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TOWARDS VIBRANT EUROPEAN CIVIC AND DEMOCRATIC SPACE

The case for a European civil society strategy and preliminary reflections on the gaps, challenges and opportunities to be addressed

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Executive summary

Existing analyses have mostly focused on the democratic and societal role that civil society plays and the challenges it faces nationally. Beyond this aspect, CSOs are crucial European actors and the European dimension of civic space is growing. The societal and democratic role of civil society becomes increasingly important for the European Union. **Civil society is instrumental to foster and protect EU values enshrined in article 2 TEU and rights protected by the Charter of Fundamental Rights both at European and national level. Additionally, CSOs' role is also key build a European public space and upscale participatory democracy at the EU level.** Better participation of civil society in the policy-making and agenda setting would allow EU policies to respond in a more meaningful way to the needs, concerns, aspirations and rights of people living in Europe, resulting in greater popular ownership and trust in institutions. This is even more essential in the context of the multifaceted crises the EU faces internally and globally.

While the majority of the monitoring and research has focused on how these obstacles emerge at national and European level through the lenses of patterns of restrictions and harassment against civil society that are common to certain countries, there are also European drivers and implications. First, these hindrances negatively affect the EU's ability to reach objectives and ambitions of its policies as they also rely on civil society's role to monitor and support their implementation. Additionally, shrinking civic space at national level also impairs civil society's resources and capacities to engage in EU law- and policy-making and public sphere. Finally, the EU law is sometimes at the origins of the restrictions for civil society.

As the scope of EU law-making expands, increasingly intersecting with certain activities and operations carried out by civil society at national and EU level, a growing attention is being posed to the potential of EU law to protect civic space. As a result, through novel arguments EU institutions could become more proactive in defending civil society in the fields covered by EU law.

On the other side, **European policies increasingly regulate civil society's action but - in absence of appropriate strategies and guidelines to define, empower and protect CSOs democratic role** - they tend to overlook the specificities of the sector and its actors. Indeed, these policies often refer to civil society as a stakeholder to implement EU policies at the national level or as an actor of the common market. European policies tend not to recognise the specificity of CSOs' non-lucrative dimension, unique role of intermediary between the state and individuals or challenger between the state and the market, or their democratic function in promoting and protecting human rights. As a result, **the EU law and its often-rigid transposition into national legislation has sometimes contributed, although involuntarily, to not only overburden the sector but also to shrink the autonomy, individuality and operations of CSOs as a sector representing the self-organisation of people living in Europe** distinct from the government and the market. Moreover, **EU law often**

fails to take into account existing human rights standards protecting the civic sector.

These challenges and obstacles posed by EU law deepen the shrinking of civic space across EU Member States impairing civil society's ability to act in its democratic function.

EU Member States and the European Union have made international commitments to engage, support and protect civil society, including through resolutions in the United Nations Human Rights Council (HRC). **Today the European Union also has unprecedented tools to foster and protect democracy, the rule of law and fundamental rights**, such as the European Rule of Law Toolbox, the European Democracy Action Plan (EDAP), the Strategy on the European Charter of Fundamental Rights. As part of these strategies, the European Commission has started a number of promising initiatives, in particular measures to tackle SLAPPs against public watchdogs and the Citizens, Equality, Rights and Values (CERV) funding programme. Throughout these actions, the European Commission mainstreams the acknowledgement of the fundamental contribution played by civil society as well as the growing challenges it faces on the ground. It also started and won two infringement proceedings setting positive precedents for the rest of the European Union against similar moves and showing the role that the European Court of Justice (CJEU) can play in protecting civic space and fundamental rights both at national and European level. **While these measures are welcome, they mostly address in a piecemeal manner some of the most urgent problems with which CSOs are being confronted. An overarching solution has yet to surface.** The lack of initiatives empowering and protecting civil society is particularly striking when looking at the progress made in recent years in the field of media pluralism, including the European Media Freedom Act and recommendations on the safety of journalists. Long-lasting demands for a meaningful implementation of civil dialogue have still to be addressed, while the support provided to civil society through funding policies must also be reviewed in order to overcome crucial shortcomings.

In this context, the upcoming European Commission's report on "The civic space and its role in protecting and promoting fundamental rights under the charter" should clearly state the importance of nurturing and protecting civil society space at the European level, in addition to the national level, and review the impact of shrinking civic space on the achievement of EU objectives not only in the area of fundamental rights, democracy and rule of law but also equal societies, fair, sustainable and digital economy. Additionally, it should include a thorough mapping of how to use existing European tools, policies and legal venues to address obstacles and threats. Finally, it should highlight existing gaps or challenges of EU action on civil society to be tackled by relevant policies to be outlined in a comprehensive European Civil Society Strategy.

This paper brings together existing resources produced by the European Civic Forum and other CSOs to highlight the European dimension of challenges to civic space and makes the case for a European civil society strategy. First, it looks at the role that civil society plays at the European

level. Second, it points at gaps and challenges in the European legislative framework regulating activities that affect the operations of civil society. Finally, **the paper builds on broadly shared proposals for a way forward for a vibrant European civic space through a European civil society strategy.**

The way forward: a European civil society strategy

In order to promote a thriving civic space at EU and national level and respond to the challenges and gaps described above, the European Commission should launch a proactive European strategy towards open civic space and resilient civil society, responding to the European Parliament resolution of 8 March 2022 on the shrinking space for civil society in Europe ([2021/2103\(INI\)](#)), the final report of the Conference on the Future of Europe in the chapter on European democracy (2022) and calls from civil society across Europe.

The EU Civil Society Strategy should give "*genuine political recognition to the crucial role played by CSOs in the realisation of democratic values and policies*" by:

- Integrating all existing tools;
- Filling monitoring, support and protection gaps;
- Clearly linking monitoring and reporting tools to EU enforcement mechanisms (such as infringement procedures and rule of law conditionality) to ensure timely and effective follow-up action.

1. Empower civil society as a key democratic and societal actor for the European Union through political recognition and enabling policies at national and EU level

The strategy should define civil society at the European level and set political priorities to develop its capacities and support it when facing attacks. The strategy and the definition of civil society should be grounded on Article 2 and 11 of the TEU and embedded in international human rights standards, recognising the diversity of not-for-profit actors in terms of structures, modus operandi, scope and actions. It should also identify civil society organisations as key actors for European democracy, resilient societies, just green and digital transition and for the European social economy. It should define CSOs in terms of enjoyment of EU rules while protecting the specificity of the civic sector vis a vis other entities.

The democratic and societal role of civil society should be clearly recognised in the European Democracy Action Plan (EDAP) and European rule of law mechanism by:

- **Adding a fourth pillar in the EDAP on "Promoting active and democratic participation beyond elections"**. Such chapter should focus on civil society's role in the promotion of education and practice on democracy and democratic citizenship, Rule of

Law and human; the pillar should also recognise the importance of civic education vis-a-vis civil society, and promote more proactive EU-level action in this area.

- **Monitoring, documenting and analysing challenges faced by civil society in a full-fledged, stand-alone pillar on civil society and human rights defenders enabling environment in the European rule of law review** adopting a broad and structured approach. The deficiencies and obstacles to a free and vibrant civic space identified in the annual European rule of law and FRA's civic space reports should be addressed by putting forward concrete country recommendations with targets and deadlines, as well as European policies in relevant areas. The European Commission should continue launching infringement proceedings, where there is a breach of EU law violating civic space and associated Charter rights through expedited procedures and interim measures, ensuring a more active and predictable role for civil society in the process.

The European Commission should ensure that European laws and policies secure the enabling space for civil society and avoid negative side-effects related to their implementation, **carrying out structured ex-ante and ex-post impact assessment** of EU policies on Rule of Law, democracy and civil society space adopting an intersectional approach.

2. Engage: Secure an enabling environment for civil society at the European level by engaging in regular, transparent and meaningful civil dialogue throughout law- and policy-making

Article 11 TEU explicitly requires the EU institutions to give citizens and representative associations, through appropriate means, the opportunity to make known and publicly exchange their views in all areas of Union action. Implementation of civil dialogue along the Article 11.2 of the TEU is a longstanding demand of the European civil society. It includes within this framework the well-established tradition of consultation (Article 11(3) TEU). At the same time, the provision calls for a shift to a more advanced model of participation, the so-called **"civil dialogue"** which **entails civil society's engagement in the entire cycle of EU law- and policy-making not only on specific thematic areas throughout the policy cycle but also on programmatic issues and agenda-setting** such as in developing the work programme of the European institutions.

Basic coordination structures (focal points) for civil dialogue should be established within each EU institution - including each DG of the European Commission, formalising and structuring the involvement of CSOs on sectoral policy issues beyond consultation along all phases of policy making, including its implementation and evaluation phase. These structures should also enable civil society to alert the European Commission to take actions in case the restrictive measures of Member States affect the achievement of EU policies' objectives and

break EU law. The European Commission should also promote the creation of such structures and participation in the EU policy-making process and mechanisms at national level.

Finally, civil dialogue and participation are also crucial in times of crisis. The European institutions should better associate civil society organisations in crisis management discussions on emerging needs to be addressed and possible solutions.

3. Support: Nurture the civic sector through flexible funding policies and more

Supporting the sector means providing resources, including financial, to develop the infrastructures, capacities, skills and leadership needed to face the challenges and opportunities ahead. EU funding policies should be aimed at nurturing the democratic role of the civic sector and be sufficiently flexible and agile to enable the access of grassroots organisations next to national and European networks. **The European Commission should make use of dialogue infrastructures to meaningfully engage (not just inform) civil society in 1) decisions regarding the strategic priorities of the European funding, financial regulations** as well as of specific EU funding accessible to CSOs; 2) evaluating the accessibility of the funding for organisations – especially at the grassroots level - and identify obstacles that should be overcome; 3) share and discuss lessons learned among grantees and between grantees and the European Commission services.

Additionally, as CSOs are dealing with complex societal issues that requires innovative, long-term systemic thinking as well as prompt responses, they might have to experiment and adopt a trial-and-error approach to find meaningful strategies for their context. As a result, **it is crucial to ensure flexibility in adjusting the actions, the reporting efforts are proportionate to the amount funded and avoid using managerial and performance logic in reporting and measuring the impact of CSOs.**

The Citizens, Equality, Rights and Values (CERV) programme should allow intermediaries regranteeing EU funding at national level to provide core funding and to grassroots organisations ensuring administrative costs and co-funding are not disproportionately heavy on their capacities. They should also be enabled to rapidly disburse emergency action grants with simplified application and reporting processes and flexible timeframes (on the example of the action grants of the EEA & Norway grants) in addition to longer-term grants. The European Commission should take actions when national authorities impose obstacles or undue interference with CSOs' access to EU funding.

4. Protect: Defend civil society and human rights defenders (HRDs) against smear campaigns, SLAPPs and judicial harassment, threats and attacks

When governments and powerful individuals dismantle legal protections, threat and harass civil society, the European institutions should provide protection and support. There is a need to

bring coherence between protection and support mechanisms for civil society and human rights defenders existing in EU external policies, such as the EU human rights defenders' mechanism protectdefenders.eu and the EU Guidelines on Human Rights Defenders. The European Commission should speak up for and provide political support to civic actors under pressure via the European Commission Vice-President for Values and Transparency. Their mandate could be developed on the example of the UN special rapporteurs, enabling the vice President (including through appropriate staffing and support) to speak out and engage diplomatically with authorities to support civic actors.

The European Commission should foster EU-wide standards of police accountability vis a vis use of force, including on the use of non-lethal weapons in the context of public demonstrations, based on existing human rights standards and guidelines. It **should monitor instances of surveillance, harassment, prosecution and criminalisation against civil society and human rights defenders as part of the rule of law report. When such instances are identified, relevant European actions should be deployed.**

Methodology and acknowledgements

The report results from the long-lasting monitoring, research and advocacy work by the European Civic Forum (ECF) through the Civic Space Watch ([Civic Space Watch | Monitoring civic space in Europe](#)). It also builds on joint statements and reflections ongoing in the ECF network and within Civil Society Europe and beyond. We thank Martina Di Gaetano (Reclaim Europe), Veronika Mora (Okotars), Fernando Hortal Foronda (European Partnership for Democracy), Marta Gionco (PICUM) and Francesca Fanucci (ECNL) for their input.

1. What role for civil society at EU level?

A vibrant and independent civil society is vital for an open civic space, a healthy democracy, functioning rule of law and meaningful implementation of fundamental rights as it allows people to organise themselves, amplify their voices and be heard. Both in their advocacy-oriented action or service-oriented function, civil society organisations (CSOs) contribute to making effective and real the access to civil, political, economic, social, cultural, and environmental rights for many.

CSOs embody, organise and channel the common aspirations and interests of society, or of certain groups within society, including those underrepresented, who normally do not enjoy access to decision-makers. On this basis, CSOs facilitate active citizenship by empowering individuals to better understand and contribute to shaping laws and policies which affect their daily lives, allowing them to act collectively in fields of mutual interest and representing them to ensure that their voice is heard. As such, CSOs are recognised as an essential component of a democratic and pluralist society.¹ Civil society is also crucial to witness and provide direct response to the need of the population by organising and delivering services, sometimes filling the gaps left by public policies, as observed during the COVID-19 pandemic² and in the current humanitarian crisis resulting from the Ukraine war.³

As the European dimension of the political life grows, the societal and democratic role of civil society becomes increasingly important for the European Union not only to ensure EU values enshrined in article 2 are fostered and protected at national level, but also to build a European public space and upscale participatory democracy at the EU level. This would allow EU policies to respond in a more meaningful way to the needs, concerns and aspirations of people living in Europe. This is even more essential in the context of the multifaceted crises the EU faces internally and globally.

