



FRA

EUROPEAN UNION AGENCY
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PROTECTING CIVIC SPACE IN THE EU

CIVIL SOCIETY

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Foreword

Civil society organisations across the European Union are impressively diverse. They provide services, engage communities, raise awareness, advocate on behalf of others, gather information and data, and hold authorities to account. Whether active at the local, national or regional level, they often play a crucial role in safeguarding human rights. But are we doing enough to ensure they can do their work?

This report looks at recent developments in the EU regarding different aspects of the environment in which CSOs operate – also referred to as the ‘civic space’. Focusing on CSOs that work on human rights, it considers overall challenges and opportunities, the regulatory framework, access to funding, participation in decision-making processes, as well as threats and attacks against both organisations and their staff.

The EU Fundamental Rights Agency first highlighted the various hurdles encountered by civil society organisations in its 2018 report on *Challenges facing civil society working on human rights in the EU*.

Since then, it has taken regular temperature checks on this important issue, including through its Fundamental Rights Platform, which brings together myriad organisations from across the Union. The findings presented here are based on EU-wide research, and on two online consultations, carried out in 2020.

Not surprisingly, Covid-19 looms large. More than half of national or local organisations say that their situation deteriorated compared with previous years. Measures imposed to curb the pandemic were often vital to protect human health, but also interfered with various rights, especially to peaceful assembly and association.

Accessing funding has always been challenging. The health crisis made this harder, too, often prompting the diversion of much-needed funds. Opportunities for CSOs to both access and participate in decision-making remained patchy overall; authorities’ tendency to introduce changes using fast-track or emergency legislative procedures sometimes further reduced such opportunities.

Meanwhile, harassment remained a concern, particularly online. Smear campaigns continued to create a climate of hostility, especially for organisations working with minority groups and migrants, and on women’s and LGBTI people’s rights.

Yet not all news was grim. Revamped financing and taxation frameworks brought relief in a number of countries, and several Member States set up targeted support schemes to counter the effects of Covid-19. Others took steps to systematically include civil society in procedures previously inaccessible to them.

We hope that, by highlighting both problematic and positive practices, this report encourages policymakers at all levels to make choices that foster a more conducive working environment for civil society across the EU, helping to realise human rights for all.

Michael O’Flaherty
Director

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Key findings and FRA opinions

International and regional human rights organisations – including the United Nations’ Human Rights Council, different entities of the Council of Europe, as well as the Organization for Security and Co-operation in Europe (OSCE)/ Office for Democratic Institutions and Human Rights (ODIHR) – emphasise the important role of civil society in safeguarding and promoting human rights and democracy.

In the European Union, civil society plays an important role in bringing to life the values shared between the EU and its Member States specified in Article 2 of the Treaty on European Union (TEU). They make a substantial contribution to the implementation of EU policies in the area of human rights. The key role of civil society is also reflected in the EU Treaties. Relevant EU policy documents, including strategies and action plans, similarly underline its importance.

Article 11 (2) of the TEU and Article 15 (1) of the Treaty on the Functioning of the European Union (TFEU) consider civil dialogue and civil society participation as tools for good governance. This is also the case in relevant EU policy documents, such as the EU Strategy to strengthen the application of the EU Charter of Fundamental Rights (‘EU Charter’), the European Democracy Action Plan, and sectorial action plans on anti-racism, LGBTQI+ equality, Roma inclusion, children’s rights, disability, victims’ rights, women’s rights or migrant integration.

Yet civil society organisations face diverse challenges across the EU. This report presents findings by the EU Agency for Fundamental Rights (FRA) on a range of such challenges. The findings are based on research conducted by the agency’s research network, Franet, in 2020; two separate online consultations undertaken with civil society organisations in 2020; and on desk research.

FRA has consistently pointed to a number of significant hurdles for CSOs since it issued its 2018 report on *Challenges facing civil society working on human rights in the EU*. It has also identified positive developments that foster an enabling environment for such organisations.

Norms and practices affecting the operation of civil society are commonly referred to as ‘civil society space’. According to the **UN Guidance Note on Protection and Promotion of Civic Space**, “civic space is the environment that enables people and groups – or ‘civic space actors’ – to participate meaningfully in the political, economic, social and cultural life in their societies”. It further notes that “ [a] vibrant civic space requires an open, secure and safe environment that is free from all acts of intimidation, harassment and reprisals, whether online or offline. Any restrictions on such a space must comply with international human rights law”.

This space includes the relevant regulatory framework, access to resources, participation in policy and decision-making, and a safe environment. These norms and practices can have positive or negative implications for the

implementation of EU legislation and policies, including as regards the application of the EU Charter of Fundamental Rights.

This report outlines relevant legal and policy developments that have an impact on activities of CSOs working on human rights across the EU. It also presents relevant promising practices. In addition, the opinions presented below outline ways to foster a more positive working environment for civil society.

Overall, the research underscores that the situation varies considerably across Member States. It also shows that the situation in 2020 was generally more difficult than in previous years, often due to the Covid-19 pandemic. Despite this reality, the research also points to some positive developments.

Fostering an enabling environment and supporting civil society development

In 2020, around one third (33 %) of civil society organisations (CSOs) from across the EU that responded to FRA's consultation on civic space said that the conditions for CSOs working on human rights in their country were 'good' or 'very good'. Another third (31 %), however, said that the conditions were 'bad' or 'very bad'. Furthermore, more than half of responding national or local organisations (57 %) said that, in 2020, the situation 'deteriorated' or 'greatly deteriorated' compared with previous years.

Positive steps taken in several EU Member States include policy measures for a more conducive environment for civil society development and for strengthening cooperation between public authorities and CSOs. These include the creation of infrastructure aimed at providing space for dialogue and channelling targeted support towards civil society, and specific commitments to open government, including under the **Open Government Partnership's** national action plans.

In some EU Member States, CSOs are particularly active in trying to improve the policy framework in which they operate, including through coalition building. National Human Rights Institutions (NHRIs), as human rights defenders, are committed to supporting civil society space. They are also committed to promoting, protecting and supporting all other human rights defenders, as reflected **in the European Network of National Human Rights Institutions' Regional Action Plan** on Human Rights Defenders, which is based on the **Marrakesh Declaration**.

The Council of Europe's **Recommendation CM/Rec(2018)11 of the Committee of Ministers to member states on the need to strengthen the protection and promotion of civil society space in Europe** reaffirms that protecting and promoting civil society space requires Member States to ensure "a conducive political and public environment" for human rights defenders, including CSOs. Such an environment allows CSOs and other human rights defenders to carry out their work freely.

Promoting a vivid and strong civil society is also part of the EU's global human rights policy. The Council of the European Union, in 2021, renewed its support for human rights defenders and CSOs and committed to strengthening its support to create an enabling environment for civil society. The **EU guidelines on human rights defenders** provide practical suggestions for enhancing EU action in supporting human rights defenders.

FRA OPINION 1

As part of their action to strengthen the application of the EU Charter of Fundamental Rights and the rule of law, EU institutions should regularly monitor civil society space, closely involving civil society actors and other human rights defenders. The methodology of the European Commission's 'CSO Meter' applied in Eastern Partnership countries could be adapted for this purpose. Such a mechanism should be developed in close consultation with civil society and identify ways for EU institutions to respond rapidly when there is evidence of civic space restrictions. The monitoring results could be included in the European Commission's annual reports on the EU Charter of Fundamental Rights and as part of rule of law reporting, together with recommendations and strategic guidance for improving the situation.

The EU and its Member States are encouraged to make use of the Council of Europe's Recommendation CM/Rec(2018)¹¹ of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe and the United Nations (UN) guidance note on the protection and promotion of civic space, which indicate steps and processes to protect and promote civic space. While applicable to the EU's external policies, the EU's guidelines on human rights defenders could also serve as inspiration.

In line with the Council of Europe's Recommendation CM/Rec(2021)¹ of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions, Member States should ensure that their NHRIs have sufficient resources to engage regularly with human rights civil society actors and monitor challenges affecting them.

The European Commission has also supported the development of a 'CSO Meter' to assess the civil society environment in Eastern Partnership countries under its European Neighbourhood Instrument. In addition, the Directorate-General for Neighbourhood and Enlargement Negotiations' *Guidelines for EU support to civil society in enlargement countries*, which were developed in consultation with civil society, aim to promote a conducive environment for civil society, partnership and dialogue between civil society and public institutions, and CSO resilience and capacity.

Promoting a conducive regulatory environment

A conducive regulatory environment requires a strong legislative framework protecting and promoting the rights to freedom of association, peaceful assembly and expression in conformity with international human rights law and standards. This was recently again underlined in the **UN guidance note on the protection and promotion of civic space**, which was published in September 2020.

These rights are also enshrined in the EU Charter of Fundamental Rights, which is binding on the Member States when they implement EU law, but also when national law or practices, although adopted autonomously, have a connection with EU law and thus fall within its scope.

The **UN Declaration on Human Rights Defenders**, although not a legally binding instrument, contains principles and rights that are based on human rights standards enshrined in other legally binding international instruments.

Organisations responding to FRA's civic space consultation 2020 reported challenges in exercising their fundamental rights: about one third (29 %) to freedom of peaceful assembly, one quarter (25 %) to freedom of expression, and almost one in five (18 %) to freedom of association. The difficulties they reported mostly related to Covid-19-related measures, such as emergency laws, travel restrictions and visa bans, and limitations to the freedoms of assembly and association.



Other challenges included those regarding the legal environment, for example relating to legislation on civil dialogue and consultations (25 %), transparency or lobby laws (20 %), data protection laws (18 %), changes in laws governing charitable status (14 %), anti-money laundering measures (12 %), changes in tax laws (11 %), counter-terrorism legislation or policy (11 %), and legal provisions on political campaigning (10 %).

