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CIVIC SPACE IN THE EUROPEAN RULE OF LAW FRAMEWORK

Assessing the inclusion of civil society in the consultation, methodology and follow up of the European rule of law mechanism 2 years on

**European
Civic Forum** 

**CIVIC
SPACE
WATCH** 

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Executive summary

The functioning of the rule of law infrastructure does not rely only on state institutions. It lives and breathes through culture, values, and principles. For this reason, the societal component of the rule of law ecosystem is vital to the proper functioning of institutions. An open, plural, and vibrant civic space is a pre-condition for democratic, cohesive and resilient societies. It is also an integral component of the rule of law as civic actors are vital players to strengthen, implement and, when needed, defend the rule of law. On a cultural level, civil society actively promotes and strengthens the rule of law by sharing information, promoting civic education, raising awareness, and understanding of the rule of law, and countering discrimination and disinformation. It fosters a culture of active participation in public and community life. Civil society also plays an instrumental part in the implementation and functioning of the rule of law: civil society actors support access to justice and human rights, monitor legality and proportionality of laws, measures, and practices, and support the work of independent authorities and human rights bodies.

Over the last years, civil society and social movements, academics, and other public watchdogs, including national human rights institutions, have alerted and made more visible a fast deterioration of the rule of law and democratic backsliding in some European Union Member States. These groups have often been at the forefront of advocating, mobilising, and acting in defence of these democratic frameworks. In doing so, they have become the target of restrictive laws, orchestrated media disinformation or delegitimizing campaigns, judicial and administrative harassment, physical and verbal attacks, while their economic resources and ability to engage with policymakers were shrunk. Pressure on civic actors is widely recognised as one of the first indications of deterioration of rule of law and democratic backsliding which is rightly expressed in the general communication of the 2021 rule of law report by the European Commission. The COVID-19 pandemic contributed to accelerate these trends in several countries at a time when civic actors' role was most needed to face the health, socio-economic and democratic crisis unfolding.

This report highlights how **the silos approach to the rule of law, democracy and fundamental rights currently adopted by the European Commission leads to significant gaps and inconsistencies in the analysis of the rule of law framework and limits the effectiveness of the European rule of law mechanism to bring expected change in the protection and strengthening of the rule of law in practice**, including the protection of institutional and societal actors that are fundamental for the *effective* functioning of the rule of law at national and European level.



A silos approach to rule of law, democracy and fundamental rights

The rule of law backsliding that we observe across some European Union Member States reflects tensions and divisions that are present in our societies, resulting from the rising social and economic vulnerabilities, fear, and insecurity regarding the future and growing distrust in the ability of our democratic institutions and policies to deliver for all. Democracy, fundamental rights, and the rule of law are interlinked. Positive developments in one area trigger progress in all areas and vice-versa. Moreover, they are interlinked with the general cultural, socio-economic context.

To date, the European rule of law mechanism is not embedded in the European democracy, fundamental rights, social and equality policies. The European Commission's approach looking at each of these policies separately results in analytical gaps: the rule of law report does not capture the concrete impact, the causes, the victims, and the responsible actors of the rule of law deterioration. Importantly, the silos approach also limits the impact of the EU actions in these areas.

- *An overarching vision and strategy for rule of law, fundamental rights, and social justice are needed in order to make the European Commission's instruments feed into and mutually strengthen each other.*

Vibrant civic space at the heart of the rule of law

Civil society's role and position as an enabler, promoter, monitor and defender of the rule of law is not fully recognised by the report as it only dedicates a marginal space to the analysis of the situation of civic space and civic actors. The reporting on civic space issues still presents major gaps and disparities across the country chapters. The rule of law report also does not analyse the impact on the sectors' ability to act within the rule of law ecosystem nor clearly identify those responsible to ensure accountability. It does not paint an accurate picture of the intensity of the deterioration of civic space and the hostile environment faced by civic actors in some countries. As a result, there is a tendency to flattening all challenges described in different countries.

- *The European rule of law report should clearly reflect the link between a functioning rule of law framework and an enabling environment for civic actors through a systematic and structured approach. A deeper analysis would require going beyond describing legislative and regulatory developments, it needs delving into the implementation and impact of measures. The report should also mainstream the interconnection between vibrant civic space and functioning rule of law by highlighting how civic actors' actions and achievements are pivotal to strong rule of law institutions and culture as well as the impact that the deteriorations of the other rule of law report's pillars have on these actors. To strengthen its analysis, the European Commission should also provide an assessment of the intensity of the deterioration and identify the responsible actors.*



Civil society and public watchdogs as key partners to the European rule of law mechanism

Civic actors are crucial allies for the European Commission to gather information on the situation of the rule of law on the ground, fact check data provided by member states and identify recommendations. However, there is an imbalance in the ability of civic actors and other stakeholders to participate and feed into the reporting vis a vis member states. Additionally, the most disadvantaged in the process are those organisations representing groups directly affected by the rule of law deterioration. Beyond providing information, civil society, and other public watchdogs such as journalists and human rights institutions are crucial actors to mobilise to spark a rule of law debate at national level, make use of the rule of law report and contribute to a vibrant rule of law culture. At present the rule of law report's impact is limited not only because it is not properly linked with enforcement tools but also because the European Commission does not properly involve civic actors and other public watchdogs in the planning and implementation of follow-up.

- *The European Commission should strengthen the accessibility and the transparency of the consultation process, especially with regards to how information is included in the European rule of law report. The European Commission should proactively enable the participation of organisations and groups working on policy areas that intersect with rule of law, such as those representing and supporting groups that are most vulnerable to the deterioration of the rule of law. Beyond the consultation period, stakeholders should be able to alert in real time on worrying rule of law developments to be included in the following reporting cycle by uploading information throughout the year.*
- *The European Commission needs to meaningfully partner with civic actors and other stakeholders such as NHRIs and journalists to identify and design the appropriate format for follow up actions at national and European level. In doing so, the European Commission should set up a proper dialogue process along with the provisions of article 11 of the Treaty of the European.*



The success of the European rule of law mechanism rests on a European culture of active citizenship and vibrant civic space

A vibrant and safe environment for civic actors at national and European levels is necessary to foster active citizenship and foster a meaningful debate on the finding of the rule of law review. But in few countries, the capacities of civil society and the independent media to participate and mobilise citizens around the findings are limited due to shrinking civic space.

- *The European Commission should develop a civil society strategy to support the development of vibrant civic space in Europe. It should also establish adequate protection mechanisms to prevent reprisals or censorship, including self-censorship, against civil society defending rights and values.*



Methodology and acknowledgements

The report results from the qualitative analysis of the 2021 report by the European Commission in comparison with the submissions to the consultation by the European Civic Forum (ECF)¹ and Civil Society Europe.² The analysis also relies on feedback collected from 20 CSOs that participated in the process at national and European level through an online survey³ as well as four expert interviews with European Network against Racism (ENAR), European Network of National Human Rights Institutions, European network for equality for lesbian, gay, bisexual, trans and intersex people – ILGA Europe, and the European Union Agency for Fundamental Rights. It also builds on the joint statement by 60 CSOs, including the ECF, addressing how the Commission can improve the credibility, inclusiveness and impact of the Rule of Law Report.⁴ Finally, it reflects long-term reflections with civil society and institutional actors at national and European level.

We thank Jan Robert Suesser (Ligue des Droits de l'Homme), Martina Di Gaetano (Reclaim Europe), Veronika Mora (Okotars) and Blaženka Sečkar (Gong) for their fundamental review work.

¹ European Civic Forum (ECF) Rule of law consultation, [Rule-of-Law-2021-ECF.pdf \(civic-forum.eu\)](#), 2021.

² Civil Society Europe (CSE), CSE Contribution to the 2021 Rule of law Report, [CSE contribution to 2021 Rule of Law Report consultation.docx \(civilsocietyeurope.eu\)](#), 2021.

³ Action Droits des Musulmans (ADM), Allianz "Rechtssicherheit für politische Willensbildung" / Alliance "Legal certainty for political advocacy", Association for International Affairs (AMO) in Prague, Bulgarian Center for Not-for-Profit Law, Centre for Information Service, Co-operation and Development of NGOs (CNVOS), Civic Alliance-Latvia, Dominika Spyratou European Center for Not-For-Profit Law Stichting, European Network against Racism, Gesellschaft für Freiheitsrechte e.V./Society for Civil Rights, Global Focus, Gong, Human Rights House Zagreb, Irídia, Centre per la Defensa dels Drets Humans, Nyt Europa, Ökotárs - Hungarian Environmental Partnership Foundation, Omnium Cultural, OSEPI, Portuguese NGDO Platform, TI Portugal.

⁴ EPD, Joint statement: civil society recommendations for the Commission on the Rule of Law Report, [Joint Statement: Civil Society Recommendations for the Commission on the Rule of Law Report \(epd.eu\)](#), 2021.



Introduction

Over the last years, civil society and social movements, supported by journalists, academics and other public watchdogs such as national human rights institutions, have alerted of and made more visible a fast deterioration of the rule of law and democratic backsliding in some European Union Member States. These groups have often been at the forefront of advocating, mobilising and acting in defence of the democratic frameworks, ensuring the effective access to human rights and justice of many. In doing so, they have become the target of restrictive laws, orchestrated media disinformation or delegitimizing campaigns, judicial and administrative harassment, physical and verbal attacks, while their economic resources and ability to engage with policymakers were shrunk. The COVID-19 pandemic has resulted in further constraints on civic actors in all countries – some disproportionate and recognised by courts as unlawful, at a time when their role was most needed to face the health, socio-economic and democratic crisis unfolding. In those Member States where the rule of law was already in a process of deep deterioration, the health emergency was deliberately used to accelerate already ongoing worrying trends.

