

***GUIDE TO THE APPLICATION OF THE CHARTER OF FUNDAMENTAL  
RIGHTS OF THE EUROPEAN UNION IN THE IMPLEMENTATION OF THE  
EUROPEAN STRUCTURAL AND INVESTMENT FUNDS***

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## I. ABBREVIATIONS

<b>Charter</b>	Charter of Fundamental Rights a European Union, published on 30.3.2010 in THE Official Journal of the European Union C 83/401
<b>EU</b>	European Union
<b>Commission</b>	European Commission
<b>FRA</b>	EU Agency for Fundamental Rights
<b>Proposal for Regulation / CPR PROPOSAL</b>	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing common provisions on the European Regional Development Fund, the European Social Fund plus, the Cohesion Fund and the European Fisheries and Maritime Affairs Fund, and establishing financial rules applicable to these funds, as well as the Fund for Asylum and Migration, the Fund for Internal Security and the Instrument for Border and Visas Management for the period 2021-2027
<b>ANES</b>	National Agency for Equal Opportunities between Women and Men
<b>CNCD</b>	National Council for Combating Discrimination

## II. INTRODUCTION

The Charter of Fundamental Rights of the European Union (hereinafter referred to as "the Charter") is a document adopted by the European Commission, the European Parliament and the Council of the European Union on December 7, 2000, within the Nice European Council.

The inclusion of the fundamental rights of the people in the European Union in the Lisbon Treaty, which entered into force in December 2009, implies that the Union institutions and the Member States are legally bound when implementing EU law (Article 51 of the Charter), to respect these rights.

The Court of Justice of the European Union stated that the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law, but not outside such situations. However, when national legislation of a Member State *falls within the scope of EU law*, that legislation must be compatible with the fundamental rights. This guide aims to provide a better understanding of the Charter, to explain the importance and binding nature of its compliance in the implementation of ESI funds and to facilitate the procedures for verifying compliance with the provisions of the Charter, by providing simple and direct check-list tools.

## III. CONTENT OF THE CHARTER OF FUNDAMENTAL RIGHTS

The Charter of Fundamental Rights brings together in a single text all the civil, political, economic and social rights of all people in the European Union. These rights are described in 54 articles, 50 grouped into six main chapters: Dignity, Freedoms, Equality, Solidarity, Citizenship and Justice and four procedural articles.

Chapter I: dignity (human dignity, the right to life, the right to integrity of the person, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of slavery and forced labour);

Chapter II: Freedoms (the right to freedom and security, respect for private and family life, data protection, the right to marriage and the right to found a family, freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association, freedom of arts and sciences, right to education, freedom of choice of employment and right to work, freedom to conduct a commercial activity, property right, asylum right, protection in the event of displacement, expulsion or extradition);

Chapter III: equality (equality before the law, non-discrimination, cultural, religious and linguistic diversity, equality between men and women, the rights of the child, the rights of the elderly, the integration of the people with disabilities);

Chapter IV: solidarity (workers' right to information and consultation within the company, the right to bargain and collective action, the right of access to placement services, protection during unjustified dismissal, fair and correct working conditions, prohibition of child labour and protection of young people at the work place, family and professional life, social security and social assistance, health protection, access to services of general economic interest, environmental protection, consumer protection);

Chapter V: Citizens' rights (the right to choose for and be elected in the European Parliament, the right to choose and to be elected in local elections, the right to good administration, the right of access to documents, the European Ombudsman, the right to petition, freedom of movement and residence, diplomatic and consular protection);

Chapter VI: justice (the right to an effective remedy and a fair trial, the presumption of innocence and the right to defence, the principles of legality and proportionality of offenses and penalties, the right not to be tried or convicted twice for the same offense);

## **IV. LEGAL STATUS. OBLIGATION TO RESPECT THE CHARTER**

The domain of application is stated in the contents of Art. 51 of the Charter:

The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union, in compliance with the principle of subsidiarity, as well as to the Member States, only if they implement the Union law." The requirement to respect the rights defined in the Charter is only compulsory for the Member States when they act within the scope of EU law. As far as the Member States are concerned, the Charter applies to all "state manifestations". Therefore, this applies to both central and regional authorities, local and other public authorities when implementing EU law.

In the context of the implementation of ESI funds, all actions of the Member States taken in order to implement the applicable regulations (CPR PROPOSAL or any other delegated acts) fall within the scope of EU law.

The charter can be applied to the beneficiaries of ESI funds, regardless of their legal form, who have been made responsible, based on a measure adopted by a Member State, for providing a public service under the control of the state, and who have received, for this purpose, special attributions in addition to those arising from the usual rules applicable in the relations between natural persons.

Thus, in the field of ESI funds, Member States implement EU law when:

1. they establish the intervention strategy for the ESI funds and prepare the programming documents (partnership agreement, operational programs, etc.)
2. they establish management, monitoring and control systems
3. they implement programs (3).

When drafting such documents, Member States must ensure, with the help of the "Fundamental Rights Compliance Checklist", that the document complies with the provisions of the Charter. The contents of the document must respect the rights protected by the charter and the principles contained in it.

In this context, the most relevant rights and principles are equality before the law, non-discrimination, equality between women and men, integration of persons with disabilities, property rights and environmental protection.

## **V. APPLICATION OF THE CHARTER - ENABLING CONDITION IN THE FINANCIAL PERIOD 2021-2027**

As part of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund and the European Fisheries and Maritime Affairs Fund, and determining financial rules applicable to these funds, as well as the Asylum and Migration Fund, the Internal Security Fund and the Instrument for Border Management and Visas, the

"ex ante conditionals" from 2014-2020 are replaced by "enabling conditions" between 2021-2027. Unlike the 2014-2020 period, they are monitored and applied throughout the period.

This will ensure that all co-financed operations are aligned with the EU politics framework.