Measures affecting the freedom of peaceful assembly, such as strict bans on assemblies, surveillance of assemblies and assembly organisers and participants, sanctions and the use of force in policing protests, related mostly, but not only, to Covid-19 measures. Almost half of respondents to FRA's Covid-19 consultation considered Covid-19-related restrictions to be disproportionate. Moreover, the evidence that FRA's research network, Franet, has collected shows that, in some countries, newly introduced restrictive laws on assemblies have no direct connection to the Covid-19 pandemic and do not involve much of a, or any, consultation process.

As regards freedom of expression, civil society actors in a number of Member States found that provisions criminalising speech, including those seen as necessary for counter-terrorism, may have a chilling effect on the exercise of freedom of expression. In some Member States, efforts to tackle hate speech, particularly online, have raised concerns about a potentially disproportionate impact on free speech.

The evidence that FRA has collected also shows that some governments have been making efforts to facilitate the right to freedom of association. These have included easing the bureaucratic burden, improving data protection frameworks, and simplifying and modernising registration systems.

However, in a number of Member States, both Franet reports and civil society sources identify persisting serious challenges, such as laws or administrative burdens concerning the dissolution and deregistration of CSOs or unfavourable rules on their status. Stricter rules on the establishment and functioning of CSOs proposed in a number of Member States to protect national security or democratic values have drawn criticism as regards their legality and proportionality. Moreover, unintended collateral effects of rules to counter money laundering and terrorist financing appear to continue to affect the operation of CSOs.



FRA OPINION 2

As part of their action to strengthen the application of the EU Charter of Fundamental Rights and the rule of law, EU institutions and Member States – when acting within the scope of EU law – should ensure that EU and national laws strengthen the rights to freedom of expression, peaceful assembly, and association. Furthermore, they should ensure that the transposition and application of EU rules do not result in disproportionate restrictions on civil society activities.

The European Commission should ensure consultation with civil society during the preparation or review of legislation potentially affecting civic space and civic freedoms. The European Commission could consider providing targeted guidance on the application of its rules, to prevent any unintended restrictions, building on existing good practices.

Member States should ensure that laws that could restrict civil society space to operate comply with EU law and international human rights standards and principles, such as the UN Declaration on Human Rights Defenders. They should consult transparently a wide range of CSOs when drafting and implementing legislation that may potentially affect them.

EU institutions could explore the added value of harmonising the basic rules for the functioning of CSOs in the EU internal market.

Accessing and using funding

Finding and accessing resources and funding remains an ongoing concern for CSOs, which the Covid-19 pandemic aggravated in 2020. In total, 60 % of respondents to FRA's 2020 civic space consultation report experiencing difficulties in finding funding, despite some efforts in improving financing frameworks in several Member States. If funding is available, CSOs face hurdles to accessing it.

The challenges reported in the civic space consultation range from competition with other CSOs for limited funds (49 %), to limited administrative capacity to apply for funding (35 %), a lack of transparency and fairness in funding allocation (30 %), and restrictive eligibility criteria (29 %). CSOs also report a number of pandemic-related issues, such as the diversion of public funds to other priorities, a decrease in private donations and the inability to organise fundraising events, and a decline in in-kind contributions such as volunteering.

Civil society actors report, in a number of Member States, discriminatory or restrictive funding practices affecting, in particular, CSOs working on gender equality and lesbian, gay, bisexual, transgender and intersex (LGBTI) rights, as well as those working with migrant communities and religious minorities; these practices may affect the implementation of the EU strategies adopted in these areas.

Advocacy organisations generally seem to be affected more than CSOs providing services. Furthermore, CSOs in at least eight Member States are concerned about laws that introduce new restrictions on foreign donations and stricter rules on reporting for CSOs benefiting from foreign funding; for one country, these have led to a ruling by the European Court of Justice.

Some positive developments have also been identified. A number of EU Member States have improved their general financing frameworks, whereas others have explored a more favourable taxation framework for CSOs. Several Member States have set up targeted support schemes for CSOs to counter the effects of the Covid-19 pandemic. CSOs have welcomed the new **EU Citizens, Equality, Rights and Values programme**, which has a significantly increased budget for the 2021–2027 period compared with previous financing. The **Norway Grants' Active Citizens Fund**, administered through independent fund operators, provides essential support to CSOs in 13 EU Member States.



The Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights and Venice Commission guidelines on freedom of association note that “the ability to seek, secure and use resources is essential to the existence and operation of any association”. Access to and use of funding provide associations with the means to operate and pursue their missions and are therefore an inherent element of the right to freedom of association.

Improving civil society participation

According to FRA research, as well as civil society reports, despite efforts in some Member States to improve consultation with civil society, channels for CSOs’ access to and participation in decision-making remain patchy overall and are often not properly supported by access to relevant information or clear standards or guidelines.

FRA’s civic space consultations have consistently shown that CSOs are concerned about their access to and participation in decision-making processes. FRA’s 2020 civic space consultation shows that these concerns refer, in particular, to a lack of adequate information about participation and consultation processes (46 %), a lack of trust between civil society and public authorities (35 %), a lack of feedback on what happened with the input provided, and different obstacles, including discriminatory ones, to accessing and participating in decision-making processes (24 %).

Most Member States’ widespread use of fast-track and emergency legislative procedures during the pandemic exacerbated existing issues. CSOs also claim that minorities and vulnerable groups are often not adequately represented in consultations.

FRA’s research has identified some efforts to improve consultation processes, such as opening up previously closed processes to consultations, and some progress on the creation of an infrastructure for facilitating CSOs’ cooperation with national authorities and their participation in the development of policies and strategies. EU



FRA OPINION 3

The European Commission should consider the funding needs of civil society when reviewing national programmes on the disbursement of EU funds under shared management, including the European Structural and Investment Funds (ESIF) and the NextGenerationEU recovery plan. It should monitor how funds are disbursed to CSOs and offer Member States guidance on and training in involving CSOs more effectively.

Member States should draw on the expertise of civil society when monitoring the enabling conditions related to fundamental rights under the Common Provisions Regulation for the shared management of EU funds, including the horizontal enabling conditions related to the EU Charter of Fundamental Rights and the Convention on the Rights of Persons with Disabilities, as well as – where applicable – the thematic enabling conditions related to gender equality, Roma inclusion, etc.

The European Commission should continue observing national rules regulating access to and use of foreign funding by CSOs in the light of relevant EU provisions and the recent Court of Justice of the European Union judgment, including the free movement of capital within the EU, and offer Member States, with the involvement of CSOs, a space for exchanging information and good practices in this area.

EU institutions and Member States should ensure that the legal and policy environment is conducive to the possibility of CSOs having access to diverse pools of resources and that they face no undue obstacles when accessing funding from domestic or foreign sources, including through the use of technologies. Financial support offered should cover the full range of civil society activities, including advocacy, community engagement and civil society development. Beyond project funding, infrastructure core funding and multiannual funding cycles would strengthen the civil society sector and ensure the sustainability of civil society’s human rights work.

action can serve as a catalyst in this regard, as many EU strategies require the adoption of national action plans. For this, the involvement of CSOs is considered good practice.

FRA OPINION 4

With a view to implementing Article 11 of the TEU, the EU could consider the establishment of an EU policy framework allowing for an open, transparent and regular dialogue between the EU institutions and civil society at EU, national and local levels. Such a framework should include the appropriate means allowing citizens and representative associations to make known and publicly exchange their views in all areas of Union action.

Such means could include funding for appropriate processes, training of officials, and the regular organisation of civil society consultations and exchanges, including through the representations of the European Commission and the European Parliament in the Member States. The framework should facilitate the participation of civil society in consultations all along the policy cycle on EU law and policy. Emphasis should, in this regard, be given to access to information and the participation of CSOs representing vulnerable and underrepresented groups.

Guidance for developing such a framework is provided by the Council of Europe Guidelines for civil participation in political decision-making. When following up on the recent fundamental rights-relevant EU action plans, strategies and other policy frameworks, including on the implementation of the EU Charter of Fundamental Rights and in the areas of anti-racism, LGBTIQ+ equality, Roma inclusion, children's rights, disability, victims' rights, gender equality and migrant integration, the Member States should be urged to integrate the results of these consultations, as well as future outcomes of the Conference on the Future of Europe and the European Democracy Action Plan.

The participation of civil society in policy and decision-making processes is an indicator of democracy and contributes to the quality and effectiveness of laws and policies. Article 11 of the Treaty on European Union (TEU) defines civil dialogue as an essential component of participatory democracy and requires EU institutions to "give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action" and to "maintain an open, transparent and regular dialogue with representative associations and civil society". The Conference on the Future of Europe and the European Democracy Action Plan potentially provide ways to enhance participation in the EU.

Ensuring a safe space free from harassment and attacks

International human rights law guarantees people the rights to life, liberty and security of person, to participate in public affairs, and to be free from any undue interference in their enjoyment of the freedoms of expression, assembly and association. All EU Member States have signed up to the Sustainable Development Goals that are relevant to human rights defenders.

However, FRA evidence and evidence from other organisations show that threats and attacks against CSOs and human rights defenders, as well as against journalists, bloggers and whistle-blowers, persist in the EU. These include frequent online and offline threats and harassment (as many as 40 % of respondents to FRA's civic space consultation 2020 report online attacks and 26 % report offline attacks), as well as vandalism of premises and property (8 %) and physical attacks (4 % of respondents). In addition, there are high rates of underreporting (less than one in three report such attacks), and CSOs express frustration at how the authorities are dealing with incidents.

In several Member States, CSOs complain about a climate of hostility towards them and human rights defenders; more than one third of CSOs report smear campaigns by media outlets or state actors. In contrast, in other Member States, governments, politicians and high-level officials have highlighted the vital role of human rights defenders and other civil society actors in promoting rights and ensuring accountability, including in particular during the Covid-19 pandemic.

