

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

FRANET national research in Portugal

Final Report

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1 Introduction

This report aims to provide an overview of the research conducted under the project 'Providing technical assistance to national bodies with a human rights remit involved in assessing EU Charter & CRPD compliance of EU funds', with the objective of studying the role of national bodies with a human rights remit in the management of EU funds and study their potential to monitor and assess EU Charter & CRPD compliance of EU funds.

This report is the result of: the desk research conducted from 8 March to 8 April 2022; 10 semi-structured interviews with national fund managers of operational programmes, representatives of national bodies with a human rights remit and of the civil society organizations and academic interlocutors, conducted between 14 April and 23 May 2022; and a roundtable organized in the Centre for Social Studies in Lisbon, in 7 June 2022, with the participation of fund managers of operational programmes, representatives of national bodies with a human rights remit, and civil society organizations.

The desk research was based on the available online documentation and publications of the following main sources: legal framework through the official publication of laws and similar legislation; governmental entities in charge of planning, managing and monitoring the implementation of the EU funds; civil society organisations that discuss the European funds in Portugal; and publications and researches carried out by the academia and research centres of different scientific areas.

The interviewees were selected considering their profile, knowledge and practical experience with the EU funds and/or fundamental rights. The sample of interviewees consists of 3 national fund managers of operational programmes, 3 representatives of national bodies with a human rights remit, 2 representatives of civil society organizations and 2 academic interlocutors. Initially, the invitations were addressed to managers of the Portuguese operational programmes and to the higher representative of the national bodies with a human rights remit and civil society organizations. In most cases the higher representative nominated other representative(s) with a more direct experience in the funding cycle (5 cases) or asked to be accompanied by another representative with a more direct experience in the funding cycle (2 cases). Only 2 interviews were conducted with the higher representative and, in both cases, the representative was a fund manager. The 2 selected academic experts accepted the invitation to make the interview.

The interviews had, on average, the duration of 1 hour and 30 minutes. In the beginning of each interview, it was asked to the interviewees to give their consent to record the interview, following the consent form protocol. The consent was obtained orally and in writing. No one refused that the interview was recorded.

The roundtable focused on the discussion and reflection on the consideration of fundamental rights within the scope of European Union funding programmes in Portugal. It included representatives 7 entities, three representatives of national bodies with a human rights remit (ACM – Alto Comissariado para as Migrações / High Commission for Migration; CIG – Comissão para a Cidadania e a Igualdade de Género / Commission for Citizenship and Gender Equality; CITE – Comissão para a Igualdade no Trabalho e no Emprego / Commission for Equality on Work and Employment), two representatives of non-governmental associations which receive EU funding (CES – Centro de Estudos Sociais / Centre for Social Studies; SPEM – Sociedade Portuguesa de Esclerose Múltipla / Portuguese Multiple Sclerosis Society), and two representatives of national fund managers of operational programmes (PIS – Estrutura de Missão Portugal Inovação Social / Portugal Social Innovation Mission Unit; POISE – Programa Operacional para a Inclusão Social e o Emprego / Operational Programme for Social Inclusion and Employment).

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

2.1 The legal framework and governance of EU funds in Portugal

In accordance with Article 3(3) of the Treaty on European Union, the European Union “shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment”¹. Thus, to achieve this objective, the European Union established the European Structural and Investment Funds (ESIF). These funds are distributed among the various Member States, through partnership agreements that have the duration of seven years, so that they can develop and implement essential policies such as economic, territorial and social cohesion.

At the national level, the ESIF constituted the financial package that materialized the “Portugal 2020” Strategy, and later, the “Portugal 2030” Strategy. Moreover, it should be noted that “Portugal 2020” Strategy also included funds taken from the Fund for European Aid to the Most Deprived, regulated by Regulation (EU) 223/2014 of the European Union and of the Council².

“Portugal 2020”³ is a partnership agreement adopted between Portugal and the European Commission, which brings together the activities of the ESIFs and defines the programming principles that enshrine the economic, social and territorial development policy to be promoted in Portugal between 2014 and 2020. This agreement establishes four main priorities: competitiveness and internationalisation; social inclusion and employment; human capital; and sustainability and efficiency in the use of resources.

In order to achieve the various measures established by these priorities, 16 operational programmes were established⁴ through which the ESIF were to be distributed. For the purposes of this report, particular attention was given to the thematic operational programmes, as these are the ones that have more programmes related to the promotion of fundamental rights.

In Portugal, the ESIF operate in a national context and there are several legal sources that govern and regulate its application. Therefore, the following must be highlighted.

From a functional perspective, Decree Law 159/2014⁵ establishes the general rules for the implementation of operational programmes and rural development programmes financed by the ESIFs. This decree law is focused on the development of definitive and procedural rules, with a view to the swiftness of decision making, the reduction of administrative costs

¹ European Communities (2012), [Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union](#), OJ 2012 C326.

² [Regulation \(EU\) 223/2014 of the European Union and of the Council on the Fund for European Aid to the Most Deprived](#), OJ 2014 L 72/1.

³ Portugal, [Portugal 2020 - Acordo de Parceria 2014-2020](#) (Portugal 2020- Partnership Agreement 2014-2020), July 2014.

⁴ For more information on the operational programmes, [see the website of the Portugal 2020](#).

⁵ Portugal, [Decreto-Lei 159/2014, que estabelece as regras gerais de aplicação dos programas operacionais e dos programas de desenvolvimento rural financiados pelos fundos europeus estruturais e de investimento, para o período de programação 2014-2020](#) (Decree-Law 159/2014, which establishes the general rules for the implementation of operational programmes and rural development programmes financed by European structural and investment funds, for the 2014-2020 programming period), 27 October 2014.

and the responsibility of the different stakeholders in the context of the granting of support and incentives financed by the EU funds now in question.

Decree-Law 6/2015⁶ establishes the conditions and rules for the creation of incentive systems applicable to companies in the mainland territory. Although this decree is not directly related to the application of the ESIF, it applies when an incentive financed by an ESIF is at stake.

The Contractual Investment Regime, approved by Decree-Law 191/2014⁷, is foreseen for large projects involving simultaneous negotiation processes in several countries. This special regime does not exclude the regimes that regulate the granting of incentives financed by the ESIF, but some specificities of this regime may apply to projects financed by ESIF because of the high amount of investment or by the size of the investor or its importance for the national economy.

Furthermore, at the functional level, the specific regulations of the operational programmes and regional development plans are also considered. There are several orders that establishes these specific regulations, but the following stands out: Order 57-A/2015⁸, which adopts the specific regulations for the Competitiveness and Internationalisation domain; Order 57-B/2015⁹, which adopts the Specific Regulation on Sustainability and Efficiency in the Use of Resources; Order 60-C/2015¹⁰, which adopts the Specific Regulation for the Human Capital Domain; and Order 97-A/2015¹¹, which establishes the Specific Regulation of the Social Inclusion and Employment Domain.

The governance model for the ESIF under the Portugal 2020 agreement, on the other hand, was established by Decree-Law 137/2014¹². This governance model is divided into 2 general tiers: a political coordination tier; and a technical coordination tier.

At the political coordination tier, the coordination body for all ESIF is the Interministerial Commission for Coordination of the Partnership Agreement (Comissão Interministerial de Coordenação do Acordo de Parceria), known as "CIC Portugal 2020". This Commission

⁶ Portugal, [Decreto-Lei 6/2015, que estabelece as condições e as regras a observar na criação de sistemas de incentivos aplicáveis às empresas no território do continente](#) (Decree-Law 6/2015, which establishes the conditions and rules to be observed in the creation of incentive systems applicable to companies in the mainland), 08 January 2015.

⁷ Portugal, [Decreto-Lei 191/2014, que estabelece um regime especial de contratação de apoios e incentivos exclusivamente aplicável a grandes projetos de investimento enquadráveis no âmbito das atribuições da Agência para o Investimento e Comércio Externo de Portugal, E.P.E.](#) (Decree-Law 191/2014, which establishes a special regime for contracting support and incentives exclusively applicable to large investment projects falling within the remit of the Agency for Investment and Foreign Trade of Portugal, E.P.E.), 31 December 2014.

⁸ Portugal, [Portaria 57-A/2015, que adota o regulamento específico do domínio da Competitividade e Internacionalização](#) (Order 57-A/2015, which adopts the specific regulations for the Competitiveness and Internationalisation domain), 27 February 2015.

⁹ Portugal, [Portaria 57-B/2015, que Adota o Regulamento Específico Sustentabilidade e Eficiência no Uso de Recursos](#) (Order 57-B/2015, which adopts the Specific Regulation on Sustainability and Efficiency in the Use of Resources), 27 February 2015.

¹⁰ Portugal, [Portaria 60-C/2015, que Adota o Regulamento Específico do Domínio do Capital Humano](#) (Order 60-C/2015, which adopts the Specific Regulation for the Human Capital Domain), 2 May 2015.

¹¹ Portugal, [Portaria 97-A/2015, que estabelece o regulamento específico do domínio da Inclusão Social e Emprego](#) (Portaria 97-A/2015, which establishes the specific regulations for the Social Inclusion and Employment domain), 30 March 2015.