Article 11 of the Proposal for a Regulation establishes the framework and the modalities by which these prerequisites must be met for the effective and efficient implementation of the Regulation: *"2. When preparing a programme or introducing a new specific objective as part of a programme amendment, the Member State shall assess whether the applicable enabling conditions linked to the selected specific objective are fulfilled, taking into account the principle of proportionality. An enabling condition is fulfilled where all the related criteria are met. The Member State shall identify in each programme or in the programme amendment the fulfilled and non-fulfilled enabling conditions and where it considers that an enabling condition is fulfilled, it shall provide justification.*

*3. Where an enabling condition is not fulfilled at the time of approval of the programme or the programme amendment, the Member State shall report to the Commission as soon as it considers the enabling condition fulfilled with justification.*

*4. The Commission shall, within three months of receipt of the information referred to in paragraph 3, perform an assessment and inform the Member State where it agrees with the fulfilment.*

*Where the Commission disagrees with the assessment of the Member State, it shall inform the Member State setting out its assessment accordingly. The Member State shall react in accordance with the procedure set out in paragraph 3.*

*5. Without prejudice to Article 99, expenditure related to operations linked to the specific objective shall not be reimbursed by the Commission to the Member State<sup>1</sup> until the Commission has informed the Member State of the fulfilment of the enabling condition pursuant to the first sub-paragraph of paragraph 4.*

*The first sub-paragraph shall not apply to operations that contribute to the fulfilment of the corresponding enabling condition.*

*6. The Member State shall ensure that enabling conditions remain fulfilled throughout the programming period. It shall inform the Commission of any modification impacting the fulfilment of enabling conditions.*

*Where the Commission considers that an enabling condition is no longer fulfilled, it shall inform the Member State setting out its assessment and give it the opportunity to present its observations within one month. Where the Commission concludes that the non-fulfilment of the enabling condition persists, and without prejudice to Article 99, expenditure related to the specific objective concerned shall not be reimbursed by the Commission to the Member State<sup>1</sup> as from the date the Commission informs the Member State accordingly."*

Article 17, which refers to the contents of future operational programs, also specifies that each program will also establish an assessment of the fulfilment of the enabling condition at the time of submission of the program, for each enabling condition determined in accordance with Article 11, Annex III and Annex IV.

In Annex III of the aforementioned document, the horizontal enabling conditions applicable to all the specific objectives, as well as the necessary criteria for evaluating their fulfilment, are defined.

The effective application and implementation of the EU Charter of Fundamental Rights is a horizontal condition and the horizontal enabling conditions are applicable to all specific objectives. It is stated that effective mechanisms are in place to ensure compliance with the EU Charter of Fundamental Rights which include:

1. Arrangements to ensure compliance of the programmes supported by the Funds and their implementation with the relevant provisions of the Charter.<sup>1</sup>
2. Reporting arrangements to the monitoring committee on the cases regarding non-compliance of operations supported by the Funds with the Charter.<sup>2</sup>

In the following part within this guide, we will present practical ways that will ensure this verification, respectively the use of check-lists and consultation in all phases of implementation of relevant entities, etc.

## VI. OBLIGATIONS OF MANAGING AUTHORITIES AND OTHER INSTITUTIONS INVOLVED IN MANAGING EUROPEAN FUNDS

\* Question: Who must ensure compliance with the principles and provisions of the Charter?

Answer:

1. Ministry of European Funds
2. Management authorities
3. Audit authorities
4. Certification and payment authorities
5. Intermediate bodies
6. Monitoring committees
7. Consultation groups
8. Beneficiaries, in certain situations

\*\*Question: What are the key questions we need to ask to identify whether a right enshrined in the Charter has been violated?

Answer: See the key-question table at page 19 of this Guide.

\*\*\*Question: At what stages should we verify compliance with the rights included in the Charter?

Answer:

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<sup>1</sup> According with the Trialog compromise text 14962/19 of December 2019 - General Affairs Council (Cohesion)

<sup>2</sup> Idem

## 1. VERIFICATION OF COMPLIANCE WITH THE CHARTER DURING THE ELABORATION OF THE PROGRAMMING DOCUMENTS.

Preparation and modification of the partnership agreement as well as preparation and modification of programs and guides are national measures for the implementation of EU law and they require compliance with the Charter. Member States must ensure compliance with the Charter throughout all stages of management of EU Funds (in the consultation process, transmission of the documents to the Commission, the documents themselves etc).

In accordance with the European Commission's Guidelines for ensuring compliance with the Charter, the following rights / principles contained in the Charter could be of particular importance: equality before the law, non-discrimination, equality between women and men, integration of persons with disabilities, property rights and environmental protection.

The Opinion of the European Union Agency for Fundamental Rights, entitled „Challenges and opportunities for the implementation of the Charter of Fundamental Rights, as well as many National Human Rights Institutions (4/2018) mention that the Member States must ensure a significant and active participation at national level of human rights institutions, non-discrimination bodies (ANES, CNCD etc.) and of the People's Advocate in the monitoring committees of EU-funded programs.

As FRA has repeatedly emphasized, Member States should provide adequate resources, training and assistance for both these entities and relevant civil society organizations in order to develop their administrative capacity of fulfilling these tasks.

Romania, like the other Member States, will also take into account the use of statistical data and other available evidence regarding discrimination, violence, harassment and vulnerable groups so as to prepare its reports based on the relevant indicators.

All the authorities involved in the management of European funds are encouraged to collaborate with the authorities that provide statistical data, with the associations for the defence of human rights, the entities that promote non-discrimination and the People's Advocate, and to consider any type of technical assistance from FRA. (FRA Opinion, September 2018, p. 61).

In order to enhance the visibility of this enabling condition, the authorities are encouraged to introduce consistent clauses, related to human rights, in the texts of the relevant programs and guidelines. Also, the Management Authorities shall add the Charter of the Fundamental Rights of the European Union as an appendix to the guidelines and shall require the beneficiaries' commitment to their clauses when applying for financing.

Art 67 paragraph 3, letter b of the Proposed Regulation establishes that the Management Authority is bound to ensure, when selecting the operations, the fact that they are consistent with the corresponding strategies and planning documents established for the fulfilment of enabling conditions.

Thus, in order to select the operations, the Management Authority must establish and apply non-discriminatory, transparent criteria and procedures, which will ensure that all the rights set out in the Charter are observed and that are in line with the principle of sustainable development and the Union's environmental policy.

In Annex V to the Regulation Proposal presenting the Model for the ERDF funded programs ("Investments for employment and economic growth"), ESF +, the Cohesion Fund and the EMFF, is included a table by which the enabling conditions are presented. Thus, for the enabling condition of the Charters application, the following elements will be introduced:



Enabling conditions	Fund	Specific objective (N/A for EMFF)	Fulfilment of the enabling condition	Criteria	Fulfilment of the criteria	Reference to the relevant documents	Justification
Effective application and implementation of the EU Charter of Fundamental Rights			Yes/No	Arrangements to ensure compliance of the programmes supported by the Funds and their implementation with the relevant provisions of the Charter	Yes/No	Guide to applying the Charter of Fundamental Rights of the European Union in the implementation of the Structural and Investments Funds	The arrangements are included in the Guide. The Guide will be approved by memorandum within the Romanian government
Effective application and implementation of the EU Charter of Fundamental Rights				Reporting arrangements to the monitoring committee on the cases regarding non-compliance of operations supported by the Funds with the Charter	Yes/No	Guide to applying the Charter of Fundamental Rights of the European Union in the implementation of the Structural and Investments Funds	The arrangements are included in the Guide. The Guide will be approved by memorandum within the Romanian government

