnership Agreement itself, contains some references to the Charter and the UNCRPD. Those appear when the document refers to the goals of social inclusion (stressing the need to accommodate people with disabilities and the need to take steps and ensure the protection of fundamental rights of vulnerable groups. In particular, the Policy Objective 4,⁵ which refers to the need of implementing the European Pillar of Social Rights (EPSR), includes references to key fundamental rights (which are included in the EPSR) such as gender equality and equality of opportunity. The Partnership Agreement reflects the commitments made in the Programme “THALIA 2021-2027” discussed below, that EU Funds will be used in ways that comply with Charter provisions, ensuring the safeguarding of fundamental rights.⁶

³ Council of Ministers Decision no. 79.735 of 17/11/2015

[http://www.cm.gov.cy/cm/cm.nsf/All/3D0303207620BDA9C22583E5002A00C8/\\$file/79.735.pdf?OpenElement](http://www.cm.gov.cy/cm/cm.nsf/All/3D0303207620BDA9C22583E5002A00C8/$file/79.735.pdf?OpenElement).

⁴ COUNCIL RECOMMENDATION on the 2022 National Reform Programme of Cyprus and delivering a Council opinion on the 2022 Stability Programme of Cyprus COM(2022) 604 final, Brussels, 23.5.2022

⁵ Republic of Cyprus, ‘Structural Partnership Agreement 2021-2027’ (June 2022)

<https://www.structuralfunds.org.cy/uploadfiles/%CE%A3%CE%95%CE%A3%20%202021-2027.pdf> > p. 13.

⁶ Republic of Cyprus, ‘Structural Partnership Agreement 2021-2027’ (June 2022)

<https://www.structuralfunds.org.cy/uploadfiles/%CE%A3%CE%95%CE%A3%20%202021-2027.pdf> > p. 20.

In the context of Cohesion Policy, Cyprus is funded by the ERDF, the Cohesion Fund, the ESF+ and the JTF. The Programme “THALIA 2021-2027” (THALIA) constitutes a multi-annual, multi-fund development Programme that was drawn up in accordance with Article 22 of the CPR Regulation, outlining the development strategy for the utilisation of the resources allocated to Cyprus through the Cohesion Policy Funds, for the period 2021-2027. The total budget of the Programme amounts to €1.81 billion, of which €968 million comes from the EU Cohesion Policy Funds, while the remaining €842 million is the national contribution. The Programme aims to create a robust and competitive economy through smart, digital and green investments, under conditions of full employment and social cohesion and align the development priorities of Cyprus with the new priorities and the five EU Policy Objectives for the period 2021-2027.⁷ The approval of the Cohesion Policy Programme “THALIA 2021-2027” and the Partnership Agreement took place on the 8th of July 2022 in Cyprus, by the European Commissioner for Cohesion and Reforms.⁸

The Programme “THALIA 2021-2027” is structured through sixteen Priorities, which have been established through the selection of Specific Objectives, including Priorities referred to Technical Assistance. Each Specific Objective is broken down by the type of supported actions, the indicative beneficiaries and the final recipients of the actions. The policy interventions promoted, aim to strengthen the competitiveness of the economy, with a particular emphasis on the sectors of energy, environment, transport, as well as the integrated sustainable spatial development. In addition, the Programme aims to support the employment sector, and safeguard social inclusion and social cohesion. The actions of the Programme include a combination of investments by the wider public sector, as well as State Aid Schemes supporting private sector entities.

Programme “THALIA 2021-2027” includes several references both to the EU Charter and the UNCRPD. In addition, several of its aims and targets are relevant to fundamental rights. For example, targets associated with green energy, maintaining environmental standards, biodiversity, recycling, and waste management are all associated with the protection of the rights of citizens. Programme THALIA outlines a series of specific objectives and priorities that are intrinsically connected with the safeguarding of fundamental rights. For example, one of the general objectives that Programme THALIA seeks to achieve is to ensure the implementation of the European Pillar on Social Rights. In outlining specific actions designed to achieve that overall goal, Programme THALIA underlines the need to secure equal rights and protections for various socially disadvantaged groups, in an effort to ensure their social inclusion (those disadvantaged groups include women (Specific Objective 4(c) on the need to ensure gender equality and prevent gender discrimination) and the youth (Priority 8 on facilitating their participation in the labour market), to people with disabilities, e.g., Specific Objective 4 (11), enhancing equal and timely access to quality, sustainable and affordable services. The THALIA programme also includes a series of different references to the objective of securing gender equality and of promoting ‘social policy’, which refers to the need

⁷ <https://eufunds.com.cy/en/programme-thalia-2021-2027-2/>

⁸ European Commission, ‘Executive Decision for the approval of the partnership agreement with the Republic of Cyprus and the "Thalia" programme for support from the European Regional Development Fund, the Cohesion Fund, the European Social Fund+ and the Just Transition Fund under the objective "Investments in employment and development" in Cyprus’ Brussels, 8.7.2022, C(2022) 4774 Final <https://thalia.com.cy/wp-content/uploads/2022/10/Approval-Decision-C20224774_-08.07.2022.pdf>

to support vulnerable groups of the society (with specific mentions made to the need to support people with disabilities).

The above illustrates THALIA's commitment to the allocation of funding for programmes and actions that promote and enhance the objectives identified earlier. Realising those goals and priorities would lead to the further safeguarding and protection of the fundamental rights of disadvantaged and vulnerable groups. Moreover, THALIA explicitly recognises the requirement created by the CPR that the use of all EU funds to realise the special aims of THALIA will comply with the principles established in the Charter and the UNCRPD. More specifically, it is provided that in all stages of the planning and completion of an action, (a) gender equality will be taken into consideration, and (b) steps will be taken to ensure that there is no discrimination on the basis of sex, race or nationality, religion or beliefs, disability, age, or sexual orientation, as well as the accessibility of people with disabilities.