1.1 Fostering and protecting European values, rule of law, democracy, fundamental rights, and equality across Europe

The importance of civil society in fostering and protecting the EU values and advancing European aspirations on rule of law, democracy, fundamental rights and equality is reflected in a wide variety of EU strategies such as the Strategy for the Implementation of the Charter of Fundamental Rights, the European Democracy Action Plan and sectoral policies in the area of the rule of law, equality, anti-racism, LGBTQI+ equality, Roma inclusion, children's rights, disability, victims' rights, women's rights and migrant integration.

¹ See among others European Commission (July 2019), [Strengthening the rule of law within the Union - A blueprint for action](#) and the decision of the Court of Justice of the EU in case C-78/18, [European Commission v Hungary](#), paragraph 112.

² https://civic-forum.eu/wp-content/uploads/2020/11/INT_ACTIVIZEN5_BAF.pdf

³ <https://www.fidh.org/en/region/europe-central-asia/ukraine/war-ukraine-refugee-european-commission-council#>

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

Civil society contributes to the implementation of the European Charter of Fundamental Rights by providing crucial public services to population, advocating for rights-based policies, 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.

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, democracy and human rights when they are under pressure**.

Civil society also enables and empowers people to **freely participate** in matters of common good. Civil society contributes 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 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, democracy and fundamental rights** 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).

The EU cannot foster and protect rule of law, democracy, fundamental rights and equality without a vibrant civil society.

Resource

For concrete example on how civil society fosters, strengthens and protects rule of law and democracy across the European Union and the challenges it faces at national level, check the European Civic Forum's response to the 2022 European Commission rule of law consultation containing country chapters written by national watchdog: [Civic Space Watch | RULE OF LAW \(January 2022\)](#).

1.2 Building European public space and participatory democracy

Participation is a crucial component of European democracy, both to ensure that policies and laws are targeted and meet real needs, and to provide policy-makers with the best and widest possible input to address the complex challenges Europe is faced with. Participatory democracy would also increase the legitimacy of EU policies in the face of the so-called EU's democratic deficit and contribute to closing the gap between European decision-making and individual citizens. The concept of participatory democracy is explicitly embedded in the Treaty on European Union (TEU), framed as the right of every EU citizen to participate in the democratic life of the Union and as an institutional engagement to take decisions as openly and as closely as possible to the citizens.⁴

Organised civil society has a crucial role in better connecting citizens to EU decision-makers for the purpose of the practical implementation of the EU model of participatory democracy.⁵ This role has been amply recognised in the final report of the Conference on the Future of Europe in the chapter on European democracy,⁶ which calls for "*strengthening cooperation between EU legislators and civil society organisations*" including by providing "*structural support, financial and otherwise, for civil society [...] and a dedicated civil society strategy*" (2022). Indeed, civil society's participation channels the expression of collective engagement, which adds to forms of direct citizens' participation that convey the sum of individuals' opinions. Organised civil society is an important participation channel for citizens. Its mediation role is particularly relevant at the EU level, where, while some tools of direct citizens' participation exist,⁷ they are rarely used by citizens to influence the EU decision-making process

⁴ Article 10(3), Article 11(1) and (2) TEU.

⁵ On the interconnection between civil dialogue, civil society and participatory democracy, see EESC, Group III, [Participatory democracy in 5 points](#) (March 2011).

⁶ [shorturl.at/klAL3](#) (p.79)

⁷ Including the European Citizens Initiative (Article 11(4) TEU), the right to petition (Article 24 of the Treaty on the Functioning of the European Union (TFEU) and Article 44 of the Charter of Fundamental Rights of the EU (CFR)) or the right to refer to the European Ombudsman (Article 24 TFEU and Article 43 CFR).

– both due to their expertise-based and technocratic nature and to their limited impact, which frustrates the engagement of ordinary citizens.⁸

The relevance of civil dialogue as a key component of participatory democracy rests on the general consideration of the active involvement of civil society in decision making within the EU's standards of good governance.⁹ The same principle is applied to national governments, within the framework of the EU's monitoring for the respect of basic democratic standards: the extent to which EU Member States, and candidate countries, ensure an enabling environment for the participation of civil society in decision-making is regarded as an indicator for the respect of democracy and the rule of law.¹⁰

As a premise for participation, the functioning of European democracy also requires the fostering of a European public sphere. **Civil society is an important actor in the development of a European public sphere, by raising awareness among citizens of existing European policies and actions, monitoring and assessing the functioning of EU institutions, mobilising citizens around key moments of the life of the European community**, such as during the European elections, and bringing people from different countries together (for example, through networks or conferences).

Thus, the development of a European public sphere and strengthening of European democracy lies on a vibrant European civic space and resilient civil society as well as on the institutional and political willingness to engage civil society in the policy-making and agenda-setting.

1.3 Mitigating the social costs of multifaceted crises

With the pandemic crisis not yet fully overcome, the European Union is facing important challenges and crises like climate change and related natural disasters, the rise of inequalities, the war in Ukraine and consequent humanitarian emergency that require leadership, solidarity and public trust.

At the same time, we can witness on the ground a widespread popular desire for deep, structural change, which is confirmed by the data. The research by the think tank *More in common* shows that there is a majority of the population that aspires to social change, with economic concerns COVID-19 and climate change on top of their priorities.¹¹ The results of the special

⁸ For a critical analysis of Treaty based mechanisms of direct participation, see for example Centre for European Policy Studies, S. Russack, [Pathways for Citizens to Engage in EU Policymaking](#) (November 2018). Newer and more innovative forms of direct participation seem to suffer from similar challenges. See for example, as regards European Citizens Consultations, C. Stratulat & P. Butcher, European Policy Centre and The Democratic Society, [The European citizens' consultations: evaluation report](#) (2018).

⁹ Article 15 TFEU.

¹⁰ See, as regards EU Member States, European Commission, [2020 Rule of Law Report The rule of law situation in the European Union](#), COM/2020/580 final; and as regards candidate countries, European Commission, [Enhancing the accession process - A credible EU perspective for the Western Balkans](#), COM/2020/57 final. See also Council of Europe Venice Commission and the Organisation for Security and Cooperation in Europe (OSCE), [Rule of Law Checklist](#), CDL-AD(2016)007.

¹¹ <https://www.moreincommon.com/media/eoahwumw/navigating-uncertainty-more-in-common-feb-2022.pdf>

Eurobarometer on the Future of Europe released in January 2022 also showcase that the most pressing challenges for Europeans are social inequalities, unemployment, health, environmental issues and climate change.¹² According to the global research on trust by Edelman, people question the capitalist economic model that has shown its limitations during the pandemic and call for more accountability and social responsibility for businesses.¹³ At the same time, surveys on trust levels alert on growing public distrust towards institutions and public policies and the lack of public confidence in the political system's ability to deliver on the citizens' aspiration^{14,15,16,17,18,19}. For example, the above-mentioned study by *More in common* finds that 3 out of 4 people believe the "system is rigged to serve the rich and influential". The European Union and Member States need to meaningfully meet these aspirations for deep change while also tackling the pressing challenges and needs at stake in order to regain collective public trust, fundamental for democratic legitimacy and the functioning of the rule of law. In doing so, civil society is a crucial partner of the European institutions and Member States. CSOs are also key to ensure the ongoing transition towards a green and fair economy as well as for the digitisation process to meet the EU values and objectives and, more importantly, the expectations and needs of people living in Europe.

Indeed, civil society has shown its resilience and leadership in this complex societal and political context. **During the COVID-19 pandemic, CSOs and citizens movements have been stepping up by providing support for the vulnerable, proposing policy-solutions and systemic alternatives to ensure solidarity and rights for all are at the centre of the political agenda.** When communities were left aside from public policies at an early stage of the pandemic, civic actors pushed policy makers to address the issues at stake.²⁰ These efforts contribute to the positive perception of civil society in Europe. Edelman research highlights that, after years of declining public confidence to which smear campaigns and delegitimising policies contributed, CSOs are increasingly perceived as a unifying force. The study shows that the majority of the people in surveyed countries view civil society as able to take leadership roles and get results when faced with the political and social challenges posed by the pandemic and climate change.²¹

¹² <https://www.eureporter.co/politics/eurobarometer/2022/02/16/eurobarometer-defending-democracy-is-top-priority-for-the-european-parliament/>

¹³ *ibidem*

¹⁴ https://www.edelman.com/sites/g/files/aatuss191/files/2022-01/Trust%202022_Top10.pdf

¹⁵ https://www.edelman.com/sites/g/files/aatuss191/files/2022-01/2022%20Edelman%20Trust%20Barometer%20FINAL_Jan25.pdf

¹⁶ https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1867

¹⁷ <https://www.eurofound.europa.eu/topic/trust>

¹⁸ https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1867

¹⁹ <https://www.moreincommon.com/media/eoahwumw/navigating-uncertainty-more-in-common-feb-2022.pdf>

²⁰ Activizanship #5, Stories from the lockdown (2020) pp. 43-49, [INT_ACTIVIZEN5_BAF.pdf](https://www.moreincommon.com/media/eoahwumw/navigating-uncertainty-more-in-common-feb-2022.pdf) (civic-forum.eu)

²¹ https://www.edelman.com/sites/g/files/aatuss191/files/2022-01/2022%20Edelman%20Trust%20Barometer%20FINAL_Jan25.pdf

Resource

For an overview of the actions and initiatives of civil society in the context of the COVID-19 pandemic, see [Activizanship #5 – Civic Space Watch report 2020 – Stories from the lockdown](#) (December 2020). On the impact of COVID-19 pandemic on the sector and policy recommendations for EU institutions, check out the study commissioned by the European Economic and Social Committee [The implications of the COVID-19 pandemic on fundamental rights and civic space](#) (February 2022).

In the current war and humanitarian crisis, CSOs have also shown their crucial contribution. Since the beginning, in Poland, Hungary, Romania and all across Europe, the democratic and independent civil society organisations have been devoting their energy to rescue, welcome and assist millions of refugees. Civil society organisations, alongside local authorities, have provided humanitarian assistance, medical care, psychological support, legal assistance, interpretation services, shelter, childcare services, and have organised logistics to bring aid to Ukrainian cities under siege. They coordinate transport and accommodation for refugees arriving at the eastern UE border, sometimes, like in Poland, despite the lack of systemic solutions and support at the level of the state authorities. They are advocating for the maximum protection of those escaping from Ukraine, monitoring human rights violations of the victims and ensuring their access to justice. They are also mobilising in the streets and advocating for a peaceful resolution of the conflict.

1.4 Shrinking civic space and the impact on EU democracy and policies

While civil society is an important partner for EU institutions, a growing body of evidence shows that it faces increasing difficulties and obstacles. According to the monitoring and research work of the European Civic Forum, corroborated by the findings of other civil society and institutional stakeholders, constraints include:

- an unfavourable political landscape characterised by, on one hand, (1) institutional disregard to the role of civil society as intermediary between the citizens and their governing authorities and related lack of participation, and, on the other hand (2) the growing threat of far-right narratives and attacks in the public space, that creates fear and further marginalises racialised communities, migrants and LGBTQI+ people and those who defend them;
- complex bureaucratic legal environment and restrictive laws that negatively affect civic freedoms, in particular the right to association, assembly and expression;

- weak implementation of civil dialogue;
- insufficient availability of funding for the civic sector to engage in rule of law and fundamental rights issues and growing obstacles (including bureaucratic ones) to access them;
- surveillance, prosecution of human rights defenders and criminalisation of human rights actions.²²

While the majority of the monitoring and research has focused on how these obstacles emerge at national and European level through the lenses of patterns of restrictions and harassment against civil society that are common to certain countries, there are also European drivers and implications. First, these hindrances negatively affect the EU's ability to reach objectives and ambitions of its policies as they also rely on civil society's role to monitor and support their implementation. Additionally, shrinking civic space at national level also impairs civil society's resources and capacities to engage in EU law- and policy-making and public sphere. Finally, the EU law is sometimes at the origins of the restrictions for civil society as discussed in the next chapter.

²² For more information on the challenges, check [Civic Space Watch | RULE OF LAW](#)

CSOs' working on equality and anti-discrimination are increasingly targeted

The EU has put emphasis on achieving a "Union of equality" by strengthening Europe's commitment to inclusion and equality in all its senses, irrespective of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. In that perspective, the first ever commissioner on Equality, Helena Dalli was appointed in 2020. Under her mandate, several strategies have been adopted to further equality: the EU anti-racism action plan, the LGBTIQ Equality strategy, the EU Roma strategic framework, the Gender Equality Strategy. All these strategies highlight the key role of civil society in the realisation of the Union of Equality. Nevertheless, CSOs working in these fields are particularly under attack. Across European Union member states, racialised groups, migrants and asylum seekers, the LGBTIQ+ community have faced specific challenges to their actions linked with discriminatory and exclusionary trends promoted, enabled or tolerated by some authorities.

For instance, LGBTIQ+ activists have especially been targeted in Poland, Hungary and Bulgaria. In Poland, LGBTIQ+ activists faced persecution for the "crime of offending religious feelings". In Bulgaria they faced a surge of physical attacks and violent threats. They faced similar attacks in Hungary because of the government and pro-government media smear campaigns against organizations working on LGBTIQ+'s rights in the context of the anti-paedophilia legislation in which lastminute amendments banned "homosexual propaganda to minors".