For the programs in AMIF, ISF and IFVM, Annex VI establishes, by the model herein, a table in a more simplified form:

Enabling conditions	Fund	Specific objective (N/A for EMFF)	Fulfilment of the enabling condition	Criteria	Fulfilment of the criteria
Effective application and implementation of the EU Charter			Yes/No	Arrangements to ensure compliance of the programmes supported by the Funds and their implementation with	Included in the Guide to applying the Charter of Fundamental Rights of the

of Fundamenta l Rights				the relevant provisions of the Charter	European Union in the implementatio n of the European Structural and Investments Funds
Effective application and implementa tion of the EU Charter of Fundamenta l Rights				Reporting arrangements to the monitoring committee on the cases regarding non-compliance of operations supported by the Funds with the Charter	Included in the Guide to applying the Charter of Fundamental Rights of the European Union in the implementatio n of the European Structural and Investments Funds

In order to maintain a favourable investment framework, the continued fulfilment of the enabling conditions should be monitored regularly. It is also important to ensure that operations selected for support are implemented consistently with the strategies and planning documents in place underlying the fulfilled enabling conditions, thus ensuring that all co-financed operations are in line with the Union policy framework.

When establishing the intervention strategy for ESI funds and developing the programming documents, Member States must respect the rights and principles protected by the Charter. In this context, the most relevant provisions are comprised in the Article 47 of the Charter, which recognizes the right to an effective remedy and a fair trial, including the right to be heard, Article 7 on respect for private and family life and Article 8 on protection of personal data.

Starting from the elaboration, implementation, monitoring and up to the evaluation of the projects, the potential beneficiaries must consider the rights mentioned in the Charter during the whole life cycle of the projects, respectively in the stages of designing, writing programs, in the analyses of situations, in identifying the target groups, in consultation, in defining the objectives and planning the activities, in the elaboration of the budget, training, communication, visibility, etc.

For a better and full comprehension of the topic, one or several actions could be assumed, such as:

- The Charter might be included among mandatory appendices of the programming documents (programmes, guides etc)
- The Beneficiaries could be requested to attach to the application forms a checklist or a declaration to assess the compliance with the Charter

- Ensuring thorough knowledge of the provisions of the Charter and how to verify its application by employees involved in the programming, implementation, monitoring etc. of European funds through training and courses.

## 2. VERIFICATION OF COMPLIANCE WITH THE CHARTER WHEN SETTING UP MANAGEMENT, MONITORING AND CONTROL

A non-exhaustive list of actions and documents for which the Charter must be observed:

### **(A) Documents related to the establishment of management and control systems for programs:**

- documents containing the rules for establishing management and control systems: TITLE VI Management and control of the CPR PROPOSAL, CHAPTER II Standard management and control systems
- documents related to procedures for ensuring effective and proportionate measures to combat fraud (Articles 63, 64, 68, 74, Legislative financial statement 2.3 Measures to prevent fraud and irregularities of the CPR PROPOSAL);
- documents which regard procedures to support the activity of the monitoring committee;
- documents related to the procedures which regard a system for collecting, recording and storing, in electronic form, the data on each operation necessary for monitoring, evaluation, financial management, verification and audit, including, where appropriate, data that concerns each participant and a breakdown of data on indicators by sex, when necessary;
- documents related to the procedures for supervising the functions officially delegated by the management authority pursuant to Article 65 of the CPR PROPOSAL;
- documents related to the procedures for evaluating, selecting and approving operations and ensuring their compliance, for the entire period of implementation, with the applicable rules (Articles 65, 66, 67, 68 of the CPR PROPOSAL), including instructions and guidelines for ensuring conformity of the contribution of the operations to the achievement of the specific objectives and results and procedures designed to ensure that the operations are not selected, if they have been physically completed or fully implemented before the beneficiary having submitted the application for financing (including the procedures used by the intermediary bodies, if the evaluation, selection and approval of the operations were delegated);
- documents relating to the procedures for ensuring that the beneficiary is provided with a document setting out the conditions under which support is provided for each operation, including the procedures for making sure that the beneficiaries have either a separate accounting system or an appropriate accounting code for all transactions related to an operation;
- documents relating to procedures for verifying operations (in accordance with the requirements of Article 65, 68 of the CPR), including in order to ensure that operations are in line with Union policies (such as partnership and governance policies on several levels, promoting equality between women and men, non-discrimination, accessibility for people with disabilities, sustainable development, public procurement, state aid and environmental standards), and for identifying the authorities or bodies that carry out such checks;

- documents relating to the procedures by which the requests for reimbursement are received from the beneficiaries, are verified and validated, and by which the payments to the beneficiaries are authorized, executed and accounted for, in accordance with the obligations provided by Article 68 of the CPR PROPOSAL (including the procedures used by the intermediary bodies in case the processing of the reimbursement requests has been delegated), in order to observe the 90 days deadline for making payments to beneficiaries, in accordance with Article 68 of the CPR PROPOSAL;
- documents relating to the procedures for the preparation and submission to the Commission of final performance reports (Article 38 of the CPR PROPOSAL), and annual performance review (Article 36 of the CPR PROPOSAL) including the procedures for collecting and reporting reliable data on performance indicators (Articles 35, 38 of the CPR PROPOSAL);
- documents relating to the procedures for drawing up the management declaration (Article 68 letter (f) of the CPR PROPOSAL);
- documents relating to the procedures for the preparation of the annual summary of final audit reports and if the controls performed, including an analysis of the nature and extent of errors and weaknesses identified in the systems, as well as corrective actions planned or undertaken (Article 71 letter (b) from the CPR PROPOSAL);
- documents relating to the procedures which regard the communication to staff of the above-mentioned procedures, as well as an indication of the organized / planned training courses and of all the issued guidelines (date and reference);
- documents relating to the procedures used by the intermediary bodies so as to carry out the delegated tasks and to the procedures of the certification authority for monitoring the effectiveness of the tasks delegated to the intermediary bodies;
- documents relating to the procedure for reporting and correcting irregularities (including fraud) and for tracking them, as well as the recording of amounts withdrawn and recovered, amounts to be recovered, amounts not recoverable and amounts related to operations suspended by a legal procedure or administrative remedy with suspensive effect;
- documents relating to the procedure for complying with the obligation to notify the Commission about the irregularities, in accordance with Article 63 (2) of the CPR PROPOSAL;
- documents relating to the procedures for drawing up and transmitting payment applications;
- documents relating to the measures taken in order to ensure that the certifying authority has access to all information concerning the operations necessary for the preparation and transmission of payment requests, including the results of management checks (in accordance with Article 63 and 68 of the CPR PROPOSAL) and of all relevant audits ;
- documents relating to the procedure by which payment requests are drawn up and submitted to the Commission, including the procedure for ensuring the transmission of the final payment application by 31 July, following the end of the previous financial year;
- documents relating to the accounting system used as a basis for the certification of expenditure accounts before the Commission (Article 92 of the CPR PROPOSAL);

