

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

FAQ

A. What role do civic organisations play at EU level and what effects does shrinking civic space has on European values and policies?

Civic organisations are crucial European actors and the European dimension of civic space is growing. Indeed, 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 to 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 as emerged clearly during the COVID-19 pandemic and the humanitarian emergency.

While the majority of the monitoring and research has focused on how obstacles and attacks affect civil society at the national level, 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 shape them, and then monitor and support their implementation.** For example, as CSOs' working on equality and anti-discrimination are increasingly targeted, the promise of a Union of Equality is at risk. Similarly, when environmental defenders face obstacles to influence and monitor national policies and their implementations, including the National Recovery and Resilience Plans, the ability of the European Union to achieve the objectives of the European Green Deal is affected. Additionally, shrinking civic space at national level also impairs civil society's resources and capacities to engage in EU law- and policy-making and the European public sphere, with negative implication for the functioning of European democracy. Finally, the EU law often does not take into account civil society' specificity and is sometimes at the origins of the restrictions for civil society.

B. What is civic organisations' specificity?

From one country to another, civic actors have different status, modus operandi, and rights. The tasks and functions they perform also vary. While they may be established through different forms, such as non-governmental organisations (NGOs), charities, interest groups, foundations or cooperatives, or be informal in nature, civic organisations 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 that give substance to the principles and rights enshrined in the Charter of Fundamental Rights of the European Union;**

- **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;**
- they function in a democratic manner.

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

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.**

C. How does EU law affect civic space?

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 creative 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. For example, internal market and competition rules such as state aid and VAT directive equate CSOs with enterprises, while the draft regulation on the transparency and targeting of political advertising risks placing CSOs' activities in the realms of "political advertising".

Moreover, **EU law often fails to take into account existing human rights standards protecting the civic sector.** It is the case of the EU Pact on Migration and Asylum. 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.

D. What tools are available to EU institutions for empowering, engaging, supporting and protecting civic organisations?

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.

E. What is the way forward?

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 rights culture; 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. Beyond consultations (Article 11(3) TEU), 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. The functioning of the social dialogue can provide methodology and practices.

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 Citizens, Equality, Rights and Values (CERV) holds potential for this, but obstacles of accessibility, and the heaviness of the reporting and functioning need to be addressed.

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 and avoid using managerial and performance logic in reporting and measuring the impact of CSOs.**

It is urgent to assess the accessibility and functioning of EU funding, and remove existing obstacles. For example, the European Commission should consider expanding the indirect models of funding disbursement (through CSO intermediary) to CSOs to other funding programmes that can support the development and strengthening of CSOs capacities and infrastructures, such as the structural funds, and waive the co-financing requirement foreseen for the CERV and other funding accessible by CSOs.

The CERV programme should allow intermediaries regrantsing 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 nor on the intermediary organisations. 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. Finally, **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.

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.** This 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.**