¹² Portugal, [Decreto-Lei 137/2014, que estabelece o modelo de governação dos fundos europeus estruturais e de investimento para o período de 2014-2020](#) (Decree-Law 137/2014, which establishes the governance model of the European structural and investment funds for the 2014-2020 period), 12 September 2014.

ensures the coherence of the implementation of structural funds with the national and European national strategic guidelines set out in the multi-annual organic programming framework. At the technical coordination tier, the organizational structure of the Portugal 2020 Agreement is divided into 2 levels of activity: the general level; and the specific level to each ESIF. The general level is coordinated by the Agency for Development and Cohesion (Agência para o Desenvolvimento e Coesão)¹³. As for the specific level for each ESIF, this is coordinated by different entities: the Agency for Development and Cohesion (Agência para o Desenvolvimento e Coesão) for the cohesion policy funds and the Fund for European Aid to the Most Deprived; the National Coordination Commission (Comissão de Coordenação Nacional) for the European Agricultural Fund for Rural Development; and the Coordination Commission (Comissão de Coordenação) for the European Maritime and Fisheries Fund.

The Agency for Development and Cohesion, the National Coordination Commission, and the Coordination Commissions, as technical coordination bodies for EU funds, shall be responsible for ensuring, in articulation with the managing authorities of the operational programmes, the overall coordination of the respective programming instruments, with the competencies to: contribute to the preparation of the overall evaluation plan of Portugal 2020 and the overall communication plan of Portugal 2020, to be submitted to the approval of the CIC Portugal 2020; coordinate the preparation of the overall evaluation plan of the respective operative programmes, which includes evaluations of strategic and operational scope and includes an indicative list of the evaluation exercises foreseen for the 2014-2020 period, their nature and timing; manage the allocations from the ESIF and the amount of the national counterpart, except in the case of the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund; and approve the technical guidelines applicable transversally to the operational programmes and monitor their application, for the cohesion funds and the European Agricultural Fund for Rural Development.

In terms of management, each operational programme has its managing authority. Article 19 states that the managing authorities shall be the bodies responsible for the management, monitoring and implementation of operational programmes. However, Article 36 states that, by delegation from the managing authorities, the management functions may be carried out by intermediate bodies, i.e. public or private entities which ensure conditions for improving the levels of effectiveness and efficiency or for overcoming qualitative or quantitative inadequacies in the technical, human or material resources of the managing authorities. The managing authorities delegate the exercise of management powers to an intermediate body through a written agreement, whereby the intermediate body shall: elaborate a management and control system that respects the model adopted by the respective managing authority; exercise the management competences delegated to it by the managing authority, under its supervision; and comply with the specific applicable regulations and the recommendations of the managing, certifying and audit authorities and submit to the control and audit procedures. It's in this capacity that some national bodies with a human rights remit intervene in the funding cycle.

In terms of monitoring, each operational programme has a monitoring committee. Among other tasks, these committees are responsible for monitoring the progress of actions undertaken in order to comply with ex ante conditionalities. Also, because the thematic operational programmes are the ones most closely related to fundamental rights issues, it should be noted that article 54 states that it is also the task of the monitoring committee for the thematic programmes to examine actions to promote equality between men and women, equal opportunities and non-discrimination, including access to funding for people

¹³ For more information on the agency, see the [Agency for Development and Cohesion website](#).

with disabilities, showing the importance of fundamental rights to these programmes. It should also be stated that it is also at this capacity that national bodies with a human rights remit intervene in the funding cycle. By having a seat and a right to vote, they follow and participate in the activities of the monitoring committee.

It should be highlighted that, although not foreseen in the original text of the Common Strategic Framework¹⁴, the Asylum, Migration and Integration Fund was later included in the list of EU funds from which this strategy benefits. Through the Decision C(2016) 1816¹⁵, the European Commission approved the Asylum, Migration and Integration Fund National Programme¹⁶, allowing Portugal to receive financial support from this fund for the period 2014-2020. This national programme has undergone several changes, mainly at the level of budgetary allocation, and the current version¹⁷ was approved by Decision C(2020) 2897¹⁸.

The Resolution of the Council of Ministers 46/2015¹⁹, which approves the management and control system of the EU funds of the Multiannual Financial Framework 2014-2020 in the field of home affairs, designates as competent authorities, the General Secretariat of the Ministry of Internal Affairs, as the responsible authority for this fund, and the General Secretariat for Internal Affairs (Secretaria-Geral do Ministério da Administração Interna) and the Inspectorate General of Finance (Inspeção-Geral das Finanças), as the audit authorities. It also determines the delegated authorities with technical, administrative and financial management functions, these being the High Commission for Migration (Alto Comissariado para as Migrações)²⁰ in the context of the Asylum, Migration and Integration Fund, and the General Secretariat of the Ministry of Justice²¹ (Secretaria-Geral do Ministério da Justiça) in the context of the Internal Security Fund - Police Cooperation.

¹⁴ Annex 1 of the [Regulation \(EU\) 1303/2013 of the European Union 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 and repealing Council Regulation \(EC\) No 1083/2006](#), OJ 2013 L 347.

¹⁵ European Commission (2015), [Commission Implementing Decision amending Commission Decision C\(2015\) 1698 approving the national programme of Portugal with a view to receiving financial support from the Asylum, Migration and Integration Fund for the period 2014 to 2020](#), 21 March 2016.

¹⁶ Portugal, [Programa Nacional do Fundo para o Asilo, a Migração e a Integração](#) (Asylum, Migration and Integration Fund National Programme), 14 December 2016.

¹⁷ Portugal, [Programa Nacional do Fundo para o Asilo, a Migração e a Integração](#) (Asylum, Migration and Integration Fund National Programme), 4 May 2020.

¹⁸ European Commission (2020), [Commission Implementing Decision amending Commission Decision C\(2015\) 1698 approving the national programme of Portugal with a view to receiving financial support from the Asylum, Migration and Integration Fund for the period 2014 to 2020](#), 4 May 2020.

¹⁹ Portugal, [Resolução do Conselho de Ministros 46/2015 que aprova o sistema de gestão e controlo dos fundos europeus do Quadro Financeiro Plurianual 2014-2020 no domínio dos assuntos internos](#) (Council of Ministers Resolution 46/2015 approving the management and control system for European funds from the 2014-2020 Multiannual Financial Framework in the field of home affairs), 9 July 2015.

²⁰ For more information on this entity, see the [website of the High Commission for Migration](#).

²¹ For more information on this entity, see the website of the [General Secretariat of the Ministry of Justice](#).

2.2. European Funds and fundamental rights

From the 8 existing types of ESIF, 3 of them, fund, in their majority and within the context of “Portugal 2020”, the operational programmes that are more related to the promotion of fundamental rights. Therefore, the European Social Fund, the Cohesion Fund, and the Asylum, Migration and Integration Fund finance the 4 thematic operational programmes, in addition to the Asylum, Migration and Integration Fund and its respective National Programme.

However, it should be stressed that this doesn’t mean that the remaining operational programmes don’t address issues related to fundamental rights. It just means that the 4 thematic operational programmes and the Asylum, Migration and Integration Fund are the ones that work more closely in areas related to fundamental rights.

Within this context, and as stated, there are 4 thematic operational programmes:

COMPETE 2020 - Programa Operacional Competitividade e Internacionalização (COMPETE 2020 - Competitiveness and Internationalisation Operational Programme) aims to increase the national competitiveness by mobilising and leveraging resources and skills, with a view to creating jobs and the resumption of the dynamics of convergence with the more developed economies of the European Union. The projects funded under COMPETE 2020 related to fundamental rights are connected to the area of vocational training and job creation (right to work). Some examples of this are *Notice 08/SI/2021 - Competitiveness Clusters Capacity Building Programme Textile, Technology and Fashion Cluster*²², a programme that aims to stimulate certain competitiveness and technology poles and other clusters, strengthening competitiveness, promote the innovation and the internationalisation of the economy, and support strategies for consolidating already existing clusters or creating new ones; and *Call 07/REACT-EU/2021 - Ativar.pt Internships (Support for Employment Creation)*²³, a programme aims to finance interventions that implement active employment policy measures, promote the activation of unemployed people through job creation, and support for the transition to working life for young people and the (re)qualification of unemployed people..

PO ISE - Programa Operacional de Inclusão Social e Emprego (PO ISE - Social Inclusion and Employment Operational Programme) aims to strengthening the integration of people at risk of poverty and combating social exclusion, ensuring the dynamism of innovative measures of social intervention and direct support to the most disadvantaged population groups, active policies of employment and other instruments to safeguard social cohesion. Of the 16 operational programmes funded by “Portugal 2020”, this programme is the one that focus more in the area of fundamental rights. Examples of that are: *Notice POISE-I5-2022-01*²⁴ which establishes a programme that aims to enable the acquisition and development of professional skills, with a view to enhancing the employability of people with disabilities; *Notice POISE- 22-2020-03*²⁵ which establishes a programme to support actions related to the development of diagnosis, preparation, implementation, dissemination, and evaluation of Equality Plans at the municipal level; and

²² Portugal, [Aviso 08/SI/2021 - Programa de capacitação dos clusters de competitividade Cluster Têxtil, Tecnologia e Moda](#). Notice 08/SI/2021 - Competitiveness Clusters Capacity Building Programme Textile, Technology and Fashion Cluster, 17 February 2021.

²³ Portugal, [Convite 07/REACT-EU/2021 - Estágios Ativar.pt \(Apoio à Criação de Emprego\) \(Call 07/REACT-EU/2021 - Ativar.pt Internships \[Support for the Creation of Employment\]\)](#), 22 October 2021.

²⁴ Portugal, [Aviso POISE-15-2022-01](#) (Notice POISE-I5-2022-01), 11 March 2022.