Anti-racism, anti-xenophobia and anti-islamophobia groups were also under threat because of their work. In Sweden, delegitimising and stigmatising campaigns against Muslim and migrants' civic organisations and rights defenders carried out by representatives of far-right groups and parties have led to their growing marginalisation and exclusion from the public debate as well as to loss of public funding. In Greece, journalists and CSOs have been discredited for publishing reports on unlawful pushbacks of refugees and 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.

2. EU approach to ‘civil society’: gaps, challenges and opportunities

The European Commission increasingly acknowledges the democratic and societal role of civil society through its narrative and sectoral policies. There is also a growing institutional understanding, especially through the European Rule of law review, of the constraints to civil society space across the EU Member States. However, the EU approach to the sector vis a vis the growing challenges it faces remains reactive and piecemeal, lacking a comprehensive vision of its specificities. Additionally, in absence of a clear strategy towards civil society, EU legislation has also contributed to put pressure on the civil society space and distort its nature.

The following chapter looks at existing areas of EU actions on civil society's space as well as gaps and challenges in four areas:

- *empowering* through enabling legal and regulatory infrastructure;
- *engaging* in law- and policy-making through participation and dialogue mechanisms;
- *supporting* civil society and its infrastructures through EU funding policies and beyond;
- *protecting* civil society through existing EU legal and non-legal tools.

2.1 Empowering civil society: EU law making or breaking civic space?

Vibrant civic space and thriving civil society require an enabling and supportive legislative and regulatory environment allowing civil society to act in full capacity and independence. As of today, no specific EU law identifies civil society in the European Union with its rights and specificity. The main justification for this is the lack of EU competence on the matter. However, as the scope of EU law-making expands, intersecting more and more with certain activities and operations carried out by civil society at national and EU level, a growing attention is being posed to the potential of EU law to protect civic space vis a vis growing restrictive laws at national level.²³ As a result, through creative arguments EU institutions could become more proactive in defending civil society in the fields covered by EU law. On the other side, in absence of the recognition of civil society' specific role, mandates and rights in the internal market, civil society has faced obstacles to enjoy the freedoms enshrined in the Treaties. Additionally, its specificity has been also challenged by the development of EU law.

²³ [briefing-eu-law-civic-space.pdf \(justiceinitiative.org\)](#) , [Ground-breaking Handbook on How to Use EU Law to protect Civic Space | ECNL](#)

2.1.A The struggle for a definition and identifying civil society's specificity

One obstacle to establishing a European civil society strategy is the struggle to delimit the contours of what we mean by civil society organisations and their specificity compared to other stakeholders in the political and democratic sphere and on the internal market. Article 11 of the Treaty on European Union explicitly requires EU institutions to give citizens and representative associations, by appropriate means, the opportunity to make known and publicly exchange their views in all areas of Union action. However, EU law does not define 'civil society' or 'civil society organisations' (CSOs).

The diversity of legal systems in EU member states has been the main obstacle towards finding common criteria to define CSOs. Indeed, from one country to another, civic actors have different status, *modus operandi*, and rights. The tasks and functions they perform also vary. Any European definition would need to value CSOs' diversity and specificities, in line with international human rights standards and existing definitions set by the United Nations, the Council of Europe, and other bodies.

While they may be established through different forms, such as non-governmental organisations (NGOs), charities, interest groups, foundations or cooperatives, CSOs are generally defined across European and international standards as being characterised by certain key common features, and namely:

- they represent a general interest or an interest of a part of society;²⁴
- they are independent of public bodies, bringing together persons or organisations representing people on a voluntary basis;
- they are non-profit-making;
- they operate in areas outside the sphere of enterprise;²⁵
- they function in a democratic and transparent manner, with election of their constituent bodies on a regular basis and direct participation by their members in decision-making.²⁶

These criteria allow to distinguish between the social partners that act in the sphere of work relations and social policy, and other forms of civic organisation that are broader in scope and *modus operandi*. This distinction is needed in order to explore the full potential of implementing

²⁴ For an attempt to identify criteria to gauge the representativeness of organisations, see EESC, [The representativeness of European civil society organisations in civil dialogue](#), 2006/C 88/11.

²⁵ Such definition therefore excludes actors such as trade unions and businesses, normally referred to at the EU level as "social partners".

²⁶ Civil dialogue study [Towards an open, transparent, and structured EU civil dialogue \(civic-forum.eu\)](#)

civil and social dialogue within EU and national policy-making, while safeguarding and reinforcing these actors' different representative, political and institutional roles and history.²⁷

Definition of CSOs in EU institutions and bodies

European Parliament

[European Parliament resolution of 17 February 2022 with recommendations to the Commission on a statute for European cross-border associations and non-profit organisations \(2020/2026\(INL\)\) \(Annex I, part II, Article 2 \(1\) and \(2\)\)](#)

“Under this Directive, the term ‘non-profit organisation’ refers to voluntary and permanent associations of natural or legal persons with a common interest, activity or purpose, as well as to organisations that are not based on membership and whose assets are allocated to the pursuit of a specific aim, such as foundations, which, irrespective of the form in which the associations or organisations are established:

(a) pursue a primary aim other than that of generating a profit, meaning that if any profits are earned from the organisation's activities, they cannot be distributed as such among its members, founders or any other private parties, but must be invested for the pursuit of its objectives;

(b) are independent, in the sense that the organisation is not part of a government or administrative structure and is free from any undue interference by the state or by commercial interests. Governmental funding shall not preclude an organisation being deemed independent, as long as the autonomy of the organisation's functioning and decision-making is not affected;

(c) are self-governed, in the sense that the organisation has an institutional structure which allows it to fully exercise its internal and external organisational functions and to make essential decisions in an autonomous manner and without undue interference by the state or other external actors.”

European Economic and Social Committee (EESC)

The EESC [tends to define civil society organisations broadly](#) to include: • the “labour-market players”, i.e. the social partners; • organisations representing social and economic players that are not social partners in the strict sense of the term; • NGOs (non-governmental organisations) which bring people together in a common cause, such as environmental organisations, human rights organisations, consumer associations, charitable organisations, educational and training

²⁷ EESC, Participatory Democracy A success story written by the EESC, [ge-04-19-663-en-n.pdf \(europa.eu\)](#), 2020.

organisations, etc.;

- Community-based organisations (i.e. organisations set up within society at grass-roots level which pursue member-oriented objectives), e.g. youth organisations, family associations and all organisations through which citizens participate in local and municipal life;
- religious communities.

An alternative approach to defining the sector can be found in the EESC report on "[Financing of Civil Society Organisations by the EU \(SOC/563-EESC-2017, 2017\)](#), which refers to the term "[civil society organisations](#)" (CSOs) as "*non-governmental, non-profit-making organisations independent of public institutions and commercial interests, whose activities contribute to the objectives of the Charter of Fundamental Rights, such as social inclusion, active participation of citizens, sustainable development in all its forms, education, health, employment, consumer rights, support to migrants and refugees, and fundamental rights.*"²⁸ In the context of this definition, the objectives of the Charter of Fundamental Rights should be interpreted to distinguish liberal democratic civil society from ultraconservative, anti-choice, anti-rights groups. Indeed, both in their action-orientated and advocacy orientated capacity, civic organisations contribute to keeping our societies inclusive and democratic, thus giving meaningful application of fundamental rights directly or indirectly.

COUNCIL REGULATION (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights (Art. 10.1)

"The Agency shall closely cooperate with non-governmental organisations and with institutions of civil society, active in the field of fundamental rights including the combating of racism and xenophobia at national, European or international level. To that end, the Agency shall establish a cooperation network (Fundamental Rights Platform), composed of non-governmental organisations dealing with human rights, trade unions and employer's organisations, relevant social and professional organisations, churches, religious, philosophical and non-confessional organisations, universities and other qualified experts of European and international bodies and organisations."

Crucially, the **civil society sector, differently from other entities and stakeholder, is under international human rights protection** - including the right to set up an association and to operate free from interference, transparency obligations, access to funding and engaging in influencing the policy-making. **Regulators and standard setters are therefore obliged to apply a different approach – based on international human rights standards – to CSOs when shaping legislation.**

²⁸ EESC, [Financing the CSOs by the EU](#), 2017/SOC/563, p. 5.

Additionally, civil society is undergoing a transformation globally and informal ways for citizens to associate are emerging alongside formal ones. Laws and policies need to facilitate the establishment of formal structures while also recognising the right to associate through more flexible, informal groups, in line with international law.

Definitions of CSOs in international organisations

Recommendation CM/Rec (2007) of the Council of Europe Committee of Ministers to member states on the legal status of non-governmental organisations in Europe

The Committee of Ministers of the Council of Europe defined NGOs as '*voluntary self-governing bodies or organisations established to pursue the essentially non-profit-making objectives of their founders or members. They do not include political parties. NGOs encompass bodies or organisations established both by individual persons (natural or legal) and by groups of such persons. They can be either membership or non-membership based. NGOs can be either informal bodies or organisations or ones which have legal personality. NGOs can be national or international in their composition and sphere of operation.*'

Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association on his follow-up mission to United Kingdom of Great Britain and Northern Ireland, note / by the Secretariat (UN Doc. A/HRC/35/28, 29 June 2017, para. 10-12)

The first UN Special Rapporteur on the rights to freedom of peaceful assembly and of association stated that civil society can be viewed as '*a voluntary manifestation of associational life, with an existence and purpose that exists outside of and largely independent of the state and the market, that is inherently collective in nature, working in various ways towards common purposes that do not conflict with the principles of the United Nations.*'

2.1.B The impact of EU law on civil society in absence of a strategy protecting its specificity

The lack of clear definition of civil society, acknowledging its specificity vis-a-vis other stakeholders in the political and democratic sphere and on the EU internal market has important policy implications. While the EU does not have a specific legal competence to initiate legislation governing CSOs or civic activism, the EU law regulates various areas impacting directly on civil society activities including:²⁹

- the internal market within which all CSOs raise and spend funds and engage in activities, including the new Social Economy Action Plan;
- policy areas in which many CSOs work;

²⁹ [briefing-eu-law-civic-space.pdf \(justiceinitiative.org\)](#)

- aspects of criminal procedure and prohibitions on discrimination based on nationality, sex, sexual orientation, age, race, disability and religion;³⁰
- EU data protection rules and policies on digitalization, such as the Digital Services Act;
- Counter-terrorism and anti-money laundering directives;
- Rule of law and democracy, including the new regulations on online political advertisement.

As a result, while there is no EU communication or strategy dealing specifically with civil society, the EU is already regulating widely the operations of CSOs nationally and as European actors. Indeed, as the area of EU law-making expands, so does the influence of EU law on shaping civic space at national and EU level.

In the absence of proper attention to the civic sector and its specificities, EU law has captured civic organisations through the lenses of other entities or as a stakeholder to implement EU policies at the national level. As a result, **the EU law** and its often-rigid transposition into national legislation **has sometimes contributed, although involuntarily, to not only overburden the sector but also to shrink the autonomy, individuality and operations of CSOs as a sector representing the self-organisation of people living in Europe distinct from the government and the market.**

EU law also often fails to take into account existing human rights standards related to the civic sector and well as its democratic mandate.

Case 1: Internal market and competition rules such as state aid and VAT directive equating CSOs with enterprises

CSOs act in the internal market and therefore should enjoy related freedoms, including freedom of establishment and free movement of capital for cross-border fundraising and donations. This was recognised in the historic ruling of June 2020 of the European Court of Justice (ECJ) which found that restrictions on accessing foreign funding introduced in 2017 in Hungary with the law on transparency of organisations supported from abroad is in breach of EU law establishing free movement of capital as well as freedom of association. Furthermore, the European Parliament resolution on a statute for European cross-border associations³¹ and non-profit organisations also point to constraints in CSOs operating their activities across borders. These obstacles are

³⁰ Ibidem.

³¹ European Parliament resolution of 17 February 2022 with recommendations to the Commission on a statute for European cross-border associations and non-profit organisations (2020/2026(INL)), para 10, https://www.europarl.europa.eu/doceo/document/TA-9-2022-0044_EN.html#title1

particularly relevant in view of developing a European public sphere and fostering European democracy.

While many CSOs operate in the single market, developing economic activities and providing services, it is crucial to acknowledge that they are non-profit organisations and, as such, have specific characteristics that distinguish them from for-profit organisations and businesses. In most Member States, this translates into a legal classification which allows such a non-profit organisation to undertake economic, as long as the profit made of those activities is not distributed as such among its members, founders or any other private parties, but must be invested for the pursuit of its objectives.³² This is a crucial notion, because, on one hand, many CSOs have to carry out non-for-profit economic activities in order to support and help finance their operation and core mission and remain independent from public support. On the other hand, through the delivery of services, through procurement or delegation of public service, often filling gaps or mitigating lack of public intervention, they pursue a mission for the common good, which aims at individual and collective emancipation.

In the last years, as we observe a European-wide trend of difficult access to resources for the civic sector either due to austerity policies which led to cutting in government expenditure and subsidies, politicised access to resources, and other types of obstacles, more and more civic organisations are forced – and even encouraged by the government – to generate more revenue on their own. This almost always entails the undertaking of activities which are unequivocally economic in nature, albeit clearly distinct from those of profit-driven actors in the economic sphere, thereby increasing the possibilities of non-profit organisations being captured by the EU rules on state aid and VAT (and their national implementation). European legislation allows for some exceptions under specified conditions, but they often fail to protect CSOs comprehensively.³³

For example, in **Italy**, the Government has made moves to impose new VAT obligations on the civic organisations undertaking economic activities following an infringement procedure by the CJEU over alleged breach the **VAT European Directive**. Such decision, currently postponed until 2024, would not only entail additional complex bureaucratic burden on the sector, but also the distortion of the nature of the sector as non-profit.

