

Comments by the European Commission on the conclusions of an inquiry from the European Ombudsman
- Complaint ref. 1418/2023/VS

I. BACKGROUND

The European Commission received a complaint on 20 December 2022 from 'de:border//migration justice collective' and other civil society partners. The complaint alleged that EU funds for external border management in Greece had been misused, resulting in illegal returns and expulsions of migrants. In response, the Commission noted that Member States are responsible for implementing EU-funded programmes and ensuring compliance with EU rules. The Commission also explained that Greece had established a system to monitor and report on compliance with fundamental rights. The European Ombudsman then informed the Commission on 7 November 2023 that it had launched an inquiry into a subsequent complaint from the same organisation.

II. THE COMPLAINT TO THE EUROPEAN OMBUDSMAN

1. The complainants made two allegations against the Commission: Failure to act: The Commission did not adequately address human rights abuses by the Greek authorities in EU external border management operations.
2. Complicity in the breaches of Union law: The Commission's funding contributed to fundamental rights violations at Greece's border with Türkiye, due to its failure to investigate misuse of EU funds.

The European Ombudsman's inquiry focused on the Commission's actions since 2020, and covering EU funds provided to Greece for border management from 2014 to 2027.

III. EUROPEAN OMBUDSMAN'S INQUIRY

On her letter of 7 November 2023, the European Ombudsman requested a written reply from the Commission regarding information on the functioning of EU funds and the Commission's role, as well as relevant programme and internal guidelines documentation. The Commission provided the requested replies and documentation on 29 February 2024.

As a follow-up, the European Ombudsman requested a meeting with the Commission's Directorate-General for Migration and Home Affairs with the participation of the Secretariat-General of the Commission. The online meeting took place on 18 September 2024. A report summarising the discussion was drawn up by the European Ombudsman.

On the basis of the information received and the discussions, the European Ombudsman issued her decision on 21 February 2025 identifying areas that the Commission should address to improve how it monitors and ensures compliance with fundamental rights in the context of border management funds provided to Greece. In this regard, the European Ombudsman made the following suggestions for improvement for the Commission:

1. Establish guidelines for assessing fundamental rights compliance, including the use of independent sources of information in assessment and setting out criteria for withholding or suspending EU funds.

2. Reassess Greece's compliance with the Charter of Fundamental Rights, considering credible complaints about fundamental rights issues, including two cases of alleged non-compliance raised in the inquiry.
3. Increase transparency by publishing information on Greece's measures to fulfil the Charter of Fundamental Rights, the Commission's assessment of this fulfilment, and reporting complaints of non-compliance with the Charter HEC.
4. Urge Greece to facilitate civil society organisations to participate meaningfully as members of the monitoring committee with full rights.

IV. THE COMMISSION'S COMMENTS TO THE COMPLAINANT'S ARGUMENTS

The Commission takes note of the decision of the European Ombudsman of 21 February 2025 in the strategic inquiry 1418/2023/VS, which assessed how the Commission monitors fundamental rights compliance in the context of EU funds granted to Greece for border management.

The Commission takes note of the European Ombudsman's assessment that there is still room for improvement as regards monitoring respect for fundamental rights in the context of EU funds for border management provided to Greece.

The legal framework for ensuring respect for fundamental rights in the implementation of Home Affairs Funds has been reinforced in the 2021-2027 programming period with the introduction of the horizontal enabling condition on the effective application and implementation of the Charter of Fundamental Rights (Charter HEC), which requires Member States to have effective mechanisms in place to ensure compliance with the Charter, including (1) arrangements to ensure compliance of the programmes supported by the Funds and their implementation with the relevant provisions of the Charter and (2) reporting arrangements to the monitoring committee regarding cases of non-compliance of operations supported by the Funds with the Charter and complaints regarding the Charter submitted in accordance with the arrangements made pursuant to Article 69(7) of the Common Provisions Regulation (CPR).¹

In this regard, the Commission shared documentation on and discussed with the European Ombudsman its own assessment of Greece's fulfilment of the Charter HEC vis-à-vis the two Charter HEC criteria contained in Annex III of the CPR. The Commission can only assess Member States' compliance with the Charter HEC at the level of the specific objectives in the programme in line with the procedures set out in Article 15 and Annex III CPR, whether the breach of the Charter has a direct link to the implementation of the programme. The Commission cannot carry out assessments outside of this framework. If, at any point in time during programmes' implementation, the Commission considers, based on the information it receives, that the Charter HEC is no longer fulfilled, it may block funding as per the applicable rules.

The Commission acknowledges the good cooperation with the Ombudsman inquiry team and has carefully considered all the suggestions to improve the Commission's oversight of fundamental rights breaches.

Specific replies to the suggestions for improvement can be found below:

¹ Annex III the Common Provisions Regulation.

Suggestion 1. Put in place guidelines for assessing compliance with fundamental rights, notably the horizontal enabling condition relating to the Charter of Fundamental Rights (the Charter HEC), throughout the course of the programming period. The guidelines should include the need to take into account independent sources of information in the Commission's assessments. As part of these guidelines, the Commission should establish criteria to determine under what circumstances it will withhold or suspend EU funds for non-compliance with fundamental rights and/or the Charter HEC and publish these criteria.

The Commission would first highlight that the criteria for the Charter HEC are detailed in Annex III CPR which is a published regulation. Moreover, the Commission would emphasise that internal guidelines, including on how to take into account independent sources of information, exist in order to assess the compliance with the Charter HEC. These guidelines have been used to assess the fulfilment of the Charter HEC for all Member States in a coherent manner. They ensure equal treatment between the Member States and effectively enable the Commission to establish whether the criteria of the Charter HEC as detailed in Annex III CPR are fulfilled or not. The internal guidelines have been subject to access to documents requests, and as such a redacted version has been published, and was shared with the European Ombudsman in the Commission's reply dated 29 February 2024 (see enclosure 24).