²⁵ Portugal, [Aviso POISE- 22-2020-03](#) (Notice POISE- 22-2020-03), 18 February 2020.

*Notice POISE- 37-2021-15*²⁶ which establishes a programme aimed to fund/support public or private entities that are or could be part of the National Network of Support for Victims of Domestic Violence, in order to ensure an integrated, urgent and short-term reception of victims of domestic violence, accompanied or not by children who are minors or adults with disabilities who depend on them, due to safety issues and/or the imminent risk of re-victimization.

POCH – Programa Operacional Capital Humano (POCH - Human Capital Operational Programme) aims to promote educational success and the reduction of school dropout; improve employability through the adjustment of offers to the needs of the labour market; increase the attractiveness and number of higher education graduates; improve the qualifications of the adult population; and promote the quality and regulation of the education and training system. Therefore, this is a programme that is heavily focused in the right to education. Some examples of specific funded projects are *Notice POCH-I2-2022-01 - Skills 4 Post-COVID - Skills for the Future in Higher Education*²⁷ that aims to support projects that stimulate innovative teaching and learning practices that enhance educational projects; and *Notice POCH-I4-2021-12 - Quality and Efficiency of the Education and Training System to Promote School Success*²⁸, a project that aims to improve learning outcomes, as well as the relevance of the knowledge transmitted in the offers that make up the vocational education and training system.

POSEUR - Programa Operacional Sustentabilidade e Eficiência no Uso de Recursos (POSEUR - Operational Programme Sustainability and Efficiency in the Use of Resources) aims to make a special contribution to the priority of sustainable growth, responding to the challenges of transition to a low carbon economy, based on a more efficient use of resources and promoting greater resilience to climate risks and disasters. Out of the 4 thematic operational programmes, this is the one more focused in climate change and “green policies” and the least directly related to fundamental rights. It is also the thematic operational programme more dedicated to local projects. However, when there’s an investment in infrastructures, that can help to indirectly promote fundamental rights, since those investments tend to improve the quality of life of living places. Examples of that are *POSEUR-07-2015-31 – Call for Tender for the Project U-Bike Portugal: Promotion of Electric and Conventional Bikes in Academic Communities*, a project that aims to support the acquisition of bicycles for public use, in a university environment, within the scope of integrated projects of national scope involving consortiums of public higher education institutions; and *POSEUR-07-2016-71 - Call for tenders for the Promotion of Energy Efficiency in Public Passenger Transport with Public Service Missions*²⁹, a project that aims to fund projects that promote the use of more efficient vehicles with better environmental performance in the sector of collective public urban transport of passengers.

²⁶ Portugal, [Aviso POISE- 37-2021-15](#) (Notice POISE- 37-2021-15), 27 August 2021.

²⁷ Portugal, [Aviso POCH-I2-2022-01 Skills 4 Pós-COVID - Competências para o futuro no Ensino Superior](#) (Notice POCH-I2-2022-01: Skills 4 Post-COVID - Skills for the Future in Higher Education), 16 March 2022.

²⁸ Portugal, [Aviso POCH-I4-2021-12: Qualidade e eficiência do sistema de educação e formação para promoção do sucesso escolar](#) (Notice POCH-I4-2021-12: Quality and efficiency of the education and training system to promote school success), 14 December 2021.

²⁹ Portugal, [POSEUR-07-2016-71 - Aviso-Concurso destinado à Promoção da eficiência energética nos transportes públicos coletivos de passageiros incumbidos de missões de serviço público](#) (POSEUR-07-2016-71 - Call for tenders for the Promotion of energy efficiency in public passenger transport with public service missions), 28 November 2016.

Finally, and as stated before, the National Asylum, Migration and Integration Funding Programme adds to the efficient management of migration flows and the development of a common approach to asylum and migration by funding efforts to enhance the capacity to receive immigrants, improve the quality of asylum procedures in line with EU standards and integrate immigrants at the local and regional levels and increase the sustainability of return programmes. This is a programme that deals exclusively with asylum and migration rights and combats any kind of discrimination. Examples of specific projects funded under this programme are *Notice 13/FAMI/2016 - Implementation of Municipal Plans for the Integration of Migrants*³⁰, that aims at the implementation of Municipal Plans for the Integration of Migrants, seeking to ensure measures that promote the multi-level integration of current and new third-country nationals and develop capacity-building measures for the structures and their professionals, that promote the continuous improvement of implemented responses, training of technicians and the validation and dissemination of new resources / support tools and best practices; and *Notice 30/FAMI/2017 - Integration through Health*³¹, a programme that aims to fund projects that develop and implement measures regarding the reception and integration of third-country nationals and the prevention of prejudice and discrimination in the health area.

2.2 Fundamental rights issues raised from the previous funding cycle

One of the inferences of the present research, regarding previous funding cycles, in particular the 2014-2020 funding cycle, is that there are some issues, regarding fundamental rights in relation to EU funds, that arise as relevant to be tackled. During the desk research and the interviewees, **6 main issues** stands out regarding fundamental rights in previous EU funding cycles, in particular the 2014-2020 funding cycle.

The first is related to the *difficulty in guaranteeing/promoting access for vulnerable groups on the funded projects*. According to the gathered information, it is difficult to integrate vulnerable groups in projects financed by the EU funds, such as people with disabilities, Roma people, immigrants, women, etc. This may happen due to two main reasons: the existence of social stereotypes that prevent people from participating - one of the interviewees (a fund manager) even added that social stereotypes have a great influence on professional insertion, salaries, and, on the design of the labour market, contributing to the increase of inequalities -; and the difficulties emerging from the condition of social vulnerability that prevent attendance (some of the examples given was related to people with disabilities not having adequate transportation, the limitations on participating due to family caregiving demands or the necessity to have informal works to receive some income).

The second issue, identified more than once, is that the *evaluation criteria used to monitor and assess the implementation of projects in the field, often, focus on a quantitative approach*. This quantitative approach has two main dimensions. The first one is relates the *existing monitoring process with a main focus on the financial execution of the EU funds* in Portugal. This focus ignores their relevance to the enhancement of the fundamental rights, which can create hitches in assessing the relevance of fundamental rights in the funding cycle, even if, as it is generally understood, the funds are available to improve fundamental rights. The second dimension focus on the *quantitative evaluation of the physical execution of the projects*. According to the civil society interviewees, in previous funding cycles, the

³⁰ Portugal, [Aviso para a apresentação de candidaturas 13/FAMI/2016 - Implementação dos Planos Municipais para a integração de Migrantes](#) (Notice for the submission of applications 13/FAMI/2016-Implementation of Municipal Plans for the Integration of Migrants), 8 July 2016.

³¹ Portugal, [Aviso para a apresentação de candidaturas 30/FAMI/2017 - Integração através da Saúde](#) (Notice for applications 30/FAMI/2017 - Integration through Health), 24 March 2017.

projects were evaluated considering the actual expenditure. If expenditures were lower than expected/budgeted, the level of execution was considered as low/bad. Currently, the evaluation criteria used to monitor and assess the implementation of projects considers, besides the financial execution, the physical execution of the project, but the focus of evaluation is on the quantitative results of the physical execution. Within the scope of each project, the organizations are committed to results that must be achieved during the project execution and in the evaluation stage the compliance with these results is checked. If the beneficiaries don't/can't comply, their budget gets cut, which can create further problems for beneficiaries that depend on that financing. It should be noted that this difficulty was identified by two civil society organizations that intervene in the funding process as beneficiaries. One of the CSO interviewees gave the example of the execution evaluation of a project for training disabled people which was based on the attendance of classes. Since some of the beneficiaries have severe mental and poor social conditions that prevent the daily attendance of classes, the absence of trainees lead to budget cuts at the end of the project.

The predominance of a quantitative evaluation of the EU funds (financial and physical) does not mean that there are no evaluations of the impact of the funds on fundamental rights. One of the rare examples that was compiled during the desk research is the "Portugal 2020: Annual Report"³². This report assesses the funding of the "Portugal 2020", during the year of 2020, by the Agency for Development and Cohesion. Although this is mainly a financial execution report, it offers a comprehensive and complete assessment of the impact of the ESIF in areas related to fundamental rights like education, housing, gender equality, employment, combat to discrimination, racism, among others. In part 3 of this report, through the financial analysis of how funds were allocated by the various operational programmes, it is possible to draw some conclusions about the impact of funding on fundamental rights-related areas, for instance, regarding the integration of people in the labour market, in particular young people. The financial implementation of the various projects financed by the structural funds, which have benefited from support to hire people, has allowed around 73% to be employed 6 months after participating in this support measure (within the Social Inclusion and Employment Operational Programme, while in the other operational programmes, where this measure has been supported, the number oscillate between 50% and 93% of employability). In the case of professional internships, the employability 6 months after the participation is 69% in the Social Inclusion and Employment Operational Programme (the percentage oscillates between 35% and 57% in the other regional operational programmes).

A third issue related with EU funds relates the *necessity to ensure the continuity of the financed projects and activities*. According to a representative of a national body with a human rights remit, one of the main challenges, regarding fundamental rights in the negotiation stage, is to ensure the continuity of projects that are on the ground and expand funding to respond to new needs identified. Most of the beneficiaries intervene in the public space, replacing the role of the State. In this context, the EU funds are disruptors, because they are not continuous, forcing a competitive logic of equal opportunities. The interviewees give as an example a project which gave support to the caregivers of people with disabilities that ended and there was no other alternative. With respect to this issue, the interviewees of one of the civil society organizations mentioned the setbacks that the limited duration of the projects funded may have on fundamental rights.