- documents relating to the procedures established for drawing up the accounts referred to in Article 59 para. (5) of the Regulation (EU, Euratom) no. 966/2012 of the European Parliament and of the Council (8) (Article 92 of the CPR PROPOSAL);
- documents with regard to the provisions for certifying the completeness, accuracy and veracity of the accounts and the fact that the expenses entered in the accounts comply with the applicable law (Article 71 of the CPR PROPOSAL), taking into account the results of all the verifications and audits;
- documents relating to the system of ensuring the prompt recovery of public support, including the Union support;
- documents that regard the procedures for ensuring an adequate audit trail by keeping the accounting records in electronic form, including the amounts recovered, the amounts to be recovered, the amounts withdrawn from a payment request, the non-recoverable amounts and the amounts related to operations suspended through a legal procedure or administrative remedy with suspensive effect, for each operation, including the recoveries resulting from the application of article 59 of the CPR PROPOSAL regarding the sustainability of the operations;
- documents which concern the measures for deducting the amounts recovered or the amounts to be withdrawn from the expenses to be declared;
- documents relating to computer systems, including a diagram (a system of central or common networks or a decentralized system with links between systems);
- documents regarding procedures for verifying that the security of IT systems is ensured;
- national eligibility rules for operational programs
- adoption of rules regarding the eligibility of expenses for the cooperation programs.

**(B) Organization of a partnership (articles 6 paragraphs (1) and (2), 7, 8, 9, 10 of the CPR PROPOSAL and articles 2, 3 and 4 of the Delegated Regulation (EU) no. 240/2014 of the Commission (9))**

Documents relevant to the organization of a partnership: documents related to the partnership measures under the partnership agreement, and other documents related to the organization of a partnership.

The relevant rights / principles in the Charter include: non-discrimination, linguistic diversity, equality between women and men, integration of persons with disabilities.

**(C) Formulation of the rules regarding the membership of the monitoring committees, as well as the procedural rules of the monitoring committee (Article 10 paragraph (1) of the Delegated Regulation (EU) no. 240/2014), articles 33, 34, 35 of the CPR PROPOSAL.**

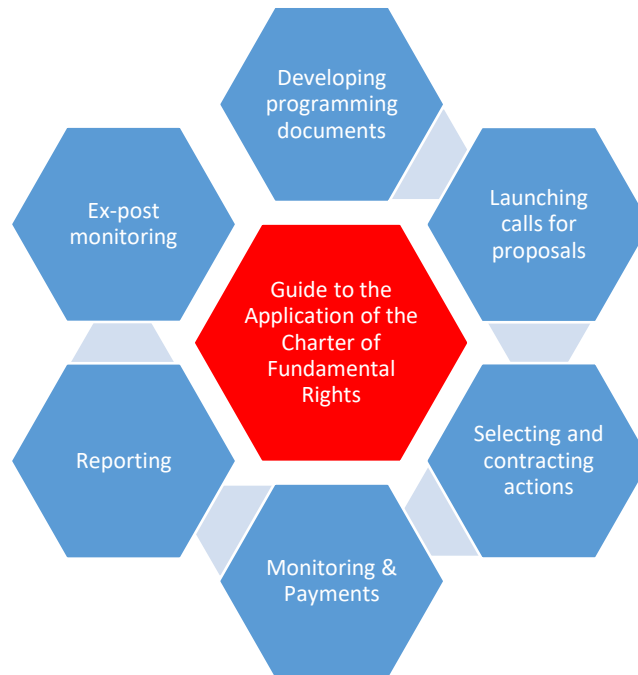
Relevant documents: documents that concern the rules regarding the membership of the monitoring committee and the procedural rules of the monitoring committee.

The relevant rights / principles in the Charter include: non-discrimination, equality between women and men, linguistic diversity.

### 3. VERIFICATION OF COMPLIANCE WITH THE CHARTER DURING THE IMPLEMENTATION PERIOD

Operations such as launching calls for proposals, selecting operations, signing grant agreements, monitoring the implementation, verifying payment requests received from beneficiaries, carrying out on-the-spot checks, monitoring the activity of intermediary bodies, sending payment requests, preparing and the submission of reports by the Management Authorities, intermediary bodies and other institutions involved in the handling of European funds are actions within the scope of the EU law.

For a clearer perspective, the figure below illustrates the positioning of the enabling conditions of respecting the Charter principles related to the entire process of programming and managing EU Funds.



Also, developing an audit strategy, conducting an audit, drafting opinions and reports by an audit authority involve taking measures to implement the EU law.

In what concerns the **implementation** of the programs, in the following there is a list of examples representing actions and documents ensuing from the CPR PROPOSAL, in the case of which the member states or the authorities assigned by them should grant special attention to the observance of the charter.

#### I. Management authority/ intermediary body

Crt. no.	Actions	Documents relevant to the action	References	Rights and principles to be tackled
1	Development and, after approval by the monitoring committee, application of appropriate	- documents related to the selection procedure	- article 35 of the CPR PROPOSAL, - article 67 of the CPR PROPOSAL	All rights and principles enforced by the Charter: Dignity, Freedoms, Equality, Solidarity, Citizenship and Justice, but paying more

	selection procedures and criteria, including preparation of calls for proposals	<ul style="list-style-type: none"> <li>- documents related to the selection criteria</li> </ul>	<ul style="list-style-type: none"> <li>- article 111 of the CPR PROPOSAL</li> <li>- (11)</li> <li>- article 12 of the TEC Regulation</li> <li>- second paragraph of the Treaty on the European Union.</li> </ul>	attention on protection of personal data, linguistic diversity, equality before the law, non-discrimination, equality between women and men, integration of persons with disabilities, environmental protection, the right to an effective remedy and a fair trial, safe working conditions.
2	implementation of programs, providing cumulative data on the operations selected for funding	<ul style="list-style-type: none"> <li>- documents setting out the conditions applicable to the contributions for each operation, including the specific requirements which regard the products or services to be provided within the operation, the financing plan and the execution deadline;</li> <li>- notifications of the major projects selected</li> </ul>	<ul style="list-style-type: none"> <li>- articles 44 and 67 of the CPR PROPOSAL,</li> <li>- article 21 of the TEC Regulation,</li> <li>- and (EU)</li> </ul>	All rights and principles enforced by the Charter: Dignity, Freedoms, Equality, Solidarity, Citizenship and Justice but paying more attention on protection of personal data, freedom of expression and information, freedom of assembly and association, the right to education, the freedom to conduct a commercial activity, property rights, protection in the event of displacement, expulsion or extradition, equality before the law, non-discrimination, equality between women and men, integration of persons with disabilities, environmental protection, the right to an effective remedy and a fair trial