³² In Belgium (and for instance Germany as well, with the *Idealverein*), a further specification is made: there, an CSO can undertake economic activities in an incidental capacity. How this “incidental nature” of these economic activities is determined, varies; a possible threshold is their share in the total revenue of the organisation.

³³ See briefing by Belgian CSO platform De verenigde verenigingen, “Open call for cooperation and action - Empowering civil society as key societal actors in the European Union” (2018).

Case 2: EU legislation on anti-money laundering and counter-terrorism conducive of over-regulating the sector and shrinking civic space

The European Commission's work on anti-money laundering and terrorism financing has also come under the CSOs attention for leading to over-regulation of the sector³⁴ and being over-implemented by EU Member States creating obstacles to accessing funding at national level. Indeed, stricter anti-money laundering and counter-terrorism financing (AML/CTF) legislation have also resulted in disproportionate restrictions on access to financial services for CSOs (de-risking). In some cases, governments deliberately impose restrictions on the ability of CSOs to solicit, receive and utilise financial resources.³⁵ While the 2021 Anti-Money Laundering package takes positive steps towards identifying entities falling under the regulation and expressing that NPOs are usually excluded, concerns persist.³⁶

For example, in **Latvia**, the **Anti-Money Laundering (AML)** laws and regulations include rather strict and often disproportionate provisions and guidelines. As a consequence, risks of anti-money laundering and terrorism financing for the CSO sector is overly generalised. Therefore, banks display an overcautious attitude towards CSOs: organisations end up classified and viewed as 'high risk entities' in terms of AML, which render the CSOs' ability to open bank accounts, or even keep current accounts low. Since it is impossible for an organisation to properly operate and receive tax returns without a bank account, this is a serious challenge to the operation of CSOs negatively affecting their freedom of establishment. The discussion on prevention of money laundering within the CSOs sector is ongoing. Civic Alliance – Latvia (CAL) has continued dialogue and discussion with the government, the Financial and Capital Market Commission (FCMC) and other authorities, in order to explain and clarify the specifics of the sector and to improve the position of the CSOs in this field. This work is ongoing and will continue also in 2022.

In addition to the negative effects on CSOs' access to funding, the AML legislation shows how a lack of recognition of civil society specificity is conducive to over-burdening and restricting civil society's operations. A joint briefing by Civil Society Europe, Dafne, ECNL, European Fundraising

³⁴ [2021 SNRA NPOs Coalition DECEMBER Comments FINAL.pdf \(civilsocietyeurope.eu\)](#)

³⁵ NYU Paris EU Public Interest Clinic, Bank De-Risking of Non-Profit Clients A Business and Human Rights Perspective, [NYU-HSC-Report_FINAL.pdf \(hscollective.org\)](#), June 2021.

³⁶ Civil Society Europe, Dafne, ECNL, European Fundraising Association, European Foundation Centre and Human Security Collective, NPO COMMENTS ON 2021 EU AMLD package by: EFC/DAFNE, ECNL, HSC, CSE, EFA, 8 Nov. 2021.

Association, European Foundation Centre and Human Security Collective stressed that *“the obligation of NPOs to disclose financial data and sensitive private information (including Beneficial Owners (BO) /board member or CEO or donor identity) is a clear limitation of the right to privacy”*.

Additionally, because there are no distinctions made between not-for-profit entities (NPOs) and other entities, the directive on anti-money laundering has led to great confusion among CSOs on how to implement the directive with regards to reporting obligations regarding beneficial owners³⁷ which the new package fails to address. CSOs explain that *“NPOs and public benefit foundations are set up to benefit the general public and not private interests. [...] The governing bodies act as stewards and are bound to the public benefit purpose of the organisation as defined in the statutes. They benefit the general public and are not set up to financially support for example family members or other private interests. The definition of BO as currently drafted is therefore ill suited for public benefit foundations and NPOs.”*³⁸

Case 3: EU policies on migration fail to protect migrants' rights defenders from criminalisation

An example of the risks connected to equating CSOs to service providers for government policies emerges when looking at EU migration policies. CSOs and informal groups providing support and solidarity to migrants - ranging from search and rescue to information-sharing and legal representation to providing food and shelter - do so in order to foster and protect migrants' rights. In doing so they are protected by international human rights law. While cooperation between civic efforts in this field and authorities' actions is essential for ensuring the effectiveness of these initiatives, we observe a tendency to organise these services top-down while sanctioning civic solidarity acting outside of this realm. Rights defenders with migrant background are disproportionately hit by criminalisation policies and actions. PICUM - the Platform for International Cooperation on Undocumented Migrants, reports that *“criminal proceedings, including when they end in acquittals, can have a life-long impact on migrants' human rights defenders' possibility to live regularly in the EU.”*³⁹

³⁷ See for example: [Civic Space Watch | PORTUGAL: Problematic transposition of the EU directive against Money Laundering](#)

³⁸ Civil Society Europe, Dafne, ECNL, European Foundrasing Association, European Foundation Centre and Human Security Collective, NPO COMMENTS ON 2021 EU AMLD package by: EFC/DAFNE, ECNL, HSC, CSE, EFA, 8 Nov. 2021.

³⁹ Marta Gionco (PICUM), Criminalisation of solidarity is a political act - the EU needs to stand up for human rights at home too, [Activizenship #6 - Civic Space Watch report 2022 - Stories of hope in dark times](#) (March 2022).

In this context, the EU Pact on Migration and Asylum setting out the EU's agenda on migration and a package of legislative proposals and recommendations for the years to come - which has been broadly criticised for its impact on fundamental rights, increasing detention, including for children and families (which is against international human rights law),⁴⁰ and curtailing safeguards⁴¹ - contains a number of provisions conducive of negatively affecting the notion of CSOs' autonomy from the state.

As explained by PICUM, "*the Commission Guidance on the implementation of EU rules on the definition and prevention of the facilitation of unauthorised entry, transit and residence*⁴² only invites member states not to criminalise acts that are "mandated by law", which are very different from acts 'permitted by law'. Activities like providing food, shelter, car lifts or information, all remain excluded, particularly when they are not carried out by an official CSO that is 'mandated' to carry out such activities. [...] Search and rescue operations are only considered legitimate when they 'observe the instructions received from the coordinating authority' and while 'complying with the relevant legal framework', which leaves the door open to the prosecution of CSOs under (often trumped-up) accusations of breaching national legislation or instructions on disembarkation."^{43 44}

The package also imposes further restrictions on the work of SAR CSOs⁴⁵ and fails to ensure that CSOs have the right to be involved in legal assistance and monitoring of fundamental rights at the EU external borders.⁴⁶ Additionally, it risks further stiffening the criminalisation of solidarity with migrants.⁴⁷

⁴⁰ <https://www.refworld.org/docid/5a12942a2b.html>

⁴¹ European Parliament, August 2021, [The European Commission's New Pact on Migration and Asylum Horizontal substitute impact assessment](#).

⁴² European Commission, 23 September 2020, [Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence](#).

⁴³ PICUM, October 2020, [More detention, fewer safeguards: How the new EU Pact on Migration and Asylum creates new loopholes to ignore human rights obligations](#).

⁴⁴ Marta Gionco (PICUM), Criminalisation of solidarity is a political act - the EU needs to stand up for human rights at home too, [Activizanship #6 - Civic Space Watch report 2022 - Stories of hope in dark times](#) (March 2022).

⁴⁵ https://ec.europa.eu/info/sites/default/files/commission-recommendation-cooperation-operations-vessels-private-entities_en_0.pdf

⁴⁶ <https://picum.org/wp-content/uploads/2021/04/PICUM-Recommendations-on-the-Screening-Regulation-1.pdf>

⁴⁷ Marta Gionco (PICUM), Criminalisation of solidarity is a political act - the EU needs to stand up for human rights at home too, [Activizanship #6 - Civic Space Watch report 2022 - Stories of hope in dark times](#) (March 2022).

Resource

Read the analysis of shrinking civic space for migrants' rights defenders, particularly of migrant-background, challenges and recommendations on EU policies in the field by PICUM in *Activizanship #6 – Civic Space Watch report 2022 – Stories of hope in dark times* (March 2022).

Case 4: Regulation on the transparency and targeting of political advertising places CSOs' activities in the realms of "political advertising"

As we undergo a fast process of digitisation, the internet is becoming an increasingly important dimension of our civic space. As argued by the European Centre for Not-For-Profit law (ECNL), the internet is becoming "*a space for the exercise not only of the right to freedom of expression, but also of the right to peacefully assemble and to participate in public affairs. Social movements and democratic protests are often held online or organised with the support of online platforms.*"⁴⁸ CSOs, like other stakeholders, also rely more and more on social media for spreading awareness and mobilising the public on issues related to the common good, especially in a context of changing ways in which people consume information and engage politically. This tendency is also intrinsically linked with declining media pluralism which forces CSOs to find different venues to reach the public. As a result, the European Commission's ambitious plan for regulating digital services in order to protect European democracies – the Digital Service Act – also affects CSOs and their campaigning activities.

This is for example the case of the proposal for a regulation on the transparency and targeting of political advertising,⁴⁹ which addresses existing regulatory gaps regarding political advertisement and online campaigning to protect electoral integrity through voter manipulation. It defines 'political advertising' and puts forward transparency obligations and some targeting restrictions for online ads considered political.⁵⁰ As explained by the European Partnership for Democracy, "*the Commission proposal casts a wide net, to capture as much campaigning as possible that is not commercial in nature.*"⁵¹

⁴⁸ [ECNL comments on the EU Digital Services Act | ECNL](#)

⁴⁹ https://ec.europa.eu/info/sites/default/files/2_1_177489_pol-ads_en.pdf

⁵⁰ [Everything you need to know about online political ads \(epd.eu\)](#)

⁵¹ *Ibidem.*

The proposed text of the European Commission mentions civil society only as watchdogs of the use of political advertising⁵² and provides clear contours for the regulation's understanding of "political actor". Nevertheless, it defines what constitutes "political advertising" as "the preparation, placement, promotion, publication or dissemination, by any means, of a message [...] which is liable to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour." As such, the proposal does not distinguish between advertising that is "political" from the one that is "electoral".⁵³ While the proposal does not regulate the content, publication and dissemination of political advertisement but the services linked to political advertisement, in particular connected with online targeting, this definition covers all types of political advertising online and offline.

Several CSOs activities would be captured by this definition as they aim at influencing the political debate. Civil society has a wide range of tools to influence politics: advocacy, campaigning, press releases, demonstrations and, as said above, an increasing number of these activities happen or are communicated online. Civil society's action, regardless of the type of activity (advocacy, service provision, watchdog...), deals with the protection of common goods and values. It responds to societal problems and needs thus it might target topics that become high on the political agenda.

Civil society warned against the impact that such broad definition could have on freedom of expression⁵⁴ and civic space⁵⁵ more broadly as paid online advertisement by civic organisations on matters of public interests and common good risks being labelled as "political" by online platforms.

This definition will inevitably intertwine with the emerging trend of delegitimising, overregulating and restricting actions of civil society deemed "political".⁵⁶ In this regard, it is important to notice how a wide range of issues have been interpreted as "political" in different countries: from environmental justice to working as watchdog against corruption, from advocating for rights and democracy to campaigning for social and tax justice.

⁵² European Commission, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the transparency and targeting of political advertising, COM/2021/731 final, recital 46 and Article 11, : <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0731>

⁵³ See for example, European Court of Human Rights, Article 10 Expression and advertising of political positions through the media/Internet in the context of elections/referendums, [Research report - Article 10: Expression and advertising of political positions through the media/Internet in the context of elections/referendums \(coe.int\)](#), 2018.

⁵⁴ [Solutions for Regulating Targeted Political Advertising on Online Platforms.pdf \(dq4n3btxmr8c9.cloudfront.net\)](#)

⁵⁵ [CDT Europe - Response to the European Commission Draft Regulation on the transparency and targeting of political advertising](#)

⁵⁶ [Civic Space Watch | Activizanship #4](#)

Such activities in **Germany**⁵⁷ and **Ireland**⁵⁸ have been reported by the European Commission in the rule of law report for the chilling effect on CSOs campaigning. In some countries, like in the **Czech Republic**, advocacy CSOs are being labelled as “political” with the aim to discredit their watchdog work as partisan.⁵⁹ Additionally, CSOs engage with a number of campaigning activities around elections, from advocating to include specific issues in the agenda of political parties, to mobilise voters and monitor the conduct of elections. Governments in **Slovenia**⁶⁰ and **Hungary**⁶¹ have also made moves to silence NGOs, even though their campaigns were aimed at protecting the common goods, not gaining political power.

In this context, if the definition is not narrowed and the European Commission’s proposal will not be balanced against the right of civil society to freely engage in activities influencing the policy-making, it will be conducive to a chilling effect on civil society’s use of these services. It is crucial that the final document puts emphasis on multistakeholder oversight of the implementation and enforcement of the regulation and involve civil society in the process.

The European Commission should assess how this broad definition of “political advertisement” could affect CSOs’ campaigning and advocacy activities across the EU and regularly monitor its implementation in order to ensure this regulation is not misused by Member States to further shrink civil society campaigning.