The European rule of law mechanism is the result of successful advocacy efforts calling for a more prominent role of European institutions in defending the values and principles enshrined in Article 2 of the Treaty on European Union which should be at the core of the European project and are now under pressure from democratic backsliding. Civil society has largely welcomed the efforts of the European Commission in this field but stressed that its actions, including the annual rule of law report, often come too late and are too limited and unambitious compared to the challenges ahead. Many – including the European Civic Forum - have highlighted significant gaps and inconsistencies in the analysis of the rule of law framework in the approach currently adopted, including the marginalisation of civic space and the failure to capture a number of major violations of human rights intertwined with the deterioration of the rule of law.⁵ Questions have particularly arisen on the effectiveness of the European rule of law mechanism to bring expected change in the protection and strengthening of the rule of law in practice, including the protection of institutional and societal actors that are fundamental for the *effective* functioning of the rule of law at national and European level.

The current report reviews the inclusion of civil society in the consultation, the report and follow up of the European rule of law mechanism after two years of implementation.

⁵ European Partnership for Democracy (EPD), Civil society recommendations: how the Commission can improve the credibility, inclusiveness and impact of the Rule of Law report, <https://epd.eu/wp-content/uploads/2021/10/joint-statement-on-rule-of-law-reports-22-09-21-epd.pdf> September 2021.



Scope and methodology

GOING BEYOND THE SILOS APPROACH: THE RULE OF LAW REVIEW MECHANISM NEEDS TO BE EMBEDDED IN THE COMMISSION'S DEMOCRACY, FUNDAMENTAL RIGHTS, SOCIAL JUSTICE AND EQUALITY FRAMEWORKS

In the European Union, the rule of law (Etat de Droit, Rechtsstaat) refers to constitutional supremacy and equality before the law, which entails the protection of fundamental rights over any public or private hindrance. The functioning of the rule of law infrastructure does not rely only on state institutions. It lives and breathes through culture, values and principles. For this reason, the societal component of the rule of law ecosystem is vital to the proper functioning of institutions.

The work of institutions that are deemed to protect the rule of law framework from abuses is interlinked with and, thus, affected by the way our democratic systems strike a balance between fundamental rights, social justice and free market. Experience shows that when societies are inclusive, when inequalities are low, when institutions enjoy people's trust, there is less risk of political authorities disregarding the rule of law.⁶

The rule of law backsliding that we observe across some European Union Member States falls within the context of raising political illiberalism and growing tensions in our societies, resulting from the growth of inequalities and vulnerabilities,⁷ the sense that democracy and effective access to fundamental rights are not working for many. A long process of rising social and economic vulnerabilities combined with a weakening of social protections as well as growing cultural and demographic divisions fuel fear for the future and contribute to producing a degradation of cohesion inside society.⁸ Many people feel that democratic processes and the current institutional channels do not ensure that their needs are addressed or even heard.⁹ When democracy does not deliver social and economic cohesion, trust in democratic institutions,

⁶ See, for example, Staffan Lindberg, Are Increasing Inequalities Threatening Democracy in Europe?, [Are Increasing Inequalities Threatening Democracy in Europe? - Carnegie Europe - Carnegie Endowment for International Peace](#), Carnegie Europe, 4 Feb. 2019.

⁷ See, for example, the work by Thomas Piketty, Brahmin Left vs Merchant Right: Rising Inequality & the Changing Structure of Political Conflict (Evidence from France, Britain and the US, 1948-2017), <http://piketty.pse.ens.fr/files/Piketty2018.pdf>, World Inequality Database, March 2018.

⁸ See, for example, the research on authoritarian populism in the rural areas by the research consortium Emancipatory Rural Politics Initiative (ERPI): Nathalia Mamonova, Right-wing populism and counter-movements in rural Europe, <https://www.arc2020.eu/right-wing-populism-emancipatory-rural-politics-initiative-europe/>, 27 Feb. 2019. More at: <https://www.iss.nl/en/research/research-networks/emancipatory-rural-politics-initiative>.

⁹ See, for example, Pew Research Center, European Public Opinion Three Decades After the Fall of Communism, Washington DC, www.pewresearch.org/global/2019/10/15/european-public-opinion-three-decades-after-the-fall-of-communism/, October 2019; Reynié, D., Democracies under Pressure. A Global Survey, Paris: International Republican Institute/Fondation pour l'innovation politique, www.fondapol.org/en/etudesen/new-global-survey-democracies-under-pressure-volume-i-the-issues/, 2019.



which is crucial for the functioning of the rule of law, tends to perish. These tendencies also go hand in hand with a growing risk that nationalism, xenophobia, and identity politics, abused and exacerbated by populist rulers and governments based on exclusion become substitutes for an inclusive shared future.

As stated by the European Commission, the European rule of law mechanism is “*part of broader EU efforts to promote and defend its founding values. This work includes the European Democracy Action Plan and the renewed Strategy for the Implementation of the Charter of Fundamental Rights, as well as targeted strategies to progress towards a “Union of Equality”*”.¹⁰ However, these policies are shaped and implemented in silos, which prevents the Commission from addressing the root causes of these trends of deterioration. The European Commission’s approach looking at each of these policies separately limits the impact of the EU actions in these areas. **An overarching vision and strategy are needed in order to make these instruments feed into and mutually strengthen each other.**

This also translates into methodological and analytical gaps that we find within the 2020 and 2021 rule of law reports. A statement jointly written and supported by over 60 CSOs, including the European Civic Forum, has pointed out that the “*the Commission’s very narrow interpretation of the rule of law*” resulted in the rule of law report failing “*to map the scale of systemic human rights violations that directly affect respect for the rule of law in the EU.*”¹¹ While we welcome improvements in the 2021 reporting on rule of law challenges compared to the first report in 2020, the current methodology still needs to overcome important shortages in terms of the scope and consistency of the report. The 2021 report overlooks important aspects of the rule of law, including the accountability of law enforcement authorities and violations of human rights directly linked with rule of law abuses. In particular, it does not reflect how rule of law violations and abuses have disproportionately impacted the rights of marginalised, discriminated and racialised groups. At the same time, it fails to show how deterioration of human rights, including social and economic rights of many, negatively affects access to justice and protection from rule of law violations. These omissions are particularly unfortunate in a context where the COVID-19 pandemic has exacerbated, multiplied, and exposed the interconnection of social vulnerabilities. As a result, **the report often fails to capture the *real* impact of rule of law deterioration on people, what are the driving factors, who is most vulnerable and which actors are responsible and should be held accountable.**

¹⁰ European Commission, Communication – 2021 Rule of law report – the rule of law situation in the European Union, [2021 Rule of law report | European Commission \(europa.eu\)](#), 2021, p.2.

¹¹ EPD, Joint statement: civil society recommendations for the Commission on the Rule of Law Report, [Joint Statement: Civil Society Recommendations for the Commission on the Rule of Law Report \(epd.eu\)](#), 2021.



Recommendation # 1:

The European Commission should adopt a comprehensive approach on the rule of law, fundamental rights, democracy, and social justice which are intrinsically intertwined. Any restriction on a category of rights contributes to restricting rights in their universality. The rule of law review should be better integrated and connected with other policies that intersect and affect rule of law in practice, including the European Democracy Action Plan, the Strategy on the European Charter of fundamental rights, the European anti-racism action plan, LGBTI Equality strategy and the European Pillar of Social Rights Action Plan linked with the European Semester. For example, the coordinators or contact points of the European Commission for civil society on the respective policies could be involved and feed into the rule of law monitoring process. The Commission should also better showcase the impact of the deterioration of the rule of law on the implementation of the above listed policy objectives. The participation of civic actors working on these issues in the review cycle at all stages should also be proactively ensured and considered as an asset for the assessment of issues at stake (see more in next chapter).

Recommendation # 2:

In line with a broader approach to the rule of law, democracy and fundamental rights, the European Commission should review the scope of the annual rule of law report. In this sense, we welcome the European Parliament's proposal for a monitoring mechanism that examines the state of democracy, the rule of law and fundamental rights together¹², and not separately. Such a mechanism should cover the full scope of Article 2 TEU, consolidate and supersede existing monitoring instruments to overcome gaps and avoid duplication.

VIBRANT CIVIC SPACE AT THE HEART OF THE RULE OF LAW
FRAMEWORK: RECOGNISING THE MULTIFACETED ROLE OF CIVIC
ACTORS

An open, plural, and vibrant civic space is a pre-condition for democratic, cohesive, and resilient societies. Civic actors are vital players to strengthen, implement and, when needed, defend the rule of law. Both in their advocacy-oriented and action or service-oriented function, they

¹² European Parliament, on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights (2020/2072(INL)), https://www.europarl.europa.eu/doceo/document/A-9-2020-0170_EN.html, 2020



contribute to making effective and real the access to civil, political, economic, social, cultural, and environmental rights for many.

Civil society actively **promotes and strengthens a rule of law culture** by sharing trustworthy information, promoting civic education, raising awareness, and understanding of rule of law, countering discrimination and disinformation.

Civil society contributes to the implementation of the rule of law in supporting and enabling access to justice through judicial and non-judicial mechanisms to those that are affected by violations or lack of access to human rights (including socio-economic and environmental rights), monitoring the legality and proportionality of laws, measures and practices and triggering their review when unlawfulness is observed. It also feeds and supports the work of independent authorities and bodies including courts and national human rights institutions.