3	informing potential beneficiaries about funding opportunities	- promotional and dissemination materials	Article 44 of the CPR PROPOSAL	All rights and principles enforced by the Charter: Dignity, Freedoms, Equality, Solidarity, Citizenship and Justice but paying more attention on equality before the law, non-discrimination.
4	maintaining and ensuring access to the list of operations accessible through the unique site or the unique internet portal	information on a website or internet portal	- Article 44 of the CPR PROPOSAL-	All rights and principles enforced by the Charter: Dignity, Freedoms, Equality, Solidarity, Citizenship and Justice but paying more attention on respecting private and family life, protecting personal data

#### 4. VERIFICATION OF COMPLIANCE WITH THE CHARTER DURING THE MONITORING PERIOD

Article 35 let. (h) from the Regulation Proposal established among the functions of the monitoring committee “(h) the fulfilling of the enabling conditions and their application during the entire period of scheduling”.

As part of the evaluation and monitoring of the projects, the MA is bound to ensure that the operations observe all the rights comprised in the Charter that fall into the six categories, namely Dignity, Freedoms, Equality, Solidarity, Citizenship and Justice.

The efficient monitoring of the compliance of the operations supported by the EU funds with the enabling conditions and the whole set of rights set out in the Charter should not be only a tick-box exercise in the context of the new realities and should ensure that the funding is spent in accordance with both the EU framework law, and with the priorities and objectives of EU policy.

In the context of the possibility of the European Commission to freeze the relevant payments when a breach of a certain enabling condition is identified, the monitoring committees of the EU-funded programs play a decisive role.

Particular attention will be paid to the component of the commissions / monitoring entities by including not only the representatives of the national authorities, but also the economic and social partners, the bodies representing the civil society and the environmental partners, as well as the bodies responsible for promoting social inclusion, fundamental rights, rights of persons with disabilities, gender equality and non-discrimination (for example, CNCD, ANES, etc.)



In order to monitor the application of the Charter in the project activities, the type of information and indicators to be collected and measured will be determined from the elaboration stage.

Complaints and possible situations of violation of a human right should be brought to the attention of the monitoring committees by any person or group of persons who believe they have been a victim of violation of human rights, any civil or human rights advocacy group, on behalf of one or more victims, any person who witnesses a situation of human rights violation.

Based on the data collected in the monitoring process, the assessments can show to what extent all rights enshrined in the Charter have been observed.

In this sense, in each report of the managing authority to the monitoring committee, for example in the documents regarding the stage of implementation of the programs, the cases of violation of the rights provided in the Charter or the suspicions of violation will be highlighted in a separate document or a chapter of the reports/synthesis.

Also, the measures implemented at each level of the managing authority for verification of the compliance of documents with the Charter provisions will be reported in the same chapter.

Non-exhaustive list of actions and documents for which the Charter must be observed:

#### A. For the Monitoring Committee

Crt. no.	Actions	Documents relevant to the action	References	Rights and principles to be tackled
1	Examination and approval of the communication strategy for the operational program and any modification of the strategy, the selection criteria of the operations	Communication strategy Selection criteria list	-Article 35 and 43 of the CPR PROPOSAL	All rights and principles enforced by the Charter: Dignity, Freedoms, Equality, Solidarity, Citizenship and Justice, but paying more attention on protection of personal data, non-discrimination, linguistic diversity, equality between women and men, integration of persons with disabilities
2	Establishment of additional norms regarding the eligibility of expenses in the programs	Documents that establish additional norms regarding the eligibility of expenses in the programs	Article 35 and 57 of the CPR PROPOSAL -	All rights and principles enforced by the Charter: Dignity, Freedoms, Equality, Solidarity, Citizenship and Justice but paying more attention on non-discrimination, equality between women and men, linguistic diversity, integration of persons with disabilities, equality before the law, the right to an

				effective remedy and a fair trial
3	Selection of operations	Scheduling documents	<ul style="list-style-type: none"> <li>- a</li> <li>- second subparagraph of Article 19 paragraph (1) of the Treaty on the European Union</li> </ul>	All rights and principles enforced by the Charter: Dignity, Freedoms, Equality, Solidarity, Citizenship and Justice but paying more attention on equality before the law, non-discrimination, equality between women and men, integration of persons with disabilities, protection of the environment, the right to an effective remedy and a fair trial
4	Review and approval of the annual implementation report	Annual performance review	-	All rights and principles enforced by the Charter: Dignity, Freedoms, Equality, Solidarity, Citizenship and Justice but paying more attention on the protection of personal data

#### B. For the Audit Authority

Crt. no.	Actions	Documents relevant to the action	References	Rights and principles to be tackled
1	Carrying out audits	Audit strategy Audit opinions Audit reports Control report	Articles 71, 72, 73, 74 of the CPR PROPOSAL	All rights and principles enforced by the Charter: Dignity, Freedoms, Equality, Solidarity, Citizenship and Justice, but paying more attention on the protection of personal data, respect for private

				and family life, non-discrimination
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## VII. HOW TO ANALYSE COMPLIANCE WITH THE CHARTER - CHECKLIST FOR RESPECTING FUNDAMENTAL RIGHTS

Respect for the fundamental rights contained in the Charter must be permanently verified, starting from the programming phase related to the funds and until the completion of the projects.

Thus, the check-list mentioned below will be applied during the drafting of the program documents (partnership agreement, programs, guides, calls) and will be monitored during and at the end of the projects.

VERIFICATION on the existence of a possible violation of fundamental rights

1. What are the fundamental rights affected?

- the action or measure envisaged in relation to the fundamental rights set out in the Charter is examined

- the "impact key questions" are asked:

Ref. no.	Effects on the fundamental rights	Key-questions
1	General statements	Which fundamental rights are affected?
2		Are the rights in question absolute rights (which cannot be subject to limitations, for example, human dignity and the prohibition of torture)?
3		Does this action (1) have both a beneficial impact and a negative impact, depending on the fundamental rights in question (for example, a negative impact on freedom of expression and a beneficial impact on intellectual property)?
4	Dignity	Does this action affect human dignity, the right to life or integrity of a person?
5		Does this action pose problems of a (bio) ethical nature (cloning, use of the human body or its parts as a source of profit, genetic research / testing, use of genetic information)?
6		Would this action entail risks in terms of torture and inhuman or degrading treatment or punishment?
7		Would this action have an impact on forced labour or trafficking in human beings?
8		Does the action affect the right to freedom of any persons?