In Annex I, THALIA identifies the Necessary Terms of the Agreements that will be concluded for the use of EU Funds. One of those necessary terms is that the programme to be funded 'effectively applies and realises the Charter of Fundamental Rights'.⁹ This horizontal enabling condition applies to all EU Funds under CPR. In particular, a programme approval decision will depend on whether the programme ensures the protection of Charter Rights and whether it includes provisions for submitting monitoring reports on the protection of Charter Rights. The Ombudsman's Office is explicitly identified as a relevant body, when it comes to the effective application of the Charter. Providing further information on how the effective application and the Charter would take place, THALIA outlines the various functions that relevant bodies ought to perform.

In addition to the necessary term regarding application and realisation of the Charter, THALIA also incorporates a necessary term that the programme funded implements and complies with the requirements of the UNCRPD.¹⁰ The Programme's Annex which provides further information on this enabling condition, enlists the relevant bodies to be responsible for ensuring that all Programmes funded through THALIA comply with the provisions of the UNCRPD. The relevant bodies are the Department for Social Inclusion of Persons with Disabilities, which acts as the Focal Point, the Pancyprian Council for People with Disabilities, which acts as the Coordinating Mechanism, and the Ombudsman, who acts as an Independent Mechanism. In a similar vein as the criteria included for ensuring provision with the Charter, THALIA provides for the need to ensure that the preparation and implementation of Programmes financed through EU Funds reflect relevant provisions found in legislation regarding the accessibility of persons with disabilities. Similarly, there ought to be sufficient monitoring of such compliance, with reports to be prepared and submitted to the Monitoring Committee of the Programme identifying cases of non-compliance with the UNCRPD.

In addition to the funds described earlier, Cyprus is also a beneficiary of other funds. The **European Funds Unit of the Ministry of Interior (EFU)** is the Managing Authority for the Home Affairs Funds. In particular, the Asylum, Migration, and Integration Fund (AMIF), the Internal Security Fund (ISF) and the Border Management and Visa Instrument (BMVI). The general objective of the AMIF policy is to contribute to the efficient management of migration

⁹ 'Programming Document THALIA 2021-2027', (June 2022) <<https://thalia.com.cy/wp-content/uploads/2022/07/%CE%98%CE%91%CE%9B%CE%95%CE%99%CE%91-2021-2027.pdf>> p. 199-200.

¹⁰ Ibid, p. 201-203.

flows and the implementation, enhancement and development of common asylum and migration policy, according to the *acquis* and fully observing the international obligations of the Union and its Member States, which arise from international acts in which the Member States are contractual parties.¹¹ The BMVI is one of the two financial instruments of the Integrated Border Management Fund and a continuation of the financial instrument “Internal Security Fund - Borders and Visas” of the previous Programming Period of 2014-2020. The general objective of the Fund’s policy is to ensure a powerful and effective European integrated management of the external borders, contributing this to a high level of internal security within the Union. Moreover, it ensures the free movement of persons within the Union, fully respecting the relevant *acquis* and international obligations of the Union and its Member States, which arise from international acts in which the Member States are contractual parties.¹² The ISF is the continuation of the financial instrument “Internal Security Fund - Police Cooperation” of the Programming Period 2014-2020. The ISF was set up to contribute to a high level of security in the EU, in particular by preventing and combating terrorism, radicalisation, serious and organised crime and cybercrime, by assisting and protecting victims of crime, and by preparing for, protecting against and effectively managing security-related incidents, risks and crises.¹³

Cyprus, a front-line MS in the Eastern Mediterranean route, has been faced with disproportionate migratory pressure for the past 5 years. The increase in arrivals continued in 2018 through 2022 having the highest number of arrivals per capita in the EU and being one of the MS that faces the greatest challenges when it comes to the accommodation of migration and refugees’ flows. EU institutions have recognised the special position of Cyprus. Through the Programmes for each respective Fund, Cyprus aims to address the needs and challenges that stem from its efforts to manage the increased migration flows while, at the same time, promoting EU policies and priorities in the area of Home Affairs.

Moreover, in relation to the European Funds Unit (EFU) of the Ministry of Interior, an agreement between the Commissioner’s Office and the EFU regarding the monitoring of the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy’s compliance to the EU Charter has been reached.

The current Report will be focusing on the participation of the Commissioner in the co-funding cycle of programmes covered under Programme THALIA 2021-2027 only. The Recovery and Resilience Facility (RRF) is excluded from the current analysis considering that the CPR does not apply to the RRF whilst the Regulation establishing the facility does not contain similar provisions. Unlike the CPR, the RRF does not refer to any mechanism to monitor compliance with fundamental rights or to the consultation of national statutory bodies with a human rights or equality remit, that is, national human rights institutions, equality bodies or ombuds institutions.¹⁴ The CPR, which applies to eight EU funds,¹⁵ explicitly requires compliance with

¹¹ <http://www.moi.gov.cy/moi/eufundsunit.nsf/all/4FE34B43572153C9C225870B003DE87F?opendocument>

¹² Ibid

¹³ Ibid

¹⁴ Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility.

¹⁵ The EU funds covered by the CPR are the following: 1. European Regional Development Fund, 2. European Social Fund Plus, 3. Cohesion Fund, 4. Just Transition Fund, 5. European Maritime, Fisheries and Aquaculture Fund and financial rules for those, 6. Asylum, Migration and Integration Fund, 7. Internal Security Fund, and 8. Instrument for Financial Support for Border Management and Visa Policy.

the EU Charter of Fundamental Rights and the CRPD, and sets out national arrangements for compliance.

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

Within the framework of the Common Provisions Regulation (CPR)¹⁶ and the explicit reference that the provisions of the Regulation respect the fundamental rights and observe the principles recognised in particular by the Charter of Fundamental Rights of the EU,¹⁷ national statutory bodies with a human rights or equality remit have been entrusted with a new responsibility and have become key actors in monitoring and ensuring compliance of EU funded programmes with fundamental rights. While the CPR allows a broad margin of appreciation under Article 8, for national authorities to set up their own arrangements at national level to comply with the Regulation, fundamental rights institutions are being approached by Member states to become involved and are increasingly engaging in seeking arrangements with state authorities concerning their participation in the implementation of the CPR.