Organisations and human rights defenders particularly affected are those working with minority groups, refugees and other migrants, those working against racism, and those working for women's rights and sexual and reproductive health rights, and LGBTI rights. The lack of a safe environment for CSOs to fulfil their functions has a potential impact on the implementation of the related EU strategies. At the same time, evidence indicates continued criminalisation of and legal actions against civil society activity, notably in search and rescue (SAR) at sea and humanitarian assistance for those in need while on the move.

Legal and administrative harassment, in particular through abusive prosecutions and strategic lawsuits against public participation (SLAPPs), is also noted. The European Commission announced in its European Democracy Action Plan that it has commissioned a comprehensive study on how SLAPPs affect watchdogs, including CSOs and civil society activists across the EU, and will on that basis propose an initiative to counter SLAPPs.



FRA OPINION 5

The European Commission should include reference to attacks against human rights defenders in its reporting under the Framework Decision on combating certain forms and expressions of racism and xenophobia, when monitoring and assessing EU rules and tools to protect the rights of victims of crime, and when revising EU provisions on combating hate speech and hate crime.

The European Commission should ensure that its upcoming initiative on SLAPPs offers effective protection to CSOs and human rights defenders against legal harassment. Such protection could include uniform procedural safeguards against abusive lawsuits, provisions precluding libel tourism and forum shopping, and the obligation to provide assistance and support to victims of SLAPPs. The European Commission and Member States should use their respective means to raise awareness among justice authorities and practitioners of the negative impact of SLAPP practices.

Building on the example of the existing external EU human rights defenders mechanism protectdefenders.eu, the EU could consider providing appropriate financial support for the creation and maintenance of a similar monitoring mechanism in the EU, allowing CSOs and human rights defenders to report attacks, register alerts, map trends and provide timely and targeted support to victims.

Member States should ensure that crimes committed against CSOs and human rights defenders are properly recorded, investigated and prosecuted, including under applicable hate crime provisions where relevant. Politicians and policymakers could contribute to developing a positive narrative about civil society and highlight its important role, avoiding statements that could fuel hostility towards CSOs and human rights defenders and have a chilling effect on their human rights work.

Member States should refrain from criminalising or taking similar legal actions that hamper the operation of CSOs in the context of humanitarian assistance for asylum seekers and other migrants and during search and rescue at sea.



FRA's work on civic space

FRA is mandated to provide the relevant institutions, bodies, offices and agencies of the EU and its Member States (when acting within the scope of EU law) with assistance and expertise relating to fundamental rights, through a range of different tools.

In this context, FRA is tasked with cooperating with a range of stakeholders, including non-governmental organisations and civil society institutions active in the field of fundamental rights,^a through its Fundamental Rights Platform. Through this platform,^b CSOs provide useful input to and feedback on the agency's work, and on the developments of the enabling conditions and space to operate for CSOs and the related EU legal and policy framework in the area of fundamental rights.

Based on research that Franet^c carried out, FRA's 2018 report on **Challenges facing civil society organisations working on human rights in the EU** identified a number of challenges facing civil society – for example, aspects of government regulatory work, availability of funding, possibilities of contributing to law making and policymaking, and harassment and negative discourses undermining the work of civil society.

In 2020, the agency again asked its research network, Franet, to provide information about legal and policy developments related to an enabling space for human rights civil society in all EU Member States, as well as in the accession countries of North Macedonia and Serbia. The information covered the year 2020.

Moreover, since 2018, the agency has annually consulted the civil society actors participating in its Fundamental Rights Platform on their experiences. In total, 398 CSOs working on human rights from all 27 EU Member States, including 50 EU-level umbrella organisations, responded to the online consultation on civic space covering the year 2020.^d These organisations are active at international, EU, national or local level and work in a range of different areas, including advocacy, campaigning and awareness raising, service provision, community engagement, victim support, research and data collection, and litigation.

To collect more specific responses on the impact of Covid-19, FRA conducted an additional online consultation covering March to November 2020.^e In total, 177 CSOs from across the EU responded; 35 of these were umbrella organisations that were active at EU level.

In addition, FRA hosted a number of expert meetings and exchanges with relevant CSOs active in the area of human rights, notably the annual Fundamental Rights Platform online meeting 'Human rights work in challenging times: Ways forward' in February 2021. This meeting, which brought together over 300 CSOs from across the EU, provided additional information as regards the challenges and opportunities civil society actors experience in their work.^f

^a See **Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ 2007 L 53 (Founding Regulation).**

^b For more information about FRA's Fundamental Rights Platform, see the agency's **dedicated webpage**.

^c **Franet** is the agency's multidisciplinary research network. It is composed of contractors in each EU Member State, in the United Kingdom and in countries that have observer status who, on request, provide relevant data to FRA on fundamental rights issues, to facilitate the agency's comparative analyses.

^d See **questionnaire** for 'FRA 2020 consultation on experiences of civil society organisations working on human rights in the EU'.

^e See FRA (2021), **'Covid-impact on civil society work – Results of consultation with FRA's Fundamental Rights Platform'**, 24 February 2021.

^f FRA (2021), **Human rights work in challenging times: Ways forward – Report of the meeting of FRA's Fundamental Rights Platform 2021**.

1

OVERALL CHALLENGES AND OPPORTUNITIES FOR CIVIL SOCIETY ACROSS THE EU

1.1. CONTRIBUTIONS OF CIVIL SOCIETY TO FUNDAMENTAL RIGHTS IN THE EU

Civil society actors often play an important role in bringing to life the values shared by the EU and its Member States (Article 2 of the TEU). Their key role is reflected in the importance that the EU Treaties give to civil dialogue and civil society participation as tools for good governance.¹

It is also reflected in recent policy documents guiding the EU's action to promote and protect fundamental rights, such as the EU Strategy to strengthen the application of the Charter of Fundamental Rights of the EU,² and relevant sectorial action plans in the areas of anti-racism, LGBTQI+ equality, Roma inclusion, children's rights, disability, victims' rights, women's rights and migrant integration. These documents variably refer to free and active civil society as a key party in promoting fundamental rights.

Civil society actors are considered key in promoting awareness of the EU Charter of Fundamental Rights and a culture of values.³ They are an essential component of a strong rule of law ecosystem,⁴ and a precondition for healthy democracies.⁵

The promotion of a vivid and strong civil society is also part of the EU's global human rights policy. The Council of the European Union, in 2021, renewed its support for human rights defenders and civil society organisations (CSOs). It also committed itself to strengthening its support to create an enabling environment for civil society and to oppose disproportionate legal and administrative restrictions on CSOs that limit their ability to operate.⁶

The EU guidelines on human rights defenders provide practical suggestions for enhancing EU action in supporting human rights defenders.⁷

Under its European Neighbourhood Instrument, the European Commission has supported the development of a 'CSO Meter' to assess the civil society environment in Eastern Partnership countries.⁸ A conducive environment for civil society, partnership and dialogue between civil society and public institutions, and CSO resilience and capacity are the priorities of the Directorate-General for Neighbourhood and Enlargement Negotiations' *Guidelines for EU support to civil society in enlargement countries*; these guidelines were developed in consultation with civil society. The guidelines provide a results-oriented strategic framework with indicators, targets and benchmarks, against which each country is monitored annually. The outcomes feed into the Commission's annual enlargement country reports.⁹



SUSTAINABLE DEVELOPMENT GOALS



International and regional human rights organisations, including the United Nations (UN)¹⁰ and its Human Rights Council,¹¹ the Office of the UN High Commissioner for Human Rights (OHCHR),¹² the Council of Europe,¹³ the Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR),¹⁴ and the Organisation for Economic Co-operation and Development (OECD),¹⁵ all underline the key role that civil society actors and rights defenders play in developing and safeguarding human rights and democracy.

CSOs do this by working directly with and supporting rights holders and vulnerable groups, providing essential services, engaging and empowering citizens on a wide range of social and human rights issues, monitoring respect for human rights and freedoms, advocating rights-compliant legal and policy responses, and promoting transparency and accountability of public authorities.

In addition, especially during the Covid-19 pandemic, diverse civil society actors have helped in many different ways, by providing services and community support, informing public policies and keeping institutions accountable.¹⁶

The UN Special Rapporteur on the freedom of peaceful assembly and of association has recently recalled the importance of civil society space for achieving the 2030 Agenda for Sustainable Development.¹⁷

1.2. CHALLENGES INCREASINGLY AFFECTING CIVIL SOCIETY SPACE

Civil society actors and rights defenders play a key role in developing and safeguarding human rights and democracy. To be able to fulfil this role, civil society needs an enabling space. Key elements in this regard include a legal framework enabling CSOs to carry out their work, a sustainable financing framework, access to participation in decision-making processes, and a safe space to operate. Norms and practices concerning their space to operate have positive as well as negative implications for the implementation of EU legislation and policies in the area of human rights, as well as for the application of the EU Charter of Fundamental Rights.

