

**Comments of the Commission on the European Ombudsman's Own-initiative inquiry
– Ref. OI/8/2014/AN**

I. SUMMARY OF THE FACTS

On 21 December 2013, the basic acts of the new legislative package on cohesion policy entered into force.

On 7 January 2014, the Commission adopted Delegated Regulation (EU) No 240/2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds¹, which aims at facilitating Member States' implementation of the partnership principle.

On 19 May 2014, the European Ombudsman opened an own-initiative inquiry seeking clarification as regards the means which the European Commission has at its disposal to ensure that fundamental rights enshrined in the Charter are complied with at all stages of the implementation of the cohesion policy in the Member States.

II. THE INQUIRY

The European Ombudsman asked the Commission to provide her with its views on the following: "What means does the Commission have at its disposal to ensure that fundamental rights enshrined in the Charter are complied with at all stages of the implementation of the cohesion policy in Member States".

In particular, the European Ombudsman asked the Commission to comment on the following issues:

1. Has the Commission considered introducing, or requesting Member States to introduce, specific provisions regarding compliance with the Charter in the Partnership Agreements it is currently assessing? Does the Commission consider that the existence of such provisions could be a pre-condition to its approval of a Member State's Partnership Agreement?
2. Why has the Commission not introduced specific provisions regarding compliance with the Charter in the Delegated Regulation on the European code of conduct on partnership meant to assist Member States in organising their partnerships with regional and local authorities and civil society?
3. Has the Commission considered asking Member States to include in their programmes a specific commitment to act, and to ensure that their partners and the beneficiaries act in compliance with the Charter? Does the Commission consider that such a commitment should play a role in its assessment of the programmes?
4. Does the Commission have any means to verify whether the "effective arrangements for the examination of complaints concerning the European Structural and Investment Funds" are indeed effective and allow for the detection and, if necessary, redress of any possible breach of the fundamental rights enshrined in the Charter?

¹ OJ L 74, 14.3.2014, p. 1

5. Does the Commission intend to assist Member States in putting such arrangements in place?
6. Does the Commission intend systematically to request Member States to examine complaints submitted to the Commission falling within the scope of their arrangements and to inform the Commission of their outcome, particularly when such complaints relate to the respect for the fundamental rights enshrined in the Charter?
7. What means does the Commission have at its disposal to tackle situations in which Member States do not provide the above information, or where the information provided shows that the Member State's examination was flawed?
8. Does the Commission currently have a unified approach towards complaints concerning the national implementation of the European Structural and Investment Funds, for instance by handling them as infringement complaints or by referring complainants to the national means or redress? Is the approach the same in cases concerning possible breaches of fundamental rights enshrined in the Charter?
9. Is the Commission contemplating any changes to the above approach following the entry into force of the new legal framework for the cohesion policy?

III. THE COMMISSION'S COMMENTS ON THE INQUIRY

General comment on the scope of the inquiry and on the scope of application of the Charter of Fundamental Rights:

The Commission attaches great importance to the respect of fundamental rights, including in the context of cohesion policy implementation. That is why the Commission introduced a number of obligations on Member States' part, as well as on its own part in its proposal for a Regulation laying down common provisions on the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD) (hereinafter the 'European Structural and Investment Funds' or 'ESI Funds') and the European Maritime and Fisheries Fund (EMFF) and laying down general provisions on the ERDF, the ESF, the Cohesion Fund and the European Maritime and Fisheries Fund and sought during the negotiations to maintain and reinforce where possible these elements. As a result the framework for ensuring respect of fundamental rights is significantly strengthened in Regulation (EU) No 1303/2013 of the European Parliament and of the Council², notably through the following provisions:

- As a general principle, Article 4(2) of the Regulation (EU) No 1303/2013 requires the Commission and the Member States to ensure that support of the ESI Funds is consistent with relevant policies and horizontal principles as referred to, inter alia, in Article 7 of the Regulation, and priorities of the Union.

² Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund (OJ L 347, 20.12.2013, p. 320).