A similar view was also expressed by the Fundamental Rights Agency (FRA) in their 2022 annual Fundamental Rights Report. The FRA indicated that the competent Member State authorities are encouraged to engage in systematic and meaningful consultations with their statutory human rights and equality bodies in this process. This could include seeking their advice on putting in place systems to ensure compliance with the EU Charter of Fundamental Rights and obligations stemming from the CRPD, EU Member States could also consider involving statutory human rights bodies in fundamental rights impact assessments of recovery measures.¹⁸

According to Article 8 of the CPR, the Member States must establish Monitoring Committees through Partnership Agreements, that include regional, local, urban and other public authorities, relevant bodies representing civil society, and bodies responsible for the promotion of fundamental rights¹⁹. The Monitoring Committee will, *inter alia*, be entrusted with the tasks of examining the progress in programme implementation and in achieving the milestones and targets as well as the fulfilment of enabling conditions and their application throughout the programming period.²⁰ Managing authorities are also responsible to ensure that any operations selected that fall within the scope of an enabling condition cohere with the corresponding strategies and planning documents established for the fulfilment of that enabling condition (Article 73 (2)(b)). Monitoring Committees are responsible for examining the fulfilment of enabling conditions and their application throughout the programming period (Article 40(1)(h)).

¹⁶ 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 Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy.

¹⁷ Preamble Recital 95, Article 9(1), Article 73(1),

¹⁸ European Union Agency for Fundamental Rights, 'Fundamental Rights Report – 2022' (Luxembourg, 2022) <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2022-fundamental-rights-report-2022_en.pdf> p. 19

¹⁹ Article 38 CPR.

²⁰ Article 40, CPR.

Article 9 of the CPR provides that it is incumbent on Member States and the Commission to ensure that throughout the preparation, implementation, monitoring, reporting, and evaluation of programmes financed by EU funds, the equality between men and women, gender mainstreaming, and the integration of a gender perspective are taken into consideration. In all stages of a programme, MS and the Commission must also take the appropriate steps to prevent any discrimination based on gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Article 15, in turn, requires that a set of enabling conditions are met. Those enabling conditions are prerequisites for the effective and efficient implementation of the specific objectives set out in the Fund Specific Regulations. It is the responsibility of MS to assess compliance with those enabling conditions. For each programme, MS ought to identify the fulfilled and non-fulfilled enabling conditions, providing a justification where it considers that an enabling condition has been fulfilled (Article 15(2)). Some of the enabling conditions are horizontal, which means that they are required for all specific objectives of all programmes, while some of them are thematic, only applying for specific objectives of specific funds. One such horizontal enabling condition, identified in Annex III, refers to the effective implementation of the Charter of Fundamental Rights and of the United Nations Convention on the rights of persons with disabilities (UNCRPD) in accordance with Council Decision 2010/48/EC. More specifically, this condition requires that effective mechanisms shall be established in order to ensure compliance with the Charter and the UNCRPD. This includes both arrangements designed to ensure that programmes financed by EU funds comply with the Charter and the UNCRPD, and that there are sufficient reporting arrangements in place that enable the Monitoring Committee to detect cases of non-compliance of operations supported by the Funds with the Charter and the UNCRPD and to process complaints submitted regarding the Charter and the UNCRPD.

As a result, the involvement of national human rights institutions (NHRIs), equality bodies and ombudspersons in the national monitoring mechanism for the implementation of EU funds is indispensable, while their role in promoting compliance with the Charter is further increased. The role of NHRIs, other specialised bodies, and civil society in such committees differs across the EU. Several Member States started enforcing the Regulation by issuing guidelines explaining the Charter obligations in Union funds activities, while other Member States established Monitoring Committees and complaint mechanisms. Questions however arise with regards to the extent and limits of NHRIs' involvement in the monitoring of EU funded programmes, in line with the UN Paris Principles, according to which broad functions of protecting, promoting and guaranteeing human rights as a National Institution for Human Rights (NHRI) are provided.

3.1. The case of the Cyprus Commissioner for Administration and the Protection of Human Rights

In Cyprus, the Commissioner for Administration and the Human Rights' Institution (Ombudsman) is the relevant NHRIs / Equality Body that is currently participating in the process of EU funds' compliance with the EU Charter rights. Within the context of the EU Funds, the Cyprus Commissioner for Administration and the Protection of Human Rights, primarily engages with the Directorate General for Growth, Ministry of Finance which is the Managing Authority for the Cohesion Policy Programme «THALIA 2021-2027» as well as with the European Funds Unit, Ministry of Interior with regards to the Asylum, Migration and

Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy.

With regards to the current programming period 2021-2027, the Commissioner is involved in the procedures laid down by the Managing Authorities to ensure that the co-funded Programmes comply at all stages with the EU Charter of Fundamental Rights. In particular, the Commissioner, within the framework of its mandates as the National Human Rights Institution - Equality Body, and without prejudice to its independence from the State, shall advise and guide the Managing Authority/Intermediate Body (where applicable) in the decision making as regards the compatibility of the co-funded Programmes with the provisions of the Charter at all stages of the implementation of EU Funded Programmes.

More specifically, according to THALIA's programming documents, the Managing Authority in cooperation with the Ombudsman and other national public services responsible to ensure the compliance of national policies with EU laws and policies, shall work towards the compliance of each programme with the Charter throughout all its stages.²¹ More details on the involvement of the Ombudsman per stage are described below.

It is noted that national public services and relevant bodies participate both in consultations on the preparation of funded programmes as well as in the implementation of the programmes, where they assess their compliance to the EU Charter by issuing a relevant compliance certificate.

In the implementation of the programmes the Cyprus Commissioner for Administration and the Protection of Human Rights also monitors compliance with the EU Charter providing guidance to the Managing Authority / Intermediate Body.

In case of non-compliance with a Charter provision, relevant conditions could be imposed in order to ensure that the programme concerned is compatible with the Charter. Furthermore, the Ombudsman and other relevant authorities participate in the Monitoring Committee of co-funded Programmes with the aim to monitor the compliance of those programmes with the Charter. In case of non-compliance, the Ombudsman should provide recommendations and/or specific measures to be taken in order to resolve the issue concerned. The Monitoring Committee shall also be informed of Programmes that might be revoked in case Charter violations are detected during the implementation of the programme. The Ombudsman, in accordance with its mandate, shall inform the Committee about the investigation of complaints/reports submitted in regards to violations of the Charter in co-funded programmes and all the relevant recommendations offered to resolve the problem in question. All such actions should be included in annual reports to be submitted to the Council of Ministers and be made available to all relevant authorities.²²

The involvement of the Commissioner along with the relevant challenges and opportunities will be discussed in detail below, in all the four phases of the funding cycle including: the drafting and preparation of the Strategic Partnership Agreement, the preparation of the

²¹ 'Programming Document THALIA 2021-2027', (June 2022) <<https://thalia.com.cy/wp-content/uploads/2022/07/%CE%98%CE%91%CE%9B%CE%95%CE%99%CE%91-2021-2027.pdf>> p. 199-200.