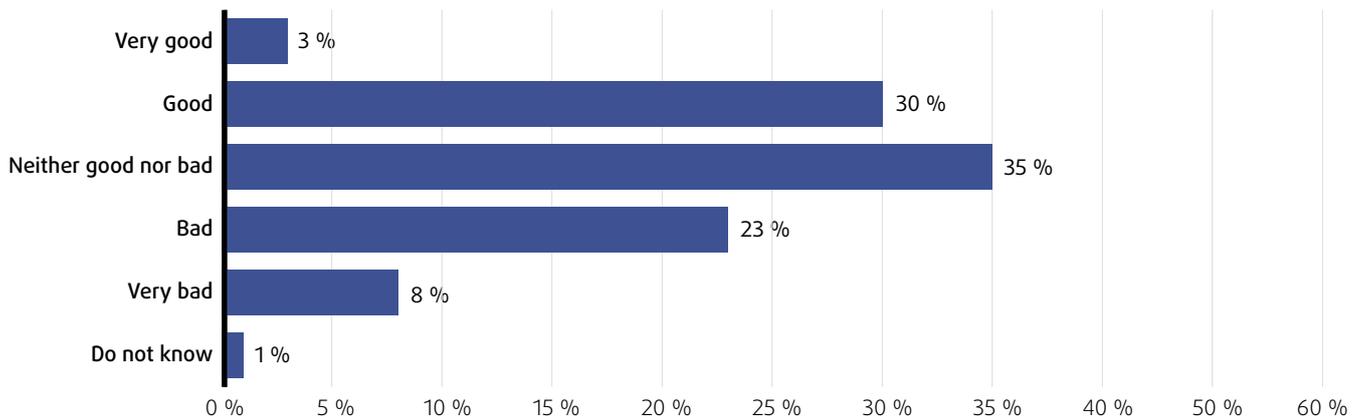
FRA research has pointed to a number of difficulties facing CSOs in the EU in regard to each of these elements.¹⁸ Recent reports by international organisations, EU institutions and CSOs¹⁹ have echoed FRA's findings and point to a further deterioration in the situation in the EU in recent years. Hate speech and attacks targeting ethnic and religious minorities, women, migrants, human rights defenders and lesbian, gay, bisexual, transgender, intersex and 'other' (LGBTI+) people, sometimes in connection with nationalist and extremist rhetoric, has a particular impact on CSOs and rights defenders engaging in the support for and protection of the targeted groups.²⁰

Other actors who play a role in monitoring and raising awareness of human rights protection and promotion, such as National Human Rights Institutions (NHRIs),²¹ equality bodies,²² and media and journalists,²³ are reporting similar challenges.

“Civil society is more essential than ever [...] yet we are under pressure from all sides [...] It is unsustainable and creating unprecedented situations of burnout for people who work tirelessly for social change, not for profit.”

(Respondent to FRA's civic space consultation 2020)

FIGURE 1: GENERAL CONDITIONS FOR CSOS WORKING ON HUMAN RIGHTS IN THE EU AT NATIONAL AND LOCAL LEVELS



Source: FRA, civic space consultation, 2020

▲ Note:

Question: “How would you describe in general the conditions for civil society organisations working on human rights in your country today?”; N=299.

These concerns are reflected in the responses to FRA’s three annual online consultations (2018, 2019, 2020) with CSOs.²⁴ The responses suggest that the general situation for CSOs in the EU was more difficult in 2020 than in past years; the impact of the Covid-19 pandemic and the measures to constrain its spread also affected the situation in 2020. Almost one third (31 %) of responding organisations reported that the conditions in which they worked were ‘bad’ or ‘very bad’ in 2020.²⁵ (Figure 1).

“The solidarity should be rising and be supported by authorities but is not, the government incites the division (us, them). I am in constant attention not to do or say something they could take as an attack on them [...]. And this is not freedom [...].”

(Respondent to FRA’s civic space consultation 2020)

At the same time, the vast majority of responding organisations to FRA’s consultation from Austria, Belgium, Denmark, Finland, Germany, Ireland, Lithuania, Luxembourg, the Netherlands, Portugal and Sweden indicated that the general conditions for CSOs working on human rights in their country were ‘good’ or ‘very good’ in 2020.

The responses further expose a deterioration in the situation compared with previous years; more than one third of respondents (37 %) out of all responding organisations working at local, national, EU and international levels say that, in 2020, the situation for their own organisation ‘deteriorated’ or ‘greatly deteriorated’ (Figure 2). The proportion is even higher (57 %) for CSOs working at local or national level.²⁶

PROMISING PRACTICE

Training CSOs on raising awareness of their key role and framing responses to attacks

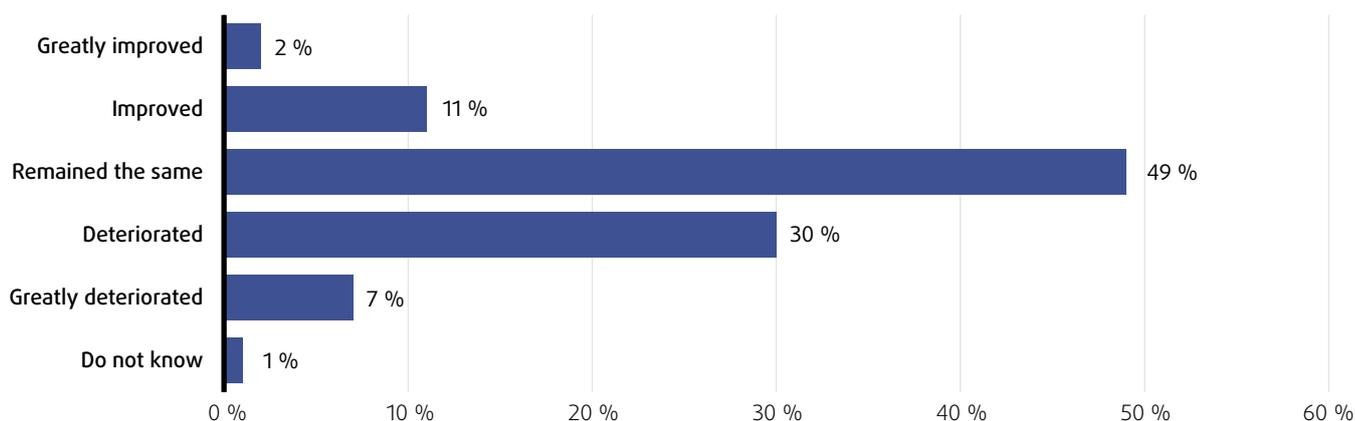
The Civil Liberties Union for Europe (Liberties) is developing a specific guide on civic space in the context of the training and support it offers to human rights organisations in values-based framing and strategic communications.*

The guide advises CSOs on ways to improve how they communicate their goals and their work, so that they can

better connect with what matters to people, and better respond to attacks and smear campaigns. Building on this guide, Liberties offers workshops and targeted support to train and coach CSOs and their staff to apply their guidance to their communications and campaigns.

* The guide is forthcoming and will be available on Liberties’ [website](#).

FIGURE 2: PERCEIVED CHANGE IN SITUATION OF RESPONDENTS' OWN ORGANISATIONS IN 2020



Source: FRA, civic space consultation, 2020

Beyond the EU: civic space in North Macedonia and Serbia

CSOs in North Macedonia and Serbia are facing similar issues to those in the EU. They point to certain institutional developments that can support efforts to improve the enabling environment for CSOs, such as the creation in North Macedonia of a new advisory Council for Cooperation with and Development of the Civil Society Sector.

Still, in both countries they report several challenges which affect their ability to carry out their work. These include restrictions to the exercise of civic freedoms including freedom of expression and of information and freedom of peaceful assembly, insufficient funding, as well as attacks and smear campaigns against CSOs and human rights defenders.*

**For more information on this and other aspects, see the Franet report on Serbia and the Franet report on North Macedonia (available on FRA's website).*

▲ **Note:**

Question: "Thinking about your own organisation, how has its situation changed in the past 12 months?"; N=398.

1.3. COVID-19 EXACERBATES CHALLENGES FACING CIVIL SOCIETY

FRA's research on the impact of Covid-19-related measures,²⁷ its dedicated consultation with CSOs on their experiences with measures to curb the spread of the pandemic,²⁸ and Franet's reporting²⁹ show the important role that civil society plays in monitoring and shaping authorities' responses to the Covid-19 pandemic, promoting access to basic services for all, and responding to urgent needs. The OHCHR has also recognised this important role.³⁰



Civil society activities have included citizen-led initiatives to help, for example, as reported in various national Franet reports, by distributing medicines and groceries, and marginalised and rural communities, such as in Croatia³¹ and Portugal,³² as well as awareness raising initiatives on the impact of measures adopted to counter the pandemic on human rights protection. For instance, in Austria, as in several other countries, the crisis inspired various coalition building initiatives between civil society and the media, especially those aimed at providing material assistance to vulnerable people who were affected by the pandemic.³³ In some countries, such recognition translated into enhanced cooperation and targeted support (see also below the promising practices about providing dedicated support to civil society during the pandemic).

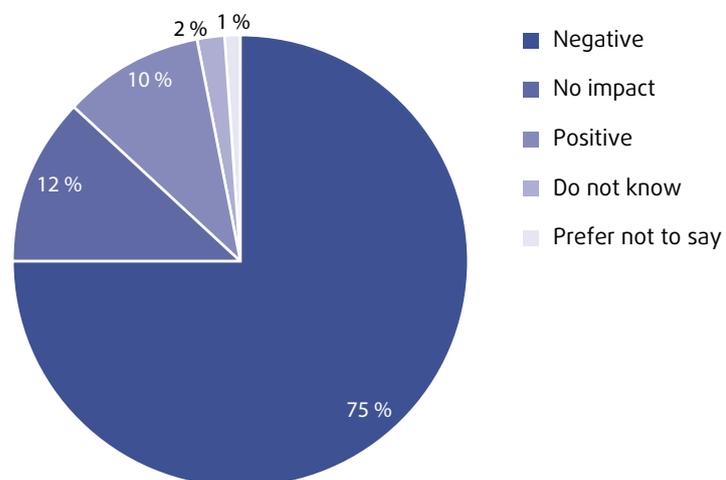
However, overall, the social and economic impact of the pandemic and restrictions brought about by the measures adopted to contain the spread of the virus exacerbated the challenges that CSOs are facing. International human rights bodies, such as the UN Rapporteur on the rights to freedom of peaceful assembly and of association, warned governments across the world to ensure that responses to the Covid-19 pandemic did not result in restrictions that were disproportionate to civil society space.³⁴

Despite such warnings, numerous reports have pointed to increased difficulties facing CSOs, including in the EU, when carrying out their work.³⁵ The research that FRA conducted in 2020 also shows that, compared with 2019, the general situation for CSOs in the EU, influenced by the pandemic, has deteriorated.