- Article 6 of Regulation (EU) No 1303/2013 requires that operations supported by the ESI Funds must comply with applicable Union law and national law relating to its application ('applicable law').
- According to Article 7 of Regulation (EU) No 1303/2013 Member States and the Commission have to ensure the respect for the principles of equality between men and women and non-discrimination throughout the preparation and implementation of programmes.
- More specifically, Article 15 of Regulation (EU) No 1303/2013 provides that the Partnership Agreements must set out the application of horizontal principles such as referred to in Article 7 on promotion of equality between men and women and non-discrimination.
- Part II of Annex XI Regulation (EU) No 1303/2013 establishes *ex ante* conditionalities *inter alia* in the area of anti-discrimination, gender and disability which have to be fulfilled, in case they are applicable to the specific objectives pursued within the priorities of Member States' programmes, requiring the existence of administrative capacity for the implementation and application of Union anti-discrimination law and policy, gender equality law and policy as well as the United Nations Convention on the rights of persons with disabilities (UNCRPD) in the field of ESI Funds.

These provisions are complemented by a new explicit obligation imposed on Member States to set up effective arrangements for the examination of complaints (Article 74(3) of Regulation (EU) No 1303/2013).

As regards the scope of application of the Charter, the Commission considers that as stated in Article 51(1) of the Charter, its provisions 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. Institutions as the Commission and the Member States 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. However, paragraph 2 of that Article also set out that 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.

In line with the Court of Justice's settled case-law interpreting these provisions (see case C-198/13, *Hernández and others v Spain*, paragraphs 33-37), the concept of "only when they are implementing Union law" does not mean that Member States are automatically implementing Union law when they hand out support under the ESIF Funds, regardless what is the "national measure" or "national legislation" behind the act attacked by a complainant or applicant. The concept of "implementing Union law" presupposes a degree of connection between the measure of EU law and the national measure at issue which goes beyond the matters covered being closely related or one of those matters having an indirect impact on the other (Case C-198/13, paragraph 34). In order to determine whether a national measure involves the implementation of EU law, it is according to the Court of Justice (Case C-198/13, paragraph 37) "*necessary to determine, inter alia,*

- *whether that national legislation is intended to implement a provision of EU law;*
- *the nature of the legislation at issue and*
- *whether it pursues objectives other than those covered by EU law, even if it is capable of indirectly affecting EU law;*
- *and also whether there are specific rules of EU law on the matter or rules which are capable of affecting it.*³

The above reasoning would apply mutatis mutandis to any national measure implementing EU law, legislative or not.

In case C-562/12 *Liivimaa Lihaveis MTÜ v Eesti-Läti programmi 2007-2013 Seirekomitee* of 17 September 2014, paragraph 62, the Court took the view that, in cohesion policy as in other areas, the concept of ‘implementing Union law’ requires a certain degree of connection above and beyond the matters covered being closely related or one of those matters having an indirect impact on the other.

The consequences of this case law is that it will be necessary to examine whether or not in a practical case a national measure is intended to implement a provision of Union law.

Question 1. Has the Commission considered introducing, or requesting Member States to introduce specific provisions regarding compliance with the Charter in the Partnership Agreements it is currently assessing? Does the Commission consider that the existence of such provisions could be a pre-condition to its approval of a Member State's Partnership Agreement?

The Treaty on the European Union (TEU) stipulates in Article 6 that the Charter of Fundamental Rights of the European Union (the 'Charter') has the same legal value as the Treaties. As stated in Article 51(1) of the Charter, its provisions are applicable to the institutions and bodies of the Union and to the Member States when they are implementing Union law. Consequently, the Charter is binding on Member States even without any explicit reference in the secondary legislation (for more details see reply to question 3).

Nevertheless, Regulation (EU) No 1303/2013 imposes a series of obligations on Member States with a potential relevance to certain fundamental rights.

Article 4(2) of Regulation (EU) No 1303/2013 requires the Commission and the Member States to ensure that support from the ESI Funds is consistent with the relevant policies, horizontal principles referred to in Articles 5, 7 and 8 and priorities of the Union.