²² 'Programming Document THALIA 2021-2027', (June 2022) <<https://thalia.com.cy/wp-content/uploads/2022/07/%CE%98%CE%91%CE%9B%CE%95%CE%99%CE%91-2021-2027.pdf>> p. 199-200.

Programmes, the implementation of the Programmes and, lastly, the evaluation of the Programmes.

3.1. Phases I and II: Drafting & Preparation of the Partnership Agreement and Preparation of the Programmes

As mentioned above, the Directorate General for Growth of the Ministry of Finance as the National Coordination Authority and the Managing Authority for the Cohesion Policy Funds in Cyprus has the overall responsibility of coordinating the necessary phases for the preparation of the Programming Documents (Partnership Agreement and Programme "THALIA" 2021-2027), their negotiation and their submission to the European Commission.

The consultation process for the preparation of the Programming Documents included the following stages:

Broad consultation with Ministries/Deputy Ministries and submission of proposals to DG for Growth. In August 2019, a Circular was sent to all Ministries/Deputy Ministries informing them of the key provisions of the Regulatory Framework on the Programming process, Policy Objectives and Specific Objectives. The Ministries/Deputy Ministries were requested to submit their proposals, regarding the strategic political objectives in the area of their responsibilities as well as their suggestions for programme proposals planned to be implemented during the Programming Period 2021-2027. Within this framework, for the definition of each Ministry/Deputy Ministry's strategy, further consultations/communication with the relevant stakeholders in the area of their responsibility were preceded. As a part of the broad consultation process, programme proposals have been submitted concerning capacity building of the social partners, which were included in the Programming documents.

Broad consultation with all stakeholders and the European Commission on the basis of the "Strategic Investment Plan". Following the proposals received from the Ministries/Deputy Ministries, the DG for Growth proceeded with the drafting of the "Strategic Investment Plan 2021-2027" This document outlines the strategic objectives and investment priorities in the context of which the resources from the Cohesion Policy and Common Fisheries Policy Funds will be utilized. This document, was approved by the Minister of Finance and was subject to a broad consultation with all partners, including the competent European Commission Services. The consultation was launched on July 30 and concluded at the end of September 2020. At the same time, the document was made publicly available on the Managing Authority's website for public awareness and for further comments/suggestions.²³

Consultation of the Draft Programming Documents with the European Commission. Following the results of the broad consultation of the Strategic Investment Plan, the DG for Growth proceeded with the preparation of the Draft Programming Documents. Taking into consideration all the parameters for the design of the programming documents and the fact that DG for Growth is the National Coordination Authority and Managing Authority of the Cohesion Policy Programmes, it was decided, after the approval by the Minister of Finance, to prepare a single multi-funded Programme including all Policy Objectives. The Partnership Agreement was submitted simultaneously with the Programme as provided in the relevant

²³ www.structuralfunds.org.cy

Regulations. These drafts were sent to the European Commission and a dialogue/consultation process was initiated.

Consultation of the Draft Programming Documents with all involved stakeholders.

Following the comments received by the European Commission on the Draft of the Programming Documents, a new phase of consultation with all stakeholders (Ministries/Deputy Ministries, Authorities, Departments/Services/Organizations) was launched. At the same time, a dialogue was held with the European Commission to discuss its positions on the Programming Documents. All relevant competent bodies participated in the dialogue with the European Commission. Following the discussions, a revised draft of the Programming Documents was prepared and submitted for comments to the European Commission.

Broad Consultation on the Programming Documents. In parallel with their submission to the European Commission, the Programming Documents were subject to a broad consultation widely consulted with all stakeholders (public, wider public and private sector) for their comments.

Preparation of final revised Draft Programming Documents. At the final stage of the consultation process, the Programming documents were properly formulated and finalised.

Submission of Programming Documents to the European Commission for approval.

The final Programming Documents were officially submitted to the European Commission for approval through the SFC-2021 system.

Approval by the Council of Ministers. Following the official submission to the European Commission, the Programming Documents were submitted for approval to the Council of Ministers.²⁴

Approval by the European Commission. Upon completion of all consultations with the EU, and agreement on the documents, the Programming Documents were officially approved by the European Commission.²⁵

The Commissioner for Administration and the Protection of Human Rights (National Human Rights Institution – Equality Body), as an independent Institution of the state, did not participate in the consultations/decisions of the Executive. However, it should be noted that, the Commissioner received information from the Managing Authority on the developments of the consultation that preceded the preparation of the Programmes, receiving all the relevant documents and decisions of the Council of Ministers. Additionally, during the programming phase, it was deemed appropriate to participate as an observer, upon invitation, in bilateral meetings with the Managing Authority as well as in Technical Meetings with the European Commission.

²⁴ Council of Ministers Decision no. 90.684 of 13/01/2021

<[http://www.cm.gov.cy/cm/cm.nsf/All/E888BA7022F789E0C22586AB0028D6E2/\\$file/90.684.pdf?OpenElement](http://www.cm.gov.cy/cm/cm.nsf/All/E888BA7022F789E0C22586AB0028D6E2/$file/90.684.pdf?OpenElement)>.

²⁵ European Commission, 'Executive Decision for the approval of the partnership agreement with the Republic of Cyprus and the "Thalia" programme for support from the European Regional Development Fund, the Cohesion Fund, the European Social Fund+ and the Just Transition Fund under the objective "Investments in employment and development" in Cyprus' Brussels, 8.7.2022, C(2022) 4774 Final <https://thalia.com.cy/wp-content/uploads/2022/10/Approval-Decision-C20224774_-08.07.2022.pdf>.