A fourth issue raised by interviewees refers to the *low participation and consultation of the stakeholders/organisations who represents the direct beneficiaries of the EU funds* (e.g.

³² Agency for Development and Cohesion (2021), [Portugal 2020: Relatório Annual 2020](#) (Portugal 2020: Annual Report 2020). Lisbon, Agency for Development and Cohesion.

elderly, disabled, children, etc.), as a problem to be tackled in order to reinforce a fundamental rights' approach. According to one interviewee, these organisations should participate in the design of the programmes as they are the entities that have a deeper knowledge of the necessities of society and will be the beneficiaries of the EU funds.

A fifth issue focus on the *rigid implementation of the financed projects by EU funds*. According to a representative of a national body with a human rights remit, sometimes the funded project is planned in one way but during the implementation phase it has to be restructured due to the reality faced by the intermediary/beneficiary organisation. An example pointed out are the projects that contemplate the training of the Roma community that, often, before being given the training for insertion in the labour market, it is necessary to give training on issues/implementing values such as writing a CV, how to be in an interview, compliance with schedules, follow orders, etc. Another example, during the implementation phase, is the existence of external elements that prevent a better implementation of the projects, especially those in which the direct contact with the community is a prerequisite for its success. For example, the confinements during the COVID pandemic is an example of external elements that hinder a better execution. And all these necessities, that arise after the starting of a specific project, are very difficult to be integrated in a financed project, unless it was already planned.

A sixth issue relates with *the collection, use and management of sensible data*. This problem was identified by a fund manager based on their experience in dealing with this subject. There is a tension between the national legislation and the European requests from the EU managers related to the identification of what constitutes sensible data and what data can be collected and how it's stored. According to this manager, the European Union asks for very detailed data that can't be collected due to national constitutional and legal safeguards regarding the right to privacy. Also, according to the Portuguese fund manager, it is necessary to clarify what constitutes sensible data, since this is a point of great discussion and tension with the EU management. It should be noted that this issue was mentioned again on the roundtable by a representative of an operational programme.

Additionally, the interviewed academics referred to **4 other relevant issues** regarding fundamental rights, in relation to EU funds, that are worthy to be mentioned and described. The issues that were identified are of a more general scale.

The first one has to do with the *relationship of trust between the citizens and the public administration*. According to an interviewed academic, one of the principles of an open and modern society is that there should be a relationship of trust between citizens and the State, and citizens should feel sufficiently comfortable with the services provided by the State. And although in recent years the State had made massive investments in modernising itself, it still faces a major challenge in ensuring that, in the social areas, the modernisation will reinforce citizens' trust in the State, and thus be a complement to the guarantee of fundamental rights. Therefore, the modernisation of the public administration must be done taken fundamental rights as a key issue, including the easy access of citizens, the swiftness of the response, the transparency of procedures and the right to claim, among other.

"O primeiro deles tem a ver com a relação de confiança dos cidadãos com o Estado e a administração pública. (...) um desafio muito grande na minha opinião, no futuro, em algumas áreas críticas, sobretudo das áreas mais sociais, [é] fazer com que a modernização que as tecnologias vão dar ao Estado e às suas instituições reforcem a confiança dos cidadãos no Estado e com isso sejam um complemento àquilo que é uma garantia do ponto de vista dos direitos fundamentais (...)." (PT/CSO/4)

"The first one has to do with the relationship of trust between the citizens and the State and the public administration. (...) a major challenge in the future in some critical areas, particularly in the social areas, [is] to ensure that the modernisation that technologies will bring to the State and its institutions will reinforce citizens' trust in the State and thus be a complement to the guarantee of fundamental rights (...)" (PT/CSO/4)

The second issue raised the interviewed academics concerns *the importance of improving the access of minorities to the EU funds*. It was referred that, in recent years, since Portugal has received a large number of migrants, the majority of them fleeing from situations of war and other uncontrollable situations. In this academic's opinion, it would be beneficial for the government and operational programmes could set an example of how EU funds can be used to support the proper and intelligent integration of immigrants in the country.

"O outro, na minha opinião, tem a ver claramente com o acesso das minorias. (...) Acho que era importante os programas operacionais darem um exemplo daquilo que poderia ser a utilização dos fundos comunitários no sentido de serem um apoio à integração (...) dos emigrantes no nosso país. (...)" (PT/CSO/4)

"The other, in my opinion, is clearly about minority access. (...) I think it would be important for the operational programmes to set an example of how Community funds could be used to support (...) integration of immigrants in our country. (...)" (PT/CSO/4)

A third issue, mentioned by other academic, refers to the necessity of *building a stronger model of communication between government officials, management authorities and human rights institutions*, such as the Ombudsperson's Office, so that the protection of fundamental rights is guaranteed, and that solutions in this matter are presented ex-ante. It is considered that rarely this issue is a matter of concern by the national authorities, more focused in the financial execution of the operational programmes and of the financed projects.

"Eu acho que há sempre uma preocupação que a própria Comissão [Europeia] tem e outras instituições também têm que é (...) importante do ponto de vista garantístico, ou seja, haver sempre ali uma dimensão de garantia dos direitos dos beneficiários, do ponto de vista dos direitos fundamentais também. (...) na prática, (...) verificamos que o Provedor de Justiça tem auxiliado em resolver muitos problemas em concreto. (...) Porque muitas vezes as autoridades de gestão, a preocupação delas não é essa, a preocupação delas é cumprir os seus objetivos, que há de ser alocar o dinheiro. Poderia existir uma entidade com uma dimensão preventiva, que permitisse o diálogo e fizesse recomendações ao nível de direitos fundamentais, apresentando soluções ex-ante (...)" (PT/CSO/3)

"I think there is always a concern that the [European] Commission itself and other institutions also have, which is (...) important in terms of guarantees, i.e. there should always be a dimension of guarantee of the rights of beneficiaries, in terms of fundamental rights. (...) in practice, (...) we see that the Ombudsperson's Office has helped to resolve many specific problems. Because many times the management authorities are not concerned about this, their concern is to fulfil their objectives, which is to allocate the money. (...) there could be an entity here with a preventive dimension, which would allow the dialogue and make

recommendations at the level of fundamental rights, presenting ex-ante solutions (...).” (PT/CSO/3)

The fourth issue raised by the interviewed academics relates to *the right of access to justice*. Considering that the existing mechanisms to access law and justice are slow, when a beneficiary does not have the financial capacity to wait for a judicial decision, this can mean the end of the beneficiary and the loss of jobs. Moreover, it was also mentioned that most judges are not qualified to make a decision on a claim related to the EU funds since the funding cycle is a particularly complex process and the training provided to these professionals is scarce.

“Depois, há a preocupação com o acesso à justiça, que é a preocupação da celeridade e do conhecimento especializado dos juízes sobre fundos europeus e direitos fundamentais (...). Temos toda uma burocracia e todo um conjunto de problemas associados ao nível social, de empregados que ficam sem vencimento.” (PT/CSO/3)

“Afterwards, there is a major concern with access to justice, which is the concern for celerity, and specialised knowledge of judges regarding the European funds and fundamental rights. We have a whole bureaucracy and a whole set of associated problems, then at a social level, of employees who are left without pay, a whole impact.” (PT/CSO/3)

In sum, the following issues were raised as problematic in what concerns the conception, management, and implementation of the EU funds in Portugal:

- difficulty in guaranteeing/promoting access for vulnerable groups on the funded projects,
- strict quantitative approach of the evaluation criteria to monitor and assess the implementation of projects (financial and physical),
- difficulty in ensuring the continuity of the financed projects,
- low participation and consultation of the stakeholders/organisations who represents the direct beneficiaries,
- rigid implementation of the financed projects,
- tension on the collection, use and management of sensible data by EU and national entities,
- necessity to build a relationship of trust between citizens and public administration,
- improvement of the access of minorities to the EU funds,
- necessity of a stronger model of communication between government officials, management authorities and human rights institutions,
- better right of access to law and justice by beneficiaries.

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

As stated before, the national bodies with a human rights remit intervene in the funding cycle exclusively as beneficiaries, such as SPEM – Sociedade Portuguesa de Esclerose

Múltipla (Portuguese Multiple Sclerosis Society) and CITE – Comissão para a Igualdade no Trabalho e no Emprego (Commission for Equality on Work and Employment), or in some specific cases, such as ACM – Alto Comissariado para as Migrações (High Commission for Migration), CIG – Comissão para a Cidadania e a Igualdade de Género (Commission for Citizenship and Gender Equality), they intervene, simultaneously, as intermediate bodies and beneficiaries.

3.1 The role of national bodies with a human rights remit in ensuring the fundamental rights conditionality introduced and reinforced on the basis of the Common Provisions Regulation

The European Union funding programmes has been guided, since 2010, by the “Europe 2020: A strategy for smart, sustainable and inclusive growth”³³ (hereafter, Europe 2020), a document that establishes a reference framework for properly articulated European and national policies to promote economic growth and job creation. The priorities of this strategy have been reflected in the strategic objectives of the **Common Strategic Framework**³⁴, which aims to promote the harmonious, balanced and sustainable development of the EU.

