



Response to the European Commission's consultation on the Defence of Democracy Package

Brussels, April 2023

About European Civic Forum

European Civic Forum (ECF) is a pan-European network of nearly 100 associations and NGOs across 29 European countries: big federations of associations, national platforms uniting hundreds of thousands of NGOs, and smaller groups working at community level or engaging with the public on local issues. We work to build a democratic and civic Europe that delivers on people's needs.

Introduction

The European Commission has published its consultation on the Defence of Democracy package (DoD package) which aims to bring together legislative and non-legislative measures to “strengthen resilience to covert foreign interference and encourage civic engagement in our democracies”. As part of the package, the Commission intends to introduce a directive for “common transparency and accountability standards for interest representation services directed or paid for from outside the EU”. It will also put forward recommendations for: tackling covert foreign interference from outside the EU, to securing resilient electoral processes in the context of the upcoming elections at the European Parliament and at national and local levels, and promoting civic engagement.

The European Civic Forum welcomes the package's aim to “nurture, strengthen and protect” democracy, its recognition of the role of civil society in contributing to democratic resilience, and the proposal of a recommendation to promote civic engagement. However, we are concerned that the framing of the package fails to target the root causes of democratic challenges and instead focuses at length on tackling “covert foreign interference” as the major cause for the weakening of democratic institutions and processes.

We strongly believe that in order to defend democracy, EU institutions should focus on tackling internal threats to democracy and building democratic resilience, by shaping coherent policies which correspond to the aims outlined in the European treaties. In particular, it should strengthen social cohesion by addressing the various vulnerabilities people are confronted with, and create an enabling environment for civil society.

We are also concerned about the process leading up to the adoption of the package. Firstly, the initiative is being developed within a short timeframe, without a thorough impact assessment of the problem. Secondly, the package is scheduled to be published shortly after the end of the public consultation, suggesting that the proposal has already been drafted while the public consultation is still open and that the time needed to integrate inputs has not been considered.

We are also concerned about the potential direct or indirect negative consequences that the directive and recommendation to tackle covert foreign interference may have on civil society. This includes over-regulation and casting a negative presumption on the entire sector with regards to transparency and foreign interference.

The following submission is our contribution to the European Commission consultation on the Defence of Democracy package.

To defend democracy, the EU needs to invest in its democratic resilience

If we want a new push for European democracy, malign foreign interference is not the biggest threat. Rather, we need a proper assessment of the challenges, opportunities and threats facing democracy today.

Democratic resilience requires both good *inputs* (*processes*) and good *outputs* (*efficient policies*).

Participatory mechanisms which enable diverse voices to contribute to the democratic debate and a robust rule of law infrastructure are the key tools conducive to developing effective policies and measures. These *inputs* decisively contribute to ensuring that good policy-making is possible.

However, it is crucial to understand that people evaluate the relevance of democracy based on its *outputs* - the ability of implemented policies to address their needs, concerns and hopes for the future. For many people, the legitimacy of our democratic system rests in its capacity to respond to existing insecurities (including in social, economic, environmental and cultural spheres), to collectively face crises and other challenges of our time, and to foster social cohesion and a shared vision for the future.

Today, democracy is facing pressure both on its *inputs*, as democratic backsliding unfolds across the EU, and its *outputs*, as many fear for their future and increasingly mistrust institutions' ability to deliver policies that will protect them.

When people lose trust in institutions' ability to deliver on their needs and aspirations, democracy is at risk

Declining trust in democracy is a well-documented and worrying trend all over the world and Europe is no exception.

Decades of economic and financial globalisation have had dramatic consequences in raising inequalities and precarity, with certain groups of people and their needs being invisible to policy makers. This fuels both a sense of democratic disempowerment and competition between excluded groups for access to rights and services.

Moreover, in the EU, the democratic legitimacy of policies is challenged by the complexity of the multi-level governing and decision-making system. The deregulation of markets and the over-emphasis on competition combined with structural reforms have reduced social and labour protection, making it increasingly difficult for the Member States (with the exception perhaps of the strongest economies) to balance decisions on economic policies with social policies and the provision of services for the common good.

Together, this has contributed to an erosion of trust in democracy, both in its inputs, with the public's influence on policy decreasing, and in its outputs, with policies that fail to deliver for everyone.