The content of the programming documents was formulated after a wide consultation with all stakeholders, respecting the principles of partnership and multi-level governance, in accordance with Article 8 of the Common Provisions Regulation 2021/1060 and the delegated regulation 240/2014 on the European code of conduct for partnership within the Funds. The process of drafting the Programming Documents (Partnership Agreement and THALIA Programme) was parallel. The Republic of Cyprus opted to submit the Partnership Agreement and the Cohesion Policy Programme "THALIA" 2021-2027 as a single package of the Programming Documents. Consequently, the procedures described in Phase I above for the preparation of the Partnership Agreement apply for Phase II as well, including the extent of the Commissioner's involvement in the processes.

The development needs/ priorities identified in the Programme "THALIA 2021-2027" Programme were addressed in consistence with the new priorities and the five EU Policy Objectives for the period 2021-2027 and in full alignment with the national development objectives, as described in the Government Strategy Statement 2021-2023.

3.2. Phase III: Implementation of the Programmes

The Council of Ministers of the Republic of Cyprus, in accordance to the provisions of Article 9 CPR, approved the appointment of the Authorities and Bodies entrusted with the Management and Control of the "THALIA 2021-2027" and "Maritime, Fisheries and Aquaculture 2021-2027" Programmes for the period 2021-2027.²⁶ Based on the said Decision, the Directorate General for Growth of the Ministry of Finance, as the Managing Authority, has the general responsibility for the management and implementation of the above mentioned programmes.

Within the framework of its responsibilities, and as defined by the relevant Regulations governing the operation of the Funds, the Managing Authority has the responsibility to draw up and apply criteria and procedures that prevent discrimination, are transparent, ensure access to people with disabilities, ensure gender equality, the principle of sustainable development, and the Union policy in the field of the environment, in accordance with Article 11 and Article 191(1) of the TFEU and are in compliance with the EU Charter of Fundamental Rights. In addition, the Decision defined the Independent Institutions/State Bodies, which guide and advise the Managing Authority in terms of decision-making, as well as the Public Bodies entrusted with the responsibility of ensuring the compatibility of the co-financed programmes with horizontal national and EU principles and legislation, through the issuance of compliance certifications

More specifically, the following ***independent State institutions advise/guide*** the Managing Authority in making decisions as follows:

- The *Commissioner for State Aid Control* provides an opinion on the compatibility with the national and EU legislations and policies on State Aid.

²⁶ Council of Ministers Decision no. 94.440 of 22/2/2023
<[http://www.cm.gov.cy/cm/cm.nsf/All/B7A80B3F2CC00926C2258967003DF541/\\$file/94.440.pdf?OpenElement](http://www.cm.gov.cy/cm/cm.nsf/All/B7A80B3F2CC00926C2258967003DF541/$file/94.440.pdf?OpenElement)>.

- The *Commissioner for the Administration and the Protection of Human Rights*, within the scope of his/her responsibilities as the National Human Rights Authority - Equality Body, advises and guides the Managing Authority/ Intermediate Bodies in decision making regarding compliance with the provisions of the EU Charter of Fundamental Rights.

In addition, the following **Governmental Departments certify**, due to their competences, **the compatibility of the co-funded programmes / Schemes**, as follows:

- The *Department of Environment of the Ministry of Agriculture, Rural Development, and the Environment*, assesses the compatibility of programmes to the national and EU principles and legislation for the protection of the environment and the implementation of the "Do No Significant Harm" principle.²⁷

- The *Ministry of Justice and Public Order (MJPO)* evaluates the compatibility of programmes/ Schemes with national and EU principles and legislation for the implementation of the principle of Equality between men and women.

- The *Department of Labour of the Ministry of Labour and Social Insurance* assesses the compatibility of programmes/Schemes with the national and EU principles and legislation, for implementation of the principle of non-discrimination.

The detailed procedure aims to ensure compliance for each of the horizontal national and EU principles and legislation and is defined and described in the specific Guidelines issued by the Managing Authority.

More specifically, the Commissioner for the Administration and the Protection of Human Rights within the framework of its mandates as the National Human Rights Institution - Equality Body, and without prejudice to its independence from the State, shall advise and guide the Managing Authority/Intermediate Body in taking decisions on the compatibility of the co – funded Programmes with the provisions of the Charter at all stages of the Cohesion Policy Funds processes. The detailed description of the procedure is recorded in the Guidelines issued by the Managing Authority.

The Managing Authority / Intermediate Body are obliged to submit the programme proposal to the Commissioner for Administration and the Protection of Human Rights for guidance on its compatibility with the provisions of the Charter of Fundamental Rights of the EU and in particular the compatibility with the following laws as amended:

- The Commissioner for Administration Laws of 1991 to 2022
- The Equal Treatment (Racial or Ethnic Origin) Law of 2004 (Law 59(I)/2004)
- The Combating of Racism and Other Discrimination (Commissioner) Law of 2004 (Law 42(I)/2004)
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Optional Protocol) (Ratification) Law of 2009 (Law 2 (III)/2009)
- The UN Convention on the Rights of Persons with Disabilities and Related Matters (Enactment) Law of 2011 (Law 8(III)/2011).

As a result of the procedure above, which is based on a methodology and criteria applied by the Commissioner in the context of the guidance provided to the competent Authorities of the

²⁷ "Do No Significant Harm" principle

co-funded Programmes, the Commissioner provides written advice / guidance as to the compliance of the proposed programme with the provisions of the EU Charter. The methodology and criteria applied by the Commissioner in assessing the compatibility include the use of a Fundamental Human Rights Checklist with key assessment questions.

Subject to the provisions of Article 8 of the Commissioner for Administration Laws 1991 to 2022, the Commissioner shall have the power to obtain information from any person and in any manner he/she deems fit for the purpose of providing guidance to the Managing Authority/Intermediate Body. In the advice/guidance of the Commissioner during this stage, suggestions may be submitted to the Managing Authority/Intermediate Body, in the event that a possible violation of the programmes in relation to any provision is found, in order to align the programmes with the provisions of the Charter.