Civil society, both organised and unorganised, also enable and empower people to **freely participate** in matters of common good and contribute to building a **culture of active participation in public and community life**, which is a prerequisite for the inclusiveness, the quality and transparency of law-making. Civic organisations are at the frontline to witness precarious situations and rights' violations that people suffer from while trying to respond to people's needs. So, they are in a privileged position to **contribute to the policymaking** and alert on the possible limitations and adverse consequences of public policies.

Civic organisations and movements act on a daily basis to **address the root causes** laying behind the **deterioration of the rule of law** by building bridges within divided societies, filling the gaps left by public actions (or lack of thereof) through their services, contributing and maintaining media pluralism (for example, through civic journalism).

By monitoring and keeping the powerful accountable, carrying out crucial litigation to challenge unlawful political decisions, galvanising and mobilising people to action – including through public demonstrations - they contribute to **defending rule of law when it is under pressure**.

It is not by chance that civil society is one of the main targets of governments that exercise vertical, coercive or authoritarian power: pressure on civic actors is widely recognised as one of the first indications of democratic backsliding and deterioration of the rule of law.¹³ This is rightly expressed in the 2021 rule of law general communication. States have a positive duty to enable and protect civil society's ability to operate, including freedom of association and assembly, freedom of expression and opinion, the right to political participation, access to funding and freedom from fear and interference.

¹³ See, for example, V-Dem Institute, Autocratization Turns Viral - DEMOCRACY REPORT, <https://www.v-dem.net/files/25/DR%202021.pdf>, March 2021, p. 22.



In its recent communications,¹⁴ the European Commission has often reiterated the important role of civil society for democracy, fundamental rights and for a fair and inclusive recovery from the manifold consequences of the COVID-19 pandemic. In the 2020 and 2021 rule of law reports, the European Commission rightfully describes the rule of law as an ecosystem of institutional and societal checks and balances and acknowledges civil society as a “*key partner for the EU in its work to promote a stronger European rule of law culture*”. Throughout its 2021 general communication, the Commission has cited civil society alongside journalists as integral part of the rule of law framework. It stated the need for authorities to mitigate the effects of the pandemic on the media and civil society in order to ensure they are able to exercise their *role of public scrutiny*. It also stressed that “*when their space to operate shrinks, it is a sign that the rule of law is at risk*”.¹⁵

We welcome a better reporting on civic space challenges in the 2021 report. However, the report does not duly connect the functioning of rule of law institutions with civil society activities and **does not dedicate the same attention to civil society actors as it rightly does to journalists and the media landscape**. The analysis of the situation for civil society in each member state is marginal in the report, limited to one or two paragraphs within the section dedicated to issues concerning checks and balances. There seems to be little understanding of civil society's multifaceted role in the rule of law framework beyond scrutiny and litigation.

Recommendation # 3

The European Commission should establish a clearer link between the respect of the rule of law and the enabling environment for civic actors in Member States. It should recognise civic space as a rule of law pillar and dedicate a chapter to analysing the state of civil society space in each Member State as done for Media pluralism and media freedom.

Recommendation # 4

The European Commission could better highlight in the country chapters and in the general communication the role and contribution of civil society to the rule of law environment, including achievements that are due to civil society's actions.

¹⁴ including the Strategy to strengthen the application of the Charter of Fundamental Rights in the EU, the European democracy action plan, and Europe's moment: Repair and Prepare for the Next Generation.

¹⁵ European Commission, Communication – 2021 Rule of law report – the rule of law situation in the European Union, [2021 Rule of law report | European Commission \(europa.eu\)](https://ec.europa.eu/euro-justice/communications-portal/en/communications/2021-rule-of-law-report), 2021, p. 27 and 20.



VIBRANT CIVIC SPACE AT THE HEART OF STRONG AND FUNCTIONING RULE OF LAW

An open, plural and vibrant civic space is a pre-condition for democratic, cohesive and resilient societies.

Civil society promotes and strengthens a rule of law culture by



Sharing trustworthy information,
Promoting civic education,
Raising awareness and understanding of rule of law,
Countering discrimination and disinformation.

Civil society contributes to the implementation of the rule of law by

Supporting and enabling access to justice
Triggering their review when unlawfulness is observed,
Feeding into the work of independent authorities and bodies,
Monitoring the legality and proportionality of laws, measures and practices.



Civil society contributes to building a culture of active participation in public and community life



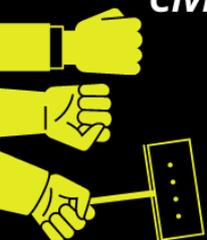
Enabling and empowering people to freely participate in matters of common good,
Contributing to the policy-making,
Alerting on the possible limitations and adverse consequences of public policies.

Civic organisations and movements act on a daily basis to address the root causes laying behind the deterioration of the rule of law by

Building bridges within divided societies,
Providing social services to those in need
Contributing and maintaining media pluralism.



Civic actors contribute to defending rule of law under pressure by



Monitoring and keeping the powerful accountable,
Litigation
Public mobilisations.



IMPROVING THE REPORTING ON CIVIC SPACE THROUGH A SYSTEMATIC METHODOLOGY

In most country chapters, **the monitoring of civil society developments was strengthened compared to the previous reporting cycle**, including in countries where the rule of law deterioration is not systemic. Additionally, the reporting included new laws (or, in the case of Spain, the ongoing reform of existing legislation) affecting freedom of assembly which was identified as a clear gap in the 2020 monitoring cycle.¹⁶ The general communication of the 2021 report also identifies many of the challenges that civil society faced during 2020 and that the European Civic Forum raised in its response to the written consultation: *"deliberate threats, including through financial restrictions or controls, from the authorities, or inadequate protection against physical or verbal attacks, against arbitrary decisions, against SLAPPs, or when the level of protection of fundamental rights guaranteeing the work of civil society are lowered"*.¹⁷ Nevertheless, these **challenges are not systematically and consistently reviewed across the different country-specific reports**. As a result, there is huge inconsistency in the way civic space is assessed and incorporated across the country chapters.

In order to identify the gaps of the current approach of the European Commission and how to strengthen it, the European Civic Forum asked its members and partners working on the ground and at European level what the three key issues for civic space in their country or field of action are, and to what extent they were captured in the 2021 rule of law review.

What emerged is that while these country reports are often able to provide a snapshot of the most pressing **developments in the regulatory and legislative environment** and whether concerns remain from the previous review cycle, they are overly descriptive and do not delve into the concrete implementation and impact of legislations and reforms on civil society and the public at large.

For example, in **Croatia**, the watchdog association Human Right House Zagreb reports that the *"general conditions for work of civil society have deteriorated in the past year due to the combination of continuing issues and additional challenges emerged in relation to the spread of COVID-19 epidemic. There were no public initiatives or policies adopted that would aim at strengthening civil society development in Croatia."* The Croatian chapter of the rule of law report states that *"The Government is still preparing the National Plan for Creating and Enabling Environment for the Civil Society Development 2021-2027"* and that, according to authorities, the envisaged National Plan should support CSOs legally, financially and institutionally.¹⁸ However, the Commission's review foregoes the fact that the National Plan for the development of civil society and National

¹⁶ ECF, First EU rule of law report recognizes civic actors as crucial safeguards, <http://civic-forum.eu/statement/first-eu-rule-of-law-report-recognises-civic-actors-as-crucial-safeguards>, 6 October 2020.

¹⁷ ECF Rule of law consultation, [Rule-of-Law-2021-ECF.pdf \(civic-forum.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021SC0713) p.23, 2021.

¹⁸ EC, Croatia Country Chapter – Rule of law report, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021SC0713>, 2021, p.22.



Program for Protection and Promotion of Human Rights expired in 2016 and have been in a legislative limbo since then. As a result, the capacities and sustainability of the sector have shrunk over the years.¹⁹

The country report on **Spain** mentions the ongoing reforms of the 2015 Law on Citizen Security, dubbed "*gag law*" by associations and social movements as it was used to silence critical voices and protests. In its response to the rule of law consultation, the European Civic Forum informed the European Commission that the law was used and abused by the police in the context of the COVID-19 pandemic: in the first 75 days of the first state of alarm, the Ministry of the Interior imposed nearly 1.1 million fines, 42% more than in the first three and a half years of the entry into force of the "Gag Law". Additionally, its provisions were applied to sanction associations and social movements providing support to vulnerable groups during the lockdown. The rule of law report only hints to abuses by the police enabled by this restrictive law indirectly through the Venice Commission's opinion "*highlighting that even in cases when a norm is considered to be constitutionally acceptable, if in practice it has led to abuses it should be changed, circumscribed, or accompanied by additional safeguards.*"²⁰

On civic space in **Greece**, the European Commission rightly reports on the persisting concerns raised by civil society and international organisations related to the new registration requirements for civil society in the field of migration and social inclusion. The 2020 report had already pointed to worrying aspects of the newly established register. However, the 2021 report does not explain what real impact its implementation has on associations except for a weak reference to a complaint to the Ombudsperson by "*NGOs, which have been refused registration*".²¹ As reported by the European Civic Forum, by granting excessive discretion to public authorities, the register restricted the operation of a number of organisations while creating huge confusion and uncertainty for all organisations. Additionally, the aggressive narrative by the Government accompanying and justifying the law created a hostile environment for civil society activities and heightened tensions on the islands preparing fertile ground for the attacks by far-right groups against migrants and CSOs observed at the beginning of 2020.

