

## ANNEX

### Additional observations on the Cypriot BMVI programme 2021–2027

#### Section 4 – Enabling conditions

Reference: point (i) Article 22(3) CPR

The Commission does not have sufficient information yet to assess the fulfilment of the HEC 3 *‘Effective application and implementation of the EU Charter of Fundamental Rights’* (‘the Charter’).

With respect to **criterion 1 of the HEC 3**, the Cypriot authorities are invited to provide concrete information about the arrangements in place in all phases of programming and implementation of the Programme to effectively ensure compliance with the Charter. In this regard, the Cypriot authorities state in their self-assessment that “the Managing Authority in cooperation with the Ombudsman and Protection of Human Rights Office take all necessary measures to ensure compliance of the Programme with the EU Charter of Fundamental Rights, during all stages.” The Cypriot authorities are invited to clarify what is meant by “*all necessary measures*” and provide the working arrangements in place.

The Cypriot authorities are invited to indicate how compliance with the Charter will be ensured in all phases of the implementation of the programmes, in particular in key areas such as reception, reception conditions – in particular of unaccompanied minors and vulnerable persons – detention conditions and border management. The Cypriot authorities are invited to explain how they will ensure that alleged breaches of the Charter in the implementation of the programme are properly investigated and how effective follow-up of the findings of the investigations will be ensured.

In this context, the Commission invites the Cypriot authorities to pay particular attention to the following:

- The Commission has concerns in relation to reception and detention conditions for asylum applicants, recalling the commitment of the Cypriot authorities to achieve an overall improvement in the level of material reception conditions in line with the 2022 Action Plan (annexed to a joint Memorandum of Understanding on migration management between Cyprus, the European Commission and EU Agencies<sup>1</sup>). In this context, the Cypriot authorities are kindly requested to provide information on the mechanisms in place to ensure that reception and detention conditions are in line with rights under the Charter (e.g. prohibition of inhuman and degrading treatment (Article 4 of the Charter), the rights of the child (Article 24 of the Charter), and the protection in the event of removal, expulsion or extradition (Article 19 of the Charter).
- The Commission is aware of allegations of pushbacks at sea. The Cypriot authorities are invited to clarify what procedures are followed in those cases. More specifically, the Cypriot authorities are invited to provide specific information on the mechanisms in place and the authorities competent to investigate alleged breaches, amongst others, of the principle of *non-refoulement* (enshrined in Article 19 of the Charter). Moreover, investigations into pushbacks

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<sup>1</sup> [Commission Decision on the implementation of the EU-Cyprus Action Plan for Migration Management-Annex 1](https://european-council.europa.eu/media/1000000/1/related/attachment/Commission%20Decision%20on%20the%20implementation%20of%20the%20EU-Cyprus%20Action%20Plan%20for%20Migration%20Management-Annex%201.pdf) ([europa.eu](https://european-council.europa.eu/media/1000000/1/related/attachment/Commission%20Decision%20on%20the%20implementation%20of%20the%20EU-Cyprus%20Action%20Plan%20for%20Migration%20Management-Annex%201.pdf))

allegations of various types should not be limited to access to the right to asylum, as guaranteed by EU law and the Charter, but also include e.g. the prohibition of torture and inhuman or degrading treatment or punishment (Article 4 of the Charter), and the protection in the event of removal, expulsion or extradition (Article 19 of the Charter).

In addition, the self-assessment should clearly indicate the role and tasks of the different authorities and bodies, e.g. the Managing Authority, Ombudsman, Protection of Human Rights Office, Audit Authority, etc., in relation to ensuring the compliance with the Charter throughout the programming and implementation of the programme and demonstrate that these authorities have the necessary expertise to ensure compliance with the Charter.

The arrangements to ensure compliance with the Charter as set out in the self-assessment seem to rely almost exclusively on the “*compliance check*” of the Ombudsman. The Cypriot authorities are therefore, invited to clarify the process for the involvement of the Ombudsman and to further substantiate that the Ombudsman will have the capacity and independence to carry out these checks effectively for all operations (considering the concerns raised in the 2021 Report of the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions<sup>2</sup> and the 2021 Country Report on non-discrimination in Cyprus of the European Equality Law Network )<sup>3</sup>.

The Commission welcomes the fact that details about the respect of the Charter will be included in the Monitoring and Control Systems of the programmes.

The Commission notes however, that based on the self-assessment, the “Ombudsman conducts compliance checks against the Charter of Fundamental Rights on all the suggested co-funded operations (on the basis of a dedicated control checklist)”. The Cypriot authorities are invited to clarify whether use will be made of the Commission guidelines to ensure respect for the Charter of Fundamental Rights of the European Union in the implementation of the European Structural and Investment Funds (2016/C 269/01), as well as if the relevant checklist is aligned to the Commission’s guidelines. If so, the Cypriot authorities are invited to include a link to the Commission’s guidelines in the references to relevant documents.

The information provided to the Commission explains that the approval of project proposals and compliance of the programmes is conditional upon obtaining a “compliance certificate/opinion”, i.e. of compliance with the Charter. In this regard, the Cypriot authorities are invited to inform under which legal provision the non-obtaining of this certificate/opinion may result in the rejection of the project proposal. In addition, further clarification is needed to understand on which legal basis the Ombudsman will have the competence to lay down the necessary conditions for the programmes and the projects to comply with all Charter rights. Moreover, the Cypriot authorities are also invited to provide further clarification as regards a possibility for beneficiaries to obtain a review of the decision of the Ombudsman refusing to grant the compliance certificate/opinion on the ground of violations of the principle of non-discrimination as well as of all the other Charter rights, by reference to the relevant applicable law.

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<sup>2</sup> [EN-SCA-Report-June-2021.pdf \(ohchr.org\)](#)

<sup>3</sup> [5529-cyprus-country-report-non-discrimination-2021-1-91-mb \(equalitylaw.eu\)](#)

With respect to **criterion 2 of the HEC 3**, the Cypriot authorities are also invited to include in the self-assessment more detailed information about the reporting arrangements to the monitoring committee, such as the frequency and content (scope, remedial actions) of reporting on complaints and cases of non-compliance. At present, the focus is only on the Ombudsman reporting to the committee, and not the reporting arrangements to the monitoring committee.