Furthermore, the Commissioner shall act as a **complaints mechanism** in relation to claims submitted during the implementation of co-funded programmes for violations of the provisions of the Charter. This role is in accordance with its mandate to act as the Equality Body based on the Combating of Racism and other Discrimination (Commissioner) Law of 2004 as well as the mandate to act as the Independent Mechanism for the Promotion, Protection and Monitoring of the Rights of Persons with Disability, based on the UN Convention on the Rights of Persons with Disabilities and Related Matters (Enactment) Law of 2011.

In the event that a complaint is submitted within the framework of the implementation of a co-funded programme regarding any violation of a provision of the EU Charter and in particular for discriminatory treatment against a group of affected persons, in particular due to sex, race, colour, ethnic origin or social origin, genetic characteristics, language, religion or belief, political opinions or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation, the Commissioner, acting as the Equality Body, in accordance with the law,²⁸ summons the Beneficiary and/or Intermediate Body to a hearing. Where necessary and after consultations, the Commissioner issues binding recommendations to the party concerned and requires the taking, within a specified period, of corrective measures to address the violation found.

In the event that it is found that the necessary measures have not taken place in accordance to the recommendations of the Commissioner, to properly address the discrimination which violates the rights protected by the Charter, the Commissioner recommends to the Managing Authority to take all appropriate measures, provided in CPR. Pursuant to Article 23 of the Combating of Racism and Other Discrimination (Commissioner) Law of 2004 (Law 42(I)/2004), any person in the private sector whose programme does not meet the requirements, because it was found by the Commissioner as contradicting with the Charter, may file an appeal to the Administrative Court based on Article 146 of the Constitution.

Lastly, the Commissioner shall participate as an **observer on the Monitoring Committee** in an advisory role. The "Monitoring Committee of the THALIA 2021-2027" Programme was established upon the approval of the Minister of Finance on the 7th of October 2022 and is responsible for monitoring the implementation of the mentioned Programme,²⁹ in accordance to the provisions of Article 38 of CPR. The Committee includes:

²⁸ Article 21 of the Combating Racial and Certain Other Discrimination (Commissioner) Law of 2004 (Law 42(I)/2004).

²⁹ <https://thalia.com.cy/programme/monitoring-committee/>

- Representatives of the competent Ministries/Deputy Ministries and Public Authorities
- Representatives of the Intermediate Bodies
- Representatives of Local Government Authorities
- Representatives of the Economic and Social Partners
- Representatives of Civil Society
- Representatives of Research Organisations and Universities.
- Representatives of the European Commission also participate in a supervisory and advisory capacity.
- Advisors, Observers (without voting rights).

The Committee's decisions are taken by majority either during the Committee's meetings, or by following a written decision-making procedure. The exact composition, duties and modus operandi of the Committee are defined in the relevant Internal Regulation.³⁰

As mentioned, the Commissioner will participate as an observer on the Monitoring Committee in an advisory role without having voting rights and will provide information on cases of programmes for which any violation of the Charter was found during their implementation period as well as any recommendations imposed for compliance. Moreover, the Commissioner shall inform the Monitoring Committee about the investigation of any complaints that may be submitted during the implementation of the Programmes and the actions/corrective measures he/she has recommended to the competent authority in order to ensure compliance with the Charter. The aforementioned actions of the Commissioner will be recorded in annual activity reports which will be submitted for information to the Council of Ministers and will be available to all interested parties.

It could be argued that participating in the Monitoring Committee as an advisor without having voting rights, poses the challenge of not having substantial influence / impact on decision-making or effectively promoting suggestions for additional measures to be taken by the Managing Authority to ensure compliance with the EU Charter. On the other hand, according to a recent report from the European Network of National Human Rights Institutions (ENNHRI), the role of the NHRIs when carrying out their tasks in the context of monitoring and contributing to fundamental rights compliance of EU funded programmes must be limited. More specifically, it was emphasised that in line with the independence requirement of the Paris Principles,³¹ it is inappropriate for NHRIs to adopt/maintain a decision-making or voting position in the context of the CPR, nor to issue 'fundamental compliance certificates' to state authorities in advance of the EU funded programmes being implemented.³²

Within the compatibility assessment, it is the responsibility of the Managing Authority / Intermediate Body, during the evaluation process of the programmes under its area of responsibility, to examine whether the relevant advice / guidance of the Commissioner is followed for the compliance of the programmes with the Charter, prior to the official approval

³⁰ Internal Operation Regulation of the Monitoring Committee for "THALIA 2021-2027" (October 2022) <<https://thalia.com.cy/wp-content/uploads/2023/01/%CE%95%CF%83%CF%89%CF%84-%CE%9A%CE%B1%CE%BD%CE%BF%CE%BD-%CE%9B%CE%B5%CE%B9%CF%84%CE%BF%CF%85%CF%81%CE%B3%CE%AF%CE%B1%CF%82.pdf>>

³¹ Paris Principles ('Principles Relating to the Status of National Human Rights Institutions').

³² European Network of National Human Rights Institutions, 'Monitoring Fundamental Rights Compliance of EU Funds – Potential Role, Opportunities and Limits for NHRIs' (16 May 2022) <<https://ennhri.org/wp-content/uploads/2022/05/ENNHRI-Statement-on-NHRIs-Monitoring-Fundamental-Rights-Compliance-Of-EU-Funds.pdf>>

of the programme. For procedures that had already started and are in the implementation stage prior to process mentioned in regards to providing guidance by the Commissioner, the Managing Authority / Intermediate Body requests the said guidance when this need arises. It is noted that the Managing Authority and/or the competent Intermediate Body (as the case may be) reserve the right, if during the implementation of a programme significant changes are observed in its nature or subject and which relate to compliance with the provisions of the Charter, to request new guidance from the Commissioner.

In the event where the Beneficiary fails to fulfil any of the obligations arising from the relevant horizontal national and EU principles or to comply to any condition set, in regards to the provisions of the Charter, the initial approval of the programme will be revoked, and the expenditure up to that moment will become liability of the Beneficiary.

Irrespective of the above, the Commissioner may carry out on his/her own initiative inspections to ascertain the compliance of the programmes with the principles of the Charter.