The chapter on **Denmark** is extremely vague on the new laws on the prohibition of receiving donations from certain physical persons and legal entities and the draft law on introducing the possibility of police ordering persons to stay away from public places, including reference to the bills only in footnotes. The report only mentions a "*risk of arbitrariness in their scope of*

¹⁹ See more on the CSO sustainability index: CSO Sustainability Index Explorer (csosi.org); Civil society recourses: Human Rights House Zagreb, Human Rights in Croatia: Overview of 2020 https://www.kucaljudskihprava.hr/wp-content/uploads/2021/06/KLJP_GI2020_EN_PRIIP_web.pdf, 2020; Joint NGO Submission on behalf of the Coalition of Croatian human rights NGOs in relation to Croatia's 3rd UN Universal Periodic Review, JS4 - Joint Submission.

²⁰ EC, Spain Country Chapter – Rule of law report, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021SC0710>, p.19-20, 2021.

²¹ EC, Greece Contry Chapter – Rule of law report, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021SC0709>, p.12, 2021.



application”,²² while it does not describe which rights would be affected and especially the discriminatory nature of the laws and narrative driving them.

The chapter on **France** clearly describes legislative developments that could threaten the rule of law. The Commission highlighted plainly the “*considerable criticism*” raised by civil society with regards to some of the recent legislations. For example, on the Law on Global Security, it mentioned the “*potential impact on the freedoms of expression and of information and the right to protest*” connected with allowing, for instance, “*police patrols to carry cameras and use drones to transmit the images of demonstrators and bystanders live to a command centre*”.²³ It also reports on the concerns expressed by civil society regarding the law to “*reinforce respect for the republican principles*” related to freedom of association and of expression, such as extending the grounds of dissolution of associations including for acts of its members and impose an obligation to sign a broadly defined “*contract of republican commitment*” to access public subsidies. However, the report limited itself to this descriptive function, it failed to analyse the concrete impact of such measures. Therefore, the report fails to question the broader trend of regression of fundamental rights and freedoms, the discriminating narratives driving these policies as well as the chilling effect their implementation will have. Additionally, the report does not reflect that these policies, led by the government, have not been consulted with civil society organisations’ representative contrary to the past practice and international standards in this legislative field.

A more positive example of how the European Commission did include the impact of legislation on the civic sector is the German chapter. In **Germany**, the public benefit status defined in the tax legislation produces critical obstacles to civil society campaigning. Allianz Rechtssicherheit für politische Willensbildung (in English: Alliance Legal certainty for political advocacy) identified three of them: “*1) crucial tax-privileged purposes are missing (e.g. human rights, social justice, rule of law); 2)[it creates] legal uncertainty concerning how politically opinionated CSOs can be/act without risking the public benefit status; 3) it misses recognition of the role of CSOs in a democracy; inherently, CSOs may be seen as a threat for/by (some) political parties.*” While the Commission did not state whether it could amount to a breach of rule of law and democratic standards, the inclusion of this issue in the country chapter of Germany can be considered a positive example because the concerns were expressed clearly (“*Uncertainty regarding the tax-exempt status for civil society organisations continues to be a challenge despite some slight improvements to the framework. [...] in practice the interpretation of these conditions creates a significant uncertainty for civil society organisations, especially those active in human rights and democracy advocacy.*”).²⁴

²² EC, Denmark Country Chapter – Rule of law report, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021SC0707>, p.14, 2021.

²³ European Commission (EC), French Country Chapter - Rule of law report, https://ec.europa.eu/info/sites/default/files/2021_rorl_country_chapter_france_en.pdf, 2021, p.17.

²⁴ EC, Germany Country Chapter – Rule of law report, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021SC0706>, p.17-18, 2021; Civil society resources on the issue: Gesellschaft für



Beyond the regulatory framework, civil society's ability to act within the rule of law ecosystem is crucially linked to its capacities, including the economic resources, the channels to influence political decisions and public recognition of its role. Safe space and freedom from interference are also integral components of the enabling environment for civil society. The 2021 report on "Protecting civic space in the EU" by the European Union Agency for Fundamental Rights (FRA) corroborated civil society warnings about obstacles in the access to and use of funding, and the access to and participation in the decision-making. It also highlighted threats, attacks and harassment at the hand of state and non-state actors.

However, the rule of law country reports do **not systematically address shrinking civic space beyond restrictive legislation**. Because the enabling environment for civil society is marginalised in the rule of law mechanism, when restrictions are identified they are not substantially and meaningfully explained. As a result, they mostly miss the contextual changes for civil society environments, especially the political will to support its development and participation through appropriate policies and funding. These factors are particularly important in Centre and Eastern Europe where the capacities of the associative sector are historically lower than in Western Europe and access to funding represents one of the main obstacles for achieving the continuity and quality of work of CSOs. Additionally, when legislation supporting the sector, its capacities and participation exists, it is frequently not sufficiently implemented to ensure meaningful support towards CSOs' action.

For example, the Bulgarian Center for Non-for-profit Law (BCNL) describes the three main challenges for civil society in **Bulgaria**: smear campaigns delegitimising the sector vis-a-vis the public to justify new restrictive legislation; lack of real civic participation and unwillingness of the authorities to develop mechanisms to support it; and lack of financial resources for CSOs as the Civil Society Development Council is still not established and the national fund for civil initiatives is still waiting to be disbursed. Only the first issue was included in the Bulgarian chapter of the 2021 rule of law report. Similar shortcomings were pointed by partners in **Czechia, Croatia and Slovenia**. In the case of **Hungary**, these challenges are touched upon but not elaborated on. To some extent, the issues of the participation of the civic sector in the decision-making and civil dialogue are included in the section on *inclusiveness, quality, transparency of law-making* but often the review does not make a difference between civil society and other stakeholders. Additionally, laws on *lobbying and political party financing* have sometimes an impact on civil society when they are used to overly regulate or control advocacy and campaigning, but the report does not look at these aspects.

Freiheitsrechte e.V./Society for Civil Rights, Study: Shrinking Space in Germany, shrinking space in Europe, <https://freiheitsrechte.org/study-shrinking-space>, July 2021; Allianz "Rechtssicherheit für politische Willensbildung" / Alliance "Legal certainty for political advocacy": <https://www.zivilgesellschaft-ist-gemeinnuetzig.de/eu-warnt-deutschland>, July 2021; Liberties, Health of our democracies compromised by many EU leaders during 2020 Liberties Report, <https://www.liberties.eu/en/stories/demanding-on-democracy-liberties-report-2020/43366> March 2021.



Concerning the COVID-19 emergency, the 2021 general communication better captures the pandemic's effects on the rule of law. For example, when looking at the *scrutiny of the executive*, it recognised that while the institutional framework often showed great resilience, *"it proved more difficult to maintain the ability of society as a whole to take part in the formulation of measures, with public consultation, institutionalised social dialogue and consultation of stakeholders being generally curtailed."*²⁵

However, the 2021 rule of report overall **fails to capture the impact of COVID-19 on civil society space in members states and across the EU**. With regards to the operation and capacities of civil society, the ECF reported and engaged the European Commission on the serious economic challenges triggered by the pandemic and lack of appropriate responses by the authorities in many EU states.²⁶ The 2021 FRA report supports these trends and states that *"60 % of CSOs participating in FRA's civic space consultation had difficulties finding adequate funds in 2020, and 42 % of respondents to FRA's Covid-19 impact consultation indicated that they were facing "financial difficulties" as a "direct result of measures related to the Covid-19 pandemic"*. It also found that *"the funds provided have not always been sufficient, and support has often been provided late"*.²⁷ The ECF explained in its response to the consultation how the drop of funding impaired CSOs capacities at a time when they were most needed to provide support to their constituencies to access basic rights and justice, monitor and keep authorities accountable in the democratic emergency.

The general communication does mention the impact of COVID-19 on access to funding and involvement in the law-making processes.²⁸ As mentioned above, it also successfully points to the responsibility of authorities to take *"steps to mitigate the impact of the pandemic"* on media and associative sector.²⁹ However, the report does not describe **the effects on civil society's ability to further act on the rule of law and democracy ecosystem**. The omission of the challenges linked to funding are particularly striking if one compares the section on civil society to the chapter on media pluralism. As stressed by the Commission in the general communication, *"several country chapters point to an unprecedented loss of revenue and financial liquidity issues for media houses, or even bankruptcy and closure"*.³⁰ They also capture whether Member States put in place specific media support schemes, an assessment that would have

²⁵ EC, Communication – 2021 Rule of law report – the rule of law situation in the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1634551652872&uri=CELEX%3A52021DC0700>, 2021, p.3.

²⁶ ECF, ECF response to the European Commission stakeholders' consultation on the rule of law in the European Union, <https://civic-forum.eu/wp-content/uploads/2021/03/Rule-of-Law-2021-ECF.pdf>, March 2021; ECF, CSOs must be able to keep acting in response to social emergencies, States must integrate the needs of CSOs into their policies, <https://civic-forum.eu/publications/open-letter/national-platforms-call-eu-commission>, 10 April 2020.

²⁷ Fundamental Rights Agency, Protecting civic space in the EU, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-protecting-civic-space_en.pdf, 2021, p.41.

²⁸ EC, Communication – 2021 Rule of law report – the rule of law situation in the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1634551652872&uri=CELEX%3A52021DC0700>, 2021, p.24-25.

²⁹ Ibid p.3.

³⁰ Ibid p.19.



been useful in the case of civil society, too, to showcase more virtuous examples and positive practices to inspire replication. Some of the country reports also mention when States put in place funding for the civic sector, but so briefly and without contextual information that the accessibility and impact of such support could hardly be understood.