FRA’s dedicated online survey of 177 CSOs on the impact of Covid-19 on fundamental rights indicates that three in four CSOs (75 %) say that the impact of measures taken to contain the Covid-19 pandemic on their operations and activities is negative. At the same time, 75 % find the measures to contain the pandemic overall justified, despite the impact on their work, and more than half (56 %) consider these measures to be proportionate (Figures 3–5).³⁶

Many of the challenges reported by CSOs are linked to the pandemic and measures taken to tackle it.³⁷ They are mainly linked to the following three main areas: day-to-day work being undermined by limited outreach opportunities and physical access to beneficiaries; reduced funding; and limits on participation in decision-making.

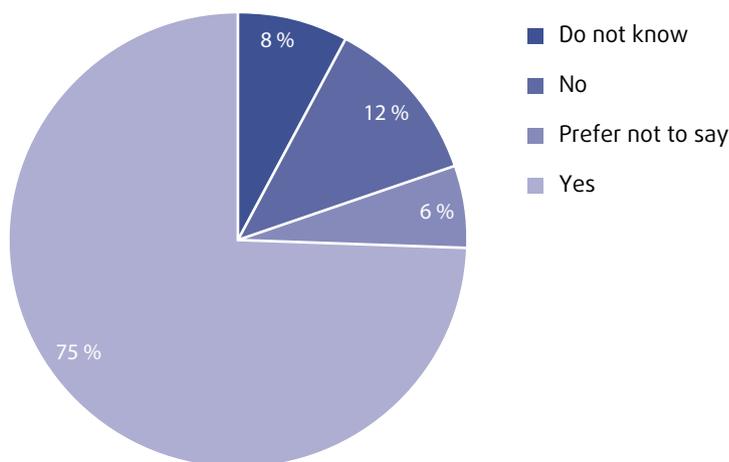
FIGURE 3: PERCEIVED IMPACT OF COVID-19-RELATED MEASURES ON ORGANISATIONS’ OPERATIONS SINCE MARCH 2020



Note: Question: “Looking back over the past year, would you say that the impact of measures taken to contain the Covid-19 pandemic on your operations and activities since March 2020 was: negative; no impact; positive; do not know; prefer not to say”; N=177.

Source: FRA, Covid-19 impact consultation, 2020

FIGURE 4: PERCEIVED LEVELS OF JUSTIFICATION FOR COVID-19-RELATED MEASURES

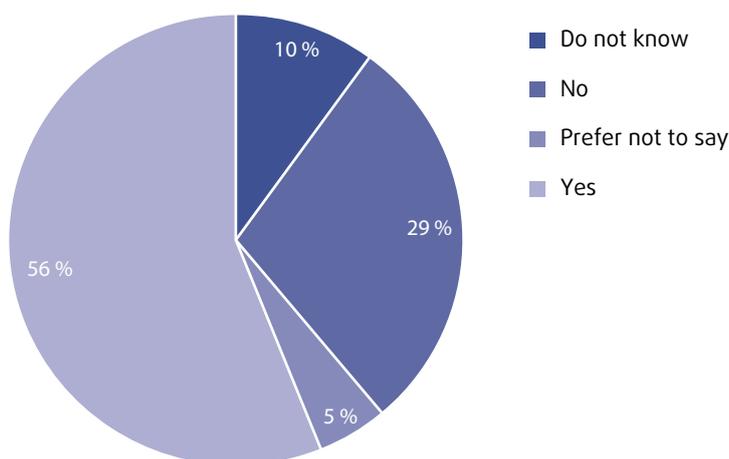


Source: FRA, Covid-19 impact consultation, 2020

◀ Note:

Question: "Do you think that measures to contain the Covid-19 pandemic, despite their impact on your work, are overall justified?"; N=177.

FIGURE 5: PERCEIVED LEVELS OF PROPORTIONALITY OF COVID-19-RELATED MEASURES



Source: FRA, Covid-19 impact consultation, 2020

◀ Note:

Question: "Do you think that measures to contain the Covid-19 pandemic, despite their impact on your work, are overall proportionate?"; N = 177.

Day-to-day work

Outreach and physical access to beneficiaries was severely affected by physical distancing and free movement restrictions. In total, 68 % of respondents to FRA's 2020 Covid-19 impact consultation said their work suffered from restrictions of physical access to beneficiaries 'every time' or 'often', and 67 % said they were facing challenges in ensuring continuity in the provision of regular services to their beneficiaries 'every time' or 'often'.³⁸ This has particularly affected people in a vulnerable situation, including because they lack access to digital tools and the internet.

CSOs have also been facing obstacles in the implementation of project activities, including as a result of travel bans and restrictions on free movement, and social distancing rules and the inability to hold physical meetings. As many as 90 % of respondents to FRA's Covid-19 consultation said they had to cancel or postpone activities, events or campaigns 'every time' or 'often', and 35 % said they faced legal problems with keeping deadlines for project implementation 'every time' or 'often'.³⁹

"The restrictions were exacerbated by digital exclusion as digital technology platforms used by many to communicate during the pandemic lockdown periods, are largely inaccessible to [our beneficiaries]."

(Respondent to FRA's Covid-19 impact consultation 2020)

“Civil society was completely left out of pandemic-response relief schemes [...] in spite of promises.”

(Respondent to FRA’s civic space consultation 2020)

Reduced funding

Against the background of a widely reported sharp decrease in private donations and other important sources of funding, such as those linked to tax revenues in some countries, CSOs did not benefit, in most Member States, from dedicated recovery funding, according to Franet research.⁴⁰ On the contrary, in some countries, CSOs were even excluded from compensation schemes awarded to the private sector or were threatened through substantive cuts in public funding.

PROMISING PRACTICE

Providing dedicated support to civil society during the pandemic

Member States supported CSOs in different ways during the Covid-19 pandemic. A range of countries set up dedicated support for CSOs. These include **Austria**,^a **Denmark**,^b **Germany**,^c **Finland**,^d **Ireland**,^e **Italy**,^f **Latvia**,^g **Lithuania**,^h **Luxembourg**,ⁱ **Malta**,^j **Poland**,^k **Slovakia**^l and **Sweden**.^m

This support took on various forms. Some involved dedicated funding for organisations to address the pandemic directly – such as one-off cash injections for organisations delivering front line services; covering the costs of necessary supplies (face masks, disinfectants, etc.); or covering the costs of support activities related to counteracting Covid-19, such as providing healthcare services or providing services to vulnerable and marginalised people. Other forms of support involved direct support for organisations to compensate for loss of income and to pay employee salaries.

^a *Civicus (2020), ‘Austria civic space rating upgraded to open’, 15 September 2020.*

^b *Denmark, Ministry of Social Affairs and the Interior (Social og Indenrigsministeriet) (2020), Political agreement on initiatives on vulnerable groups in relation to Covid-19 of 25 April 2020 (Aftale om initiativer for sårbare og udsatte grupper i forbindelse med Covid-19); Ministry of Social Affairs and Interior (Social og Indenrigsministeriet) (2020), ‘Bredt politisk flertal enige om hjælpepakke*

til sociale organisationer’, press release, 7 April 2020; dedicated webpage of the Danish Welfare Authority (Socialstyrelsen) (in Danish).

^c *Germany, German Foundation for Civic Engagement and Volunteering (2020), Joint Impact Support Programme in times of corona (2020).*

^d *Finland, Ministry of Social Affairs and Health (2020), ‘Additional funding to be granted to organisations and foundations in health and social services sector in an effort to prevent effects of Covid-19 epidemic on people’, press release, 28 May 2020.*

^e *Ireland, Department of Rural and Community Development (2020), Covid-19 Stability Fund for Community and Voluntary, Charity and Social Enterprises.*

^f *These measures are described in detail in a document issued by the Chamber of Deputies on 22 October 2020.*

^g *Latvia, Society Integration Foundation (Sabiedrības integrācijas fonds) (2021), ‘Covid-19 radīto seku mazināšanai finansējumu saņem 21 NVO projekts’, press release, 26 February 2021.*

^h *Lithuania, Ministry of Social Affairs and Labour (Socialinės apsaugos ir darbo ministerija) (2020), Order of the Minister of Social Affairs and Labour (Socialinės apsaugos ir darbo ministro įsakymas). See also the statistical data on Covid-19 measures.*

ⁱ *Luxembourg, CLAE (2020), Investigation into the associative difficulties linked to*

the Covid-19 pandemic in Luxembourg (Enquête sur les difficultés associatives liées à la pandémie du Covid-19 au Luxembourg).