The deterioration of the rule of law and democratic backsliding is systemic in some Member States, and is on the rise in many other. This trend falls within this context of declining public trust, which provides fertile ground for growing political illiberalism and tensions in our societies. Nationalism,



xenophobia, and exclusionary identity politics, abused and exacerbated by reactionary and authoritarian leaders and governments, risk becoming substitutes for an inclusive, shared future. Those most affected are groups whose access to rights is frequently denied, including women, LGBTQI+ people, refugees and asylum seekers, ethnic and religious minorities and people of low socio-economic background.

Regressive forces inside and outside Europe that promote such policies gain political capital from this erosion of trust. As a consequence, the manipulation of information and foreign interference thrive on such dissatisfaction.

Civil society actors are part of what makes democracy alive, and as a result are targets when democracy is under attack

An open, plural, and vibrant civic space is a condition for democratic, cohesive and resilient societies. It is an integral component of the rule of law as civic actors are vital players in strengthening, implementing and, when needed, defending the rule of law.

Both in its advocacy-oriented and service delivery functions, civil society aims to effectively implement fundamental rights. Additionally, civic and social organisations, through their everyday work on the ground, work to build trust from the bottom up and to ensure that the people they represent are being heard through democratic channels. They understand the impact of policies or lack thereof on the wider population and specific groups. Thus, they can be important partners for authorities who want to tackle societal vulnerabilities and environmental concerns and contribute to rebuilding trust in democracy. Often, civil society finds itself on the frontline - mobilising, responding to social needs, advocating, and defending rights and democratic frameworks, even more so during crises. This was evident during both the COVID-19 pandemic and the crisis that has ensued as a result of Russia's full-scale invasion of Ukraine in February 2022.

Over the last few years, civil society organisations (CSOs), human rights defenders (HRDs) and grassroots movements have raised concerns about the rapid deterioration of democratic processes, civic freedoms and adherence to the rule of law in several EU Member States. They play a vital role in responding to the erosion of democratic processes, the breaches of the rule of law and direct attacks on civic freedoms, which usually act together to dismantle fundamental rights. As a result, they have faced measures aimed at shrinking civic space, including restrictive laws, smear campaigns, judicial and administrative harassment and physical and verbal attacks. At the same time, their access to funding, capacity, resources and participation in policy-making processes have also been constrained in several Member States. It is worrying that narratives that legitimise such restrictive legislation and harassment of activists at national level have been echoed by some representatives of the European institutions under the guise of protecting democracy from foreign interference.

The European Commission should acknowledge the root causes of democratic decline and the importance of strengthening internal democratic resilience in its chapeau communication of the Defence of Democracy package.

The tools of the package must match the objectives of defending democracy

We welcome the Commission's recognition in the DoD package that a **"strong and enabling civic space** is critical for the resilience of our democracies" and that "civil society organisations act as **watchdogs** when democratic foundations and institutions are threatened". Furthermore, we welcome that the Commission has expressed its willingness to include a strong chapter on civil society. This comes after repeated calls and actions by civil society organisations, including a letter signed by nearly 350 organisations from across Europe calling for a European Civil Society Strategy¹.

We would like to draw attention to the legal basis of the package which is aimed at ensuring the "proper functioning of the internal market". This narrowly defined approach underpins all actions undertaken by the Commission in the field of democracy, rule of law and fundamental rights. The package driven by market logic, as the call for evidence refers to interest representation services, is limited in its scope of action as it is neither relevant nor coherent with article 2 of TEU.²

Challenges to democracy cannot be tackled with a "pick and choose" approach or a focus only on those areas of action which directly affect the functioning of the internal market, such as corruption, or which can be addressed via market regulations. As with fundamental rights, democracy's components are interrelated and indivisible: any shortcoming or breach in one area is detrimental to the overall democratic ecosystem.

While the current framing and narrative in the DoD package emphasises its "aim to bolster democratic resilience from within", the tools developed do not substantively deal with the root causes of democratic backsliding in Europe, nor do they provide appropriate support for democratic resilience. On the contrary, this approach leads to a lack of coherence between the stated aim of "nurturing, protecting and strengthening" democracy and the tools developed to address this, in particular the directive on covert interference, which risks contributing to the further weakening of civil society and internal democratic resilience (more on this below).

To defend democracy, the EU needs to invest in its democratic resilience via appropriate policies and tools

Strengthening democracy requires a shared commitment of European institutions and Member States.