9	Natural persons, private life and family life, freedom of conscience and expression	Does the action affect the right to privacy (including domicile and the secrecy of communications)?
10		Does the action affect a person's right to move freely within the territory of the Union?
11		Does it affect the right to marriage and the right to found a family or the legal, economic and social protection of the family?
12		Does the action affect freedom of thought, conscience and religion?
13		Does the action affect freedom of expression and information?
15		Does the action affect freedom of expression and information?
16		Does the action affect the freedom of assembly and association?
17		Does the action affect the freedom of the arts and sciences?
18	Personal data	Does the action involve the processing of personal data?
19		Who processes personal data and for what purpose?
20		Is the person's right of access, rectification and objection guaranteed?
21		Has the data processing activity been notified to the competent authority?
22		Do data processing / transfer chains also involve international transfers and, if so, are there any specific guarantees for international transfers?
23		Is the security of data processing activities technically and organizationally ensured?
24		Are guarantees provided to ensure the proportionality and the necessary character of the interference with the right to data protection?
25		Are appropriate / specific reviewing and monitoring mechanisms in place?
26	Asylum and protection in case of displacement, expulsion or extradition	Does this action affect the right of asylum and guarantee the prohibition against collective expulsion or extradition of persons to states where they are liable to be punished with death, torture or degrading treatment?
27	The rights of property and the right to perform a trading activity	Are property rights affected (land, movable property, tangible / intangible assets)? Is the acquisition, sale or use of property rights limited?
28		If so, will there be a complete loss of property? If so, what are the justifications and compensation mechanisms?
29		Does the action affect the freedom to conduct a commercial activity or impose additional requirements that increase the transaction costs for the economic operators concerned?
30	Equality between women and men, equal treatment and equal opportunities, non-discrimination and the rights of persons with disabilities.	Does the action guarantee the principle of equality before the law and would it directly or indirectly affect the principles of non-discrimination, equal treatment, equality between women and men and equal opportunities for all?
31		Does the action (directly or indirectly) have a different impact on women and men?
32		How does the action promote equality between women and men ?

33		How does the action involve different treatment of groups or individuals directly on the basis of reasons such as sex, race or ethnicity, religion or belief, disability, age and sexual orientation? Could it lead to indirect discrimination?
34		Does the action guarantee respect for the rights of persons with disabilities in accordance with the UN Convention on the Rights of Persons with Disabilities? In what way?
35	Rights of children	Does the action strengthen or limit the rights of the child (or of a group)? What is the justification for a possible limitation?
36		Does the action take into account the principle of the best interests of the child?
37		Does the action contribute to promoting the protection of the rights of the child? In this context, does it also consider the rights and principles set out in the UN Convention on the Rights of the Child (UNCRC)? If so, what articles might this be about?
38		How are the UN CRC's guiding principles promoted in the action?
39		Does the action violate any of the UN CRC's guiding principles?
40		What measures have been taken to improve or compensate for any adverse effects of the action?
41		Has the child's right to be heard regarding all aspects concerning him/her been observed?
42		Does the action contribute to the promotion of justice systems in the interests of the child, adapted to the needs, age and maturity of the child?
43	Good administration/ efficient way of challenging / court contestation	Will existing administrative procedures become more burdensome?
44		Will they guarantee the right to be heard, the right of access to the file with observance of professional and commercial secrecy, as well as the obligation of the administration to motivate its decisions?
45		Is the person's access to justice affected?
46		If the action affects the rights and freedoms guaranteed by Union law, does it provide for the right to an effective remedy before a court?
47		If the action concerns criminal law or concerns criminal penalties, were guarantees offered regarding the presumption of innocence and the right to defence, the principles of legality and proportionality of offenses and penalties, as well as the right not to be tried or convicted two times for the same crime?
48	Solidarity and rights of the workers	The action observes the rights of workers, such as: workers' right to information and consultation within the company; the right to negotiate and to take collective action; the right of access to placement services; protection in case of unjustified dismissal; fair and correct working conditions; the prohibition of child labour and the protection of young people at their work place, as well as the right of access to social security benefits and social services?

49	Environment protection	Does the action contribute to ensuring a high level of environmental protection and improving its quality, in accordance with the principle of sustainable development?

Additional facts and information about some violation of fundamental rights shall be outlined as follows:

2. Are the rights in question **absolute rights**? (for example, the prohibition of torture and the prohibition of slavery or servitude)

If it is concluded that the action or measure examined limits an absolute right, it must already be eliminated at this stage, since absolute rights cannot be limited and further analysis is not required in accordance with items 3-6.

3. What is the impact of the action or measure envisaged on fundamental rights? This stage aims to identify, for all the different stakeholders, any positive impact (promotion of fundamental rights) or negative (limitation of fundamental rights).

4. Does the action or measure envisaged have both a beneficial impact and a negative impact, depending on the fundamental rights concerned? (for example, a negative impact on freedom of expression and a beneficial impact on intellectual property)

If the analysis indicates that the action or measure envisaged would not have a significant impact on fundamental rights or would only have a positive effect on fundamental rights, there is no need for the additional analysis referred to under items 5 and 6.

If a **negative impact** is identified, the following aspects must be analysed:

5. Would the limitation / negative impact on fundamental rights be defined in the law in a clear and predictable way?

6. Such limitation / such negative impact:

- would really achieve an objective of general interest of the Union or would it protect the rights and freedoms of others? (This step should identify what is the objective of general interest or of protecting the rights and freedoms of others.)
- would it be necessary in order to achieve the goal pursued? (This step should examine whether the measure is appropriate and effective for achieving the goal pursued without going beyond what is necessary for the purpose of achieving it. Why is an equally effective but less intrusive measure not available?)
- would it be proportionate to the goal pursued?
- would it maintain the essence of the fundamental rights in question?

If all these questions on the negative impact can be answered in an affirmative manner, the limitation of the fundamental right affected can be considered legitimate.

## VIII. Examples/models from Court of Justice of the European Union

Case no 1.