Moreover, in line with Article 15(6) CPR the onus is on the Member States to ensure the fulfilment of the enabling condition throughout the programming period, and they must inform the Commission of any changes affecting such fulfilment. Furthermore, in accordance with Article 69(7) CPR, Member States shall ensure the effective examination of complaints, including those related to the Charter.

Nevertheless, citizens and stakeholders can address complaints to the Commission, including with regard to alleged violations of the Charter, and the Commission is also continuously monitoring developments in the Member States related to the Charter, notably through audits, active engagement with stakeholders and in monitoring committees, and can take action via the procedure detailed in Article 15(6) CPR in case the HEC Charter is no longer fulfilled.

It is also important to note that, in addition to the fulfilment of the Charter HEC as prerequisite condition for the effective and efficient implementation of the CPR programmes, all operations must be selected and implemented while respecting the Charter (Article 73(1) CPR) and that, where the Commission finds that there has been a violation of the Charter, the Commission must adopt corrective measures according to the gravity of the established violation. The guidance on ensuring the respect for the Charter of Fundamental Rights in the implementation of the European Structural and Investment Funds (ESI funds) Regulation (2016/C 269/01) remains relevant today for the Commission, Member States and other fund beneficiaries.

Suggestion 2. Consider whether the Charter HEC continues to be fulfilled, in light of the credible complaints it has received about potential fundamental rights issues, including the two cases of alleged non-compliance with fundamental rights raised in this inquiry.

As required by the Common Provisions Regulation², Greek authorities must make sure that the enabling conditions remain fulfilled and respected throughout the programming period and must inform the Commission of any modification impacting the fulfilment of enabling

² Article 15(6) of the Common Provisions Regulation.

conditions. In addition, in line with the CPR rules, the Commission may consider that an enabling condition for a given programme is no longer fulfilled, in which case it should notify the Greek authorities setting out its assessment. The Commission has always taken very seriously all reports and allegations of violations as regards respect for fundamental rights and will not hesitate to use all legal means at its disposal to request corrective measures by Greece in case there is evidence that complaints related to potential fundamental rights issues, including the two cases mentioned in the inquiry, are directly linked to EU funds granted to Greece in the context of border management.

Suggestion 3. *Enhance the transparency of the measures taken by Greece to fulfil the Charter HEC, the Commission's own assessment(s) of fulfilment of the Charter HEC and the reporting of complaints about non-compliance with the Charter HEC by proactively publishing all relevant information.*

The Commission welcomes the suggestion of the European Ombudsman, as transparency is a key aspect covered in the CPR (Title IV, Chapter III), which provides for mandatory publication of certain documents. To further enhance transparency, the Commission will request the Greek authorities to publish other relevant documents, focusing on information not already made public through the Commission's website or the Managing Authority's website. The Commission will also continue working with Greece on the recommendations provided by the European Ombudsman in its decision on complaint 1418/2023/VS.³

As regards the transparency of the Commission's own assessment, the Commission complies with the right to access to documents as enshrined in Regulation (EC) 1049/2001 regarding public access to European Parliament, Council and Commission documents. According to the regulation, any Union citizen and any natural legal person residing or having registered office in a Member State, has a right of access to documents. The regulation also provides that all institutional documents are made accessible to the public following a written application or directly in electronic form or through a register with some exceptions. In order to ensure that the right of access is fully respected, a two-stage administrative procedure applies, with the additional possibility of initiating court proceedings or submitting a complaint to the European Ombudsman. In applying the regulation, the Commission follows the Detailed rules for the application of Regulation (EC) 1049/2001.⁴ These rules establish, inter alia, a decentralised approach to the treatment of application for access to Commission documents, a mechanism of full administrative review of replies to initial applications and an internal organisation of responsibilities.

The Commission also has a publicly available website⁵ registering documents partially or fully disclosed following requests for access. The website contains guidance on how to submit requests and has a dedicated portal to submit such requests.

Suggestion 4. *Urge Greece to facilitate the meaningful participation of civil society organisations as members of the monitoring committee with full rights.*

In line with Articles 8(1) and 39 CPR, representatives of relevant partners, including at least one civil society organisation, are members of the Monitoring Committees with voting rights.

³ https://www.ombudsman.europa.eu/en/decision/en/200015#_ftn29

⁴ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202403080#anx_1

⁵ <https://ec.europa.eu/transparency/documents-request/home>

Other civil society organisations are invited to participate without voting rights to the Monitoring Committees meetings on horizontal issues, including the fulfilment of the horizontal enabling conditions

The composition of the Monitoring Committees has been repeatedly discussed with the Greek authorities in bilateral exchanges and in Monitoring Committees meetings. The Commission services will continue asking the Greek authorities to consider the amendment of the existing Rules of Procedure of the Monitoring Committees to ensure a more meaningful participation of other civil society partners in the Monitoring Committees.

The Greek authorities have already achieved significant progress as regards the composition of the AMIF Monitoring Committee where other civil society representatives are already participating as members with voting rights.

V. CONCLUSION

The Commission is committed to address the EU suggestions for improvements and to continue working closely with the Greek authorities for a robust system for monitoring investigations of allegations and ensuring the necessary follow up. The Commission is also committed to continue ensuring that the EU funding for border management provided to Greece is in line with the principle of sound financial management and in respect of the applicable EU rules.

For the Commission
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