Civic actors, including the European Civic Forum, have also extensively monitored how COVID-19 laws restricted fundamental rights, in particular the right to peaceful assembly and expression, and were used to disproportionately silence demonstrations and sanction peaceful protesters in several countries, including **Hungary, France, Slovenia, Spain** and **Greece**. The rule of law country chapters only timidly and sporadically mention issues in these areas. The report also **overlooks the emerging securitisation trend, excessive discretion, and abuses of power and even violence by law enforcement bodies – including in the context of public demonstrations**, which have been reported by a number of civil society organisations. Police abuses of power and violence are not included in the report, except for few mentions when violence of police forces was exercised against journalists in the context of public protests. An encouraging exception is the country chapter concerning **Poland**, where massive demonstrations have taken place to oppose the de-facto ban on abortion – led by women human rights defenders - with a violent response from the state. The report explicitly stated that "*the violent actions of the police forces during protests and demonstrations affected also journalists reporting from such events*" and that concerns were "*raised over intimidation, violence and detention of peaceful protesters*".³¹ In its response to the consultation, the European Civic Forum alerted on how fines and policing abuses across Europe disproportionately impacted racialised groups, including people of colour and people of Muslim faith, Roma, people on the move and migrants, as well as homeless people. This aspect is completely missing from the report.

The rule of law review often does not capture how **civil society organisations and rights defenders, which represent and stand up for the groups that are most vulnerable to rule of law violations, often face specific challenges to their actions linked with discriminatory and exclusionary trends promoted, enabled or tolerated by authorities**. For example, the **French** report does not include references to the harassment and attacks against organisations fighting discrimination of migrants and Muslim people, especially the administrative dissolution of the Collective Against Islamophobia in France (CCIF).³² The **Hungarian** report does not mention how government and pro-government media carries out systemic smear campaigns against organizations working on the rights of LGBTIQ+ people. Cases of censorship of books and TV shows dealing with LGBTIQ persons in Hungary are also omitted. In **Greece**, journalists and CSOs have been discredited for publishing reports on unlawful pushbacks of refugees and

³¹ EC, Poland Country Chapter – Rule of law report, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021SC0722>, 2021, p.24 and 28.

³² ENAR, Joint statement: France's shrinking civic space must be protected, <https://www.enar-eu.org/Joint-statement-France-s-shrinking-civic-space-must-be-protected>, 20 July 2021.



migrants. In few cases they have been threatened with criminal sanctions or even arrested for their work. CSO staff and migrants have been the target of racist violence from local groups. This information does not appear in the Greek chapter.

This gap results from the narrow understanding of the rule of law adopted by the Commission described above and the limitations concerning the participation of civil society described in the next chapter. But there are a few promising examples of how the Commission could better link civic space challenges with the broader deterioration of fundamental rights. The **Polish** chapter is one of them as it contextualises, albeit superficially, the civic space restrictions with the *"general problems concerning women's rights, and by attacks on LGBTI groups"* (abstract). Another somewhat positive example is the chapter on **Portugal**, which especially highlights *"instances of hostility and pressure [...] against civil society organisations active in the support of minorities"* – although without clearly referring to the active role of authorities - and measures taken to mitigate the phenomenon.³³

It is also important to note that new European policies, in particular the new pact on migration and asylum and 2020 counter-terrorism agenda for the EU have raised great concerns on the potential threats posed on fundamental rights and civil society working with people on the move and of Muslim faith.³⁴

³³ EC, Portugal Country Chapter – Rule of Law report, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021SC0723>, 2021, p.18.

³⁴ See PICUM, [More detention, fewer safeguards: How the new EU Pact on Migration and Asylum creates new loopholes to ignore human rights obligations](#), October 2020; European Parliament, [The European Commission's New Pact on Migration and Asylum Horizontal substitute impact assessment](#), August 2021; Joint statement: Anti-terrorism bill not in line with basic human rights standards, <https://www.enar-eu.org/Joint-statement-Anti-terrorism-bill-not-in-line-with-basic-human-rights>, 20 July 2021.



Recommendation # 5

The European Commission should adopt a structured and systematic methodology to monitoring civil society space.³⁵ (see Annex) Assessments should be based on a standard ‘checklist of issues’, which should cover the following areas:

- 1) enabling legal environment for the exercise of civic freedoms (freedom of association, of peaceful assembly, of expression and privacy, online and offline) including its implementation;**
- 2) framework for civic organisations’ financial viability and sustainability;**
- 3) access to and participation in decision-making, including the right to access information;**
- 4) safe space, including state duty to protect from verbal and physical attacks, smear campaigns and judicial harassment through strategic lawsuits against public participation (SLAPPs) and criminalisation of human rights work;**
- 5) contribution to the functioning and protection of the rule of law framework.**

The Commission should strengthen its cooperation with the FRA to build on the agency’s methodology for assessing the state of civic space. The methodology of the European Commission’s ‘CSO Meter’ applied in Eastern Partnership countries could also serve as a resource for this purpose. In addition to a set of issues that the Commission should investigate in all countries, it should also analyse rule of law and civic space concerns that are specific to each country.

Recommendation # 6

The European Commission should not limit the reporting to describing measures in place or incidents but also clearly state their impact on civic space, and, therefore on the ability of civil society to fulfil their tasks as part of the rule of law landscape.

³⁵ Find the ECF, European Civic Forum framework to analyse civic space in its response to the 2021 rule of law consultation: [Rule-of-Law-2021-ECF.pdf \(civic-forum.eu\)](https://www.civic-forum.eu/Rule-of-Law-2021-ECF.pdf).



Recommendation # 7

The European Commission should be more explicit when measures or incidents amount to a breach of rule of law and are not in line with international standards, as well as on the impact on the sector. In order to improve the legitimacy and reliability of the report, such assessment of breaches and restrictions of the rule of law, including civic space, should be carried out on the basis of clear benchmarks to be defined on the basis of international standards in cooperation with civil society organisations.

Recommendation # 8

The rule of law mechanism should also report cases where European policies or laws are applied inappropriately and disproportionately, with the direct or indirect effect of silencing or sanctioning civic actors. The European Commission should carry out structured impact assessment of how EU laws could impact rule of law, and civic space in particular, including through over implementation. Where such instances are identified, the Commission should provide remedy.

Recommendation # 9

The European Commission should mainstream its focus on civil society throughout the review and investigate whether developments in other chapters, in particular on lobbying and revolving doors, political party financing, as well as on inclusiveness, quality, transparency of law-making affect civic organisations' ability to act within the rule of law framework.



UNPACKING CIVIC SPACE IN THE RULE OF LAW FRAMEWORK

Civic space is the political, legislative, social and economic environment which enables citizens to come together, share their interests and concerns and act individually and collectively to influence and shape their societies.

Civic space enables people to pursue multiple, at times competing, points of view.

5

Pillars for an open and vibrant civic space:

1 *Enabling legal environment for the exercise of freedom of association, of peaceful assembly, of expression and privacy, online and offline and its implementation;*



2 *Access to and participation in decision-making, including the right to access information;*



3 *Framework for civic organisations' financial viability and sustainability;*



4 *Safe space, including state duty to protect from verbal and physical attacks, smear campaigns and judicial harassment through strategic lawsuits against public participation (SLAPPs) and criminalisation of human rights work;*



5 *Civil society's contribution to the functioning and protection of the rule of law framework.*



ASSESSING THE INTENSITY OF DETERIORATION OF CIVIC SPACE AND CLEARLY IDENTIFYING THOSE RESPONSIBLE IN ORDER TO ENSURE ACCOUNTABILITY

While challenges concerning civic space are emerging in all Member States, the intensity, nature and impact of the restrictions varies greatly. Moreover, in some countries, the space for actions of anti-rights groups seems to be expanding at the expense of democratic forces. **For civic actors in some countries or in specific fields of action, the challenges mentioned above tend not to happen in a vacuum but, rather, they often happen in combination, leading to a compound effect.** The toxic atmosphere in which they operate creates a chilling effect and discourages organisations and citizens to engage on rule of law and democracy issues as well as on other causes of general interest. It can also have distressing impact on individuals involved, eroding the capacities and sustainability of the sector. For example, the 2021 FRA report found that *"In FRA's civic space consultation 2020, 21 % of respondents who had experienced threats and attacks said that these had resulted in their organisation discontinuing or reducing activities. CSOs report that, to some extent, there is also self-censorship"*.³⁶

To date, the rule of law report not only does not systematically report on civic space challenges, it also does not lead to a comprehensive analysis of how these restrictions interplay and affect civil society's ability to act. There is a **lack of comprehensive analysis of the hostile environment in some countries stemming from the combination of repressive legislation, defamatory and intimidatory practices, and opaque and discriminatory access to resources.**

For example, the chapter on **Hungary** provides a description of the recent legislative evolution for civil society's environment. The report rightfully mentions the retraction of the Lex NGO concerning foreign funding for civil society, the new law replacing it which also introduces new rules regarding the checks carried out by the State Audit Office, and it highlights the persistent concerns regarding laws criminalising the support of migrants. However, it does not delve into the consequences of these developments, especially the chilling effect on NGOs and other critical voices. The rapport finds that *"Civil society organisations critical towards the Government remain under pressure"* and *"underfinanced"*.³⁷ These are understatement considering that as a result of these political pressures and historical structural weaknesses, Hungarian civil society's capacities and sustainability is ranked lowest for several years in a row in the CSO Sustainability

³⁶ Fundamental Rights Agency, Protecting civic space in the EU, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-protecting-civic-space_en.pdf, 2021, p.56.

³⁷ EC, Hungary Country Chapter- Rule of law report, https://ec.europa.eu/info/sites/default/files/2021_rolr_country_chapter_hungary_en.pdf, 2021, p.25-26.



index,³⁸ especially in the field of advocacy and financial viability.³⁹ The COVID-19 pandemic further deteriorated CSOs' capacities as a consequence of the loss of income at the time when civil society's watchdog and service provision role was most fundamental to respond to the democratic and social emergency unfolding.