First and foremost, it requires putting in place coherent policies which link economic and social issues to respond to the vulnerabilities and insecurities in our societies. These include policies which combat social, cultural and regional inequalities, economic precariousness and redistributive policies aimed at solidarity, inclusiveness, social security and equality. European

¹ <http://civilsocietyeurope.eu/wp-content/uploads/2022/06/Letter-to-VDL-Template.pdf>

² Article 2 of the Treaty of the European Union states that the EU is built on values of human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016M002>

institutions must recognise that democracy, the rule of law, and fundamental rights policies are interlinked with economic and financial ones.

To move in this direction, participatory mechanisms must be strengthened at both the EU and national level. True participation means that concerns are listened to and addressed through policy-making. **Beyond consultations and citizens' assemblies, there is a need for civil dialogue to be recognised and organised on an equal footing with social dialogue in the EU's policy-making, in all areas of EU action and along all policy cycles.** The full social and environmental impacts of national and EU legislation would be better balanced with economic aims, and fundamental rights would be taken into account more adequately when designing legislation and policies. Better and fairer policies would create more fertile ground for trust in democratic institutions.

The EU must not miss the opportunity to give substance to the implementation of Art. 11.2 of the Treaty of the EU in the Defence of Democracy package. It should include a clear commitment to develop a European policy framework for European civil dialogue³, on equal footing with social dialogue, as well as clear wording and standards in its recommendations on civic engagement⁴.

Strong democracies with a functioning rule of law rest on vibrant civic space. It is crucial that civil society actors are supported, protected and empowered and that their inputs are considered fundamental for policy-making. **The EU Commission should establish a protection mechanism to allow civil society to report on attacks and receive direct assistance. Moreover, the Citizens, Equality, Rights and Values Programme should be reviewed to unlock its full potential. In the long-term, the European institutions must commit to a European Civil Society Strategy** developing a vision towards the development of an open civic space and resilient civil society, giving genuine political recognition to the crucial role played by CSOs.

This is crucial in order to rebuild popular support for democracy, protect civic space and restore public trust.

The proposed directive on covert interference risks hurting, not strengthening, democracy

The package aims to put forward a directive to "introduce common transparency and accountability requirements" addressing "interest representation services paid for or directed from countries outside the EU". It is not clear if associations and CSOs would fall under the scope of the directive as "interest representation services". However, **we demand that associations and CSOs, and more generally the whole not-for-profit sector, are kept outside the scope of this directive, as we firmly believe that it risks weakening, rather than strengthening democracy.**

In addition, CSOs do not provide paid interest representation services (as recognised by specific exceptions in the services directive). For example, Article 2 of Protocol 26 of the Consolidated version of the Treaty on European Union - on services of general interest - excludes CSOs from the scope as a non-economic service of general interest because of their non-profit nature. This is also

³ See Annex 2 on civil dialogue

⁴ See Annex 1 on civic engagement

the case for several Member States legislations). **Civil society organisations represent the self-organisation of people living in Europe, which is distinct from the government and market actors, and they advocate for the common good and access to fundamental rights for all in line with the European Treaty provisions.**

We are concerned that if CSOs fall under the scope of such a directive, there would be negative consequences for civil society. In particular, they would face more stringent and burdensome reporting requirements, even though they are already subject to disproportionate public scrutiny, reporting obligations and sanctions in comparison to other entities such as corporate lobbies and consultancies, which have a big influence on EU and national policy-making processes. Furthermore, as CSOs' funding is overseen by the state, public authorities, and under the scrutiny of donors, auditors, banks and the general public, states can collect and access the necessary information required to closely examine their funding and to evaluate and mitigate potential risks.

We are particularly concerned about the context in which this directive was put forward, with worrying discussions in the European parliament that single out CSOs and call for further transparency measures, including a proposal for a Foreign Agents Act. Such a legislative proposal which targets all those benefiting from any funding considered as foreign will only further stigmatise and cast a further negative presumption on civil society.