In its article 73 (1), the Common Strategic Framework states that “for the selection of operations, the managing authority shall establish and apply criteria and procedures which are non-discriminatory, transparent, ensure accessibility to persons with disabilities, ensure gender equality, and take account of the Charter of Fundamental Rights of the European Union, the principle of sustainable development and of the Union policy on the environment in accordance with Article 11 and Article 191(1) TFEU. The criteria and procedures shall ensure that the operations to be selected are prioritised with a view to maximising the contribution of Union funding towards the achievement of the objectives of the programme”. This means that in the selection of projects to be funded, the managing authorities or the intermediate bodies have to apply criteria and procedures that ensure the compliance with the principles and values enshrined in the Charter of Fundamental Rights.

On the national level, and according to article 27 of **Decree-Law 137/2014**³⁵, the Steering Committees of the thematic operational programmes are responsible for the appraisal of the eligibility and the merit of the applications submitted, in accordance to the criteria applicable to the operative programme. Additionally, according to article 53 of **Decree-Law 137/2014**³⁶, each operational programme, as described above, has a monitoring committee, a collegiate body which, within the framework of an operational

³³ European Commission (2010), [Europe 2020: A strategy for smart, sustainable and inclusive growth](#), COM(2010) 2020 final, Brussels, 3 March 2010.

³⁴ Annex 1 of the [Regulation \(EU\) 1303/2013 of the European Union 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 and repealing Council Regulation \(EC\) No 1083/2006](#), OJ 2013 L 347.

³⁵ Portugal, [Decreto-Lei 137/2014, que estabelece o modelo de governação dos fundos europeus estruturais e de investimento para o período de 2014-2020](#) (Decree-Law 137/2014, which establishes the governance model of the European structural and investment funds for the 2014-2020 period), 12 September 2014.

³⁶ Portugal, [Decreto-Lei 137/2014, que estabelece o modelo de governação dos fundos europeus estruturais e de investimento para o período de 2014-2020](#) (Decree-Law 137/2014, which establishes the governance model of the European structural and investment funds for the 2014-2020 period), 12 September 2014.

programme, is responsible for reviewing and approving the selection criteria for operations, reviewing the results of programme implementation, considering the conclusions and recommendations of on-going evaluations, reviewing and approving the programme implementation reports and any proposals to amend the content of the European Commission decision on the participation of structural and investment funds in the programme. The composition of each monitoring committee is fixed by an Order issued by the competent member of the Government, but they have to be composed by representatives of: the managing authorities (usually, the President or other member of the steering committee) – being that this representative is also Chairman of the monitoring committee; the competent coordinating bodies (Agency for Development and Cohesion, for the thematic operational programmes); the intermediate bodies; the Azores and Madeira Regional Governments (one of each); the National Association of Portuguese Municipalities (Associação Nacional dos Municípios Portugueses); the economic and social partners and relevant organisations in the social economy and higher education institutions; the most relevant public entities for the operational programme in question; and civil society organisations, including the environmental area. All of these entities have one vote in the committee. Beyond these entities, other entities can participate in the meetings, but as an observer and without the right to vote.

The intervention of national bodies with a human rights remit in the monitoring committee was seen by the majority of the interviewees as crucial. These bodies are the ones who have the deepest knowledge about what is actually happening in the field and the necessities that needs to be tackled, easily making the connection between public policies and the implementation of EU funds in the area. Therefore, the majority of interviewees understood that national bodies with a human rights remit play their most efficient role in ensuring fundamental rights compliance of EU funds by intervening in the monitoring committee.

"Na fase de desenho e depois na fase dos comités de acompanhamento, eu vejo estas duas fases. (...) Ter acesso aos relatórios anuais, fazer parte dos comités de acompanhamento, o que significa participar em pelo menos duas reuniões por ano com todos os stakeholders parceiros dos programas." (PT/NHRB/3)

"In the design stage and then in the monitoring committees stage, I see these two stages. (...) Having access to annual reports, and being part of the monitoring committees, which means participating in at least two meetings per year with all stakeholders who are partners of the programmes." (PT/NHRB/3)

"Nos comités de acompanhamento. (...) Grande parte daqueles organismos têm direito a voto, outros têm direito a emissão de opinião consultiva durante as reuniões (...). Eles têm o direito de se pronunciarem sobre as condições de aplicação do programa." (PT/NFM/3)

"In the monitoring committee (...) Most of those bodies have the right to vote, and others have the right to issue an advisory opinion during the meetings (...). They have the right to comment on the conditions of application of the programme." (PT/NFM/3)

Furthermore, article 17 of **Decree Law 159/2014**³⁷ establishes that the applications submitted shall be analysed and selected in accordance with the eligibility and selection criteria set out in the specific regulations and in the calls for applications. Also, the formulation of the selection criteria shall guarantee the alignment with the results to be achieved, namely with the result indicators of the specific objective where the operation is included, when applicable. However, the greater representation of women in the board of directors, administration and management bodies and the greater wage equality between women and men, performing the same or identical functions in the applicant entity, shall be considered for the purposes of breaking the tie between applications for cohesion policy funds, where applicable, and interventions in public spaces or buildings with public access shall guarantee respect for accessibility and mobility conditions for all, including people with disabilities.

In this regard, and although the interviewees agreed that the respect for fundamental rights plays a transversal role in the implementation of EU funds at a national level, these have a more concrete role at the application assessment and result evaluation stages, since, in these phases, there are checklists with criteria aimed at evaluating the merit of the application submitted, and, later, after the implementation of a project, its results. According to the interviewees, although these checklists aren't directly aimed at assessing the fulfilment and promotion of fundamental rights, they assess the extent to which the projects fulfil equality of opportunity and other criteria related with fundamental rights, such as gender equality and non-discrimination. A representative of a national body with a human rights remit refers that it is difficult to have a specific checklist about the fulfilment and promotion of fundamental rights, considering that this a very broad concept, difficult to evaluate. A different opinion emerged on the round-table, with one of recommendations referring the implementation, at the application assessment and result evaluation stages, of a mechanism for the thematic verification of fundamental rights for the purposes of upgrades, tie-breaks and impact assessment. A fund manager also pointed to the need to have published reports, issued by civil society organisations and on-site verifications, as mechanisms to evaluate the fundamental rights compliance with EU funds.

Regarding the reports published by civil society organizations dealing with the ESIF, as mentioned above, these are, like the majority of the reports mentioned before, mostly focused on the financial execution of the EU funds. However, some of them also pay attention to the impact of the ESIF in areas related to fundamental rights. An example of this approach is the report entitled "Evaluation Study on the Contribution of PT2020 [Portugal 2020] to the Promotion of Educational Success, Reduction of Early School Dropout and Employability of Young People" (*Avaliação do Contributo do PT2020 para a Promoção do Sucesso Educativo, Redução do Abandono Escolar Precoce e Empregabilidade dos Jovens*)^{38/39}, developed by a consortium formed by the Institute for Social and

³⁷ Portugal, [Decreto-Lei 159/2014, que estabelece as regras gerais de aplicação dos programas operacionais e dos programas de desenvolvimento rural financiados pelos fundos europeus estruturais e de investimento, para o período de programação 2014-2020](#) (Decree-Law 159/2014, which establishes the general rules for the implementation of operational programmes and rural development programmes financed by European structural and investment funds, for the 2014-2020 programming period), 27 October 2014.

³⁸ An executive summary in English of this report can be found in the [website of the Agency for Development and Cohesion](#).

³⁹ Institute for Social and Economic Studies, Lisbon University Institute and PPLL Consult (2021), [Avaliação do Contributo do PT2020 para a Promoção do Sucesso Educativo, Redução do Abandono Escolar Precoce e Empregabilidade dos Jovens](#) (Evaluation Study on the Contribution of PT2020 [Portugal 2020] to the Promotion of Educational Success, Reduction of Early School Dropout and Employability of Young People), General Secretariat for Education and Science.

Economic Studies (Instituto de Estudos Económicos e Sociais), a civil society organization, the Lisbon University Institute (Instituto Universitário de Lisboa), a Portuguese university, and the PPLL Consult, a consulting company. Although this report can be considered as another financial execution report, because it analyses the impact of the action taken under the PO CH in several areas linked to education, it's possible to access the impact that these funds have in the promotion of educational success, reducing early school dropout and youth employability, which in turn can be linked to the promotion of fundamental rights as the right to education.

Regarding the on-site verifications, some interviewees mention these as a mechanism to monitor the implementation of the project. However, a representative of a civil society organization mentioned that their organisation has never experienced an on-site verification.

3.2 The involvement of national bodies with a human rights remit in insuring fundamental rights compliance of EU funds: barriers and challenges

Throughout the research process, 4 main barriers and challenges, of the involvement of national bodies with a human rights remit in insuring fundamental rights compliance of EU funds, were identified in different stages of the funding cycles.

a) Absence of the national bodies with a human rights remit from the initial stages of design and conception of the funding mechanisms

One of the barriers and challenges identified, although not consensual, is the absence of the national bodies with a human rights remit from the initial stages of design and conception of the funding mechanisms, taking into consideration that these bodies have a better knowledge of the reality where the intervention is intended to occur. A representative of a national body with a human rights remit and the two academic interlocutors suggested that the best stage for these bodies to play a more efficient role is during the negotiation stage. This opinion was also supported by a subgroup of the round-table. According to them, bodies with a human rights remit should have a consulting role, since the moment of design and conception of the funding mechanisms, taking into consideration that these bodies have a better knowledge of the reality where the intervention is intended to occur. These bodies should be able to help to identify the measures that might be best suited to resolve the needs faced by the beneficiary institutions on a daily basis.