^j *Malta, Council for Voluntary Sector (2020), Operational Assistance Scheme for VOs.*

^k *Poland (2021), ‘Program Wsparcia Doroznego Organizacji Pozarządowych w zakresie przeciwdziałania skutkom Covid-19’.*

^l *Slovakia, Ministry of Investments, Regional Development and Informatization (2020), ‘Remišová rozdelila mimovládny organizáciám na boj s Covidom 1,1 milióna Eur’, 4 November 2020.*

^m *Sweden, Ministry of Employment (Arbetsmarknadsdepartementet) (2020), ‘National Board of Health and Welfare to distribute SEK 100 million to civil society organisations to meet increased vulnerability due to the coronavirus’ (‘Socialstyrelsen fördelar 100 miljoner kronor till ideella organisationer för att möta ökad utsatthet med anledning av coronaviruset’), press release, 30 April 2020; and Ministry of Culture (Kulturdepartementet) 100 million to measures for persons in special social vulnerability and against loneliness among the elderly during the corona pandemic (100 miljoner till insatser för människor i särskild social utsatthet och mot äldres ensamhet under coronapandemin) press release, 12 May 2020.*



PROMISING PRACTICE

Joining forces to build resilience

In **Sweden**, a coalition of CSOs working across different areas launched the project Nysta. The project looks into the societal challenges brought about or exacerbated by the pandemic. The aim is to develop concrete proposals for policymakers that will form the basis of a “new social contract”.*

**For more information see the project’s [webpage](#).*

In Slovenia, for example, as part of a package of measures to promote recovery, the government proposed to abolish the fund for the development of non-governmental organisations (NGOs);⁴¹ however, this was rejected by the parliament⁴² after significant mobilisation⁴³ of civil society.

Elsewhere, CSOs could benefit from subsidies made available to economic operators or some specific forms of support, such as for rent. In some countries, targeted resources were made available to support CSOs that were active in the provision of certain services or economic activities.

Participation

CSOs responding to the FRA civic space and FRA Covid-19 impact consultations reported that the Covid-19 crisis led to increasingly limited consultations, reduced access to decision-making and restrictions on access to information.⁴⁴ With a few exceptions, the preparation of national recovery plans in the context of the EU recovery package also did not engage civil society actors, exposing a range of issues as regards transparency, inclusiveness and the participation of civil society.⁴⁵

However, there are examples in which authorities have made efforts to increase consultation and participation of CSOs in decision-making during the Covid-19 pandemic.

Surveys on the impact of Covid-19 on the civil society sector conducted in several EU Member States, such as **Bulgaria**,⁴⁶ **Latvia**,⁴⁷ **Luxembourg**,⁴⁸ **Spain**⁴⁹ and **Sweden**⁵⁰ have pointed to similar perceptions. Against this background, CSOs are intensifying their cooperation, sharing knowledge and resources to build resilience against the consequences of the crisis.

“The emergency measures added more opacity to the decision-making process, making the engagement with the authorities really problematic.”

(Respondent to FRA’s Covid-19 impact consultation)

Endnotes

- 1 Article 11 (2) of the TEU and Article 15 (1) of the Treaty on the Functioning of the European Union (TFEU).
- 2 European Commission (2020), *Strategy to strengthen the application of the Charter of Fundamental Rights in the EU*, COM(2020) 711 final, Brussels, 2 December 2020, p. 10.
- 3 *Ibid.* See also European Economic and Social Committee (2021), *Opinion: New strategy for the implementation of the Charter of Fundamental Rights*, 10 June 2021.
- 4 European Commission (2020), *2020 Rule of Law Report – The rule of law situation in the European Union*, COM(2020)580 final, 30 September 2020, p. 4.
- 5 European Commission (2020), *The European Democracy Action Plan*, COM(2020) 790 final, Brussels, 3 December 2020, p. 3.
- 6 Council of the European Union, *Council Conclusions on EU priorities in UN human rights fora in 2021*, 6326/21, Brussels, 22 February 2021.
- 7 Council of the European Union (2008), *Ensuring protection – European Union guidelines on human rights defenders*.
- 8 CSO Meter, *'CSO Meter: Assessing the civil society environment in the Eastern Partnership countries'*.
- 9 See European Commission (2013), *Guidelines for EU support to civil society in enlargement countries, 2014-2020*. On this basis, the European Commission is currently developing new guidelines, which will be published in the coming months.
- 10 See, for example, UN (1999), *Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms (UN Declaration on Human Rights Defenders)*, 8 March 1999.
- 11 See, for example, UN, Human Rights Committee (2016), *Resolution on civil society space*, A/HRC/32/L.39, 27 June 2016.
- 12 See, for example, UN (2020), *United Nations guidance note: Protection and promotion of civic space*.
- 13 See Council of Europe, Committee of Ministers (2018), *Recommendation CM/Rec(2018)11 of the Committee of Ministers to member states on the need to strengthen the protection and promotion of civil society space in Europe*, 28 November 2018.
- 14 See, for example, OSCE (2017), *'The responsibility of states': Protection of human rights defenders in the OSCE region (2014-2016)*, Helsinki, OSCE.
- 15 CSO, *'CSO Meter: Assessing the civil society environment in the Eastern Partnership countries'*.
- 16 See also European Civic Forum (2020), *Activizeship – Civic Space Watch report 2020 – Stories from the lockdown*.
- 17 UN, General Assembly (2018), *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, A/73/279, 7 August 2018. See also UN, General Assembly (2019), *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association: Civic space, poverty and exclusion*, A/74/349, 11 September 2019; and UN, OHCHR (2015), *'A central role for a civil society is the only way to guarantee inclusive post-2015 development goals'*, 18 May 2015.
- 18 See in particular FRA (2018), *Challenges facing civil society organisations working on human rights in the EU*; FRA (2018), *'Civil society space – Views of organisations'*; FRA (2019), *'Civic space – Experiences of organisations in 2019'*; FRA (2020), *Submission to the European Commission in the context of the preparation of the first annual Rule of Law Report*; and FRA (2020), *'FRA 2020 consultation on experiences of civil society organisations working on human rights in the EU'*.
- 19 See, for example, OSCE (2021), *The situation of Human Rights Defenders in Selected OSCE Participating States*; Civicus (2020), *People power under attack 2020*; Civil Society Europe (2011), *Civil Society Europe Contribution to the 2021 rule of law report – Target stakeholder consultation*; European Civic Forum (2020), *Activizeship – Civic Space Watch report 2020 – Stories from lockdown*; and European Civic Forum (2021), *Response to the European Commission stakeholders' consultation on the rule of law in the European Union*.
- 20 See, for example, Specialised Cyber-Activists Network (SCAN) Project, *Hate speech trends during the Covid-19 pandemic in a digital and globalised age*.
- 21 FRA (2020), *Strong and effective national human rights institutions – Challenges, promising practices and opportunities*; European Network of National Human Rights Institutions (2020), *State of the rule of law in Europe*; European Network of National Human Rights Institutions (2021), *State of the rule of law in the European Union*.
- 22 European Network of Equality Bodies (Equinet), *'Legislating for stronger, more effective equality bodies: Recommendations for future EU legislation'*.
- 23 Index on Censorship (2018), *Demonising the media: Threats to journalists in Europe*.
- 24 FRA (2020), *'FRA 2020 consultation on experiences of civil society organisations working on human rights in the EU'*. Data collection was carried out from 7 December 2020 to 20 January 2021, and there were 398 respondents. FRA (2019), *'Civic space – Experiences of organisations in 2019'*. FRA (2018), *'Civil society space – Views of organisations'*.
- 25 FRA (2020), *'FRA 2020 consultation on experiences of civil society organisations working on human rights in the EU'*.
- 26 *Ibid.*
- 27 See *FRA's Covid-19 bulletins*.
- 28 FRA (2021), *'Covid-impact on civil society work – Results of consultation with FRA's Fundamental Rights Platform'*, 24 February 2021.
- 29 See all national Franet 2020 reports on FRA's [website](#).
- 30 See UN OHCHR (2020), *'Civic space and COVID-19: Guidance'*, 4 May 2020. A repository of civil society initiatives across the EU during the pandemic has been created by the European Civic Forum within its Civic Space Watch project, *'Solidarity amid the COVID-19 crisis'*.
- 31 Večernji list news portal (2020), *'Initiative Jedni za druge has a free hotline'*, 19 March 2020.
- 32 Observador (2020), *'Anti-Poverty Network distributed 500 hygiene kits to Roma communities' ('Rede Anti-Pobreza distribuiu 500 kits higiene por comunidades ciganas')*, 30 April 2020.
- 33 See the website for the aid project *'Austria helps Austria' ('Österreich hilft Österreich')*; ORF Vienna (2020), *'NGOs besonders auf Spenden angewiesen'*, 31 March 2020.
- 34 UN Special Rapporteur on the rights to freedom of peaceful assembly and of association (2020), *'States responses to Covid19 threat should not halt freedoms of assembly and association'*, 14 April 2020.
- 35 Among the numerous reports by non-governmental organisations illustrating these trends at EU level, see Civicus Monitor (2020), *'Freedom of expression and the Covid-19 pandemic: A snapshot of restrictions and attacks'*; Liberties and Greenpeace European Unit (2020), *Locking down critical voices – How governments' responses to the Covid-19 pandemic are unduly restricting civic space and freedoms across the EU*; International Centre for Not-for-Profit Law (ICNL) (2020), *'Top trends: Covid-19 and civic space'*, based on data from ICNL's *Covid-19 Civic Freedom Tracker*; European Civic Forum (2020), *Activizeship – Civic Space Watch report 2020 – Stories from lockdown*; European Center for Not-for-Profit Law (ECNL) (2020), *'Covid-19 and civic freedoms in Europe in 2020'*, 1 February 2021; and ECNL (2021), *'Are we nurturing civil society in Europe – or merely keeping the boat afloat?'*, 21 May 2021. Information concerning the impact of Covid-19 on civil society can also be found in FRA's regular bulletins *Fundamental rights implications of Covid-19* and in the following report: European Parliament (2020), *The impact of Covid-19 measures on democracy, the rule of law and fundamental rights in the EU*.
- 36 FRA (2021), *'Covid-impact on civil society work – Results of consultation with FRA's Fundamental Rights Platform'*, 24 February 2021. Data collection was carried out from 9 to 30 November 2020, and there were 177 respondents.