These concerning narratives have emerged in light of the so-called 'Qatargate' scandal, which is being used by some to launch a witch-hunt against civil society and NGOs. In one example, during a debate in the European Parliament, the Chair of the budgetary control committee labeled CSOs as potential "enemies of our democracies," and called for an "EU equivalent to the US Foreign Agents Registration Act" (FARA)⁵ to increase control and transparency. The FARA has already been contested by civil society in the US because it includes vague definitions of what constitutes a foreign agent, political activities, basically encompassing all CSOs activities, and creates insignificant burdens for CSOs⁶. The same committee also called for the Commission to propose a "new NGO Regulation that includes conditions for receiving EU funds and obligations to report sources of funding as well as activities performed on behalf of foreign principals."⁷

Similar proposals have already been used in countries like Russia, Nicaragua and Hungary to stigmatise, control and shut-down critical civil society groups and media, with a detrimental effect on democracy. Both the European Court of Human Rights (ECtHR) and the European Court of Justice (ECJ) have found restrictions and registration requirements on foreign-funded CSOs, imposed by Russia and Hungary respectively, in breach of CSOs' right to freedom of association. More specifically, in June 2020 the ECJ found the Hungarian Law No LXXVI of 2017 on the Transparency of Organisations which receive Support from Abroad (so-called LexNGO law) (C-78/18), to be in violation of EU law as it imposed "discriminatory, unjustified and unnecessary restrictions on foreign donations to civil society organisations, in breach of its obligations under

⁵ <https://www.euractiv.com/section/eu-institutions/news/eu-must-copy-us-transparency-law-on-lobbying-says-epp/>

⁶ https://www.icnl.org/wp-content/uploads/2021.03-FARA-Legislative-Briefer-1.pdf?_ga=2.219441625.1708718064.1676563151-1063446133.1676563151

⁷ <https://www.europarl.europa.eu/news/en/press-room/20230320IPR77906/recovery-and-resilience-plans-commission-must-tighten-checks-and-oversight>

Article 63 TFEU and Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union.”⁸

On top of the direct consequences, if such a directive is applied to civil society, it will constitute over-regulation in countries where civic space is systemically restricted like **Hungary**⁹, **Poland**¹⁰ and **Bulgaria**,¹¹ and where similar legislation targeting the civic sector has already been proposed. For example, in **Ireland**, there is a ban on foreign funding (including from other EU member states) to “third parties” campaigning for “political purposes” beyond elections, which is de-facto applied to civil society with many high-profile organisations being brought to court for their human rights work, ending or limiting their activities¹². In **France**, civil society is facing significant restrictions as a result of the so-called Separatism law which requires any association applying for public financing to sign a “contract of commitment to Republican principles”¹³. Several associations, including those working on environmental rights and gender rights have been threatened with dissolution and defunding for allegedly not complying with the law¹⁴. We are concerned that the directive will further legitimise attempts to adopt legislation that will unduly limit freedom of association and lead to over-implementation.

Furthermore, while foreign investments for market actors and development projects are welcomed and even praised, at the same time civil society who receive foreign funding are vilified and scrutinised. It would thus be counter-intuitive to have a tool stigmatising foreign funding for civic actors.

We urge the Commission to reconsider proposing such a directive. It should ensure that in the first instance the ruling of Case C-78/18 is implemented before attention is turned to non-EU funding sources. If any directive is put forward, we urge the Commission to exempt civil society organisations (associations, NGOs, foundations, and other not-for-profit forms of organisation working for the common good) and ensure that it is in line with international human rights standards, the CJEU ruling (C-78/18)¹⁵ and the European Council conclusions on civic space¹⁶.

It is also important to note that the civil society sector, unlike other entities and stakeholders, is under international human rights protections - including the right to set up an association, to

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<https://curia.europa.eu/juris/document/document.jsf?jsessionid=D4978D9D5B261B3FA6CD03379FE11583?text=&docid=227569&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1875594>

⁹ <https://civic-forum.eu/wp-content/uploads/2023/03/Civic-Space-Report-2023-HUNGARY-European-Civic-Forum.pdf>

¹⁰ <https://civic-forum.eu/wp-content/uploads/2023/03/Civic-Space-Report-2023-POLAND-European-Civic-Forum.pdf>

¹¹ <https://civic-forum.eu/wp-content/uploads/2023/03/Civic-Space-Report-2023-BULGARIA-European-Civic-Forum.pdf>

¹² <https://www.iccl.ie/wp-content/uploads/2021/05/CCSF-and-Sen.-Ruane-Joint-Submission-Electoral-Reform-Bill-2020.pdf>

¹³ <https://civic-forum.eu/wp-content/uploads/2023/03/Civic-Space-Report-2023-FRANCE-European-Civic-Forum.pdf>

¹⁴ <https://monitor.civicus.org/explore/civil-society-push-back-against-separatism-law-pension-reforms-surveillance/>

¹⁵ <https://curia.europa.eu/juris/document/document.jsf?jsessionid=D4978D9D5B261B3FA6CD03379FE11583?text=&docid=227569&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1875594>

¹⁶ <https://www.consilium.europa.eu/en/press/press-releases/2023/03/10/fundamental-rights-council-approves-conclusions-on-the-role-of-the-civic-space/>

operate free from interference and disproportionate and unnecessary transparency obligations, to access to funding and to engage in policy-making. Regulators and standard setters are therefore obliged to apply a different approach to CSOs – based on international human rights standards – when shaping legislation, including an appropriate impact assessment.