Article 6 of Regulation (EU) No 1303/2013 sets out the general principle that operations supported by the ESI Funds shall comply with applicable Union law and the national law relating to its application ('applicable law').

Article 7 of Regulation (EU) No 1303/2013 sets out that Member States and the Commission shall ensure that equality between men and women and the integration of gender perspective are taken into account and promoted throughout the preparation and implementation of

³ Bullet points inserted for better readability.

programmes, including in relation to monitoring, reporting and evaluation. Member States and the Commission must take appropriate steps to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the preparation and implementation of programmes. In particular, accessibility for persons with disabilities must be taken into account throughout the preparation and implementation of programmes.

Article 15 of Regulation (EU) No 1303/2013 sets out the exhaustive list of elements that have to be indicated in the Partnership Agreements. The Commission is not entitled to require additional elements. Its provisions do not refer explicitly to the Charter of the Fundamental Rights as such. It follows from this, that compliance with the Charter cannot be a pre-condition for approval of a Member State's Partnership Agreement, and a reference to the Charter is not necessary. Among the elements to be mentioned in the Partnership agreement Article 15(1)(a)(v) of Regulation (EU) No 1303/2013 stipulates that the application of the horizontal principles referred to in Article 5, 7 and 8 of Regulation (EU) No 1303/2013, which cover a range of rights and principles also protected by the Charter, has to be set out in the Partnership Agreements. This includes the promotion of equality between men and women and non-discrimination. This part of the Partnership Agreement is subject to the approval by the Commission.

Question 2. Why has the Commission not introduced specific provisions regarding compliance with the Charter in the Delegated Regulation on the European code of conduct on partnership meant to assist Member States in organising their partnerships with regional and local authorities and civil society?

Article 5 of Regulation (EU) No 1303/2013 sets out a clear framework for partnership and multi-level governance. The concept of partnership covers different steps of the implementation of cohesion policy: preparation of Partnership Agreements and programmes, reporting and monitoring of programmes' implementation. Such partnership shall involve sub-national authorities, socio-economic partners, but also bodies responsible for promoting social inclusion, gender equality and non-discrimination (paragraphs 1 and 2 of that Article). The Commission was empowered to adopt a delegated act laying down main principles and good practices within which Member States must pursue the implementation of the partnership "in accordance with their institutional and legal framework, as well as their national and regional competences" (paragraph 3 of that Article).

In the context of the organisation of partnership, specific attention should be paid to include groups who may be affected by programmes but who find it difficult to influence them, in particular the most vulnerable and marginalised communities, which are at highest risk of discrimination or social exclusion, as persons with disabilities, migrants and Roma people (recital 4). This is the reason why, the Delegated Regulation on the European code of conduct refers to certain principles listed in Article 7 of Regulation (EU) No 1303/2013 and also enshrined in the Charter. Article 3(1)(c) of the Delegated Regulation (EU) No 240/2014 provides that Member States, for the Partnership Agreements, shall identify the relevant partners among at least the following: bodies responsible for promoting social inclusion, gender equality and non-discrimination. Likewise, according to Article 4(1)(c) of that Regulation, Member States, for each operational programme, shall identify the relevant partners among at least the following: bodies responsible for promoting social inclusion, gender equality and non-discrimination. Finally, Article 10(1) of that Regulation on the composition of monitoring committees of each operational programme states the following: "When formulating the rules of membership of the monitoring committee, Member States

shall take into account the involvement of partners that have been involved in the preparation of the programmes and shall aim to promote equality between men and women and non-discrimination."

Question 3. Has the Commission considered asking Member States to include in their programmes a specific commitment to act, and to ensure that their partners and the beneficiaries act in compliance with the Charter? Does the Commission consider that such a commitment should play a role in its assessment of the programmes?