The arrangements for the compliance of the Programmes with the Charter are published on the website of the Programme THALIA 2021-2027³³ and they will be the subject of the work of the Monitoring Committee. To raise awareness to the organisations involved and to inform them about the Charter of Fundamental Rights, training seminars are planned by the Commissioner's Office. The Managing Authority, in accordance to the Management and Control System, issued relevant Circulars.

Lastly, in the case of Grant/Aid Schemes, written advice/guidance of the Commissioner is obtained from the competent Intermediate Bodies on the content of the Scheme and, by extension, on all the programmes promoted under it. The obligations of the Beneficiaries in terms of compliance with the Charter will be included, where applicable, in the relevant Funding Agreement Letter signed between the Beneficiary and the Intermediate Body. It is clarified that it is not necessary to issue separate advice/guidance for each programme included in a Grant/Aid Scheme.

3.3. Phase IV: Evaluation of the Programmes

According to Article 44 (1) of the CPR, the Managing Authority has the responsibility of carrying out evaluations of the co – funded programmes. The evaluations, which aim to improve the quality of the design and implementation of programmes, are related to one or more of the following criteria: effectiveness, efficiency, relevance, coherence and Union added value. Evaluations may also cover other relevant criteria, such as inclusiveness, non-discrimination and visibility, and may cover more than one programme. The Directorate General for Growth, as the Managing Authority in Cyprus, is not only responsible for all evaluations to be carried out with respect to THALIA, but it is also responsible to draft the Evaluation plan which must be compatible with the Monitoring and Evaluation System.³⁴ The Evaluation Plan has been approved by the Monitoring Committee on May 15th 2023.

³³ <https://thalia.com.cy> , <https://eufunds.com.cy>

³⁴ Art 44 (5) CPR

The Evaluation Plan is publicly available on the website of the Programme THALIA 2021-2027 in Greek.³⁵ It identifies all the responsibilities of the Managing Authority and provides a list of scheduled evaluations, detailing the type and nature of the evaluation, the evaluation criteria, the relevant timeframe/duration, as well as an estimated cost. Indicatively, the Evaluation Plan provides for:

- Evaluations required by the CPR, such as a mid-term review to be completed by the 31st of March 2025 (Article 18 (2)), and an impact-assessment for each programme, to be carried out by the 30th of June 2029 (Article 44 (2)).
- The *ex-ante* evaluation of the financial instruments. According to Article 58(3), the assessment must be completed before managing authorities make programme contributions to financial instruments.
- Other evaluations targeting specific thematic areas such as the Evaluation of actions supporting Research and Innovation, or an Evaluation of the implementation of the Strategies of Complete Spatial Development.
- Further evaluations such as an Evaluation of the implementation of communication activities.

In addition to the above evaluations, it is possible to include further evaluations such as the application of the horizontal principles, following consultation with the relevant authorities and public bodies.

All evaluations will be carried out by external evaluators who will be appointed by the Managing Authority in accordance with the relevant public procurement procedures. Those external evaluators are functionally independent from the bodies responsible for the implementation of the programmes. The evaluations produced, will be published on the website of THALIA (Article 44 (7)). So far, no such evaluation document has been published, but this is expected considering that the Evaluation Plan was only completed in April 2023.

As discussed above, within the sphere of Phase III of the funding cycle, the Monitoring Committee for "THALIA 2021-2027" Programme, was established with the approval of the Minister of Finance on the 7th of October 2022. The Monitoring Committee in which the Commissioner for the Administration and the Protection of Human Rights is a non-voting observer with advisory role, has several responsibilities related to the evaluation of programmes. In particular, according to Article 40 CPR, the Monitoring Committee ought to, following the recommendation of the Managing Authority, approve the Evaluation Plan. The Committee should also examine the progress made in the carrying out of the evaluations and follow-up on the recommendations from previous assessments. Lastly, the Committee may propose amendments to the Evaluation Plan, in order to cover potential needs that might arise during the programming period, due to the implementation of the Programme or of other critical factors.

As the Commissioner participates in the Monitoring Committee, he/she is updated of all the evaluations carried out according to the Evaluation Plans and for all relevant results. The Commissioner may also express his/her opinion or provide recommendations regarding the

³⁵ Evaluation Plan,

<https://thalia.com.cy/%cf%83%cf%85%ce%bd%ce%b5%ce%b4%cf%81%ce%af%ce%b5%cf%82-%ce%b3%cf%81%ce%b1%cf%80%cf%84%ce%ad%cf%82-%ce%b4%ce%b9%ce%b1%ce%b4%ce%b9%ce%ba%ce%b1%cf%83%ce%af%ce%b5%cf%82/>

evaluations taking place. According to the evaluation plan, and given the Commissioner's position within the Monitoring Committee, the role of the NHRI body is limited regarding the evaluation of programmes.

As has become apparent, the Evaluation procedures in effect are not specifically concerned with the degree of compliance of programmes with the Charter or the UNCRPD but are instead primarily focusing on evaluating the overall performance of the programmes. The Commissioner, however, has the right to propose to the Managing Authority to grant the evaluation of THALIA in relation to its compliance with the horizontal principles and in particular with respect to its compliance with the Charter and the UNCRPD. No major challenges have been reported so far in relation to the evaluation of the programmes, but it is important to ensure that evaluations are conducted effectively and include clear human rights considerations.

4. Critical success factors

The previous paragraphs demonstrate the important role the Commissioner has to fulfil in securing fundamental human rights compliance of EU Funds. As the Commissioner is, in various ways, involved in the entire process of implementation and evaluation of co – funded programmes, the critical success factors identified will refer to those various stages of involvement.

As discussed earlier, the Commissioner had a limited role in the drafting of the Partnership Agreement and in the preparation of the programmes. As an independent body, the NHRI did not participate in the workings of the Executive that was responsible for drafting the Partnership Agreement and the preparation of the programmes. However, the NHRI was updated by the Managing Authority regarding all consultations conducted prior to the finalisation of the programmes. In addition, during the programming stage, the Commissioner participated as an observer, following an invitation, in meetings with the Managing Authority, as well as technical meetings with the European Commission. Although the role of the Commissioner was limited, that was considered appropriate and in accordance to Paris Principles in order to ensure its independence from the State, since the process of agreeing and drafting the Partnership Agreement and the Programme THALIA 2021 – 2027 was a core political decision which set up the strategic priorities that the State aims to achieve during the co -funding cycle. The NHRI as an independent Institution ought to remain cautious of engaging in political decisions that might undermine the perception of its independence. As the Paris principles indicate, maintaining the independence of the NHRI is a critical success factor that prevents more active participation in the drafting and preparation of the Partnership Agreement and of the programmes.