Moreover, in the latest evolution of the EU Transparency Register, CSOs have to disclose all sources of funding, unlike other interest groups that only have to declare an estimation of their lobbying expenses, with no external assessment of these declarations. Therefore, CSOs already abide by strict and discriminatory transparency requirements, which already provides information which this directive aims to collect, in order to participate in EU policy-making processes. The fact that CSOs are the sole entity under such stringent scrutiny creates a false impression that CSOs are the main vector of interest representation, while they are the least represented entities on the Transparency Register, after corporate representatives and consultancies. Instead of being a tool for the control of corporate influence, the Transparency Register is turning into a tool for the control of CSOs. We could urge that this tool is strengthened as an equal treatment tool instead of duplicating transparency mechanisms.

We firmly believe that the specificity and rights of civil society organisations (associations, NGOs, foundations, and other not-for-profit forms of organisation working for the common good) should be protected and distinguished from rules applying to for-profit and corporate-driven entities. **Any transparency and reporting obligation regarding civil society should be tailored to the sector and in line with international human rights standards. Any measure restricting the right of associations to seek, secure and use resources, including foreign resources, must pursue one of the legitimate aims exhaustively outlined under Article 11(2) ECHR and 22(2) ICCPR¹⁷. Furthermore, they should not contribute to creating suspicion of civil society organisations, restrict their actions or create further fiscal, administrative and bureaucratic burdens.** Such obligations should be necessary and proportionate to the size, resources and income of the organisations, in line with the joint guidelines of freedom of association adopted by the Venice Commission¹⁸ and the risk posed.

The legitimacy of the Defence of Democracy package is at risk

We are concerned that the package is developed in a short time frame, without a fully-fledged and thorough impact assessment to determine the extent of the impact of covert foreign interference as indicated by the call for evidence. Additionally, it is worrying that the legislative initiative is already being developed while the public consultation is still running. Such an approach raises concerns as to what extent the consultation is effectively taken into account. This approach calls the legitimacy of the package into question.

¹⁷ Article 11.2 states: “No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.” See more: https://www.echr.coe.int/documents/convention_eng.pdf and <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

¹⁸ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)046-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)046-e)

To date it is unclear what is the extent of covert foreign interference and its impacts and whether the proposed directive would actually be effective to protect democracy or rather divert attention and resources away from the root causes of democratic decline. The balance of the cost-benefit of the current approach is uncertain at best.

We believe that a more successful approach to strengthening the integrity of democratic law-making processes is to examine the EU institutions and national governments' vulnerabilities to corruption and address them, including by developing a culture of accountability, instead of increasing red tape on civic organisations that act as democratic watchdogs. Such an approach should be examined before proceeding with the proposed directive.

We call for a fundamental rights impact assessment to be carried out given the concern that certain elements of this package could have negative impacts on civic freedoms. Such an assessment should address the package's compatibility with EU treaties and legislation in force. The proposal cannot be prepared without a proper impact assessment and study of alternative measures.

ANNEX 1: RECOMMENDATIONS ON CIVIC ENGAGEMENT

Civic engagement and political participation are not possible without an enabling environment for civil society. Political participation can manifest in different ways, through the electoral process but also through crucial means like **joining associations, movements, conducting advocacy campaigns and participating in** public demonstrations and protests.

The ability of CSOs to engage in activities that influence politics and policy-making is one of the principal features of democracy – enabling members of a society to resolve social and political problems through dialogue¹⁹.

Protests are frequently being used as a tool for people to express their needs and dissatisfaction with issues of the rule of law, democracy and fundamental rights. These avenues are particularly crucial when institutionalised channels for social and civil dialogue and democratic checks and balances are weakened or broken.

More recently, digital participation is being introduced through e-consultation platforms, where civil society and the public can track legislative developments and provide feedback. While this may at face value appear to improve participation, in reality it risks excluding many groups due to challenges around digital accessibility and internet poverty, which still exists for many. Additionally, e-democracy should not substitute more substantial forms of participation and involvement in policy-making, in particular structured civil dialogue.