As regards the specific aspect of the preparation of operational programmes by Member States and the assessment of the draft programmes by the Commission, Article 96 of Regulation (EU) No 1303/2013⁴ describes the content of an operational programme and the content of the Commission implementing decision adopting this programme. But it does not request any specific commitment for Member State's authorities to act in compliance with the Charter. Therefore, there is no legal base to require the Commission to make it conditional to operational programmes approval. However, this does not mean that the Member States do not have the obligation to monitor/check that the funds are disbursed by the partners and beneficiaries in a way compliant with the Charter when they act in implementing EU law as set out above.

Non-discrimination, promotion of equality between men and women and integration of persons with disabilities as enshrined in Articles 21, 23, and 26 of the Charter are also covered by Article 7 of Regulation (EU) No 1303/2013.

In this respect, as regards Member States, the Regulation requires a number of *ex ante* conditionalities to be fulfilled if they are applicable to the specific objectives pursued within the priorities of Member States' programmes. They include general *ex ante* conditionalities related to anti-discrimination, gender and disability requiring the existence of administrative capacity for the implementation and application of Union anti-discrimination law and policy, gender equality law and policy as well as the United Nations Convention on the rights of persons with disabilities (UNCRPD) in the field of ESI Funds.

Each programme must identify which *ex ante* conditionalities are applicable to it and which of them are not fulfilled at the date of the submission of a programme. In case an applicable *ex ante* conditionality is not fulfilled, the programme must contain as well a description of the action to be taken, the bodies responsible and the timetable for their implementation. Member States are required to fulfil those *ex ante* conditionalities not later than 31 December 2016 and report on their fulfilment at latest in the annual implementation report in 2017 or the progress report. The failure to complete actions to fulfil applicable *ex ante* conditionalities by the mentioned deadline constitutes a ground for suspending interim payments by the Commission to the priorities of the programme concerned that are affected.

In addition, Regulation (EU) No 1303/2013 demands Member States to set out the specific actions to promote equal opportunities and prevent discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, during the preparation, design and implementation of the operational programme and in particular in relation to access to funding, taking account of the needs of the various target groups at risk of such discrimination and in particular the requirements to ensure accessibility for persons with disabilities as well as the contribution of the programme to the promotion of equality for men

⁴ See also the fund specific rules for programmes under the European territorial cooperation goal, the EAFRD and the EMFF.

and women in their cohesion policy programmes (Article 96(7)(b) of Regulation (EU) No 1303/2013).

As regards the implementation of programmes, Article 125(3)(ii) of the Regulation requires managing authorities to draw up and apply non-discriminatory and transparent selection procedures and criteria, taking into account the promotion of equality between men and women and non-discrimination.

With respect to individual beneficiaries, it is the responsibility of Member States to fix the conditions of support from the programme to beneficiaries in line with their obligations deriving from the Regulation and from all applicable legislation, including the Charter.

Without prejudice of infringement proceedings under Article 258 TFEU, should a Member State not ensure proper application of the Charter when taking acts or measures in the course of implementation of EU law this would constitute an irregularity or even a serious deficiency in the effective functioning of the management and control system of operational programmes which may trigger a suspension of payments or a financial correction, as a Member State has not complied with its obligations under Article 143⁵ of the Regulation (Article 142 and 144(1)(a) and (b) of Regulation (EU) No 1303/2013).

Question 4. Does the Commission have any means to verify whether the "effective arrangements for the examination of complaints concerning the European Structural and Investment Funds" are indeed effective and allow for the detection and, if necessary, redress of any possible breach of the fundamental rights enshrined in the Charter?

Article 74(3) of Regulation (EU) No 1303/2013 provides that Member States have to “ensure that effective arrangements for the examination of complaints concerning the ESI Funds are in place”. The scope, rules and procedures concerning such arrangements according to the Regulation are the responsibility of Member States in accordance with their respective institutional and legal frameworks.