It is appreciated that the exercise of reporting on the deterioration of the rule of law looks at the phenomenon in all European Member States. This format could allow for comparative analysis, raising problematic developments before the deterioration becomes structural and showcasing emerging pan-European trends. However, this potential is underutilised. On the contrary, **in the general communication, the weakness of analysis and language leads to flattening all challenges described in different countries.** The result is that to date the European rule of law mechanism only lists problems without any indications as to the severity of and the urgency of redressing the deterioration.

Additionally, **the rule of law report often downplays or even conceals the role of authorities in shrinking civil society space.** Authorities have positive obligations to ensure the full respect and functioning of the rule of law in public affairs, including the existence of vibrant and pluralistic civic space. They also have negative obligations of non-interference, including a duty to refrain from verbal, physical and judicial threats, attacks, and harassment of civic actors acting peacefully. They have a duty to investigate and protect when such events happen at hands of individual representatives of the state or of non-state actors. When authorities fail to protect as well as when they contribute to or even are the primary responsible of restrictions, threats and attacks, there is a breach of the rule of law.

This omission is particularly serious in cases where the attack on civic actors is deliberate and systematic. For example, in the case of **Slovenia**, where the government which took office in 2020 has repeatedly attempted to pass restrictive legislation and cut funding to civil society, smeared critical voices and sanctioned peaceful protesters leading to widespread international public outcry, the role of authorities is omitted. With its passive phrasing ("*Smear campaigns [...] have been reported; Attacks [...] have been noted*")⁴⁰ the report fails to reveal the intentionality of such measures taken by public authorities.

Similarly, in the above-mentioned case of **Croatia**, the wording of the report conceals the role of authorities in stalling the legislative process of relevant policies to support the civic sector while also shrinking the resources of CSOs and targeting critical organisations. While the report on **Poland** can be considered promising for some aspects described above, it also understates

³⁸ USAID, CSO Sustainability index, <https://csosi.org>.

³⁹ Mora at 2019 Civil Society Organisation Sustainability index: Hungary, <https://www.fhi360.org/sites/default/files/media/documents/csosi-europe-eurasia-2019-report.pdf>. October 2020, p. 102.

⁴⁰ EC, Slovenia Country Chapter – Rule of law report, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021SC0726>, 2021, p.26.



how authorities have encouraged the “*increasing threats against women activists*” by far-right groups (“with no apparent reaction from the public authorities”)⁴¹ while harassing and judicially persecuting them for having exercised their right to assembly and expression.

Recommendation # 10

The rule of law report should clearly state when authorities take part in the restriction of civic space both with deliberate actions and by failing to protect victims of abuses or redress the unintended side effects of badly made laws.

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Recommendation # 11

We welcome the decision of the Commission to include country conclusions and recommendations in the next review cycle. These conclusions as well as the general communication should explicitly express the level of intensity of the deterioration of the rule of law and whether the restrictions of civic space are deliberate and systematic in nature. This would enable follow up actions described in the third chapter and accountability.

⁴¹ EC, Poland Country Chapter – Rule of law report, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021SC0722>, 2021, p.28.



CIVIC SPACE IN THE 2021 RULE OF LAW REVIEW: HOW WELL WAS IT REPORTED?

LEGEND



Comprehensively reported



Described without the impact/ Misses key contextual information



Briefly mentioned but not described



Not mentioned

GERMANY



Legal development

There are serious concerns on the definition of the public benefit status for civil society organisations to benefit from the tax exemption status.



Covid-19

Measures to contain the COVID-19 pandemic have severely restricted the right to freedom of assembly.



Right to participation

The COVID-19 period was marked by weak civil dialogue infrastructure and lack of consultation with the civic sectors.

SLOVENIA



Economic sustainability

There have been repeated attacks on civil society organisations' financial and economic viability, including an attempt to abolish the NGO fund.



Right to participation

Civil dialogue is restricted, and consultation frameworks are disregarded by the government.



Covid-19

Covid-19 legislation was used to include "intruder" articles regulating issues not related to the pandemic and often restricting fundamental rights



Enforcement practice

There were restrictions to the right to protest and unlawful sanctions of peaceful protestors.

HUNGARY



Legal development

The Lex NGO was retracted, and a new legislation was introduced



Economic sustainability

Critical organisations are starved by the lack of public support to the civic sector during COVID-19 and opaque processes to access



Right to participation

Civil dialogue and consultation ceased, including on laws affecting fundamental rights



Safe space & non-discrimination

There are systematic smear campaigns by the government and pro-government media against organisations working on the rights of LGBTIQ+ and Roma people

GREECE



Legal development

The implementation of new registration requirements is restricting civil society organisations working on migration and social inclusion

Legal development

The implementation of a new law on regulating public assemblies is restricting civic space, in particular the right to protest

Safe space

The authorities' aggressive narrative and sanctions create a hostile environment for migrants' rights defenders

Covid 19

Freedom of assembly and protest have been affected by COVID 19 measures as public demonstrations were banned and police violence in public squares increased

CROATIA



Legal development

The implementation of new registration requirements is restricting civil society organisations working on migration and social inclusion

Legal development

The implementation of a new law on regulating public assemblies is restricting civic space, in particular the right to protest

Safe space

The authorities' aggressive narrative and sanctions create a hostile environment for migrants' rights defenders

Covid 19

Freedom of assembly and protest have been affected by COVID 19 measures as public demonstrations were banned and police violence in public squares increased

FRANCE



Legal development

The law on Global Security and the Law on Reinforcing Republican Principles threaten civic space in particular freedom of association and assembly

Right to participation

The Government fast-tracks parliamentary debates on liberticidal laws and does not listen to civic actors' concerns regarding direct effects on their capacity to act

Economic sustainability

Heavy handed policing is practiced enforcing lockdown measures and in the context of public demonstrations

Safe space & non-discrimination

Harassment and administrative attacks including dissolutions are carried out against organisations fighting against discrimination of Muslims

Consultation process

Civic actors are crucial allies for the European Commission to gather information on the situation of the rule of law on the ground, fact check data provided by member states, identify recommendations and ensure the use of the report to strengthen the rule of law. For this reason, this chapter looks at the current involvement of civic actors in the process and how the European Commission can best make use of civil society's potential in the consultation phase, while the next chapter will look at its engagement in the follow-up.

In its communications, the European Commission identifies civil society as important stakeholders in the review process. Civic actors are able to contribute to two phases: (1) through the written consultation and (2) during the country visits. Additionally, the Commission conducted horizontal consultations with European networks of civil society organisations. While the European Commission involves in good will civic actors and improved their engagement throughout the process, obstacles to the participation of civil society were reported in both phases. Overall, **there is an imbalance in the ability of civic actors to contribute to the EU rule of law reporting mechanism compared to Member States**, which contributes to the weakness of the analysis and impact of the European rule of law mechanism.

With regards to the **written stakeholder consultations**, the timeline for submitting written contributions was anticipated at short notice to February compared to the 2020 cycle which was opened in March. As a result, many organisations had to reorganise the work programme to accommodate the change of schedule. The information on the opening of the consultation was not publicly available and communicated with little anticipation only to a limited number of European networks strictly working on the matter. Additionally, the timeframe to submit written consultations was short - only five weeks long - to engage in such resource-intensive process. While specialised organisations are documenting the issue throughout the year and might have the capacities and resources to engage in the process with little advance notice, other organisations that could have provided important elements coming from their experience through different perspectives found obstacles in doing so, often remaining left out of the process.

The complex legal language and language barrier (given that the contributions could only be submitted in English) add to the barriers for the participation of many grassroots organisations. **Only a restricted number of organisations were able to participate; those dealing with rule of law and human rights in the strict sense and mostly from capital cities.** In turn, the most disadvantaged in the process were organisations representing groups directly affected by the rule of law deterioration, which often have fewer resources to engage in such processes and might not use English as a working language. European networks of civic organisations made a great effort to simplify the format, break down the topics of consultation into specific issues explained with simpler language to enable national members to contribute to the process.



Several civic organisations have also highlighted important limitations on the structure and rigidity of the questionnaire which does not allow contributors to provide a complete picture of the real nature of the deterioration of the rule of law, including on those rule of law concerns specific to their respective countries.⁴²

Recommendation # 12

The information on the consultation process – including a multilingual PDF version of the questionnaire - should be publicly available at least two months prior to the start of the consultation and the timeframe should be predictable to enable organisations to plan the engagement in the process ahead. The information should be made available, and submissions should be accepted in all languages: the website for the consultation of the Conference for the Future of Europe shows that this is now technically feasible. The European Commission should proactively inform of the upcoming consultation civil society organisations working on rule of law in narrow sense as well as those engaging on European policies that intersect with the rule of law, including on equality, democracy, and fundamental rights. The EU should also provide means – including through the Citizens, Equality, Rights and Values (CERV) Programme – in order to build capacity for civic organisations working with groups that are most exposed and vulnerable to the deterioration of the rule of law to participate in the process. The stakeholder consultation should be open for twelve weeks.

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Recommendation # 13

The European Commission website should enable stakeholders to alert in real time on worrying rule of law developments to be included in the following reporting cycle by uploading information throughout the year beyond the targeted consultation period.

Recommendation # 14

The European Commission should engage with civic organisations, especially European networks that have experience in consulting members on the ground, in order to make the consultation more accessible to a broader range of civic organisations affected by the deterioration of the rule of law.

⁴² See, for example, Hungarian Helsinki Committee, Remarks regarding the European Commission's rule of law report, https://helsinki.hu/en/wp-content/uploads/sites/2/2021/03/HHC_remarks_EC_RoL_Report_March2021.pdf, March 2021.