As the Council of Europe Expert on CSO Law highlighted: *“The ability of CSOs to engage in activities that influence politics and policy-making is particularly important for those that engage in advocacy activities. Such organisations aim to actively take part in policy-making in order to contribute to shaping the future of the country around elections and to defend human rights of fellow citizens.”*⁶² Indeed, the European Court of Human Rights also stated that allowing participation in public life and policy is one of the principal features of democracy —that is, to create the possibility for members of a society to resolve social and political problems through dialogue.⁶³

⁵⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021SC0706&from=EN> p.17

⁵⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021SC0715&from=EN> p,18.

⁵⁹ <https://civicspacewatch.eu/wp-content/uploads/2022/01/Czech-Republic.pdf>

⁶⁰ [Civic Space Watch | SLOVENIA: Pre-election showdown by authorities targeting NGOs](#)

⁶¹ [Civic Space Watch | HUNGARY: NGOs fined for calling for protest votes in anti-LGBT+ rights referendum](#)

⁶² Regulating political activities of Non-Governmental Organisations, 2015 (para. 10).

⁶³ United Communist Part of Turkey and Others v. Turkey, no 19392/92, 30 January 1998, paras 57-58.

2.1.C The Social Economy Action Plan: a positive step towards better recognition of the specificity and the potential of not-for-profit social economy actors

A positive step towards the legal recognition of the specificity of the sector in the internal market is the Social Economy Action Plan (SEAP) published by the European Commission in December 2021.⁶⁴ The Plan recognises that CSOs are important actors for the social economy.

Many CSOs provide services to the public, individuals and other associations, including material support, legal advice and representation. In doing so, CSOs contribute to provide access to fundamental rights protected by the Charter of fundamental rights (such as the right to asylum; protection in the event of removal, expulsion or extradition; non-discrimination; social security and social assistance...) as well as contribute to a number of EU policies and objectives. The plan is widely welcomed by stakeholders of social economy⁶⁵ and states the European Commission's plan to launch a study providing a comparative analysis of the legal regimes and landscapes of associations in the EU, challenges in operating across-borders and also develop coherent frameworks for taxation, tax treatment, state aid and reduction of bureaucratic burden to match the specificity of non-profit entities. It also outlines collection, sharing and promotion of positive practices, capacity building for policy-makers to better understand the social economy and its actors, and awareness raising activities. This is an important initiative that holds the potential to fill gaps highlighted in 'Case 1' for CSOs providing services. Nevertheless, looking at **the legal regimes governing CSOs only through the lenses of the social economy is not sufficient. CSOs are not just cheap service providers; in providing services they enact a crucial democratic mission.**

In recent years, national legislative frameworks and funding policies have become more and more oriented towards viewing CSOs as service providers rather than independent self-organisation of people and movements to advocate for the common good. This shifts the role of CSOs from a democratic space for social transformation, experimentation and emancipation, to a professionalised body responsible for implementing governmental policies. Thus, the social sector is approached as a market sector in which more and more services must be developed. This is mainly due to administrative regulations putting different actors in competition, funding schemes targeted on services with pre-established specifications, the abandonment of the subsidy recognizing the associative initiative, in favour of the public procurement. In the context where the rule of law and democracy are backsliding, governments have also combined these developments with smear campaigns dividing the civil society between "good" associations that limit themselves to the service provision role and "bad" ones that also aim at influencing policies.

⁶⁴ [Commission presents Action Plan to boost the social economy and create jobs - Employment, Social Affairs & Inclusion - European Commission \(europa.eu\)](#)

⁶⁵ See for example: [The Social Economy Action Plan is out: a new chapter begins - Social Economy Europe](#); [EU Social Economy Action Plan opens a new chapter for philanthropy | FIN \(fondseninederland.nl\)](#)

Protecting human rights and democracy in national legal frameworks for CSOs

A positive development is on the verge of taking place in Ireland through the general scheme of the [Charities \(Amendment\) Bill \(2022\)](#) which amends the Charities Act (2009). These amendments will allow human rights organisations to register as charities and benefit from the charitable status. Previously, promoting human rights was not a purpose allowing organisations to qualify as charities. Therefore, human rights organisations could not register under that purpose to benefit from the charitable status. This position does not acknowledge the role of CSOs as advocates of the common good and sends the message that promoting human rights cannot be a purpose for pursued by charities. For CSOs, this had practical consequences on their funding possibilities as funders often require the charitable status as condition for funding.⁶⁶

On the other side worrying developments have been taking place regarding CSOs charitable status in Germany. As in Ireland, since 2019 the German charity law has been subject to changes, but in this case, it has been detrimental for German CSOs. Both the charity legislation and the case law that emerged on its basis have worsened uncertainties around the public benefit status organisations can benefit from. The public benefit status granted by this law is vital for civil society's funding and tax exemption. There are two main issues. The legislative framework only contains a limited list of public benefit purpose that organisations wishing to qualify as charities can pursue. Organisation working to advance human rights, democracy, peace or social justice are not included. Additionally, the case law of the past years has raised legal uncertainty about how much influence on the policy making is permitted to still qualify as an organisation with a public benefit status. These developments are threatening the civil society sector and do not recognise nor support an active civil society working on racism, climate change, gender equality, social justice and human rights.⁶⁷

2.2 Engaging civil society: a long way to go for a European civil dialogue

The right to participation is a crucial component of vibrant civic space and functioning democracy and rule of law. Institutions have a duty to pursue policies and narratives that empower citizens and CSOs to be meaningfully engaged in public debate and policymaking. Civil dialogue is an essential component of participatory democracy. As said in the first chapter, civil society, both organised and spontaneous movements, enables and empowers people to freely participate in matters of the public good and contribute to building a culture of active participation in public

⁶⁶ [Civic Space Watch | IRELAND: Human rights included in the draft Charities Bill](#)

⁶⁷ [Civic Space Watch | GERMANY: New report on legal uncertainty around charity law and access to funding for CSOs](#)

and community life, which is a prerequisite for the inclusiveness, the quality and transparency of law-making. This is recognised by the Treaty on European Union which in Article 11.2 sets, since 2009, a legal obligation for EU institutions to engage into an open, transparent and regular dialogue with organised civil society.

However, long-standing gaps in the participation, consultation and involvement of civil society in the EU policy-making have been pointed out by CSOs over the last decades, and the pandemic had a magnifying effect. According to a recent study by Civil Society Europe and the European Civic Forum, **current practices of institutional dialogue with civil society on European policy-making, both at EU and at national level are patchy** and *"are clearly failing to meet the basic standards of enabling environment, openness and transparency, accountability and responsiveness, equality and inclusiveness as well as sustainability and structural nature"*.⁶⁸ The study found that the lack of an overarching policy framework setting a common basic approach for the implementation of Article 11 TEU is seen by CSOs as one major gap affecting the coherence, transparency, inclusiveness and regularity of civil dialogue between CSOs and EU policy makers. Lacking such framework, **civil dialogue between CSOs and EU policy makers is mostly channelled through top-down processes or is informal in nature**. The failure to ensure a regulated approach to EU civil dialogue also translates into the lack of coordination and support structures both within and among EU institutions and bodies. As a consequence, civil dialogue practices differ greatly from one institution to another (or even one Commission DG or Directorate to another).⁶⁹ A study on the impact of COVID-19 on civic space and fundamental rights commissioned by the European Economic and Social Committee has also highlighted that **CSOs believe there is need to look into better ways to include CSOs in existing European mechanisms and programmatic processes, such as the European semester, at national and EU level**. Balanced participation of stakeholders in policy-making would allow EU institutions to have a complete view of all issues at stake and avoid undue influence.⁷⁰ By improving the quality of impact assessments and ensuring meaningful opportunities for civil and social dialogue, the social and environmental impacts of national and EU legislation would be better balanced with economic impacts, and fundamental rights would be taken more adequately into account when designing legislation and policies. Better and fairer policies would create more fertile ground for trust in democratic institutions.

⁶⁸ [Towards an open, transparent and structured civil dialogue](#), 2021

⁶⁹ Ibidem

⁷⁰ Forthcoming, "The implications of the COVID-19 pandemic on fundamental rights and civic space", European Civic Forum, Institute for Public Affairs, European Centre for Not-forProfit Law and Civil Society Europe; commissioned by the Diversity Europe Group of the European Economic and Social Committee.

Resource

To learn more about civil society's views on challenges and opportunities for an effective implementation of Article 11 TEU, check the study "[Towards an open, transparent, and structured EU civil dialogue](#)" (April 2021) by the European Civic Forum and Civil Society Europe.

The troubled involvement of organised civil society in the Conference on the Future of Europe

The Conference on the Future of Europe is a paradigmatic example of the flawed approach of EU institutions to civil dialogue, in particular in its transversal form. Promoted jointly by the European Commission, the European Parliament and the Council of the EU, the Conference on the Future of Europe is presented as "*a catalyst for new forms of public participation at the European, national, regional and local levels*". The Conference sets itself the goal of giving citizens a greater role in shaping EU policies and ambitions, by creating, in close cooperation with civil society, a new public forum for an open, inclusive, transparent and structured debate with Europeans around key issues that affect their everyday lives. And yet, no clear participation role was recognised to organised civil society, and civil society was not involved in the strategic thinking, planning or set-up of the Conference. Against this background, CSOs self-organised through CSE by launching their [own Civil Society Convention on the future of Europe](#) to actively contribute to the shaping of the process. Yet, the Executive Board of the Conference rejected to include a representative of the Civil Society Convention on the Future of Europe as an observer. The CSOs Convention has been allocated 5 seats (among 450) in the CoFoE Plenary, whose main role has been to discuss the recommendations from the Citizens' panels. The Plenary does not have any decisional competence regarding the final result of the Conference, prerogative exclusively in the hands of the four main institutional components of the Conference (Commission, EU council, European and national parliaments).

National challenges to access EU policy-making

Vast research shows a trend towards weaker and more tokenistic participation of CSOs in national policy-making⁷¹ in the form of top-down consultation rather than dialogue between CSOs and public authorities. These factors negatively affect national CSOs' ability to participate and influence EU law-making as research shows that they are usually not involved in European processes at national level. The lacklustre inclusion of CSOs in the National Recovery and Resilience Plans is a case in point (see box). The final report of the Conference on the Future of

⁷¹ [Towards an open, transparent, and structured EU civil dialogue \(civic-forum.eu\)](#)

Europe in the chapter on European democracy⁷² (p.79) also expressively calls for developing further the EU decision-making process at national, regional and local levels through a better involvement of civil society (2022).

Preparations of National Recovery Plans marginalise civil society and include environmentally harmful projects

[Research conducted by the European Center for Not-for-Profit Law \(ECNL\) and Civil Society Europe](#) has shown that the participation of civil society in the preparation of the National Recovery and Resilience Plans and its inclusion as beneficiaries of the funding was perceived by CSOs as far from satisfactory in many EU countries.

A few reports by civic organisations have also shown how - while civil society was often marginalised in the preparations, the National Recovery plans have instead been shaped by lobbying corporations. Recovery Watch, a [collaborative project](#) by Observatorio de la Deuda en la Globalización, Observatoire des Multinationales, Re:common, Corporate Europe Observatory, Friends of the Earth Europe, Food and Water Action Europe, Greenpeace Europe found that despite the calls for the European Recovery Fund to be a driver for the green transition, "*industry lobbying at both national and EU level has ensured oil and gas firms and utilities remain some of the biggest beneficiaries in Italy, the Spanish State, Portugal and France.*"

Lack of transparency and public disclosure of the draft recovery plans was also identified as a challenge to external scrutiny by NGOs or sectoral experts which could have guaranteed that harmful measures were identified, modified or rejected. On the contrary, the "do not significant harm" assessment that member states presented to the European Commission regarding the planned investments was of poor quality and did not reflect the views of third-party experts. This was identified as a factor which contributed not only to planned investments that [do not meet the green ambitions](#) set by the European commitments but also to the [approval of measures harmful](#) to the environment and the climate.

2.3 Supporting civil society: limitations and obstacles of EU funding policies

The EU's approach to supporting civil society has mostly focused on funding policies. Indeed, the right to freedom of association includes the ability to seek, receive and use resources – human, material and financial – from domestic, foreign and international sources. Access to and use of funding provide associations with the means to operate and pursue their missions and are

⁷² shorturl.at/klAL3 (p.79)

therefore essential for civil society's ability to operate. Supportive funding policies aim to enable civil society to engage in long-term and strategic planning. They are flexible to allow CSOs to adapt to a changing landscape and emerging needs, focused on learning and long-term impact. They also sustain and grow civil society infrastructures, both at organisational level to develop infrastructural capacities (e.g., core support to hire and maintain staff, wellbeing policies, planning, gender, diversity and inclusion strategies etc.), and at the sectoral level – for example by financing coalitions and networks, capacities, skills and leadership. They can be complemented by other sets of supportive practices and tools, including providing training, support in the reporting and evolution processes, and peer-review and sharing of lessons learned.

A trust-based approach to philanthropy

In recent years, the philanthropic community has become more open to [acknowledge the responsibilities of the donors' sector in contributing](#) to "*systemic inequities, both in the ways wealth is accumulated and in the ways its dissemination is controlled. This history is entrenched in racism, patriarchy, and other forms of oppression, which are at the root of every social issue non-profits seek to address.*" Today's [structural weaknesses of the civil society](#) are also often interlinked with donors' cultures and policies. These practices are embedded in relations that are characterised by a power imbalance between donors and civil society. Indeed, in a context of civil society's financial dependency, in absence of meaningful participatory mechanisms to shape donors' policies, norms and structures, the civic sector's priorities have often been heavily influenced (or even shaped) by the donors' strategies and priorities. Additionally, donors have disproportionate power in defining accountability (i.e., deciding what accountability means, how it functions, and who is accountable) and evaluation of impact. These processes tend to have bureaucratic costs that drain civil society capacities to develop own accountability processes towards their communities and beneficiaries.