The treatment of complaints is considered part of the management and control system at national level and the existence of effective arrangements to carry out all stages of the procedure for the examination of complaints within the Member State will be part of the assessment carried out by the Commission with regard to the proper functioning of this management and control system provided for in Article 75 of Regulation (EU) No 1303/2013. Additionally, Article 74(3) of the Regulation provides for the possibility for the Commission to ask Member States to inform the Commission of the results of their examination and allows the Commission to verify the effectiveness of the arrangements for example by assessing random samples of the results of the examinations and the time needed to finalise replies to complainants.

In addition to what is required for programmes under the Investment for growth and jobs goal, Article 8(4)(a)(iv) of Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal⁶ requires that programmes under the European territorial cooperation goal also "set out a summary

⁵ According to Article 143 of Regulation (EU) No 1303/2013, Member States are in the first instance responsible to investigate and make financial corrections as regards individual or systemic irregularities.

⁶ OJ L 347, 20.12.2013, p. 259.

description of the management and control arrangements". When assessing the draft programmes, the Commission is systematically asking the participating Member States to explain the planned complaints handling procedure. This pro-active approach is based on past experience where Member States were more restrictive in this respect for cross-border cooperation programmes than for the national programmes on their territory (see case C-562/12 *Liivimaa Lihaveis MTÜ v Eesti-Läti programmi 2007-2013 Seirekomitee* of 17 September 2014). In case of continued failure by Member States to handle complaints effectively or evidence that the system does not work properly, the Commission will ask the Member States to correct the situation, using all means available including observations in the annual review meeting between the Commission and the Member State for each programme.

The failure of a Member State to establish a complaints handling procedure could constitute a serious deficiency which would provide the basis for suspension of payments (Article 142 of Regulation (EU) No 1303/2013) and may ultimately lead to a financial correction pursuant to Article 144(1)(a) of that Regulation.

As preventive measure, the Commission, when drafting the model description of functions and procedures to be set up by Member States, is proposing that they define:

- 1) procedures for the verifications of operations (...), including for ensuring the compliance of operations with the Union policies (such as those related to partnership and multi-level governance, promotion of equality between men and women, non-discrimination, accessibility for persons with disabilities,
- 2) scope, rules and procedures of the Managing Authority and certifying authority concerning the effective arrangements set out by the Member State for the examination of complaints concerning the ESI Funds, in the context of Article 74(2) of Regulation (EU) No 1303/2013.

If the draft Implementing act is adopted as proposed (based on the opinion of the ESIF Committee), the Independent Audit Body responsible in the Member State for drawing an opinion on the designated managing and certifying authorities will verify if these procedures have been set up by the Member State. Subsequently, the Commission may, for programmes above EUR 250 million of ESIF support and under the conditions laid down in paragraphs 3 and 4 of Article 124 of the CPR, verify whether the Independent Audit Body has assessed these aspects adequately.

Question 5. Does the Commission intend to assist Member States in putting such arrangements in place?

If there is no system for the handling of complaints in place, a system has to be set up by the Member States. Since the Regulation expressly provides that this comes under the responsibility of the Member States in accordance with their institutional and legal framework, Member States can establish the system that best suits their legal and institutional system, provided the arrangements put in place are effective. The Commission has no empowerment to adopt further provisions concerning the arrangements referred to in Article 74(3) Regulation (EU) No 1303/2013. The Commission will however disseminate good practises of what are effective arrangements for the treatment of complaints.

It should be noted, that Member States could use ESI Funds to support technical assistance including arrangements for complaints resolution.

In addition, the Commission will formally write to Member States to remind them of their obligations as regards the respect of the Charter of Fundamental Rights when Member States

implement EU law. The Commission will also issue a guidance document addressed to the Member States as regards the respect of the Charter of Fundamental Rights when Member States implement EU law in the context of the disbursement of ESI funds and provide training in the Member States on the Charter.

Question 6. Does the Commission intend systematically to request Member States to examine complaints submitted to the Commission falling within the scope of their arrangements and to inform the Commission of their outcome, particularly when such complaints relate to the respect for the fundamental rights enshrined in the Charter?