To further ensure the *independence* of the Commissioner, its role in the Monitoring Committee (an important body both in the implementation and the evaluation of the programmes) is also carefully considered. Even though it is an observer to the Committee, it primarily plays an advisory role. It acts as an observer (with no voting rights) and it benefits from the discussions of the Committee, receiving updates on the implementation of the programmes, and also provides information on cases of programmes for which any violation of the Charter was found during their implementation period, as well as any recommendations imposed for compliance. It is also worth considering that the Commissioner also has the power to unilaterally carry out

inspections of programmes to ensure their compliance with Charter principles (horizontal enabling conditions).

In addition, the Commissioner plays an active role in the complaints' mechanism and issues recommendations on the appropriate steps to follow regarding lodged complaints. In order to raise awareness of all stakeholders regarding the Charter, the Commissioner's Office is planning a series of training activities.

According to the Paris principles, NHRIs can only effectively carry out their tasks if they have adequate resources.³⁶ This requirement emerges as a concern when considering the tasks of the NHRI when it comes to the use of EU funds in Cyprus. The involvement in the monitoring of EU funds' compliance to EU Charter comes to be added to the other tasks the Office of the Commissioner has in ensuring the safeguarding of human rights in Cyprus, fighting against discrimination and to ensure equality, and helping individuals who suffer infringements on their rights find redress. The additional role it plays when it comes to EU funds (participating in the Monitoring Committee, albeit in an advisory role; contributing to the ex-ante evaluation of programmes regarding their compliance with Charter rights, contributing to the evaluation of ongoing programmes regarding their compliance with Charter rights) only adds to an already heavy workload. Successfully carrying out its tasks, requires reinforcement of the Office of the Commissioner with additional human resources, especially of staff at senior level.³⁷

Without a doubt the involvement of the Commissioner in the co-funding cycle as well as the planned training seminars, also provide for a great opportunity for improving and strengthening public policy systems, increasing the knowledge regarding the content and implications of the EU Charter in the context of the work of various actors who involved with EU funds as well as raising awareness on the importance of the EU Charter and EU law in the national legal order.

5. Conclusion

The points observed within the current Report constitute a brief contribution to the discussion around the complicated and cumbersome questions raised on the role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds. The Report has provided analytical guidance on the role of the *Cyprus Commissioner for Administration and the Protection of Human Rights* in monitoring fundamental rights compliance in the implementation of EU funds in accordance with the new mechanism established under EU law.

As discussed in the report, the role and involvement of the Commissioner throughout the co-funding cycle and the various stages of the funding procedure described has not always been extensive. For much of the procedure, in particular the first stages, which saw executive/political stakeholders making decisions on the procedures to be followed, the

³⁶ European Network of National Human Rights Institutions, 'Monitoring Fundamental Rights Compliance of EU Funds – Potential Role, Opportunities and Limits for NHRIs' (16 May 2022) <<https://ennhri.org/wp-content/uploads/2022/05/ENNHRI-Statement-on-NHRIs-Monitoring-Fundamental-Rights-Compliance-Of-EU-Funds.pdf>>.

³⁷ The Sub-Committee on Accreditation (SCA) of GANHRI in its October 2022 decision to re-accredit the Cyprus NHRI with A-status, specifically stated that the Commissioner for Administration and the Protection of Human Rights "requires additional funding, including to allow recruitment of staff at senior level."

Commissioner's role was limited, mostly focusing on providing advice and guidance to the Managing Authority in taking decisions on the compatibility of the co-funded programmes with the provisions of the EU Charter, maintaining an independent and impartial stance which is a critical success factor for the effective and credible operation of NHRIs. In its advisory capacity, the Commissioner can advise the state authorities dealing with the implementation of the programmes, stressing the importance of cooperative work with governmental bodies and other state stakeholders. It must also be noted that through its role in the Monitoring Committee, the Commissioner can further develop existing networks for improving and developing access to information on redress mechanisms, while an opportunity is granted for further enhancement and protection of fundamental rights, also through the awareness raising and training seminars planned.

The above functions, together with the Commissioner's role to deal/investigate complaints regarding the incompatibility of co-funded programmes with the Charter, are accordance with its wide mandate as an Ombudsman, an NHRI and Equality Body (based on the Combating of Racism and other Discrimination (Commissioner) Law of 2004) as well as the mandate to act as the Independent Mechanism for the Promotion, Protection and Monitoring of the Rights of Persons with Disability, based on the UN Convention on the Rights of Persons with Disabilities and Related Matters (Enactment) Law of 2011. As a complaints mechanism the Commissioner then informs the Monitoring Committee of all relevant complaints received and makes recommendations on steps to be taken regarding programmes infringing on the provisions of the Charter or the UNCRPD.

The greatest concern raised within the Report (also in accordance with reports from International and European Organisations) is the provision of adequacy of resources to the NHRI. The current tasks of the NHRI in Cyprus are already burdensome and the additional task of EU funds compliance, albeit only advisory in nature, significantly increase the workload of the Office. Therefore, there is a need for adequate human resources in order to substantiate the effectiveness of the task.

The new mechanism introduced under the CPR is truly a great opportunity to increase the knowledge around the EU Charter and enhance the protection of fundamental rights throughout the EU. However, there is a need for further guidance and greater support to the authorities involved via building their capacity further, in order to ensure the effective monitoring of the EU funds and the procedures and safeguards discussed. By empowering NHRIs to ensure that the new horizontal enabling condition on the EU Charter becomes a reality, will also, eventually, result in positively influencing both the allocation and implementation of EU funded programmes in a manner that respects the human rights of the beneficiaries of the Funds (groups and individuals).

Further analysis and discussions are expected to follow in the near future, especially after the first evaluation cycles are conducted, and the practical use of the complaints' mechanism established, will shed more light on the effectiveness of the procedures and safeguards recently put in place.