Consequently, private donors have started to reflect more proactively on how to shift power back to communities and those representing them, to ensure the priorities are led by real needs. This also requires that the costs of application, reporting and evaluation are not disproportionate compared to the support received. An interesting approach is [trust-based philanthropy](#) which intentionally places the onus of building trust between donors and civil society on the donors, starting by listening to the needs and concerns of organisations working with the communities. While there are [challenges and limitations](#) to this approach, there are also important reflections and lessons learned that can support a wider rethinking of the type of funding and relationship with donors that civil society needs to build resilience against shrinking civic space and continue to successfully respond to the societal and democratic challenges ahead, in a context of great uncertainty.

The Citizens, Equality, Rights and Values (CERV) programme has become a crucial source of financing for CSOs working to foster and protect EU values on the ground. The system of national intermediaries distributing funding at national level has also been welcomed to overcome politicised access to funding. **Nevertheless**, in this regard some challenges need to be overcome in order for this measure to meet its full potential and nurture the sector. **The opportunities to meaningfully participate in the shaping of the programme both in terms of thematic priorities and structural functioning of the programmes** (e.g., application, evaluation and reporting processes) **have been and remain limited. As a result**, while the programme was set up with the promise of supporting the long-term development and capacities of the sector, including by facilitating the access to funding from grassroots organisations, in the field of rights and values, **major shortcomings remain.**

For example, the co-funding rule of the programme is a barrier for small-medium organisations to access funding, particularly in countries where the level of national funding for rule of law and democracy is scarce and critical CSOs are cut off from public funding. Additionally, this constraint is particularly heavy on the intermediary body which is required to raise match funding not only for its operational budget but also for the amount re-granted to other organisations.⁷³ This is why civil society has been calling for a wave of the co-financing requirement foreseen for the CERV and other funding accessible by CSOs as done by the European Commission in the case of the structural funding in the context of COVID-19. This would be an efficient assistance to all CSOs operating with limited budgets in regard to their operational capacities, in need for a fast, easy, and straightforward procedure to access EU financing, in particular in the context of the ongoing humanitarian crisis.

Moreover, **the existing funding is not sufficiently flexible to adapt to crisis situations.** In this regard, the ECF has been calling for intermediaries regranting EU funding at national level to be enabled to rapidly disburse emergency action grants with simplified application, reporting processes and flexible timeframes (on the example of the action grants of the EEA & Norway grants) in addition to longer-term grants.

The CERV application and reporting obligations are too heavy for organisations and more resource-draining than the former Programme Europe for Citizens. For example, in the context of application for core funding, which should aim at sustaining and developing the operational capacities of organisations, the application process is organised similarly to the one for project grants through action-oriented “work packages”. As a result, CSOs face challenges in balancing between 1) emergency actions to respond to the uncertain landscape characterised by the continuous eruption of crises and opening of new opportunities; 2) long-term vision and planned projects; 3) investing in developing the capacities of the organisation.

⁷³ CSE letter

National obstacles to accessing EU funding

Beyond the CERV, the EU is an important donor for civil society across fields of action, particularly through the European Structural and Investment Funds (ESI) which supports civil society in the implementation of a number of fundamental rights recognised by the Charter of Fundamental rights. As a number of EU Governments have used funding policies in an attempt to curtail the work of critical CSOs, it is not surprising that in some cases this has affected CSOs' access to EU funding.

CSOs face hindrances to access EU funding in some member state

For example, a study by the **Croatian** watchdog association GONG from June 2020 found that in 2020 most public tenders for "good governance" and "social inclusion" of the ESF announced at the beginning of the year were not opened. GONG writes that the large discrepancy between announcements and publication of public calls leaves civic organisations unable to plan and financially exhausted. It is to be noted that organisations affected by the manoeuvres are those dealing with human rights, rights of vulnerable groups, corruption and transparency.⁷⁴

In the **Czech Republic**, the new EU Multiannual Financial Framework has brought difficulties to secure sufficient funding. In the previous programming period, an across-the board tax exemption was established for entities carrying out public benefit activities - i.e., typically CSOs where their share in ESF financed projects was reduced to 0%. The new rules no longer provide for an across-the board exemption, they only allow the managing authorities to decide to reduce the beneficiary's share to 0% without clear conditions.⁷⁵

Lutra, the Institute for Conservation of Natural Heritage, is one of the leading environmental CSOs in **Slovenia**. The organisation has won a number of court cases against decisions of the Ministry of Environment to protect the habitat and ecosystem, in line with the objectives of the European Green New Deal to fight climate change and environmental degradation. Despite these legal successes, the ongoing debate with the environment minister has impacted Lutra's ability to carry out other projects. For example, in 2020, Lutra signed a contract for the LIFE+ European funding, for which they are obliged to seek partner funding and approval from the Ministry of Environment. Despite Lutra's application to the ministry's call for partner funding, Minister Vizjak continues to stall completion of his obligation to sign the partnership contract.⁷⁶

In April 2022, the **French** Minister of Interior Gerald Darmanin [requested](#) to the European Commission to withdraw the funding of an EU project application granted to a French organisation working to empower Muslim women. This solicitation came after the project proposal was assessed and approved on the basis of eligibility and selection criteria by the European Commission. The request was not based on solid evidence resulting from legally-based processes but on unfounded allegations.

These cases could be regulated by EU law (art. 4 TEU on the principle of sincere cooperation) “if the decision were taken with the aim of jeopardising the achievement of an objective of EU law”,⁷⁷ such as the Green Deal or the European Anti-Racism Action Plan. According to article 17 TEU, the European Commission is the guardian of the EU treaties and shall ensure their applications as well as that of the “measures adopted by the institutions pursuant to them”. CSOs have a right to be protected under the rights set out in the Charter and under EU law.

2.4 Protecting civil society: EU approach mainstreaming or side-lining civil society as a democratic actor?

States have a duty to respect, promote and protect human rights and those defending them. EU Member States and the EU presentation to the UN have also made international commitments to engage, support and protect civil society, including through the Human Rights Council (HRC) 2016 Resolution “on civil society space”, the 2018 resolution “on civil society space: engagement with international and regional organisations”, and the 2021 resolution on “civil society space: COVID-19: the road to recovery and the essential role of civil society”.

Today the European Union has unprecedented tools to foster and protect democracy, the rule of law and fundamental rights, such as the European Rule of law toolbox,⁷⁸ the European Democracy Action Plan (EDAP), the Strategy on the European Charter of Fundamental Rights. As part of these strategies, the European Commission has started a number of promising initiatives, in particular measures to tackle SLAPPs against public watchdogs⁷⁹ and the Citizens, Equality, Rights and Values (CERV) funding programme. Throughout these actions, the European Commission mainstreams the acknowledgement of the fundamental contribution played by civil society. It also started and won two infringement proceedings against **Hungary’s** law on foreign funding for civil society⁸⁰ and the bill criminalising helping asylum seekers⁸¹ setting a positive precedent for the rest of the European Union against similar moves and showing the role that the European Court of Justice (CJEU) can play in protecting civic space and fundamental rights both at national and European level.

While these measures are welcome, they mostly address in a piecemeal manner some of the most urgent problems with which CSOs are being confronted. An overarching solution has yet to surface. The lack of initiatives empowering civil society is particularly striking when looking at the progress made in recent years in the field of media pluralism, including the European Media Freedom Act and recommendations on the safety of journalists. In particular, the EDAP and rule of law review, which have been identified as important venues for nurturing

⁷⁷ <https://www.justiceinitiative.org/uploads/4dce8ded-49b4-4382-ad45-9d80ab83ef72/briefing-eu-law-civic-space.pdf>

⁷⁸ <https://civicspacewatch.eu/wp-content/uploads/2021/12/Report-Civic-Space-in-the-European-Rule-of-Law-Framework.pdf>

⁷⁹ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13192-EU-action-against-abusive-litigation-SLAPP-targeting-journalists-and-rights-defenders_en

⁸⁰ [CURIA - Documents \(europa.eu\)](https://eur-lex.europa.eu/curia/doclist/curia.do?method=docsDocList)

⁸¹ [CURIA - Documents \(europa.eu\)](https://eur-lex.europa.eu/curia/doclist/curia.do?method=docsDocList)

and defending the democratic role of civil society, fail to recognise - thus risk side-lining - civic space as a stand-alone pillar of democracy and rule of law next to media pluralism. Not only does this fail to respond to the demands for a proactive role in defending civil society, but it also limits the effectiveness of the tools at hand. For example, as the European rule of law review's objective is to start dialogues and public debates on rule of law nationally, its success is intrinsically linked with the ability and capacities of civil society – next to journalists – to reach and mobilise the public on the European Commission's findings and recommendations.⁸² But this is increasingly difficult in the context of shrinking civic space where those that engage with the mechanism are side-lined, underfunded or even targeted nationally.

Resource

To learn more about the role of civil society for a functioning rule of law and an assessment of the European Commission rule of law report's inclusion of civil society space, check the European Civic Forum's study "[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](#)" (November, 2021).

The rule of law funding conditionality could be a powerful tool to give political leverage to the rule of law annual review. However, some serious flaws must be overcome in order to ensure this mechanism is effective, perceived as legitimate by citizens and does not hurt those forces actively defending democracy on the ground. First of all, despite the name 'rule of law mechanism', this initiative "*is not about protecting the rule of law. Instead, it's about protecting the EU budget as rule of law violations that are not closely connected to the absorption of the EU budget cannot be sanctioned*"⁸³. Thus, violations that do not involve the misuse of the budget will not be covered. Second, cohesion policies are fundamental for supporting the economic development of countries and tackling inequalities within and among countries. **The regulation of the mechanism does not provide for how this funding will be redirected to ensure those living in targeted countries will not pay the consequences of the violations of their governments.**⁸⁴ In countries where the media pluralism is seriously impaired and civil society sidelined and discredited by public authorities, abusive governments "*are likely to turn these to their own advantage by showing the EU as a biased body which blackmails and punishes the non-abiding Member States*"⁸⁵ with little counter balance in the public sphere. The EU will need to find appropriate pathways to disburse the funding directly to

⁸² [ruleoflaw2021_toolbox_factsheet_en.pdf \(europa.eu\)](#); [rolm_methodology_final.pdf \(europa.eu\)](#)

⁸³ <https://www.ips-journal.eu/topics/european-integration/the-eus-lacklustre-fight-for-hungarian-democracy-5779/>

⁸⁴ https://civicspacewatch.eu/wp-content/uploads/2022/03/FINAL3_2022-Two-pager-Conditionality-Regulation.pdf

⁸⁵ <https://www.euractiv.com/section/economy-jobs/opinion/of-funds-and-values-conditionality-in-eu-cohesion-policy/>

the beneficiaries, including civil society whose access to funding is at risk as well. The European Commission should redirect a part of these funds to nurture the capacities of the independent civil society on the ground as well as independent journalists that have been suffering from shrinking civic space, resources and capacities as a consequence of deteriorating rule of law.

3. The way forward: the need for a European strategy on civil society

In order to promote a thriving civic space at EU and national level and respond to the challenges and gaps described above, the European Commission should launch a proactive European strategy towards open civic space and resilient civil society, responding to the **European Parliament resolution of 8 March 2022 on the shrinking space for civil society in Europe (2021/2103(INI))**, **the final report of the Conference on the Future of Europe** in the chapter on European democracy,⁸⁶(2022) and calls from civil society across Europe.

As called for by the European Parliament own-initiative report, the EU Civil Society Strategy should give "*genuine political recognition to the crucial role played by CSOs in the realisation of democratic values and policies*" by

- integrating all existing tools;
- filling monitoring, support and protection gaps;
- clearly linking monitoring and reporting tools to EU enforcement mechanisms (such as infringement procedures and rule of law conditionality) to ensure timely and effective follow-up action.

The following sections builds on collective civil society proposals and recommendations for what the European Civil society Strategy could contain around the above-mentioned four key areas of EU actions, including CSOs joint statement [Civil Society on the Frontline - 5 points for EU action 2019-2024](#) (2019), [Recommendations for a Comprehensive European Policy and Strategy on Civil Society](#) (2020), [final output of the Civil society convention for the future of Europe](#) (2022), [Study on The implications of the COVID-19 pandemic on fundamental rights and civic space](#) (2022), the final report of the Conference on the Future of Europe in the chapter on European democracy⁸⁷ (2022), Recharging Advocacy for Rights in Europe (RARE)'s document on "an European strategy for civil society: recognition, inclusion, protection" (forthcoming), Civil Liberties Union for Europe's "Bringing human rights and Article 2 values to life: the roles, challenges and solutions for civil society" (forthcoming).

⁸⁶ shorturl.at/klAL3 (p.79)

⁸⁷ shorturl.at/klAL3 (p.79)

3.1 Empower civil society as a key democratic and societal actor for the European Union through political recognition and enabling policies at national and EU level

The strategy should define civil society at the European level and set political priorities to develop its capacities and support it when facing attacks. The strategy and the definition of civil society should be grounded on Article 2 and 11 of the TEU and embedded in international human rights standards, recognising the diversity of not-for-profit actors in terms of structures, modus operandi, scope and actions. It should also identify civil society organisations as key actors for European democracy, resilient societies, just green and digital transition and for the European social economy. It should define CSOs in terms of enjoyment of EU rules while protecting the specificity of the civic sector vis a vis other entities.