Below we make proposals for what we believe the European Commission should propose in its recommendation on civic engagement:

A) A common framing on enabling environment, based on (1) the European Union Agency for Fundamental Rights (FRA) methodology analysing challenges facing civil society organisations working on human rights in the EU, (2) the recommendations for the creation and maintenance of a safe and enabling environment for civil society based on good practices and lesson learned by the UN Higher Commissioner for Human Rights, and (3) the monitoring matrix elaborated by the Balkan Civic Society Development Network and used by DG NEAR in the European Commission.

The pillars of an enabling environment that allows organisations to fulfill their mandate in relation with the respect of EU values and the implementation of the EU Charter of fundamental rights are:

- **A conducive institutional, political and socio-economic landscape:** *the historical legacy of political culture, together with socio-economic structures and contingent events, profoundly shape the public's understanding of the role of civil society and the values it embodies, the activities it pursues, thus influencing public trust and support.*
- **The respect of civic freedoms:** *a supportive legal and regulatory framework for civic freedoms, in particular freedoms of association, peaceful assembly and expression, and its effective implementation ensure the protection of civil society space. National and EU*

¹⁹ Council of Europe Expert on NGO Law, Regulating political activities of Non-Governmental Organisations, 2015 (para. 10); European Court of Human Rights, United Communist Part of Turkey and Others v. Turkey, no 19392/92, 30 January 1998, paras 57-58.

legislation should recognise and protect the specificity of the civic sector vis a vis other entities, including commercial ones, and avoid undue administrative and financial burden.

- **Safe space and state duty to protect:** public authorities have a duty to protect civil society actors and human rights defenders from physical, verbal and judicial attacks linked to their human rights' work by taking action against perpetrators.
- **A supportive framework for CSOs' financial viability and sustainability:** supportive legislation on funding, including foreign and international funding, and availability of sufficient and predictable resources are crucial to civil society's capacities, independence and long-term strategic planning.
- **The dialogue between civil society and governing bodies:** governing bodies must pursue policies and narratives that empower citizens and their organisations to be meaningfully engaged in the public debate and policy-making.
- **Civil society's resilience to challenges to democracy, rule of law and fundamental rights.**

B) Common standards on enabling environment grounded in human rights law and existing legal standards developed by the Council of Europe (along with the EP proposal for a DIRECTIVE on common minimum standards for non-profit organisations in the Union, FRA and civil society recommendations).

C) Clearly identify the different stages and outcomes of civic engagement

Broadly, civil participation for inclusive policy-making and action includes different **forms and levels of engagement**. From least to most participative, these levels are: **information, consultation, dialogue, and partnership (cf CoE guidelines)**.

Access to **information** is the basis for all subsequent steps in the involvement of civil society in the political decision-making process. This consists of a one-way provision of information from the public authorities – in a way that is easily accessible and understandable – and no interaction or involvement with civil society is required or expected. Information is relevant for all steps in the decision-making process: before, during and after.

Consultation is a form of initiative where institutions ask the public for their opinion on a specific policy topic or development. Generally, institutions inform stakeholders of current policy developments and ask for comments, views and feed-back. Consultation is relevant for all steps of the decision-making process, especially for drafting, monitoring and reformulation. Consultation should be conducted in reasonable time periods (not rushed, short periods), be inclusive and accessible for all.

Civil dialogue is a structured, long-lasting and results-oriented process which is based on mutual interest in the exchange of opinions between authorities and civil society. It usually leads to a joint recommendation, strategy or document. It consists of joint, often frequent and regular, meetings to develop core policy strategies and often leads to agreed outcomes. Dialogue is highly valued at all steps in the political decision-making cycle, but is especially crucial for agenda setting, drafting and reformulation.

Partnership includes shared responsibilities in each step of the political decision-making process from agenda-setting, drafting, and deciding, to implementing policy initiatives, though it is particularly relevant for agenda setting and implementation. At this level, stakeholders and the authorities come together to closely collaborate, while ensuring that stakeholders continue to be independent. Partnership can include activities such as delegating a specific task to a CSO, for example delivery of services, as well as participatory forums and the establishment of co-decision-making bodies.