The aim of Article 74(3) of Regulation (EU) No 1303/2013 is to ensure that effective systems to handle complaints concerning ESI Funds are in place in the Member States to allow for complaints to be dealt with at national level.

The said provision does not preclude the submission of complaints to the Commission. In this context, for the 2014-2020 programming period, when the Commission receives a complaint within the scope of these arrangements, as a general rule it will ask the Member State to deal with it.

Upon request, the Member State will have to report within a set deadline on the follow up given to the complaint, in order for the Commission to be able to check the proper treatment of the complaints received. The Commission will in this case assess whether the Member State has handled the complaint according to the arrangements set up at national or regional level for the examination of the complaints.

This complaints' handling system applies to all types of complaints (the ones alleging a breach of any 'applicable rule'⁷ and to the ones alleging a violation of the Charter when implementing Union law). As regards complaints alleging violation of the Charter, the Charter as part of EU law could only be breached where Member States acted in implementing EU law (other than the Charter, see Article 51(1) thereof).

Even where the complaint concerns an alleged breach of one of the provisions of the Charter, it is still in first instance for the Member States under the principle of shared management to deal with the complaints.

The Commission would deal with complaints addressed directly to it and which cannot be transferred to Member States according to Article 74(3) of Regulation (EU) No 1303/2013, because the complaint concerns either an act (or omission) of the Commission or Union legislation as such (which would allegedly contain provisions in breach of the Charter).

The Commission considers that the provisions in Regulation (EU) No 1303/2013 concerning the set-up of effective arrangements for the handling of complaints will ensure the verification of alleged violations of fundamental rights. The Commission will also check whether a complaints handling system is in place and whether that system delivers effective assessment of the case.

The Commission can in no way substitute the judicial procedures set up in the Member States in accordance with their institutional and legal framework. In accordance with the second subparagraph of Article 19(1) TEU the Member States must provide "remedies sufficient to ensure effective legal protection in the fields covered by Union law". This provision requires Member States to put in place judicial procedures which allow individuals to protect the rights which they derive from the Union's legal order. Article 125(3)(a) of Regulation (EU) No

⁷ As defined in Article 6 of Regulation (EU) No 1303/2014.

1303/2013 provides that the managing authority shall apply "appropriate selection procedures and criteria that ensure the contribution of operations to the achievement of the specific objectives and results of the relevant priority axis". Whilst there is no legal entitlement to receiving a grant under the Union's funding schemes that Article nevertheless confers a right on individual applicants to have their applications assessed in accordance with the established criteria. Hence, the second subparagraph of Article 19(1) TEU and also Article 47 of the Charter imposes an obligation on Member States to ensure effective judicial legal protection of unsuccessful applicants.

Article 19(1) TEU requires Member States to provide for judicial protection in order to safeguard the rights which individuals derive from Union law. In doing so, the Member States implement Union law within the meaning of Article 51(1) of the Charter of Fundamental Rights. As a consequence, Member States are bound notably by Article 47 of the Charter (see again case C-562/12, where the Court of Justice stated that the lack of any remedy against a rejection decision concerning an unsuccessful project application under a cooperation programme, as set out in a document adopted by the monitoring committee, deprives the applicant of its right to an effective remedy, in breach of Article 47 of the Charter, paragraphs 63 to 71).

Question 7. What means does the Commission have at its disposal to tackle situations in which Member States do not provide the above information, or where the information provided shows that the Member State's examination was flawed?

As set out under Question 4, in case of continued failure by Member States to handle complaints effectively or evidence that the system does not work properly, which includes non-compliance with the obligation to inform the Commission upon request, the matter should be discussed at the relevant annual review meeting between the Commission and the Member State. Furthermore, should the failure to handle complaints effectively provide evidence to suggest a significant deficiency in the management and control system or the Commission's investigation of a complaint reveal the failure to ensure the respect of an applicable provision of the Charter, the Commission may interrupt interim payments (Article 83 of the Regulation) and, in case of serious deficiencies, suspend the payments (Article 142) or apply financial corrections (Article 144).