The democratic and societal role of civil society should be clearly recognised in the European Democracy Action Plan (EDAP) and European rule of law mechanism by:

- Adding a fourth pillar in the EDAP on “Promoting active and democratic participation beyond elections”. Such chapter should provide a rights-based definition of civil society and focus on civil society’s role in the promotion of education and practice on democracy and democratic citizenship, Rule of Law and human rights (see the [EESC opinion on the European Democracy Action Plan](#), 2021); the pillar should also recognise the importance of civic education vis-a-vis civil society, and promote more proactive EU-level action in this area. (See the [recommendations on citizenship education in Europe by NECE – Networking Citizenship Education](#), 2020; [CoE Charter on Education for Democratic Citizenship and Human Rights Education \(CM/Rec\(2017\)7\)](#)).
- Monitoring, documenting and analysing challenges faced by civil society in a full-fledged, stand-alone pillar on civil society and human rights defenders enabling environment in the European rule of law review adopting a broad and structured approach (see the European Parliament [draft report on the Commission’s 2021 Rule of Law Report \(2021/2180\(INI\)\)](#)).

The European Commission should ensure that European laws and policies secure the enabling space for civil society and avoid negative side-effects related to their implementation. This requires:

- Setting out a clear commitment to propose legislation on the Statute for cross-border associations – a legal instrument enabling the international work, cross-border movement and relocation of civil society organisations within the EU - and minimum standards for non-profit organisations, as called for by the European Parliament resolution of 17 February 2022 with recommendations to the Commission on a statute for European cross-border associations and non-profit organisations ([2020/2026\(INL\)](#)).

These standards, elaborated together with CSOs, should be in full compliance with the freedom of association, expression and assembly as enshrined in international law and in the EU Charter of Fundamental Rights and taking into account the different realities of CSOs, including their watchdog and advocacy functions (see Civil Society Europe [Joint Civil Society Position Paper on the European Parliament Proposal for a European Association Statute](#), 2022);

- Carrying out structured ex-ante impact assessment of EU policies on Rule of Law, democracy and civil society space. This should be done through the collection of evidence from an intersectional approach by a broad range of stakeholders, particularly from marginalised communities, including migrant and racialised communities. If CSOs are regulated by EU policies or indirectly affected, the European Commission should ensure that their specificities and fundamental rights standards are taken into account;
- Training EU civil servants to understand what civil society is and how it operates, its democratic and societal role and its specificity in order to ensure EU policies in all fields of action duly reflect and protect it.
- The EU should review all EU legislation and policy – as well as related national transpositions - regarding immigration, organised crime, anti-money laundering and counter-terrorism for its impact on the rights of migrants, racialised communities and human rights defenders. Where such instances are identified, the European Commission should provide remedy, such as through appropriate guidelines on how to interpret EU law (especially in the area of money laundering and terrorist financing) and ad hoc exemptions (as advocated for in the case of humanitarian exception in the EU Facilitation Directive⁸⁸).
- The European Commission should also undertake a mapping of the opportunities of existing EU law and policies to protect civic space as well as areas of undue negative effect they have on civil society, including through over implementation.

⁸⁸ [Criminalization-paper-22-04-2022.pdf \(icj.org\)](#)

Promising practices

In France, the charter of reciprocal commitments provides political recognition to the role of civil society and a framework for civil dialogues

The charter of reciprocal commitments ([Charte d'engagement Reciproque](#)) between national and local public authorities and associations was signed in 2014. In particular, the local authorities undertake to:

- Conduct a coherent associative policy taking into account all the fields of intervention of associations and recognize the possible contribution of associations in all the fields of competence of the communities
- Encourage the creation of places of reception, information and advice
- To implement in all transparency different forms of support to associations, including subsidies linked to projects carried out by the associations, the loan of adapted premises and equipment

The aim is to better recognize the essential role played by associations in civil society and to intensify the cooperation of the various signatories in the service of the general interest. Note that particular attention is also paid to the monitoring, evaluation and implementation of the charter.

In Latvia, the National Development Plan aims to strengthening civic participation

The National Development Plan 2021-2027 [includes](#) the commitment to strengthen civil society, civic initiatives and the promotion of volunteering, as well as to establish an equal dialogue with civil society as with social partners (social dialogue). In July 2021, the Civic Alliance – Latvia (CAL) has successfully submitted proposals for amendments to the Procedure for Assessing the Initial Impact of Draft Legislation, emphasising that when assessing the initial impact of a legal act, it is also necessary to assess its impact on associations and foundations, democratic values and civil society.

In Slovenia, the Law on Non-governmental Organisations sets the foundations for civil society development

On 23rd March 2018, Slovenia's parliament passed the [Law on Non-governmental Organisations](#) (CSO). This law defines what is an CSO, provides for them with the right to public benefit status, describes the roles and responsibilities of different public actors responsible for providing an enabling environment for CSOs; and proposes a public fund for the development of CSOs by allocating some tax revenue to civil society organisations and activities. The fund is managed by the Ministry of Public Administration. Additionally, this law establishes a duty on the state to develop strategies on the development of the CSO sector.

European institutions should also take actions to uphold the democratic role of civil society at national level, including by:

- Encouraging Member States to adopt national civil society strategies, in dialogue with CSOs, to strengthen the implementation of the European Commission strategy on civil society and ensure an enabling legal and policy environment for civil society in every EU member state;
- Addressing the deficiencies and obstacles to a free and vibrant civic space identified in the annual European rule of law and FRA's civic space reports by putting forward concrete country recommendations with targets and deadlines, as well as European policies in relevant areas;
- Creating a permanent alert mechanism constantly feeding into the European Commission's European Rule of Law mechanism that allows fast reaction and action; such alert mechanism should lead to a rapid (re)assessment of the situation allowing for timely and concrete reaction at the EU level, such as recommendations, dialogue and sanctions;
- Continuing launching infringement proceedings, where there is a breach of EU law violating civic space and associated Charter rights. Consideration should be given to the use of expedited procedures and interim measures when there is a risk of irreparable harm;
- Ensuring a more active and predictable role for civil society in ongoing infringement proceedings and providing funding to CSOs to conduct strategic litigation at national and regional level, including action before the Court of Justice of the EU.

3.2 Engage: Secure an enabling environment for civil society at the European level by engaging in regular, transparent and meaningful civil dialogue throughout law- and policy-making

Article 11 TEU explicitly requires the EU institutions to give citizens and representative associations, through appropriate means, the opportunity to make known and publicly exchange their views in all areas of Union action. Implementation of civil dialogue along the Article 11.2 of the TEU is a longstanding demand of the European civil society, supported institutionally through various EESC opinions and the work of its Liaison Group ([Participatory Democracy A success story written by the EESC](#), 2020), as well as by several European Parliament reports and resolutions, starting with the [Resolution of 13 January 2009 on the perspectives for developing civil dialogue under the Treaty of Lisbon or more recently](#) to the **European Parliament resolution of 8 March 2022 on the shrinking space for civil society in Europe (2021/2103(INI))**. It includes within this framework the well-established tradition of consultation

(Article 11(3) TEU). At the same time, the provision calls for a shift to a more advanced model of participation, the so-called “civil dialogue”.

At the European level, the implementation of article 11 entails:

- A review of civil society’s engagement in the entire cycle of EU law- and policy-making not only on specific thematic areas but also on programmatic issues throughout the policy cycle such as in developing the work programme of the European institutions. This study should identify positive practices with view to develop and implement guidelines and minimum standards in civic participation across the institutions;
- Establishing basic coordination structures (focal points) for civil dialogue within each EU institution - including each DG of the European Commission, formalising and structuring the involvement of CSOs on sectoral policy issues beyond consultation along all phases of policy making, including its implementation and evaluation phase. These structures should also enable civil society to alert the European Commission to take actions in case the restrictive measures of Member States affect the achievement of EU policies’ objectives and break EU law;
- The review of composition of expert groups, advisory bodies and task forces in all EU institutions, especially in the European Council, to ensure fair representation of CSOs and balance influence based on commercial interests;
- Hosting a structured annual agenda-setting dialogues with civil society on the European Commission horizontal and thematic strategic priorities;
- Training EU civil servants on how to implement meaningful participation and allocate sufficient time and human and financial resources to participation processes.
- Putting in place an inter-institutional agreement to implement Article 11 of the Lisbon Treaty, to implement a meaningful, structural, inclusive and transparent civil dialogue and enable citizens and their organisations to be meaningfully engaged in all EU decision-making processes. Such agreement should include above-mentioned points and create a strong framework for civil dialogue, including the setting of minimum civil dialogue standards and mainstreaming good practices, procedures and mechanisms to all EU institutions. Beyond the thematic dialogue, it should also develop a permanent inter-institutional coordination entity for transversal civil dialogue at EU level (Civil Society Europe & the European Civic Forum, [Towards an open, transparent and structured civil dialogue](#), 2021).
- Providing more specific guidelines and minimum standards for member states to observe during EESC appointment procedures so as to guarantee transparent and fair selection of members as well as more fair representation of civil society organisations.

Promising practices at EU level

Some positive examples related to a structured dialogue with civil society organisations are related to the accession of the EU to two international Conventions: the Convention on access to information, public participation in decision-making and access to justice in environmental matters that has led to the [Aarhus regulation](#), recently reinforced as to strengthen the capacity of European civil society to exercise scrutiny over decisions affecting the environment, as well as the United Nations Convention on the rights of persons with disabilities, and its [framework for implementation at EU level](#).

Directorate-General Trade's Transparency, Civil Society and Communication team

Directorate-General TRADE is one of the few services of the European Commission that has set up a specific team to coordinate relations with civil society that serves the implementation of a regular and structured dialogue with CSOs. The dialogue is meant to inform about and discuss the ongoing developments of the EU trade policy and is carried out in close consultation with the Civil Society Dialogue Contact Group, a support structure which includes one representative from each of the broad categories of organisations involved in the civil society dialogue. The transparency, civil society and communication team also manages a database recording the service's meetings with stakeholders. While being regarded as an overall positive practice, the fact that businesses outnumber CSOs in the Civil Society Dialogue has attracted criticism. Against this background, a comprehensive evaluation study was recently commissioned to assessing and improving the Civil Society Dialogue process, including as regards the need to ensure better representation of CSOs.

As argued above, the European Commission should also promote participation in the policy-making process and mechanisms both at EU and national level, through:

- Requiring Member States to strengthen or create civil dialogue infrastructure at national level in order to better involve CSOs in European policy-making processes. Participation in such structures should be duly supported with funding and capacity-building trainings;
- Encouraging Member States to prepare and adopt national implementation plans, which may build as appropriate on already existing civil dialogue frameworks and structures, of the an inter-institutional agreement to implement Article 11 TEU;
- Regularly assessing the involvement of civil society in consultations related to EU policy-making at national level and address through relevant measures where such engagement is lacking. For example, civil participation is a legal requirement in preparing the plans for using funds under shared management (including the National Recovery and Resilience

Funds), on which member states report to the European Commission in the plans they submit. The European Commission could enforce sanctions in case this dialogue did not happen or was just a formal exercise, ensuring the plans are not approved until meaningful participation takes place.

Promising practices at national level

Denmark's EU semester structured dialogue

Since several years, the Danish government has established a civil dialogue process on EU issues linked to the European Semester cycle and the Europe 2020 strategy. The dialogue is cross-sectoral, structured and regular, with three annual meetings timed in the year to coincide with key moments in the Semester cycle, in which different ministries are involved. Building on the Semester indicators and country recommendations, participants are given the opportunity to share their views on progress made in the multitude of areas covered by the Semester cycle and actively feed into the national implementation reports. While the model is considered to be well established and to work very well, it has not so far been used as a broader structure for transversal dialogue to address other horizontal EU issues.

Polish self-organised public hearings on the National Recovery and Resilience Plan

In response to the omission of organised civil society from the preparation and consultation on the National Recovery and Resilience Plan in Poland, an unofficial coalition of CSOs mobilised to initiate their own series of public hearings. Within a few weeks, the coalition organised the largest ever public hearings in Poland, resulting in a series of 11 public hearings over 11 days, bringing together over 460 speakers (from civil society, local government, trade unions, businesses etc.), and watched by over 20,000 people via livestreams. These public hearings were held in cooperation with very committed employees of the Ministry of Funds and Regional Policy under the patronage of the Partnership Development Subcommittee. These hearings laid down the foundations for other collaborations with business and social partners as well as with local authorities. It shows the determination of CSOs in defending civil dialogue, bringing social partners and local dignitaries on board, and making their voices audible to decision makers, who in turn, recognised the value of their voices by attending and adopting a role of listeners.

The Open Government Partnership, a model of collaborative public participation

The Open Government Partnership (OGP) creates action plans on broad range of issues and commits to independent and public evaluation of their progress. It has been implementing a unique model of public participation based on the collaboration between government, civil society, and other stakeholders (e.g., citizens, civil society organizations, government departments, subnational governments, parliament, academics, private sector, etc.). OGP has based its action on the research showing that open government is more accessible, more responsive, and more accountable to citizens and that improving the relationship between people and their government has long-term benefits for all.