- 37 Among the numerous reports by non-governmental organisations illustrating these trends at EU level, see Civicus Monitor (2020), **'Freedoms and the Covid-19 pandemic: A snapshot of restrictions and attacks'**; Liberties and Greenpeace European Unit (2020), **'Locking down critical voices – How governments' responses to the Covid-19 pandemic are unduly restricting civic space and freedoms across the EU'**; ECNL (2020), **'Covid-19 and civic freedoms in Europe in 2020'**; ECNL (2021), **'Are we nurturing civil society in Europe – or merely keeping the boat afloat?'**, 21 May 2021; ICNL (2020), **'Top trends: Covid-19 and civic space'**, based on data from ICNL's **'Covid-19 Civic Freedom Tracker'**; and European Civic Forum (2020), **'Activizeship – Civic Space Watch report 2020 – Stories from lockdown'**. Information concerning the impact of Covid-19 on civil society can also be found in FRA's regular bulletins **'Fundamental rights implications of Covid-19'** and in the following report: European Parliament (2020), **'The impact of Covid-19 measures on democracy, the rule of law and fundamental rights in the EU'**.
- 38 FRA (2021), **'Covid-impact on civil society work – Results of consultation with FRA's Fundamental Rights Platform'**, 24 February 2021. Data collection was carried out from 9 to 30 November 2020, and there were 177 respondents.
- 39 *Ibid.*
- 40 See all national Franet 2020 reports on FRA's **website**.
- 41 Slovenia, Government of Slovenia (2020), The draft intervention measures to assist in mitigating the consequences of the second wave of Covid-19 epidemic act (*Predlog zakona o interventnih ukrepih za pomoč pri omilitvi posledic drugega vala epidemije Covid-19*).
- 42 Slovenia, Government of Slovenia (2020), The intervention measures to assist in mitigating the consequences of the second wave of Covid-19 epidemic act (*Zakon o interventnih ukrepih za pomoč pri omilitvi posledic drugega vala epidemije Covid-19*).
- 43 See the **Facebook page** of the Centre for Information Service, Co-operation and Development of NGOs (*Center za informiranje, sodelovanje in razvoj nevladnih organizacij, CNVOS*).
- 44 FRA (2020), **'FRA 2020 consultation on experiences of civil society organisations working on human rights in the EU'**; and FRA (2021), **'Covid-impact on civil society work – Results of consultation with FRA's Fundamental Rights Platform'**, 24 February 2021.
- 45 Civil Society Europe and ECNL (2021), **'Participation of civil society organisations in the preparations of the EU national recovery and resilience plans'**.
- 46 Bulgaria, Bulgarian Center for Not-for-Profit Law (*Български център за нестопанско право*) (2020), **'The civic sector after the beginning of the Covid-19 crisis (Гражданският сектор след началото на кризата с Covid-19)'**.
- 47 Latvia, (2020), **'Par atbalsta risinājumiem Covid19 krīzes radīto negatīvo seku mazināšanu nevalstiskajām organizācijām'**, press release, 6 April 2020; Ministry of Culture (2020), **'Valdība apstiprina finansējumu nevalstiskajām organizācijām Covid-19 krīzes seku mazināšanai'**, press release, 1 December 2020.
- 48 Luxembourg, Cercle (2020), **'The Covid-19 crisis, a major issue of solidarity' ('La crise Covid-19, un grand enjeu de solidarité')**, 9 April 2020.
- 49 Spain, Fundación Deloitte, Asociación Española de Fundraising y Fundación Lealtad (2020), **'Impacto Covid-19 en entidades no lucrativas'**.
- 50 Sweden, Swedish Agency for Youth and Civil Society (*Myndigheten för ungdoms- och civilsamhällesfrågor, MUCF*) (2020), **'The corona crisis' consequences for the civil society – Overview October 2020 (Coronakrisens konsekvenser för det civila samhället – Lägesbild oktober 2020)**.

2

STRONG AND ACTIVE CIVIL SOCIETY: GENERAL DEVELOPMENTS



PROMISING PRACTICE

Open Government Partnership: action plan for a supportive environment for CSOs

The fourth **Spanish** Open Government National Action Plan that was co-created with civil society supports the legal environment and space for CSOs. It does this by: strengthening the proactive and monitoring role of CSOs so that public administrations increase transparency and accountability, improve participation, establish systems of public integrity, and train citizens and public employees in and raise their awareness of matters of open government. The aim is to contribute to a more just, peaceful and inclusive society.*

Spain, Ministerio de Política Territorial y Función Pública (2020), **IV National Action Plan Open Government 2024, Madrid, Centro de Publicaciones, Secretaría General Técnica.*

The Council of Europe reaffirmed that the protection and promotion of civil society space requires states to ensure “a conducive political and public environment” for human rights defenders, including CSOs.¹ Such a conducive environment allows CSOs and other human rights defenders to carry out their work freely. This includes engaging with public authorities, thus contributing to promoting and protecting EU values and rights, and participating in decision-making, including in areas of EU action.²

2.1. PROVIDING AN ENABLING INSTITUTIONAL FRAMEWORK

Policy frameworks and permanent dialogue structures are key tools through which governments can support the development and strengthening of the civil society sector. Progress in this area was registered in 2020 in a number of EU Member States. This has included the creation of infrastructure aimed at providing space for dialogue and channelling targeted support towards civil society, such as the recently established Foundation for Civic Engagement and Volunteering in Germany.³ The creation of a similar foundation is also expected in Lithuania, following the adoption of a new law on civil society development.⁴ In Bulgaria, it was reported that members of the Council for Civil Society Development, which was created in 2016, were finally elected.⁵

In some countries, authorities have been working on overarching policy frameworks. This is the case in Denmark, where a parliament resolution proposing a set of actions to better support and strengthen civil society is currently pending.⁶ A civic engagement strategy was adopted at regional level in the state of Berlin, in Germany,⁷ whereas in Slovakia efforts to improve the financial, legislative and institutional stability of CSOs were included in the new government’s manifesto.⁸ In Finland, a research project on the state of civil society is ongoing, to inform efforts to improve the legal environment for CSOs, in the light of the challenges facing particularly small voluntary associations.⁹

Elsewhere, governments have invested in initiatives to promote civic engagement and volunteering. This is the case in Austria¹⁰ and Malta.¹¹ Spain has implemented a comprehensive action plan as part of the government’s engagement in the Open Government Partnership (OGP) framework.

PROMISING PRACTICE

OECD Civic Space Scan and Civil Society Academy

The OECD's Observatory of Civic Space* conducted, for **Finland**, its first ever Civic Space Scan.** The comprehensive report lists strengths and challenges for Finland and provides a wealth of recommendations on how to safeguard and promote civic space.

One of the many recommendations is to further develop the Civil Society Academy Day, which was successfully launched in October 2020. The state government and CSOs jointly organise the day. The day is aimed at enhancing civil servants'

knowledge of CSOs' roles in society and improving networking between CSOs and the government.

The OECD recommends that the government commit to hosting the Civil Society Academy Day annually and complement it with conferences, forums and debates on the role of civil society and how to best support and collaborate with CSOs.

See the OECD's webpage on **civic space.*

***OECD (2021), **Civic Space Scan of Finland**.*

Some negative trends are also noted. Reports by international organisations such as the UN, the Council of Europe and OSCE/ODIHR, as well as EU institutions, Franet reports and a range of different civil society reports point to a number of patterns regarding the challenges that CSOs working on human rights face; these are described across the reports.



PROMISING PRACTICE

Empowering CSOs through coalition building

In **Slovakia**, 45 CSOs formed a coalition called 'Voice of Civil Society Organisations' to improve the overall environment for CSOs, and to strengthen integrity, transparency and cohesion in the sector, creating a space for cooperation.^a

Against a background of deterioration in the enabling space for civil society in **Slovenia** as perceived by CSOs,^b CSOs mobilised to raise awareness of their role and that of other watchdogs as part of the democratic system, counter negative narratives and build the capacity of CSOs and rights defenders to resist attacks, including through legal counselling.

Relevant initiatives include the joint project 'Defending the watchdog role of civil society and journalists in Slovenia' between CSOs and the Slovenian Association of Journalists,^c and the 'Legal network for the protection of democracy'. A coalition of non-governmental CSOs created this network to offer legal support to individuals and organisations involved in legal proceedings for their public interest engagement.^d

^a See the [webpage](#) for the Voice of Civil Society Organizations Platform (Platforma Hlas občianskych organizácií).

^b For more information, see the [webpage](#) for the project.

^c See the [webpage](#) for the project.

^d For more information, see the [website](#) of the Legal network for the protection of democracy (Pravna mreža za varstvo demokracije).

2.2. CIVIL SOCIETY RESILIENCE TO ONGOING CHALLENGES

The ability of civil society to develop strategies and resilience mechanisms to respond to challenges is an indicator of its resilience.

For example, in Bulgaria, CSOs have worked together towards the development of civil society good governance standards,¹² whereas in Romania CSOs self-organised to elect their representatives in the national Economic and Social Council,¹³ as a means to increase civil society participation.¹⁴ In Poland, over 1,200 CSOs mobilised in support of an independent candidate as the new head of the NHRI.¹⁵ In Sweden, a new social contract that a coalition of CSOs has explored includes the enabling environment for civil society among its pillars.¹⁶

Coalition building initiatives among CSOs are also gaining strength.¹⁷ These range from sectoral initiatives to strengthen the civil society movement in areas in which it is underdeveloped, such as the new Civic Platform Convergence for Culture in Portugal,¹⁸ to CSOs' coalitions aimed at empowering and promoting public trust in the sector, in particular as a reaction to negative trends and narratives (as reported in Slovakia and Slovenia).

PROMISING PRACTICE

Capacity- and alliance-building programme for human rights defenders across Europe

The Hertie School, together with the Netherlands and Hungarian Helsinki Committees, initiated, in 2020, a two-year capacity- and alliance-building programme for leading human rights defenders from across Europe.