"A fase crítica é a fase de negociação política porque é a partir daí que começa a história toda. É como pôr um comboio em movimento, depois de estar a andar é mais complicado fazer desvios. (...) A intervenção dos organismos que operam no terreno é nuclear na preparação e isso é feito normalmente com meses de antecedência, dizendo as nossas necessidades são estas, o envelope financeiro que precisamos é este e o que queremos fazer mais (...). (...) o mais importante é capacitar o decisor político." (PT/NHRB/2)

"The critical stage is the political negotiation stage because that's where the whole story begins. It's like putting a train in motion, once you're moving it's more complicated to make detours. (...) The intervention of the organisations that operate in the field is central in the preparation and this is normally done months in advance, saying these are our needs, the financial envelope we need is this and what we want to do more (...). (...) the most important thing is to support the policy-maker." (PT/NHRB/2)

According to one academic interlocutor, the lack of resources may preclude the participation of the national bodies with a human rights remit in the initial phase of the cycle (the drawing of the national partnership agreement).

"A segunda tem a ver com uma questão de consciência dos próprios organismos. Eu acho que muitas vezes acontece que os próprios organismos, fruto também às vezes de algumas dificuldades internas de gestão e de alguma ausência de recursos, não se sentem suficientemente confortáveis para eventualmente ir ter com as próprias entidades e autoridades de gestão e darem-lhes uma espécie de nota daquilo que podia ser uma intervenção mais inicial e sobretudo mais aberta e mais completa do processo. (...) E terceiro, eu acho que é interessante criar, sempre que um programa operacional é aprovado, uma espécie de conjunto de sessões de discussão à priori onde se chamariam algumas entidades da sociedade civil e alguns especialistas (...). O que nós temos assistido nos últimos tempos em relação aos programas comunitários é que tem sido desenhado de uma forma relativamente fechada, muito burocrática, sem a participação muitas vezes da sociedade civil, quando é feito é a posteriori quando as coisas já estão relativamente fechadas. (...) se fossem criados fóruns abertos suficientemente especializados (...), isso podia ter efeitos muito positivos ao nível da qualidade das propostas finais dos próprios programas e ao nível da motivação que as próprias entidades poderiam ter para mais tarde poder participar de forma mais aberta." (PT/CSO/4)

"The second barrier is a question of the awareness of the organisations themselves. I think that it often happens that the organisms themselves, also sometimes due to some internal difficulties of management and some lack of resources, do not feel sufficiently comfortable to eventually go to the managing entities and authorities and, in a certain way, give them a kind of note of what could be a more initial intervention and above all a more open and more complete intervention in the process. (...) And thirdly, I think it would be interesting to create, whenever an operational programme is approved, a kind of set of prior discussion sessions where some entities from civil society and some specialists would be called in (...). What we have seen lately in relation to community programmes is that they have been designed in a relatively closed and very bureaucratic way, often without the participation of the civil society. (...) if sufficiently specialised open forums were created (...), this could have very positive effects in terms of the quality of the final proposals of the programmes themselves and in terms of the motivation that the entities themselves could have to participate in a more open way later on." (PT/CSO/4)

Therefore, they can't contribute with the transmission of their difficulties, like the lack of human resources, which has, afterwards, risks and consequences in the implementation of the projects. In another words, the negotiation process carries the risk that the national bodies with a human rights remit are not able to guarantee the necessary level of funding to address the identified needs. This opinion was also supported by a representative of a national body with a human rights remit.

The other subgroup of the round-table stated that these bodies should also be heard and involved, in the design of the national operational programmes, with national representatives, but always with a view to subsidiarity and the organised development of programmes. The subgroup also concluded that civil society should participate collectively, through associations or entities representing specific thematic areas, and not concrete entities that are also beneficiaries, in order to avoid atomisation and the securing of funding by particular entities, preventing possible conflict of interests. Additionally, it should be noted that this subgroup of the round-table also mentioned that, considering there is a general lack of capacity/skills in the area of fundamental rights, these bodies should play a very active role in monitoring the training and upskilling of the human resources involved in the operational programmes, in order to ensure that fundamental rights are present from its conception.

b) Excessive bureaucracy linked to the fund management process

Another challenge and barrier frequently identified is the excessive bureaucracy linked to the fund management process, linking this process to public procurement procedures, and, consequent disregard for the fundamental rights. According to the interviewees and the participants of the round-table, the process of submitting applications, submitting reimbursement requests or monitoring projects, among other, is very complex and creates obstacles and frustration, not only on the part of the beneficiary entities, but also on the part of the intermediary bodies and management entities that analyse the applications and monitor the implementation of funds. In addition, because most of the beneficiaries are small non-profit organisations, they aren't familiarised to deal with public procurement procedures. This puts an increasing pressure on organisations that don't have strong institutional capacity, including qualified human resources trained to work with these bureaucratic procedures

"Os principais obstáculos são a burocracia extrema que existe (...). É demasiado difícil submeter uma candidatura, submeter pedidos de reembolso, analisar uma candidatura e analisar pedidos de reembolso, a que acresce o facto de não haver recursos humanos com competências para isso em Portugal (...). As entidades não têm pessoas com competência suficiente para submeter os projetos e para os acompanhar em termos de cumprimento de todas as regras que sejam necessárias, ou seja, conseguem fazê-las ao nível do terreno, mas depois para garantir todas as regras e todos os procedimentos não têm. E nós, como entidade gestora, não temos os recursos necessários também para conseguir fazer o nosso trabalho da melhor maneira possível porque estamos permanentemente a enfrentar uma situação de escassez e permanentemente a enfrentar uma situação em que estamos a roubar recursos humanos uns aos outros. (...) Acho que devia aqui ser feito um trabalho (...) de tentar desburocratizar ou simplificar um pouco mais toda esta carga administrativa que existe. (...) A outra questão é a contratação pública, sendo ela necessária, a verdade é que estamos a falar de entidades que não estão habituadas a contratação pública, quer dizer, se nós ao fim de vários anos a trabalhar com procedimentos de contratação pública precisamos do apoio de juristas, estas pequenas entidades também o precisam e não têm capacidade de ter um jurista a trabalhar para elas (...). Nós vamos fazendo muitas sessões de esclarecimento, chamando à atenção para isto e para aquilo, mas nota-se que ainda hoje

que não é o suficiente, portanto, esta exigência é um grande handicap aqui, é uma grande dificuldade.” (PT/NHRB/1)

“The main obstacles are the extreme bureaucracy that exists (...). It is too difficult to submit an application, submit reimbursement requests, analyse an application and analyse reimbursement requests, in addition to the fact that there are no human resources with the skills to do so in Portugal (...). The entities do not have people with sufficient competence to submit the projects and to monitor them in terms of compliance with all the necessary rules, that is, they manage to do them at the field level, but then to guarantee all the rules and all the procedures they can’t. And we, as a management entity, also do not have the necessary resources to be able to do our work in the best possible way because we are constantly facing a situation of scarcity and permanently facing a situation in which we are stealing human resources from each other. (...) I think that work should be done here (...) to try to reduce bureaucracy or simplify a little more all this administrative burden that exists. (...) The other issue is public procurement, which is necessary, the truth is that we are talking about entities that are not used to public procurement, that is, if after several years of working with public procurement procedures we need the support of lawyers, these small entities also need it and are not able to have a lawyer working for them (...). We carry out many clarification sessions, calling attention to this and that, but it is noted that even today it is not enough, therefore, this requirement is a great handicap here, it is a great difficulty.” (PT/NHRB/1)

One of the CSO interviewees mentioned also that the excessive bureaucracy in the monitoring and evaluation of financial execution of projects takes most of the national bodies with a human rights remit technicians’ time, consume equally also too much time and effort from the civil society organisations. In the interviewee’s opinion, this focus on the financial execution leaves no time to monitor the technical execution in the field and compliance with the fundamental rights. The interviewee gave the example of one of the organization shelters that, since its creation, in 2018, has never been visited by the funding entity (intermediary body) entity or any of its technicians.

Eles estão absolutamente absorvidos com as questões financeiras e recursos humanos e transferem isso para nós (ONG), que temos de ter um recurso humano para cada projeto só para lidar com a gestão financeira do projeto. (...) Acho que nós perdemos imenso tempo, não só as organizações, como a própria entidade financiadora, de volta das questões financeiras. Ficamos absorvidos todos nas questões financeiras. (...) O foco está errado. (PT/CSO/2)

They are absolutely absorbed with the financial issues and human resources and they transfer that to us [NGO], who have to have a human resource for each project just to handle the financial management of the project. (...) I think we waste a lot of time, not only the organizations but also the funding entity itself, on financial issues. We are all absorbed in financial matters. (...) The focus is wrong. (PT/CSO/2) Furthermore, the excessive bureaucracy and complex public procurement procedures can lead to the end of an organisation because the non-approval of applications or the rejection of reimbursements can put the organisations in a vulnerable financial position. That’s why

there is a concern on the part of some managing authorities and intermediate bodies in promoting information sessions as soon as a call of applications is published, allowing the interested organisations to clarify any doubts that they may have. For example, the operational programme PO ISE has an axis entitled "Technical assistance" (Assistência técnica)⁴⁰ that aims to ensure a high level of administrative and technical skills of the Managing Authority and all of the entities involved.

c) Lack of qualified human resources

The third challenge and barrier identified most often is the lack of qualified human resources, namely the lack of capacity/skills in the areas of fundamental rights and EU funds administrative and financial procedures.