On that basis, OGP created a unique model of public participation aiming to ensure that civil society has a role in shaping and overseeing governments. This approach is guided by four key principles that must be endorsed by members: transparency, inclusive participation, accountability, innovation and ambition. To embody these principles and guide the collaborative approach, the OGP has developed through their experience 5 Participation and Co-Creation Standards which include:

- Establishing a space for ongoing dialogue and collaboration between government, civil society, and other non-governmental stakeholders.
- Providing open, accessible, and timely information about activities and progress within a member's participation in OGP.
- Providing inclusive and informed opportunities for public participation during co-creation of the action plan.
- Providing a reasoned response and ensuring ongoing dialogue between government and civil society and other non-governmental stakeholders as appropriate during co-creation of the action plan.
- Providing inclusive and informed opportunities for ongoing dialogue and collaboration during implementation and monitoring of the action plan.

Additionally, this process is coupled with the "Independent Reporting Mechanism" which monitors progress of members on the implementation of actions plans which ensures transparency and promotes accountability and trust among members citizens and governments.⁸⁹

⁸⁹ <https://www.opengovpartnership.org/ogp-participation-co-creation-standards/>

Civil dialogue is also crucial in times of crisis. The European institutions should better associate civil society organisations in crisis management discussions on emerging needs to be addressed and possible solutions. To do so:

- The dialogue infrastructure, which feeds into the policy-making work of the European Commission in regular times, should also enable the rapid engagement of civil society in times of crisis;
- The European Commission should open a space to discuss lessons learned and best practices regarding the national and European institutions' cooperation with and inclusion of civic actors in the policy responses addressing the Covid-19 pandemic and the present humanitarian crisis. An analysis of strengths and weaknesses should be drawn in order to be prepared for future crises. One crucial aspect to be analysed is how the proper interactions between institutions and CSOs in "normal times" are key for efficiency in times of crisis. Such reflection should lead to a better involvement and engagement of CSOs in future crises at all levels, including within the EU Civil Protection Mechanism.

3.3 Support: Nurture the civic sector through flexible funding policies and more

As said above, supporting the sector means providing resources, including financial, to develop the infrastructures, capacities, skills and leadership needed to face the challenges and opportunities ahead. EU funding policies should be aimed at nurturing the democratic role of the civic sector and be sufficiently flexible and agile to enable the access of grassroots organisations next to national and European networks (for detail recommendations on this see [joint CSO letter regarding the implementation of the Citizens, Equality, Rights and Values \(CERV\) programme](#) from 23 February 2021). Additionally, as CSOs are dealing with complex societal issues that requires innovative, long-term systemic thinking as well as prompt responses, they might have to experiment and adopt a trial-and-error approach to find meaningful strategies for their context. As a result, it is crucial to **move towards a trust-based approach to funding for CSOs and allow them room for manoeuvre to adapt to a changing political and social landscape.**

In order to do so, the European Commission should:

- Make use of dialogue infrastructures to meaningfully engage (not just inform) civil society in 1) decisions regarding the strategic priorities of the European funding, financial regulations as well as of specific EU funding accessible to CSOs; 2) evaluating the accessibility of the funding for organisations – especially at the grassroots level - and identify obstacles that should be overcome; 3) share and discuss lessons learned among grantees and between grantees and the European Commission services;

- Take stock of promising EU funding practices, such as the disbursement through intermediary regranteeing CSOs in the CERV programme, and extend them to other funding streams where relevant in order to simplify CSOs' access to all EU funding. In particular, the European Commission should consider expanding the indirect models of funding disbursement (through CSO intermediary) to CSOs to other funding programmes, such as the structural funds, that can support the development and strengthening of CSOs capacities and infrastructures;
- Waive the co-financing requirement foreseen for the Citizens, Equality, Rights and Values Programme (CERV) and other funding accessible by CSOs. Where this is not feasible, the EU should encourage member states to take concrete measures to complement existing EU funding schemes with national funding, including by establishing national funds for democracy, rule of law and fundamental rights;
- Map existing obstacles impeding CSOs to access EU funding in order to address them with appropriate instruments, including evaluating the implementation of partnership principle in funding instruments across member states to ensure CSO's participation in the preparation, implementation, monitoring and evaluation of funding;
- Deploy part of the EU funding to support and develop civil society infrastructures (networks, coalitions as well as individual organisations) and capacities at national and European level to engage in the civil dialogue; In particular, funds under shared management should foresee specific calls aimed at supporting the development of civil society;
- Allow intermediaries regranteeing EU funding at national level to provide core funding and to grassroots organisations ensuring administrative costs and co-funding are not disproportionately heavy on their capacities; Enable them to rapidly disburse emergency action grants with simplified application and reporting processes and flexible timeframes (on the example of the action grants of the EEA & Norway grants) in addition to longer-term grants;
- Ensure the reporting efforts are proportionate to the amount funded and avoid using managerial and performance logic in reporting and measuring the impact of CSOs. In order to foster innovation, organisations should be granted the "right to failure" and the emphasis should be placed on the learnings that can be drawn from successes and failures.
- When the funding conditionality is triggered and member states' access to EU funding is blocked, ensure the financing support remains directly, effectively and quickly

accessible to CSOs (see [Factsheet on the Rule of Law Conditionality Regulation: Limits and next steps](#) by Reclaim EU, 2022).

- Actions under the Social Economy Action Plan should aim at securing a conducive taxation framework to promote private donations, including for human rights and democracy work, and an enabling legal framework for civil society organisations to seek, access and use funding from any source, including from foreign donors.

Promising practices

A Civil Society Fund to promote CSOs' participation in EU policy-making in Malta

The Malta [Civil Society Fund](#), set up in 2020 by the Malta Council for the Volunteer Sector in partnership with the Ministry of Education and Employment aims at enabling CSOs to participate effectively in the decision-making process at EU level and to better educate their members on EU matters related to their respective fields of competence. To that effect, the Fund makes available financial assistance to facilitate the creation and strengthening of national CSOs with and within European coalitions, networks and platforms, to promote the exchange of best practices, knowledge and information among CSOs and to offer CSOs training and other capacity building activities related to EU policies.

In Germany, a €30 Million annual fund to improve and support civil society organisations

The German Foundation for Civic Engagement and Volunteering (Deutsche Stiftung für Engagement und Ehrenamt – DSEE) is a public foundation on the initiative of three Federal Ministries, and began to operate in July 2020 (federal law Gesetz zur Errichtung der Deutschen Stiftung für Engagement und Ehrenamt of 23 June 202080). It will operate with an annual budget of around €30 Million to develop civil society organisations and volunteering, especially in laggard and underdeveloped regions in Germany. In particular, it focuses on enhancing the digital means for civil society activities and the development of a volunteering infrastructure in response to the Covid-19 pandemic. In the opinion of civil society networks the foundation's contribution to civic space will depend largely on its success in establishing cooperation mechanisms with the existing civil society infrastructure and not to create duplicating structures.

Beyond funding, the European Commission and national representations can explore additional ways to support civil society, for example by:

- providing assistance in the application, evaluation and reporting processes, especially to grassroots organisations with little experience in European funding programmes;

- organising training and capacity building sessions on how to engage with EU institutions and policy-making processes;
- connecting grassroots grantees with relevant EU policy-making processes and European networks involved in them.

3.4 Protect: Defend civil society and human rights defenders (HRDs) against smear campaigns, SLAPPs, threats and attacks

When governments and powerful individuals dismantle legal protections, threat and harass civil society, the European institutions should provide protection and support:

- Bringing coherence between protection and support mechanisms for civil society and human rights defenders existing in EU external policies. For example, the European Commission should build on the example of the existing external EU human rights defenders' mechanism protectdefenders.eu by providing appropriate financial support for the creation and maintenance of a similar monitoring mechanism in the EU, including a helpline, core and emergency funding, legal assistance, protection of defenders, and, if needed, temporary relocation.

Promising practice

External EU human rights defenders' mechanism protectdefenders.eu

ProtectDefenders.eu is the European Union Human Rights Defenders mechanism, led by a Consortium of 12 NGOs active in the field of Human Rights and financed by the European Union. It operates a permanent and rapid response mechanism to provide urgent assistance and practical support to Human Rights Defenders in danger, their families, and their work, including temporary relocation, creation of shelters, training and financial support.

- The European Commission should speak up for and provide political support to civic actors under pressure via the European Commission Vice-President for Values and Transparency. Their mandate could be developed on the example of the UN special rapporteurs, enabling the vice President (including through appropriate staffing and support) to speak out and engage diplomatically with authorities to support civic actors.

- Following the European Commission work on the guidelines for the protection and safety of journalists and externally the EU Guidelines on Human Rights Defenders,⁹⁰ Guidelines on the safety of civil society actors and human rights defenders should be developed. These guidelines could draw from the UN Declaration on human rights defenders⁹¹ and the OSCE Guidelines on the Protection of Human Rights Defenders.⁹² Such guidelines should complement the European Commission work on SLAPPs to ensure that CSOs and HRDs are protected from all forms of judicial harassment, including criminalisation of human rights activities.⁹³
- The Audiovisual Media Directive and/or the Media Action Plan should include guarantees for balanced reporting on civil society against smear campaigns orchestrated by propaganda media.
- The cooperation between the European ombudsperson and civil society should be encouraged and supported, following positive examples of such cooperation at national level. For example, the Ombudsperson could launch an inquiry on the misuse of disbursement of EU funding for the purpose of harassing democratic civil society or impeding access to resources.

Promising practice

Polish civil society keeper of the independence of the Ombudsperson office

After the end of the term of the former Ombudsperson, Adam Bodnar, the ruling party did not propose candidates and regularly rejected the ones presented by civil society. Thus, creating a situation deemed unconstitutional by the Constitutional Tribunal. This left an opening to temper with the independence of the office through the ruling party appointing one of their own. However, civil society organisations secured two victories in this situation. First, the participation and pressure of more than 1200 civic organisations from various parts of the country, is the factor that ensured the independence of the position which could have been hijacked by the governing majority. Second, this civic engagement led to an ongoing cooperation of organisations that now monitors what is happening with the Ombudsperson's budget, checks how public institutions respond to the Ombudsperson's general comments and takes action in this matter, and finally works out demands and cooperate with the Ombudsperson's office on the implementation.

⁹⁰ EU External Action, [EU Guidelines on Human Rights Defenders](#) (21 June 2016).

⁹¹ UN General Assembly, [Resolution A/RES/53/144 adopting the Declaration on human rights defenders](#) (1998).

⁹² Organization for Security and Cooperation in Europe (OSCE), [Guidelines on the Protection of Human Rights Defenders](#) (10 June 2014).

⁹³ European commission, [Commission tackles abusive lawsuits against journalists \(europa.eu\)](#), 27 Apr. 2022.

- The European Commission should foster EU-wide standards of police accountability vis a vis use of force, including on the use of non-lethal weapons in the context of public demonstrations, based on existing human rights standards and guidelines.
- The European Commission should monitor instances of surveillance, harassment, prosecution and criminalisation against civil society and human rights defenders as part of the rule of law report. When such instances are identified, relevant European actions should be deployed.
- In the context of the findings of the use of Pegasus software by Member states to unduly survey civil society organisations, representatives of political opposition, judges and journalists, the European Commission should urgently cooperate with the European Parliament committee of inquiry and tighten EU privacy regulation to oppose future similar attempts.

Promising practice

Observatories on police practices

France has been the theatre of several large-scale social movement that took their concerns to the streets to voice them and protest. These social movements have been met with suspicion, discontent, and unprecedented levels violence from the authorities in the past 20 years. This was especially visible in the media which often relayed clashes involving demonstrators but failed to show the disproportionate use of force by police forces against them. This led civil society organisations to fill in a need. The need to observe policing practices during demonstrations to report objectively and to document them accurately. The creation of an observatory has generally taken the form of inter-association and trade union groups with members of the Ligue des droits de l'Homme and the Syndicat des avocats de France, but also, depending on the city, other national or local partners.

Observatories are composed of trained citizens taking part in the demonstration as external observers capturing images, pictures, videos of events that happen during the protest. These images help to counter the justification regularly put forward by authorities of a context that would explain police violence. These images can also be used to help victims of violence to prove their side of the story in face of police statements. Finally, the observatories produced guides or legal tools to enable demonstrators to take ownership of their rights and defend themselves in the event of an arrest for instance.⁹⁴

⁹⁴ <https://civicspacewatch.eu/wp-content/uploads/2022/03/France.pdf>

Spain – addressing the disproportionate use of force through increased transparency

“Visible Police ID” is an initiative promoted by Irídia and AI Catalonia, with the aim of raising the standards of transparency and accountability of the Mossos d’Esquadra (the police force in Catalunya), in its public order operations. The initiative aimed to fight impunity of police officers using excessive force by guaranteeing the possibility for victims to file a complaint. To do so the actions focused on ensuring proper identification of police officers. Since 2017, this initiative fuelled advocacy and communication campaigns to raise awareness and put the issue of identification of police violence’s authors in the political and public agenda.

Through this initiative, in October 2020, Catalan police officers in charge of public order started to be identified by a Police Operational Number on the back, chest and helmet. Therefore, in the event of a malpractice complaint, the corresponding legal actions can be taken. The approval of the number ID had clear effects in the fight against impunity. For instance, it has been possible to identify the two officers who fired a foam bullet, seconds before a 19-year-old girl was wounded in the eye on 16 February 2021, in Barcelona.

To ensure transparency and accountability, there is a need to have comparable standards at European level on the identification of police officers when they carry out operations involving the use of law enforcement.⁹⁵

⁹⁵ <https://civicspacewatch.eu/spain-visible-police-id-civic-win-for-csos-in-catalunya/>

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