Question 8. Does the Commission currently have a unified approach towards complaints concerning the national implementation of the European Structural and Investment Funds, for instance by handling them as infringement complaints or by referring complainants to the national means or redress? Is the approach the same in cases concerning possible breaches of fundamental rights enshrined in the Charter?

In previous programming period, the Commission has divided the complaints received in two groups: the ones alleging a violation of Union law which are dealt with directly by the Commission, and the others, for which the complainant is informed that he/she should address himself/herself to the national authorities.

National courts and administrative bodies are responsible in the first place for ensuring that the authorities of the Member States comply with Union law. By using means of redress available at national level, complainants in Member States have an effective protection of their rights. Therefore, the Commission, in its letters acknowledging receipt of a complaint, invites complainants to consider seeking redress from national administrative or judicial authorities (including national or regional ombudsmen). The Commission considers that the

current way of handling complaints provides assurance that complaints relating to fundamental rights are properly dealt with although it does not have the same outcome than the administrative and legal appeals as regards the individual situation of the complainant.

The modalities for dealing with complaints under the 2014-2020 programming period are explained above in reply to question 6.

Question 9. Is the Commission contemplating any changes to the above approach following the entry into force of the new legal framework for the cohesion policy?

The current system as described in the reply to question 8 will be replaced by the system established by Article 74(3) of Regulation (EU) No 1303/2013 described in the reply to question 6. The Commission will check, where allowed under the legislative frame, at different steps of implementation the complaints handling system set up by Member States: when assessing draft programmes, when assessing the opinion on the designated managing and certifying authorities, when assessing annual implementation reports, when carrying out audits etc. In addition, appropriate measure to raise awareness will be carried out.

IV. CONCLUSION

In the context of the implementation of cohesion policy the principle of non-discrimination has been reinforced in Regulation (EU) No 1303/2013 through the introduction of an *ex ante* check of the existence of the arrangements to ensure the respect of the principle.

According to Article 7 of Regulation (EU) No 1303/2013, Member States and the Commission have to ensure the respect of the principles of equality between men and women and non-discrimination throughout the preparation and implementation of programmes.

Article 4(2) of Regulation (EU) No 1303/2013 requires the Commission and the Member States to ensure that support of the ESI Funds is consistent with relevant policies and horizontal principles as referred to *inter alia* in Article 7 of the Regulation (EU) No 1303/2013 and priorities of the Union.

The legal framework applicable to cohesion policy has been furthermore reinforced to ensure that Member States have a system in place for handling complaints, including complaints alleging violation of the Charter of Fundamental Rights.

The Commission considers that the provisions in Regulation (EU) No 1303/2013 on the set-up of effective arrangements for the handling of complaints will ensure the verification of alleged violation of fundamental rights.

The Commission has the possibility to interrupt payment deadlines, to suspend payments in case of serious deficiencies and to apply financial corrections in cases where Member States do not comply with its obligation to ensure effective arrangements for the examination of complaints, including those alleging violations of the Charter of Fundamental Rights. The failure to ensure effective arrangements for the examination of complaints which are part of the management and control system constitutes a serious deficiency in the meaning of Article 142(1)(a) of Regulation (EU) No 1303/2013.

Regarding the issue of awareness raising among Member States on the importance of the Charter of Fundamental Rights in the context of the disbursement of ESI funds, the Commission is taking the following measures:

First, the Commission will formally write to Member States to remind them of their obligations as regards the respect of the Charter when Member States implement EU law.

Second, the Commission will draw the attention of Member States on the possibility to use technical assistance from ESI funds to support arrangements for handling complaints.

Third, the Commission will disseminate good practices of what are effective arrangements for the treatment of complaints.

Fourth, the Commission will issue a guidance document addressed to the Member States as regards the respect of the Charter when Member States implement EU law in the context of the disbursement of ESI funds.

Fifth, after this guidance will have been issued, the Commission will organise trainings in the Member States on the Charter, its applicability and its relevance in the context of the disbursement of ESI funds.