According to the interviewees and the participants of the round-table, because there isn't a specialised training in fundamental rights and management of EU funds and its demanding procedures, these national bodies have difficulties in contracting human resources with the necessary experience and skills. And due to the lack of financial resources, they also have difficulties in retaining the existing technical staff, because the offered contractual conditions (mainly in terms of salary and career progression) aren't sufficiently attractive to retain the most qualified human resources. These limitations create a situation where these bodies take upon the difficult and long task of upskilling their human resources, but then, due to financial restrictions, those aren't retained, leading many times to outsourcing. Therefore, it was highlighted the necessity to tackle the problem of lack of qualified human resources. In addition to this problem, there is a lack of efficient IT platforms and simplified procedures, further burdening the existing few human resources.

"É preciso um conhecimento muito aprofundado (...) Isto é uma carga administrativa enorme que enquanto não se conseguir diminuir (...) a necessidade de haver muitos técnicos e, portanto, são sempre poucos, por mais que se diga que há muitos funcionários públicos, eles são sempre poucos dado a carga administrativa que têm em cima e, por outro lado, enquanto não houver sistemas informáticos em que seja possível fazer verificações, em que seja possível trabalhar a informação no próprio sistema informático sem haver a impressão e a transferência de documentos de um lado para o outro, não conseguiremos a simplificação necessária para que os fundos comunitários possam ser utilizados ainda com maior rapidez, com maior eficiência e com maior impacto no terreno."
(PT/NHRB/1)

"A very in-depth knowledge is needed (...) This is an enormous administrative burden that, while it is not possible to reduce (...) the need to have many technicians and, therefore, there are always few, no matter how many civil servants are said to be, they will be always few given the administrative burden they have on top and, on the other hand, as long as there are no computer systems in which verifications can be carried out, in which it is possible to work the information in the computer system itself without having to print and transfer documents from one side to the other, we will not achieve the necessary simplification so that Community

⁴⁰ For more information on this axis, [see the website of PO ISE](#).

funds can be used even faster, more efficiently and with greater impact on the ground.” (PT/NHRB/1)

According to some participants of the round-table, the lack of qualified human resources is also a challenge for the beneficiary entities. It creates asymmetries in accessing the funding, since not all of the beneficiary entities have professional structures to allow them to apply or have the financial means to support the unfinanced component of the programmes. This also allows for the creation of “elites” of beneficiary entities, because the strongest get stronger more easily as they have the capacity (administrative, financial and technical) to apply regularly for these funds. This may impact the promotion of the fundamental rights of the more vulnerable social groups.

d) Lack of access to relevant information

Another barrier raised by the interviewees and round-table participants was the lack of access to relevant information on the part of the national bodies with a human rights remit. This difficulty was identified, particularly, on an interviewee made to two representatives of a managing authority. Although one interviewee identified this difficulty, the other argued that, as members of the monitoring committee, the right to information is regulated and national bodies with a human rights remit can ask for more information if necessary.

“(...) a única coisa que pode haver é alguma deficiência de informação, mas se eles tiverem deficiência de informação enquanto organismos representativos da sociedade civil [na comissão de acompanhamento], podem sempre pedir.” (PT/NFM/3)

“(...) the only thing that can be is a lack of information, but if they have a deficiency of information as representative bodies of civil society [in the monitoring committee], they can always ask.” (PT/NFM/3)

In sum, taking into account all these barriers, most of the interviewees agreed that there is a reputational risk of national bodies with a human rights remit, acting as intermediate bodies, of being perceived as “signing off” on particular projects due to the lack of resources to look at the fundamental rights compliance of all the co-funded activities with the necessary degree of detail. However, a representative of a national body with a human rights remit didn’t agree with this statement, due to three factors. Firstly, there is a prior definition of the objectives to be met by the beneficiary entities in the calls. Secondly, during the project execution, the reimbursement requests are verified and validated. And thirdly, at the end of the project, there is an evaluation of the project execution, which includes the financial execution, and a report of the accomplished project activities.

“Não, não posso dizer dessa forma redutora. Nós como entidade gestora, como organismo intermédio, não assinamos por baixo por vários motivos. Primeiro porque existe uma definição prévia daquilo que deve ser financiado e quais são os objetivos a cumprir pelas entidades financiadas (...). Segundo lugar, em sede de execução há uma verificação dos pedidos de reembolso (...) e no final do relatório das entidades. Não assinamos por baixo, não é um cheque em branco, há um acompanhamento a cada pedido de reembolso que a entidade nos faz, há aquilo que se chamam de verificações no local em que vamos aos locais verificar se, de facto, as coisas estão a ser cumpridas.” (PT/NHRB/2)

“No, I can't say it in a reductive way. We, as a managing entity, as an intermediary body, do not sign below for various reasons. First, there is a

prior definition of what should be financed and what are the objectives to be met by the financed entities (...). Second, at the execution stage, there is a verification of requests of reimbursement (...) and, at the end, of the entities' report. We do not sign below, it is not a blank check, there is a follow-up to each refund request that the entity makes to us. There are what are called on-site checks in which we go to the places to verify that, in fact, things are being accomplished.” (PT/NHRB/2)

4 Critical success factors

The content analysis of the interviews and round-table allowed to identify a consensus on positive effect of EU funds upon the promotion of fundamental rights. Some contributions went even further, referring that without EU funds it would be impossible to develop the projects that are being carried out, especially the ones involving the protection of victims or the promotion of anti-discrimination of the most vulnerable groups (migrants, Roma people, people with disabilities, etc.). In addition, a fund manager also mentions that EU funds contribute to the raise of awareness among the general population on the importance of fundamental rights and the importance of generalizing the application of these values in Portuguese society. It was also mentioned that, in order to promote fundamental rights in the context of European funds, national bodies with a human rights remit are the entities in a better position to implement them on the ground, since they have a deeper knowledge on what goes on society and on the topics where the funding is more necessary.

"Q: (...) que mais-valias poderiam estes organismos trazer para enfrentar alguns desafios em matéria dos direitos fundamentais durante o ciclo de financiamento?"

A: (...) a sua intervenção e a sua natureza (...) é a mais valia porque conhecem os problemas, conhecem e lidam diariamente com os problemas dos grupos mais desfavorecidos, das circunstâncias e das medidas que os afetam e das políticas que os mais afetam. E, portanto, acho que a mais valia é o conhecimento do terreno e o conhecimento das áreas, o conhecimento mais profundo das áreas que têm.” (PT/NFM/1)

"A: (...) what added value could they bring to tackle some fundamental rights challenges during the EU funding cycle?"

Q: (...) their intervention and their nature (...) is the added value because they know the problems, they know and deal daily with the problems of the most disadvantaged groups, the circumstances and the measures that affect them and the policies that affect them the most. And so, I think that the added value is the knowledge of the terrain and the knowledge of the areas, the deeper knowledge of the areas they have.” (PT/NFM/1)

The interviews and round-table didn't provide concrete information on possible misuse of EU funds during their implementation. Nevertheless, some of the interviewees and participants on the round-table noted that, when implementing a certain project, there could be unintended or anticipated effects contrary to the promotion of fundamental rights. This can happen due to issues of fraud or asymmetries regarding the access to funding. Some concrete examples of misuses that can occur were given, such as projects: where EU funds are used for the requalification of public space without taking into account

accessibilities for people with disabilities; or where the dependency on EU funds is very high that its cessation can lead to setbacks in the positive effect in the promotion of fundamental rights, due to lack of financing outside the context of EU funds to go on with the activities. But all the participants weren't available to provide a concrete example where the misuses could be identified.

A general consensus on EU funds as having a positive effect upon the promotion of fundamental rights was achieved, as mentioned before. But it was also agreed that national bodies with a human rights remit could have a more effective role. Therefore, taking into account the 4 identified barriers and challenges, in the previous section, several suggestions were made to empower the role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds. A representative of a civil society organization mentions that national bodies with a human rights remit already have the capacity to fulfil their role in relation to EU funds. What they need to ensure is that they ask advise and listen to the representatives of civil society.

The majority of the recommendations, however, point to the need to increase human and financial resources in order to guarantee better working conditions (including physical conditions) and retain the most qualified human resources, in the national authorities and the national bodies with a human rights remit. This is a very important issue, which is crucial to ensure the good management of the EU funds and the correct assessment of the execution of the projects, in terms of financial, physical and fulfilment of fundamental rights.