D) Set a clear commitment and common standards on civil dialogue

While some progress has been registered over the past years as regards the development of innovative deliberative democracy mechanisms, similar positive trends are not witnessed as regards national authorities' structured dialogue with organised civil society. From consultation with our members and partners, it results that in many countries, state authorities' approach to dialogue is that of information and instrumentalization rather than genuine participation. Many pointed to the **lack of structure and regularity, inadequate publicity and transparency** and **poor feedback** and follow-up from the side of national institutions as the aspects that most negatively affect current practices of national civil dialogue; additionally, even in countries where dialogue structures exist (or framework agreements between governments and civil society), they are not used to engage with civil society on EU policy-making issues.

The EU should encourage national governments to recognise **civil dialogue on equal footing with social dialogue** and to develop and finance **strong infrastructures for civil dialogue** (both on domestic and EU policy-making):

- Legal frameworks to support (including financially) the development of civil society
- Dialogue frameworks (compacts etc.)
- Training, capacity building and appropriate resources of public administration services to dialogue with civil society
- Focal points in different ministerial and inter ministerial services
- Specific dialogue bodies jointly composed of public authorities and civil society
- Co-programming and participatory designing of public policies: Civil society should be involved early on in the preparation of legislation, already in the assessment of the needs of general interest to be addressed by public policies and the identification of appropriate policy solutions
- Access to information and proper timeframes for engagement
- Adequate funding to support civil society to engage in the dialogue as well as for the structures conducting civil dialogue

The Commission should also make sure that **EU financial support** under key shared-management funding programmes such as ESIF and the Next Generation EU recovery plan is channelled to support the development by national, regional and local authorities of effective civil society participation and dialogue mechanisms.

The EU should also use its own institutional infrastructure to facilitate mutual engagement between national authorities and CSOs on EU issues and help achieve progress on EU civil dialogue at national level. This may include strengthening the role in this area of **European Commission country delegations** and the **European Parliament Representation offices**. These could also ensure technical support and access to information to CSOs for their engagement in elaborating national positions on EU policies. *See enclosed for more details joint CSE/ECF study Towards an open, transparent and structured EU civil dialogue*

ANNEX 2: RECOMMENDATIONS ON CIVIL DIALOGUE AT EU LEVEL

Civil dialogue, which consists of the structured participation of civil society in policy-making from the inception to the implementation and monitoring of public policies, is a crucial component of participatory democracy. Article 11.2 of the Treaty of the European Union provides for civil dialogue as it states that “the institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.”

Beyond consultations, we call for civil dialogue to be recognised and organised on an equal footing to social dialogue in EU policy-making, in all areas of EU action and along all policy cycles and EU institutions. **The European Commission should develop a Commission staff working document on the functioning and potential of European civil dialogue to bring coherence in the engagement practices across different DGs²⁰.**

Co-programming and participatory designing of public policies: The European Commission should develop a Commission staff working document on the functioning and potential of European civil dialogue to bring coherence in the engagement practices across different DGs. Civil society should be involved in the assessment of the needs of general interest to be addressed by sectoral EU policies and programmes, the identification of appropriate policy solutions and in the preparation of the European Commission work programme. Such involvement is already happening at the national level through supervisory committees involving civil society organisations, among other partners. Civil society should also be involved throughout the policy cycle, including policies’ design, implementation and assessment. For this purpose, permanent civil dialogue structures should be established in each European Commission DG mirroring examples of positive practices such as in DG EMPL, DG Trade and DG AGRI. One member of the cabinet of the President of the European Commission should be responsible for cross-sectoral dialogue, and there should be a dedicated unit within the Secretariat General to coordinate the civil society (or civil dialogue) units within each DG and reporting to the Commission President and Vice President in charge of civic space and civil dialogue.

Sectoral dialogue: The Commission should engage in dialogue with civil society before submitting policy proposals on the possible direction of Union action and on the content of the envisaged proposal, similarly to the social partners, as well as the feasibility and impact assessment.

Cross-sectoral dialogue: The EU should establish an annual summit enabling civil society to contribute to the political dialogue on the direction of EU action and policies, in the context, for example, of the state of the union.

Interinstitutional coordination on the implementation of article 11.2 TEU: The EU institutions should coordinate to ensure the structured involvement of civil society across all phases of the policy cycle. For this purpose, permanent civil dialogue structures should be established in the European Parliament and European Council, regulated by a coherent policy framework.

²⁰ In the example of the COMMISSION STAFF WORKING DOCUMENT on the functioning and potential of European sectoral social dialogue.