The European Commission has shown commitment to better involve civic actors on the ground in the process of the **country visits** as illustrated by the fact that the Commission proactively reached out to organisations that were new to the process and did not submit written responses to the consultation. For this, it relied on contacts provided by European networks and the European Commission representations in Member States. For example, national platforms in Austria and Latvia, representing the interest of the sector, have been invited to feed into this process. Nevertheless, CSOs have reported challenges linked to this phase of the consultation regarding the transparency of the process and involvement of civil society on the ground, as well as in regard to how information was included in the reports.

The calendar was not publicly available, and it was unclear who was in charge of organising the country visits, for example to what extent the representations of the European Commission were involved. Additionally, the way the selection of organisations invited to contribute to the country visits was not transparent: several organisations that had expressed interest in being involved in the country visits through their written contributions were not invited in the second stage. The lack of clear guidelines and criteria for engaging civil society on the ground led to a sense of frustration of important civil society stakeholders that have been left out. More importantly, as a result of the limited understanding of the rule of law adopted by the European Commission, groups that do not monitor rule of law in its narrow sense but engage with a wide range of issues that affect the functioning of the rule of law have been left out of the process. Just giving a quick look to organisations consulted in country visits, it is clear that there are huge differences from country to country. For example, in **France** no organisation working on associative life and civic space was invited except for journalists' associations and unions of lawyers and judges,⁴³ despite the fact that the sector has faced huge challenges in the last year. The European Network against Racism (ENAR) and the European network for equality for lesbian, gay, bisexual, trans and intersex people – ILGA Europe reported that none of their members on the ground were consulted despite the fact they represent some of the groups that are most exposed to the failures of the rule of law. This lack of diversity and representation was clearly reflected by the analytical gaps of the reports described in the previous chapter.

CSOs invited to contribute were generally positive about the organisation of the visits: they received questions ahead of the meeting which were specific for topics that had been raised with the European Commission for each country, which allowed the meetings to delve into crucial issues for respective countries. **However, the process is opaque with regards to what input the European Commission receives and how they are included in the final reports.** Civic organisations do not have access to the respective Member State's input before it is published online with other stakeholders' contributions at the launch of the Rule of Law report. This makes it impossible for them to debunk or contextualise the potentially misleading statements or

⁴³ EC, French Country Chapter Rule of law report, https://ec.europa.eu/info/sites/default/files/2021_rorl_country_chapter_france_en.pdf, 2021, p.22.



omissions by Member States. Additionally, many of those surveyed expressed frustration with the fact that important events and phenomena discussed during country visits were not included, or only superficially, in the report. Several information reported as missing in the previous chapter had been provided to the Commission during the country visits or written contributions.

Recommendation # 15

Information on the country visits should be made publicly available to all that wish to engage in the process, including the calendar of visits and contact points in each country.

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Recommendation # 16

The European Commission should develop guidelines on how to involve stakeholders, in particular civil society, in the rule of law process. These protocols should be developed in partnership with civil society. The European Commission could benefit especially from the experience of European networks that are experts in engaging their members on the ground and in civic participation at European level. It should ensure that country visits are diverse and representative of stakeholders in the country. For example, they should include both organisations working on Rule of law in narrow sense as well as organisations working with victims of breaches of rule of law by providing support and access to justice. To do so, ahead of the country visits, the Commission should undertake a serious mapping of stakeholders engaging European networks (see below). The European Commission should cooperate with civil society on the ground to organise these meetings: civic actors should be enabled to self-organise through existing coalitions and/ or national platforms of NGOs to contribute to the process with needed support (financial and organisational).

Recommendation # 17

The European Commission should be transparent on the input received, especially on the content of the discussions happening during country visits and particularly the updates received by Member States reacting on the draft report before it is published. The European Commission should provide government reports in advance of the country visits in order to enable civic actors and other stakeholders to review the observations form Member States.



Recommendation # 18

The European Commission should ensure more clarity and transparency and feedback on how inputs received from stakeholders are selected and included or excluded from the report.

Parallel to country visits, the European Commission also organised **horizontal consultations** with European networks of NGOs and other stakeholders working at European level. These are important opportunities for the Commission to tap into the specificity of civil society organisations working at the European level, which are well placed to provide information concerning the transversal developments and countries' developments that raise broad concerns. As mentioned above, these organisations also have expertise on matters of improving participation of organisations on the ground in EU policies and discussions and, more generally, on the overall process.

Recommendation # 19

The European Commission should better reflect on how to involve European networks and civil society organisations working at the European level throughout the process to take full stock of their knowledge, experience, and connections with the grassroots through their membership. For example, the European Commission could organise the horizontal consultations in three stages. The first stage could support the European Commission ahead of the country visits to be informed of important issues, both positive and negative, and relevant contacts on the ground ahead of the country visits. The second stage could follow the country visits to discuss trends emerging across countries as well as country-specific challenges that deserve more attention by the Commission in the general communication. The third stage, after the publication of the report, could serve to review the methodology and content of the reports and assess the effectiveness of the tool. This would also be an opportunity to discuss how to build on the reports in the follow up actions.



Impact

The European rule of law mechanism is identified by civil society and other watchdogs as an important tool for national and European advocacy and action to protect and strengthen the rule of law. It can contribute to raise awareness about rule of law issues and support civil society to engage in dialogue with and campaigning vis-a-vis national institutions. Nevertheless, civic actors have also repeatedly stressed several shortcomings that still limit the impact of the review beyond those described in the previous chapters.

The weak links with enforcement mechanisms have been widely criticised by civic actors as well as the European Parliament as reducing the review process to a check-the-box exercise.⁴⁴ The European Civic Forum joins over 60 civil society and journalist' associations in calling for strengthening the potential for impact of the report by coordinating the rule of law mechanism with other EU frameworks and policy instruments, including the European Democracy Action Plan (EDAP), the EU Justice Scoreboard, procedures under Article 7 TEU, infringement proceedings and budgetary conditionality.⁴⁵ We welcome the announcement by the European Commission President in her State of the Union speech which stated that from 2022 onwards, the Rule of Law reports will include conclusions and specific recommendations to Member States. It is a needed step forward and it can contribute to improve the effectiveness of the mechanism.

To date, the main goal of the European rule of law mechanism is reportedly to spark a rule of law debate at national level and contribute to a vibrant rule of law culture. The report's release in the middle of the summer, when most institutional and civil society representatives are on holiday breaks, with little communication in advance, is therefore counterproductive. Little attention is raised among media and national Parliaments at the moment of the launch of the reports. Civic organisations in many countries stressed that there is little awareness of the mechanism among civic actors, the media and citizens except for those actors that are regularly involved at the European level. As a result, the rule of law report is underutilised. Moreover, in few countries, the capacities of civil society and the independent media to mobilise citizens around the findings are limited due to the shrinking civic space.

Additionally, the discussions between the Commission and the Member States following the publication as well as the peer review between Member States are not public and civil society is not informed about the follow-up (if any) to the discussions held.

⁴⁴ European Parliament, Report on the Commission's 2020 Rule of Law Report (2021/2025(INI)), https://www.europarl.europa.eu/doceo/document/A-9-2021-0199_EN.pdf, 9 June 2021.

⁴⁵ For concrete recommendations, read the full statement: [joint-statement-on-rule-of-law-reports-22-09-21.pdf](https://www.epd.eu/joint-statement-on-rule-of-law-reports-22-09-21.pdf) (epd.eu).



Recommendation # 20

The recommendations should be backed with concrete targets and deadlines. Civil society should also be considered as a partner to identify appropriate recommendations and monitor their implementation. The European Commission should also monitor the progress on implementation of the recommendations and dialogues and include findings of this exercise in the following rule of law report.

Recommendation # 21

The European Commission should reinforce its cooperation with civil society, national human rights institutions, and other watchdogs, as well as coordinate efforts to bring attention to the report on the ground and advocate for change. The calendar of the process should include the date of the launch of the report to enable proper planning of follow up actions. The Commission should also develop clear communication and outreach strategies for the dissemination of the findings and communicate publicly on the calendar of debates in national parliaments. It should invest more heavily into awareness-raising at national level, especially in those countries where civil society's capacities have shrunk over time due to shrinking civic space and media pluralism is challenged.

Recommendation # 22

On the basis of the findings, the European Commission should engage in dialogue with civil society actors, human rights defenders, national human rights institutions and other public watchdogs to identify and design the appropriate format for follow up actions at national level. The European Commission should also demand Member States to open dialogue with civil society and other stakeholders, including national human rights institutions, on each of the pillars of the report to address the issues spotted through the rule of law mechanism. It should also associate civic actors as well as national human rights institutions in its own dialogue with Member States on the findings.



Recommendation # 23

The European Commission should **carry out a structured review and assessment process of the rule of law mechanism**, including the scope, methodology, involvement of stakeholders and impact. Civil society has repeatedly called for such a review of the methodology adopted and expressed eagerness to support the Commission in such process. The Commission should involve civic actors in this process as partners.

Recommendation # 24

Beyond the targeted consultations and assessment, the European Commission should **set up a broad civil dialogue process on rule of law, democracy and fundamental rights along the provisions of article 11 of the TEU**. Other stakeholders such as academia, journalists and national human rights institutions should be engaged too. Such dialogue should be aimed at reflecting collectively on the root causes of the democratic backsliding witnessed in some EU Member States and identifying policies and actions to be taken and coordinated at the EU level.