"É qualificação de recursos humanos porque a área de fundos comunitários é algo que é muito difícil, ou seja, não é difícil no sentido de ser difícil os conhecimentos, é no sentido de que não existe uma licenciatura em fundos comunitários, não existe um curso em fundos comunitários, então é muito um conhecimento que é adquirido com base na experiência e com base em experiência sendo transmitida de uns para os outros. (...) Estas pessoas que trabalham em fundos comunitários assumem responsabilidades muito altas pelas quais não são remuneradas, têm timings e formas de trabalhar que exigem um esforço adicional em relação à média dos funcionários públicos e por esse motivo teriam que ser remuneradas e reconhecidas por essa responsabilidade adicional que têm e isso não acontece (...). E aqui não estamos a falar só nas entidades da sociedade civil ou nas entidades que executam os projetos, estamos também a falar ao nível central, ao nível das pessoas que analisam estes projetos e que os acompanham, precisavam de ser mais para poderem fazer um melhor trabalho e precisavam de ter melhores condições, melhores condições em termos de reconhecimento do seu trabalho e melhores condições em termos físicos, ou seja, estamos a falar inclusive de computadores e principalmente de plataformas informáticas que seja possível gerir estes fundos, nós não podemos continuar a gerir fundos com base em folhas de Excel (...)." (PT/NHRB/1)

"It is human resources skills because the area of community funds is something that is very difficult, i.e. it is not difficult in the sense that knowledge is difficult, it is in the sense that there is no degree in community funds, there is no course in community funds, so it is very much knowledge that is acquired based on experience and on experience being passed on from one to the other. (...) These people who work in

community funds assume very high responsibilities for which they are not remunerated, they have timings and ways of working that require an additional effort in relation to the average civil servant and for this reason they should be remunerated and recognised for this additional responsibility they have, and this does not happen (...). And here we are not only talking about the civil society entities or the entities that execute the projects, we are also talking about the central level, at the level of the people who analyse these projects and accompany them, they needed to be more so that they could do a better job and they needed to have better conditions, better conditions in terms of recognition of their work and better conditions in physical terms, i.e., we are also talking about computers and mainly computer platforms that enable the management of these funds, we cannot continue to manage funds based on Excel sheets (...).” (PT/NHRB/1)

Finally, a representative of a national body with a human rights remit suggested that, in order to ensure a more effective role of these bodies in relation to EU funds, there should be explicit legal provision of its requirement to comply with fundamental rights. The absence of its provision, in the national legal documents, makes the remit to fundamental rights less present and with reduced relevance. And, therefore, it is not a priority in terms of training, definition of criteria for funding or assessment of results.

“(...) se me perguntar, o que é que é necessário para garantir na aplicação de fundos comunitários a dimensão de direitos humanos, eu diria a explícita previsão legal.” (PT/NHRB/2)

“(...) if you ask me, what is necessary to guarantee the human rights dimension in the application of community funds, I would say the explicit legal provision.” (PT/NHRB/2)

The analysis of the contents of the interviewees and round-table contributed to the formulation of a set of recommendations, directed to the European Commission and the national authorities, to empower national bodies with a human rights remit in their role on the context of EU funds. These recommendations arise from the problems and difficulties identified by the interviewed and round-table participants and comes from the need to tackle and solve them.

The following 5 recommendations are directed to the European Commission.

The first proposal recommends the European Commission to promote a better articulation between national bodies with a human right remit and the European Commission, in order to share experiences, good practices, and knowledge of the needs of the most vulnerable groups. This could be done through: the creation of a consulting board where the national bodies could be heard and share experiences/good practices; the hearing of the several study groups, commissions and forums that already exist; the creation of specialised groups regarding fundamental rights and EU funds; or the creation and/or enhancement of transnational networks that could articulate national entities with European authorities (for example, the EURoma Network).

The second recommendation proposes that the European Commission shall have an active role aiming to listen to representatives of civil society organisations and suggest the promotion of policies with similar measures and resources for all European countries, especially in the area of disabilities. Moreover, in this specific area, the European

Commission shall promote and monitor, through the EU funds, the compliance of the United Nations' Convention on the Rights of Persons with Disabilities (CRPD).

The third recommendation points to the need for clarification, by the European Commission, regarding the collection and processing of sensitive data, in accordance with national legislation on data protection, updating, simultaneously, the current information systems.

The fourth recommendation to the European Commission refers to the necessity to have a more precise approach to the fundamental rights compliance, establishing previously evaluation criteria related to the fundamental rights that the intermediate bodies must follow in the calls for applications and evaluation stages.

Finally, the fifth recommendation to the European Commission highlights the importance of combating the general information deficit on fundamental rights in Member States, through a greater dissemination of the Charter of Fundamental Rights of the European Union.

The following 5 recommendations are directed to national authorities involved in the management and implementation of EU funds.

Firstly, the interviewees and round-table participants point out the necessity to change the legal framework of the governance model of EU funds in the national context. This recommendation is made to ensure the compliance with fundamental rights which must be considered since the beginning of the definition of the operational programmes until the execution of the funded projects. Therefore, the legal changes should: ensure the involvement of the organised civil society from the initial stages of the definition of each operational programme to the identification of investment priorities, including the guarantee of eligibility of all costs related to employment contracts.

Secondly, it is recommended that national authorities create the conditions to establish a contract of trust with national bodies with a human rights remit, where rights and obligations are clearly negotiated with the management authorities, promoting a more proactive attitude of these last entities, from a financial and operational nature.

Thirdly, it is recommended that national authorities introduce, at the application assessment and result evaluation stages, a mechanism for the verification of fundamental rights for the purposes of funding and for upgrades, tie-breaks or impact assessment of the results and implementation of the Sustainable Development Goals (SDGs), as a benchmark when assessing project applications and the impact of the funding in society.

Fourthly, it is recommended that the managing authorities create the conditions: to allow that bottom-up proposals can emerge, permitting beneficiary entities to develop actions that address vulnerabilities identified on the ground; and to ensure that the operational programmes can accommodate the needs of the different beneficiary profiles (technical, administrative and financial capacities).

The fifth recommendation is directed to the necessity to solve the problem of lack of qualified human resources of the national bodies with a human rights remit. In this sense, several recommendations were made to eliminate the existing barriers to a more professional performance of these bodies, such as: the creation of a higher academic training focused on fundamental rights and European funds or the creation of specialised training by the Agency for Development and Cohesion, to allow the qualification of the technical staff of these bodies; and the increase of financial resources to provide national bodies with a human right remit with the capacity to hire more human resources and to retain the most qualified, by creating adequate work conditions for people who are involved in the funding cycle. Additionally, it is considered important to invest in the improvement

of que quality and efficiency of the current digital platforms, to obtain better information and to increase the communication between each other.

Finally, as a transversal recommendation, it is suggested a more dynamic dissemination of studies/documents related to the funding cycle by national and European entities that promote fundamental rights, to grant a greater awareness of every entity involved in the funding cycle.

5 Conclusion

In the last decades, the promotion and protection of fundamental rights has been one of the major concerns at the European and national level, in several areas. One of those areas is the funding cycle of EU funds. The **Common Strategic Framework**⁴¹, has fundamental rights has one of its axis and article 73 (1) states that “for the selection of operations, the managing authority shall establish and apply criteria and procedures which are non-discriminatory, transparent, ensure accessibility to persons with disabilities, ensure gender equality, and take account of the Charter of Fundamental Rights of the European Union, the principle of sustainable development and of the Union policy on the environment in accordance with Article 11 and Article 191(1) TFEU”.

The analysis of the contents of the interviews and the contributions from the participants on the round-table allows to draw 5 main conclusions. The first one relates with the reduced awareness of the relevance of fundamental rights in the conception, implementation and assessment of the achieved results by the beneficiary entities of the diverse operational programmes with EU funds. Although the operational programmes aim to intervene in diverse thematic areas related with the need to fulfil fundamental rights, there is not much concern in ensuring that they are considered since the initial phase of design of the funding programmes.

The second conclusion refers to focus of the operational programmes on the financial execution of the financed projects, rather than the assessment of the execution of the goals. Therefore, the beneficiary entities are more concerned in financial execution, which must follow all the necessary legal requirements, because the risk of not being reimbursed may cause severe damages to the surviving of the institution. The accomplishment of the results is a matter of concern, but with an inferior priority, due to the type of follow up that was established by the operational programmes. Indeed, as assumed by several interviewed participants, in general, there is only assessment of the financial execution, with the fulfilment of fundamental rights being left aside of this procedure.

The third conclusion points out to the lack of qualified human resources in the management and implementation of EU funds, through the diverse financial mechanisms. This shortage of human resources can be seen on three different type of entities: the management structures of the operational programmes; the national bodies with a human rights remit; and the beneficiary entities (civil society organizations). The need of specialized knowledge on these matters, the payment of low salaries to these technicians or the existence of situations of labour precariousness makes the training and retaining of these professionals difficult, with a great impact on the daily management of EU funds and on the correct use of these funding.

⁴¹ Annex 1 of the [Regulation \(EU\) 1303/2013 of the European Union 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 and repealing Council Regulation \(EC\) No 1083/2006](#), OJ 2013 L 347.

The fourth conclusion relates with a major concern with the continuity of the actions promoted by EU funds. As these funds are made available on a project base, with a rigid time frame, it is difficult for the majority of the beneficiary entities to ensure the continuity of the actions that were approved. Often, with the new operational programmes funding other priorities, it's common that the beneficiary entities apply for the implementation of other actions, leaving behind the former ones. Therefore, the surviving of many of these entities depends on the funding of the operational programmes and other similar funding mechanisms, making them vulnerable entities with limited capacity to ensure the continuity of the actions. Within this context, there is a great inequality on the access to the EU funds provoked by the simultaneous existence of strong and vulnerable civil society organisations, the first ones with professional staff qualified to apply to these funding, and the last ones without the same technical capacity, which prevent them to apply and access to EU funds.

Finally, a fifth conclusion, with a more transversal nature, has to do with the rigid structure of the thematic operational programmes and its ruling, that inhibits the emergence of bottom-up proposals and actions, from entities that have a deeper knowledge of society needs, and the difficulty to change the approved financed projects during its execution, making the adaptation to unexpected occurrences very difficult to introduce. In this issue, the major concern relates with the financial execution, where the losses can have a major impact on the daily life of the beneficiary entity.

Therefore, the EU funds, and all the administrative entities in charge of their implementation (national authorities and/or intermediary institutions), must be built with a main focus on fundamental rights. The Common Strategic Framework foresees the existence of the main principles of fundamental rights on the EU funds, but does not ensure the necessary structures to implement them as it would be necessary, taken into consideration the society needs and the reality of civil society organizations.