Case C-562/12 of CJEU Liivimaa Lihaveis MTÜ/Eesti-Läti programmi 2007-2013 had as subject-matter Seirekomitee, set up within the crossborder cooperation programme Estonia-Letonia: Seirekomitee, a body made up of representatives of both Member States, made the final decisions regarding the qualitative evaluation of the applications for projects under this program. The respective committee also adopted a program manual which stated that its decisions could not be appealed to a national court. Although the adoption of a program manual was not explicitly mentioned in the applicable law for the 2007-2013 programming period and in no EU implementing provisions, the CJEU concluded that the manual had been clearly adopted with a view to implementing application of EU rules and that it was mandatory for anyone who wanted to get aid under the said program. Therefore, the charter, including Article 47, was considered applicable in this case. The CJEU considered that the exclusion from a program manual of judicial review before a national court of a decision rejecting a grant is not in accordance with Article 47.

## Case no 2.

Case C-195/12, JUDGMENT OF THE COURT (Fourth Chamber) 26 September 2013

(Directive 2004/8/EC - Scope - Cogeneration and high efficiency cogeneration - Article 7 - Regional support scheme providing for the grant of 'green certificates' to cogeneration plants - Grant of a larger number of green certificates to cogeneration plants processing principally forms of biomass other than wood or wood waste - Principle of equality and non-discrimination - Articles 20 and 21 of the Charter of Fundamental Rights of the European Union)

Industrie du bois de Vielsalm & Cie (IBV) SA versus Région wallonne

In the IBV case, the Directive 2004/8 on cogeneration and Directive 2001/77 on renewable energy allowed Member States to set supporting schemes for promotion of co-generation and renewable energy. The Member States had the option to choose and combine various support schemes such as "investment aid, tax exemptions or reductions, green certificates and/or direct price support schemes". In this case, the Court held that, when opting for a particular support scheme setting, Member States are exercising national discretion, however, they must observe the Charter and the principles of equal treatment and non-discrimination, in particular when setting selection criteria and operational rules for access to funding.

"The Court (Fourth Chamber) hereby rules:

1. Article 7 of Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC must be interpreted as meaning that its scope is not limited solely to cogeneration plants which are high efficiency cogeneration plants within the meaning of that directive.
2. In the present state of European Union law, the principle of equal treatment and non-discrimination laid down in particular in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union does not preclude the Member States, when introducing national support schemes for cogeneration and electricity production from renewable energy sources, such as those referred to in Article 7 of Directive 2004/8 and Article 4 of Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market, from providing for an enhanced support measure such as that at issue in the main proceedings capable of benefiting all cogeneration plants principally using biomass with the exclusion of cogeneration plants principally using wood and/or wood waste."

Case no 3

C 476/12 Liivimaa Lihaveis MTÜ v Eesti-Läti programmi 2007-2013 Seirekomitee

Key facts of the case:

(Reference for a preliminary ruling – Structural funds – Regulations (EC) Nos 1083/2006 and 1080/2006 – European Regional Development Fund (ERDF) – Operational programme aiming to promote European territorial cooperation between the Republic of Estonia and the Republic of Latvia – Decision of the monitoring committee rejecting a subsidy – Provision that the decisions of that committee cannot be subject to legal review – Article 267 TFEU – Act adopted by an institution, organ or body of the European Union – Charter of Fundamental Rights of the European Union – Implementation of EU law – Article 47 – Right to effective judicial protection – Right of access to the courts – Determination of which Member State’s courts have jurisdiction to rule on an action)

In the area of disbursement of EU funds, the Court of Justice ruled on the applicability and scope of Article 47 of the Charter in relation to national rules providing for an absolute ban on judicial review of a decision refusing funding for a project, which was made by the monitoring committee of a cross-border cooperation programme ( 385). The request for a preliminary ruling was made in proceedings between an association of cattle breeders and the monitoring committee of the Estonia-Latvia programme for 2007 to 2013, concerning the latter’s rejection of an application for subsidies made by that association in the context of the implementation of the European Regional Development Fund (ERDF). The Court ruled that the adoption of the programme manual by the monitoring committee had to be regarded as a measure implementing EU law within the meaning of Article 51(1) of the Charter and that the lack of any remedy against the decision refusing funding for a project did not comply with the principle of effective judicial protection laid down in Article 47(1) of the Charter.

On those grounds, the Court (Fourth Chamber) hereby rules:

Article 263 TFEU must be interpreted as meaning that, in the context of an operational programme under Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 and Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) 1783/1999 and intended to promote European territorial cooperation, an action against a decision of a monitoring committee rejecting an application for aid does not fall within the jurisdiction of the General Court of the European Union;

Point (b) of the first paragraph of Article 267 TFEU must be interpreted as meaning that a programme manual adopted by a monitoring committee in the context of an operational programme under Regulations Nos 1083/2006 and 1080/2006 and intended to promote European territorial cooperation between two Member States, such as that at issue in the main proceedings, does not constitute an act of an institution, body, office or agency of the European Union and, in consequence, the Court of Justice of the European Union does not have jurisdiction to review the validity of the provisions of such a manual;

Regulation No 1083/2006, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding a provision of a programme manual adopted by a monitoring committee in the context of an operational programme established by two Member States and intended to promote European territorial cooperation, where that provision does not provide that a decision of the monitoring committee rejecting an application for aid can be subject to appeal before a court of a Member State.

Results (sanctions) and key consequences of the case:

Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.



## IX. Bibliography

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4. Raportul FRA pe anul 2019 [Report of the Agency for Fundamental Rights for 2019]

[http://kirp.pl/wp-content/uploads/2019/06/fra-2019-fundamental-rights-report-2019\\_en.pdf](http://kirp.pl/wp-content/uploads/2019/06/fra-2019-fundamental-rights-report-2019_en.pdf)

## ANNEX 1

TEXT of the charter and national supporting legislation

CHARTER OF FUNDAMENTAL RIGHTS OF THE  
EUROPEAN UNION  
(2010/C 83/02)

30.0(3)2010 Official Journal of the European Union C 83/389

The European Parliament, the Council and the Commission solemnly proclaim the following text as the Charter of Fundamental Rights of the European Union.

## CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

### PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice. The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights.

In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention. Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations. The Union therefore recognises the rights, freedoms and principles set out hereafter.

### TITLE I

#### DIGNITY

##### Article 1

##### Human dignity

Human dignity is inviolable. It must be respected and protected.

##### Article 2

##### Right to life

(1) Everyone has the right to life.

(2) No one shall be condemned to the death penalty, or executed.

- *Art.22 of the Constitution of Romania*

##### Article 3

## Right to the integrity of the person

(1) Everyone has the right to respect for his or her physical and mental integrity.

(2) In the fields of medicine and biology, the following must be respected in particular:

- (a) the free and informed consent of the person concerned, according to the procedures laid down by law;
- (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;
- (c) the prohibition on making the human body and its parts as such a source of financial gain;
- (d) the prohibition of the reproductive cloning of human beings.
- (e)

- *Art.22 of the Constitution of Romania*

## Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

- *Art.22 of the Constitution of Romania*

## Article 5

Prohibition of slavery and forced labour

(1) No one shall be held in slavery or servitude.