The success of the European rule of law mechanism rests on a European culture of active citizenship and vibrant civic space

As described in the present communication and recognised by the European Commission, civil society actors are vital to the functioning and implementation of the European rule of law mechanism throughout its entire cycle. A culture of active participation and citizenship is also vital to foster a meaningful debate on the findings of the rule of law review. The ability of civil society and active citizens to engage with the rule of law mechanism and other intersecting European policies at national and European level requires a **vibrant and safe environment for civic actors at national and European levels**.

In the survey informing this analysis, we asked partners whether they are aware of cases of reprisals against civic organisations for their involvement in the European rule of law review. Respondents from **Bulgaria, Croatia, Greece, Slovenia, Poland** and **Hungary** reported that while they are not aware of cases specifically linked with the EU rule of law mechanism, those taking part in the process and regularly engaging with advocacy on rule of law and democracy issues at national and European level are often adversely targeted by national authorities. For example, the watchdog organisation Gong from **Croatia** was attacked by the Minister of Justice and public administration in February 2021 for having alerted the Council of Europe's GRECO of the changes to the Commission on conflict of interest that de-facto emptied its mandate from the power to decide whether an official acted with integrity, integrity, conscientiousness, responsibility and impartialness.⁴⁶

As the European Commission benefits from the work of civic organisations on the ground, it also holds a responsibility to contribute to their protection, including by monitoring whether organisations engaged in the European rule of law mechanism and other European policies face reprisal and developing protocols to respond to such attacks when they occur.

⁴⁶ Gong, [Instead of fighting corruption, minister attacks Gong-Gong](#), February 2021.



Recommendation # 25

It is urgent for the European Commission to **develop a civil society strategy approaching the sector as a whole**, in order to strengthen its role in enacting the fundamental values enshrined in article 2 TEU, in promoting democracy, rule of law, equality and justice. Such a policy framework should elaborate on the tools and mechanisms at disposal of the European institutions to support the development of vibrant civic space in Europe. It should also **establish adequate protection mechanisms to prevent reprisals or censorship, including self-censorship, against civil society defending rights and values that are at the basis of the European project, such as by engaging in the European rule of law mechanism and by implementing directly or indirectly European policies in these areas.** European policies for the safety and protection of journalists against threats, including judicial harassment, and for media pluralism provide good examples for this work. This strategy should take into account the recommendations set forward by the EU Agency for Fundamental Rights (FRA) in its 2021 report on protecting civic space, the upcoming European Parliament own initiative report on the subject as well as the EU's experience in protecting civic space and human rights defenders within EU external action.

Recommendation # 26

The European Commission should **set up an alert mechanism to regularly monitor and act early-on on restrictive legislation and attacks against CSOs and human rights defenders.** As highlighted by the 2021 FRA report on civic space in the EU, the European Commission could build on the example of the existing external EU human rights defenders mechanism protectdefenders.eu and provide appropriate financial support for the creation and maintenance of a similar monitoring mechanism in the EU, including a helpline, emergency funding, legal assistance, protection of defenders, and, if needed, temporary relocation.

The Rule of law unit of the Directorate General for Justice and Consumers, which is in charge of the process, should identify a contact person to maintain relations with civil society and regularly follow up on alerts received concerning (see recommendation #13).



Recommendation # 27

The European Commission should create a fourth pillar in the European Democracy Action Plan: "Promoting active and democratic participation beyond elections" as recommended by the EESC.⁴⁷ Such a framework should support the promotion of education and practice on democratic citizenship, rule of law and human rights. Citizens and their organisations should be fully involved in shaping EU policies. The Commission should initiate an inter-institutional agreement on civil dialogue with European civil society to implement the provision in Article 11 TEU for an "open, transparent and regular dialogue with representative associations and civil society" in all EU policy areas.⁴⁸

⁴⁷ EESC, Opinion Communication from the Commission to the European Parliament, The Council, the European Economic and Social Committee and the Committee of the Regions on the European Democracy Action Plan

COM(2020) 790 final, <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-democracy-action-plan>, 9 June 2021.

⁴⁸ European Civic Forum, [Towards an open, transparent, and structured EU civil dialogue \(civic-forum.eu\)](https://civic-forum.eu), April 2021.



Annex: Unpacking shrinking civic space: a proposal for an analytical framework

Shrinking civic space is a complex phenomenon. Pressure on NGOs and social movements can take the form of burdensome and limiting legislation; reduction, restrictions, and constraints on financial resources; new barriers to influence policymaking and accessing information; restrictions to the freedom to protest, as well as a general pressure and decline in access to rights for all. On top of the 'hard' obstacles, practices and statements, and the lack of implementation of policies, affect the environment in which civil society operates.

The European Civic Forum bases its analysis of challenges for civil society in Europe on five elements that we believe are crucial for an enabling environment⁷:

1. **The political landscape and safe space (including state duty to protect and right to freedom from fear):** the historical legacy on political culture, together with socio-economic structures and contingent events, profoundly shape the public's understanding of the role of civil society and the values it embodies, the activities it pursues, thus influencing public trust and support. Under this category also fall statements by public officials and the reactivity of public authorities to respond and investigate incidents of breaches to civic freedoms.
2. **The regulatory environment for and implementation of civic freedoms of association, assembly, expression and privacy online and offline:** a supportive legal and regulatory framework for civic freedoms, in particular freedom of association, freedom of peaceful assembly and freedom of expression, and its effective implementation ensure the full-stretching, correct functioning and protection of civil society space. Governing bodies have the duty to refrain from, investigate and discipline actions, laws and statements that threaten civic freedoms.
3. **A supportive framework for CSOs' financial viability and sustainability:** supportive legislation on funding, including foreign and international funding, and availability of sufficient and predictable resources are crucial to civil society's capacities, independence and long-term strategic planning.
4. **The right to participation and dialogue between the sector and governing bodies:** governing bodies must pursue policies and narratives that empower citizens and CSOs to be meaningfully engaged in public debate and policymaking.
5. **Civil society's responses to challenges to democracy, the rule of law and fundamental rights:** civil society is not a passive victim of government attacks. Civic actors are actively involved in fostering democracy and the rule of law and holding governments accountable.

Such categories reflect those identified by other monitoring mechanisms established by civil society and institutions, like (I) the monitoring matrix elaborated by the Balkan Civic Society



Development Network and used by DG NEAR in the European Commission, (II) the European Union Agency for Fundamental Rights (FRA)' report on challenges facing civil society organisations working on human rights in the EU, and (III) the recommendations for the creation and maintenance of a safe and enabling environment for civil society based on good practices and lessons learned by the UN Higher Commissioner for Human Rights.

These five elements are crucial for an open and vibrant civic space and could be used by the European Commission as an analytical framework to unpack the complex phenomenon of shrinking civic space.

Below, for each of the five elements, we provide a sample of questions that ECF uses to examine the situation analysed in its Civic Space Watch monitoring. We are keen to provide insights from the expertise of analysis of civil society space ECF and its partners built over the years.

Political, socio-economic and cultural landscape and safe space (including state duty to protect and right to freedom from fear):

- What is the landscape in which civil society has been operating in the last year? What are the key developments regarding the functioning of the rule of law and democracy (functioning of the justice system, media pluralism, separation of powers...) and access to fundamental rights that have characterised it?
- To what extant fundamental rights, including socio-economic, were affected over the past year?
- What is the level of public trust for civic actors? Do you consider that state authorities sufficiently foster trust or were there instances of smear campaigns?
- Was there any instance of physical attacks or other forms of harassment (administrative and judicial) against civic actors? If yes, did the authorities investigate the incident and persecuted the perpetrator?

The regulatory environment for and implementation of civic freedoms of association, assembly, expression and privacy online and offline:

- What laws regulate freedom of association, expression, assembly? Are they implemented correctly?
- Were laws passed affecting or restricting freedom of association, expression, assembly in the last year? If yes, what is the impact on civil society's actions?
- Was any civic organisation sanctioned while supporting their constituencies during COVID-19? Were any civic actors sanctioned (or threatened to be sanctioned) for the opinion expressed?
- Was freedom of assembly respected? Did the emergency legislation face COVID-19 take into account the right to peaceful assembly and protest? Were accountability and proportionality ensured?
- Did the police gain additional powers to ensure the respect of the measures implemented? If this was the case, were any particular groups affected? Were accountability and proportionality ensured?
- Were protesters unduly/disproportionately fined, imprisoned or physically attacked?



- Was any positive initiative started by public authorities to promote and protect civic space and human rights defenders?
- Did any court case affect fundamental freedoms of expression, association and peaceful assembly?
- Has the right to privacy been ensured?

The framework for civic organisations' financial viability and sustainability:

- What is the economic and financial viability of the sector?
- Are there barriers for civic actors to access funding? Are there groups that are most affected?
- Did the pandemic have an economic and financial impact on the sector?
- Did the government include the sector in the recovery measures for the economy?
- Did the government implement specific measures to support the civic sector?
- Was any law affecting access to funding discussed or passed?
- Was civil society included as a beneficiary of the National Recovery and Resilience Plans (NRRPs)?

The right to participation and dialogue between the sector and governing bodies:

- Is there a civil dialogue framework in place in the country? If yes, is it implemented in practice?
- Was the civil dialogue framework respected during the pandemic?
- Was civil dialogue with public institutions at the local and national level affected during the pandemic? How?
- Was any positive measure implemented to ensure the participation of civil society and citizens in the policymaking to respond to the pandemic?
- Was any change to civil dialogue legislation carried out in the last year?
- Was civil society able to access information?

Civil society's responses to challenges to democracy, the rule of law and fundamental rights:

- What are the most significant developments in 2021 showcasing the role of civic actors in fostering democracy, the rule of law and fundamental rights?



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more than 100 associations and NGOs in 29 countries

Standing for a Europe grounded on:
Solidarity, human rights and Civic participation

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