



Guidance on ensuring the respect of the Charter of Fundamental Rights of the European Union in the implementation of ESI Funds

DG REGIO, 2016.

The Charter of Fundamental Rights

- Drafted in 1999/2000 and solemnly proclaimed at the Nice summit, but became legally binding with the entry into force of the Treaty of Lisbon on 1 December 2009
- Legal Status : Article 6 (1) TEU:
"[it] shall have the same legal value as the Treaties"

Who is bound by the Charter?

- legal obligation for the EU institutions, bodies, agencies and offices in all their actions
- legal obligation for Member States when they are implementing EU law

Ombudsman's own-initiative inquiry into the respect of fundamental rights in the EU cohesion policy

- Inquiry opened by the European Ombudsman, Emily O'Reilly on 19 May 2014
- Focuses on the Commission's role in ensuring that EU funding is used in ways that comply with the Charter
- the Commission committed to prepare a document providing guidance as regards the respect of the Charter – *the aim: to help the MS authorities to comply with the Charter*

Relevance of the Charter for ESIF

- ...the Charter is addressed to Member States (Article 51(1)) only when they are implementing EU law
- Member States are not automatically implementing Union law when they hand out support under ESIF
- All the Member States' actions undertaken for the implementation of the applicable regulations fall within the scope of EU law
- *Annex I of the Guidance* lists relevant CPR provisions requiring actions and documents by national (central, regional, or local level) authorities implementing EU law
- Beyond this list MS may be implementing EU law if criteria established by ECJ are fulfilled

As regards Member States, the Charter applies to

- **All "emanations of State "when implementing EU law":**
 - central authorities
 - regional and local authorities
 - other public authorities
- **In the context of the ESIF : it might apply to ESIF beneficiaries, whatever their legal form**

The Guidance – adoption and structure

- The Guidance document was adopted and published in OJ 2016/C 269/01:

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2016.269.01.0001.01.ENG&toc=OJ:C:2016:269:TOC

- ***First part***
The content, legal status and applicability of the Charter
- ***Second part***
Implementation of ESIF and the Charter
- ***Third part***
How to assess compliance with the Charter in the implementation of ESIF ?
Fundamental rights checklist

When are Member States implementing EU law in the context of ESIF ?

1. when establishing the ESI Funds intervention strategy and drawing up the programming documents
2. when setting up the management, monitoring and control system
3. when implementing programmes

In those three stages of implementation of the funds Member States should ensure compliance with the Charter

Stage No 1: Establishing the ESI Funds intervention strategy and drawing up the programming documents

- MS are considered to act in the scope of EU law when adopting acts or drawing up documents resulting from an obligation included in the CPR, or any of its delegated or implementing acts

Examples: preparation of strategic policy frameworks, Partnership Agreements, programmes ...

Stage No 2: Setting up the management, monitoring and control systems

- MS are considered to act in the scope of EU law when:
 - **they set up structures and procedures required under the CPR for the management, monitoring and control of the ESI funds or**
 - *if not explicitly required by CPR, when they put in place such structures for the sake of implementing the CPR, fund specific rules or its delegated or implementing acts*
- *Examples of relevant Charter provisions: Art 8 (Protection of personal data) and Art 47 of the Charter (Right to an effective remedy and to a fair trial)*

Stage No 3: Implementing programmes and carrying out concrete actions outlined in a project description for works carried out when implementing ESI funds

- actions to be taken by the managing authority, intermediate bodies, certifying authorities, audit authorities for the implementation of programmes

...

examples: launching calls for proposals, selecting operations, signing of grant agreements, follow up of the implementation, checking payment claims from beneficiaries ...

- *Examples of relevant Charter provisions: Art 8 (Protection of personal data) and Art 47 of the Charter (Right to an effective remedy and to a fair trial)*

ESIF support and the Charter Thematic area examples

Following the complaints of the European Ombudsman inquiry

- **Institutionalisation in the field of disability, childcare, mental health (shift to community based services)**
 - Cohesion Policy thematic guidance exclude further institutionalisation, building and renovation of residential institutions
- **Discrimination of Roma children in education, segregation**
 - Infringement proceedings have been launched by the Commission against Czech Republic, Slovakia, and Hungary
 - Specific guidance has been issued by the Commission to tackle educational and housing segregation of marginalised communities, including Roma

Non-respect of the Charter by Member States

Could constitute an irregularity

- Possible interruptions of payment deadlines**
- Possible suspensions of payments**
- Possible financial corrections**
- Possible infringement proceedings under Article 258 TFEU**