(2) No one shall be required to perform forced or compulsory labour.

(3) Trafficking in human beings is prohibited.

## TITLE II

### FREEDOMS

## Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

- *Art.23 of the Constitution of Romania*

## Article 7

Respect for private and family life

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

- *Art.26 of the Constitution of Romania*

## Article 8

Protection of personal data

(1) Everyone has the right to the protection of personal data concerning him or her.

(2) Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

(3) Compliance with these rules shall be subject to control by an independent authority.

<https://www.legeagdpr.ro/>

#### Article 9

##### Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

#### Article 10

##### Freedom of thought, conscience and religion

(1) Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

(2) The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

#### Article 11

##### Freedom of expression and information

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

(2) The freedom and pluralism of the media shall be respected.

- *Art.30 of the Constitution of Romania*

#### Article 12

##### Freedom of assembly and of association

(1) Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

(2) Political parties at Union level contribute to expressing the political will of the citizens of the Union.

#### Article 13

##### Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

#### Article 14

##### Right to education

(1) Everyone has the right to education and to have access to vocational and continuing training.

(2) This right includes the possibility to receive free compulsory education.

(3) The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

- *Art.32 of the Constitution of Romania*

## Article 15

Freedom to choose an occupation and right to engage in work

- (1) Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
- (2) Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
- (3) Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

\* *Art 3-5 of the Labour Code*

[http://www.mmuncii.ro/j33/images/Documente/MMJS/Legislatie/Munca/2018/20190207-L\\_53-Codul\\_muncii\\_ian-2019.pdf](http://www.mmuncii.ro/j33/images/Documente/MMJS/Legislatie/Munca/2018/20190207-L_53-Codul_muncii_ian-2019.pdf)

\*\* *Art.41 of the Constitution of Romania*

## Article 16

Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

## Article 17

Right to property

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

- *Art 44 of the Constitution of Romania*

## Article 18

Right to asylum

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

## Article 19

Protection in the event of removal, expulsion or extradition

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

## TITLE III

## EQUALITY

## Article 20

## Equality before the law

Everyone is equal before the law.

30.3.2010 Official Journal of the European Union C 83/395 RO

### Article 21

#### Non-discrimination

(1) Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

(2) Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

- *Ordinance no. 137 /2000 on the prevention and sanctioning of all forms of discrimination*

### Article 22

#### Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

### Article 23

#### Equality between women and men

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

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

*\*See also the National Strategy for the promotion of equal opportunities between women and men and the prevention and combating of domestic violence for the period 2018-2021 as well as the Operational Plan for the period 2018 - 2021 for the implementation of the Strategy, approved by Government Decision no. 365 / 24.05.2018, published in the Official Gazette of Romania, Part I, no. 465 / 06.06.2018*

<http://anes.gov.ro/egalitatea-de-sanse-intre-femei-si-barbati/>

*\*\*For the post-2020 period the Strategy is working as follows:*

*At the government meeting on December 18, 2018, the Memorandum was approved, which assumed the Elaboration of the National Strategy for social inclusion and equal opportunities after 2020. For elaboration, there is technical assistance through the POCA project - beneficiary: MMJS in partnership with the National School of Political and Administrative Studies and the National Agency for Equal Opportunities for Women and Men - Developing a national policy framework for social inclusion and equal opportunities after 2020*

### Article 24

#### The rights of the child

(1) Children shall have the right to such protection and care as is necessary for their well-being.

They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

(2) In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

(3) Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

#### Article 25

##### The rights of the elderly

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

C 83/396 Official Journal of the European Union 30.3.2010 RO

#### Article 26

##### Integration of persons with disabilities

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

- *Law no. 448/2006, regarding the protection and promotion of the rights of persons with disabilities*
- *The UN Convention on the Rights of Persons with Disabilities, ratified by Romania by Law no. 221/2010*
- *The draft National Strategy on the Rights of Persons with Disabilities 2021-2027 and the Operational Plan to ensure the implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) will be drafted by July 2020, with specific objectives / targets and measurable indicators.*

#### TITLE IV

#### SOLIDARITY

#### Article 27

##### Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

#### Article 28

##### Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

#### Article 29

##### Right of access to placement services

Everyone has the right of access to a free placement service.

#### Article 30

##### Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

#### Article 31

##### Fair and just working conditions



(1) Every worker has the right to working conditions which respect his or her health, safety and dignity.

(2) Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

30.3.2010 Official Journal of the European Union C 83/397 RO

#### Article 32

##### Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

- *Art 49 of the Constitution of Romania*

#### Article 33

##### Family and professional life

(1) The family shall enjoy legal, economic and social protection.

(2) To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

#### Article 34

##### Social security and social assistance

(1) The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.

(2) Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.

(3) In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

#### Article 35

##### Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

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#### Article 36

##### Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.

## Article 37

## Environmental protection

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

## Article 38

## Consumer protection

Union policies shall ensure a high level of consumer protection.

## TITLE V

## CITIZENS' RIGHTS

## Article 39

## Right to vote and to stand as a candidate at elections to the European Parliament

(1) Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

(2) Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

## Article 40

## Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

## Article 41

## Right to good administration

(1) Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

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(2) This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

(c) the obligation of the administration to give reasons for its decisions.

(3) Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

## Article 42

## Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

#### Article 43

##### European Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

#### Article 44

##### Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

#### Article 45

##### Freedom of movement and of residence

(1) Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

(2) Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

#### Article 46

##### Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

## TITLE VI

### JUSTICE

#### Article 47

##### Right to an effective remedy and to a fair trial

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

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

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

#### Article 48

##### Presumption of innocence and right of defence

(1) Everyone who has been charged shall be presumed innocent until proved guilty according to law.

(2) Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

#### Article 49

##### Principles of legality and proportionality of criminal offences and penalties

- (1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
- (2) This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
- (3) The severity of penalties must not be disproportionate to the criminal offence.

#### Article 50

##### Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

### TITLE VII

#### GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

#### Article 51

##### Field of application

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

#### Article 52

##### Scope and interpretation of rights and principles

- (1) Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
- (2) Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.
- (3) In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
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5. The provisions of this Charter which contain principles may be implemented by legislative and

executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.

6. Full account shall be taken of national laws and practices as specified in this Charter.

7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.

5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.

6. Full account shall be taken of national laws and practices as specified in this Charter.

7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.

#### Article 53

##### Level of protection

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

#### Article 54

##### Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

The above text adapts the wording of the Charter proclaimed on 7 December 2000, and will replace it as from the date of entry into force of the Treaty of Lisbon.