The programme, called 'Recharging advocacy for Rights in Europe (RARE)', is meant to both build the capacity of leading human rights defenders and create a trusted network among them that is capable of reacting more effectively in solidarity to threats to the rule of law and human rights across Europe, including through transnational initiatives to protect civic space.*

*For more information, see the [website](#) of the Hertie School.

Endnotes

- 1 Council of Europe, Committee of Ministers (2018), **Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe**, 28 November 2018, para. I.a.
- 2 Article 11 (1) of the TEU.
- 3 Germany, Deutscher Bundestag (2020), **Bericht der öffentlichen Anhörung vom 15. Dezember 2020**.
- 4 Lithuania, Parliament of the Republic of Lithuania (*Lietuvos Respublikos Seimas*) (2013), **Law on development of non-governmental organisations**, 19 December 2013; Government of the Republic of Lithuania (*Lietuvos Respublikos Vyriausybė*) (2020), Decision regarding implementation of the Law on development of non-governmental organisations (***Nutarimas dėl Lietuvos Respublikos nevyriausybių organizacijų plėtros įstatymo įgyvendinimo***), 12 August 2020.
- 5 Bulgaria, Bulgarian National Radio (*Българско национално радио*) (2020), 'The first Council for Civil Society Development was elected' (***Избраха първия Съвет за развитие на гражданското общество***), 14 May 2020.
- 6 Denmark, Danish Parliament (*Folketinget*) (2020), Proposal for resolution B139 (***beslutningsforslag B139***).
- 7 Germany, Berlin Senate (2020), Civic Engagement Strategy 2020–2025 (***Berliner Engagementstrategie 2020-2025***), 22 December 2020.
- 8 Slovakia, Government of the Slovak Republic (*Vláda SR*) (2020), ***Návrh programového vyhlásenia vlády SR***, adopted on 19 April 2020.
- 9 Finland, Ruuskanen, P., Jousilahti, J., Faehnle, M., Kuusikko, K., Kuittinen, O., Virtanen, J. and Strömberg, L. (2020), '***Kansalaisyhteiskunnan tila ja tulevaisuus 2020-luvun Suomessa***', *Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja 2020* (in Finnish, with an abstract in English).
- 10 Initiatives were announced in the Federal Government of Austria's **Governmental Programme 2020–2024**.
- 11 Malta, Malta Council for Voluntary Sector, '***Vitalita'... mal-Volontarjat***'.
- 12 Workshop for Civic Initiatives Foundation (*Фондация „Работилница за граждански инициативи“*) (2020), 'Standards for good governance of a civil society organisation' (***Стандарти за добро управление на гражданска организация***), press release, 1 December 2020. See also Commissioner for Human Rights of the Council of Europe (2020), ***Report following her visit to Bulgaria from 25 to 29 November 2019***.
- 13 See the **website** of the Economic and Social Council.
- 14 See the **webpage** on the Economic and Social Council elections.
- 15 Rp.pl (2021), '***Sejm wybrał Piotra Wawrzyka na Rzecznika Praw Obywatelskich***', 22 January 2021.
- 16 See the **website** of the project Nysta.
- 17 Carnegie Europe (2020), '***How European civil society is pushing back against democratic erosion***', 12 March 2020.
- 18 For more information see the Facebook page of the Civic Platform Convergence for Culture (***Plataforma Cívica Convergência pela Cultura***).

3

REGULATORY ENVIRONMENT

A conducive legal environment requires a strong legislative framework protecting and promoting the rights to freedom of association, peaceful assembly and expression in conformity with international human rights law and standards.¹

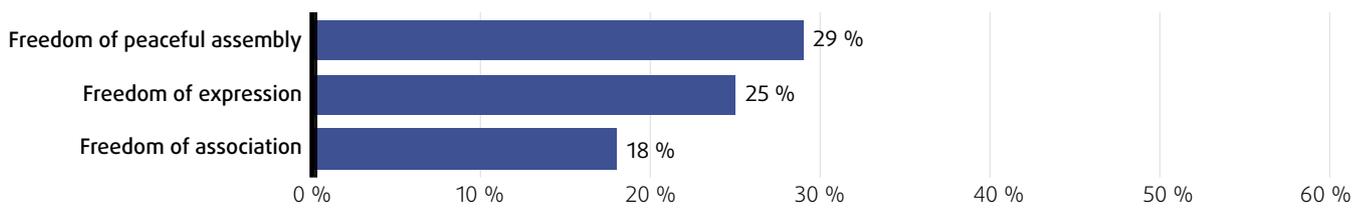
These rights are also enshrined in the EU Charter of Fundamental Rights, which is binding on the Member States when they implement EU law,² but also when national law or practices, although adopted autonomously, have a connection with EU law and thus fall within its scope.³ This may be the case when such national laws or practices compromise the full implementation of EU law⁴ or when they encroach on EU fundamental freedoms.⁵

In such cases, they will need to be checked against their compatibility with fundamental rights as enshrined in the EU Charter of Fundamental Rights. For example, the Court of Justice of the European Union (CJEU) ruling on a national decision not to ban a demonstration upheld the right to freedom of peaceful assembly insofar as it affected the free movement of goods in the internal market.⁶ For rules on foreign-funded CSOs', the CJEU ruled that people had the right to freedom of association in the light of their impact on the free movement of capital.⁷

According to FRA's civic space and Covid-19 impact consultations, as well as Franet reports, measures taken to limit the spread of the pandemic affected the freedom of peaceful assembly across the EU in 2020. Almost one in three (29 %) of responding organisations indicated having faced difficulties in exercising this freedom over the past year (Figure 6). Almost as many (25 %) pointed to difficulties in exercising freedom of expression, whereas 18 % highlighted difficulties in exercising freedom of association.⁸



FIGURE 6: CIVIC FREEDOMS REGARDING WHICH CIVIL SOCIETY FACED CHALLENGES

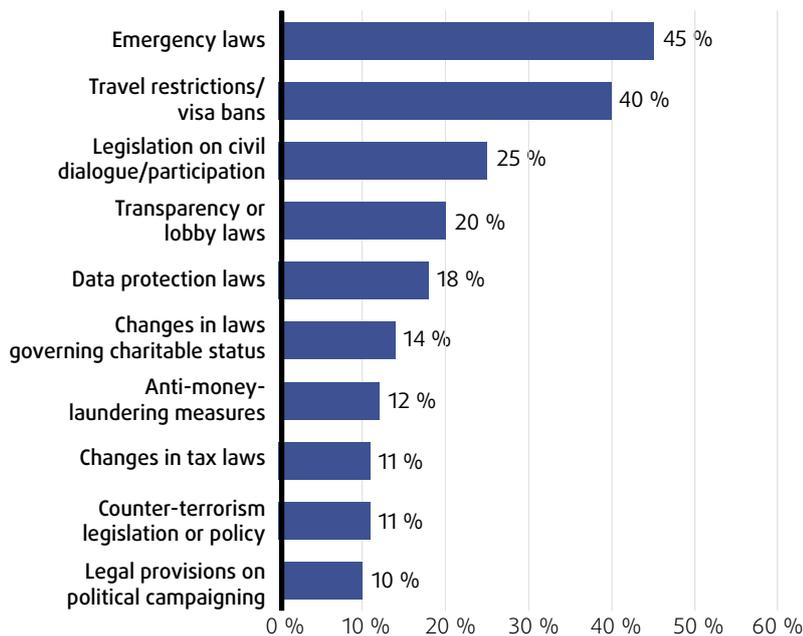


Source: FRA, civic space consultation, 2020

Figure 7 shows that restrictions to CSOs’ fundamental rights can derive from national laws and practices in a wide range of areas. Respondents to the FRA civic space consultation 2020 reported difficulties connected with responses to the Covid-19 pandemic (45 % with emergency laws and 40 % with travel restrictions or visa bans).

These were followed by challenges deriving from legislation on civil dialogue and consultations (25 %), transparency or lobby laws (20 %), data protection laws (18 %), changes in laws governing charitable status (14 %), anti-money laundering measures (12 %), changes in tax laws (11 %), counter-terrorism legislation or policy (11 %), and legal provisions on political campaigning (10 %).

FIGURE 7: CHALLENGES ENCOUNTERED BY CIVIL SOCIETY IN THE LEGAL ENVIRONMENT



Source: FRA, civic space consultation, 2020

▲ Note:
Question: “In the past 12 months, has your organisation encountered difficulties in conducting its work due to legal challenges in any of the following areas? You can tick all boxes that are relevant”; N=330.

▲ Note:
Question: “In the past 12 months, has your organisation faced difficulties in any of the following areas?”; N=333.

PROMISING PRACTICE

Providing guidance on how to use EU law to protect civic space

The European Center for Not-for-Profit Law, in partnership with the European Foundation Centre and the Donors and Foundations Networks in Europe, published a handbook providing practical guidance for CSOs to advocate and litigate using EU law to protect their rights and civic space in the EU.*

The handbook is a guide for CSOs that want to know:

- what EU law is and how it affects individuals and organisations;
- when and how CSOs can challenge national provisions or measures that affect their mission, activities and operations on the basis of EU law, including the EU Charter of Fundamental Rights;
- which legal avenues and resources are available for CSOs to defend their civic space within the EU law framework.

*ECNL (2020), **Handbook – How to use EU law to protect civic space.**

3.1. FREEDOM OF PEACEFUL ASSEMBLY

Article 12 of the EU Charter of Fundamental Rights protects the freedom of assembly and of association at all levels, in particular in political, trade union and civic matters. The *Guidelines on Freedom of Peaceful Assembly* by OSCE/ODIHR and the Venice Commission clarify that the right to freedom of peaceful assembly covers a range of different public gatherings, such as static assemblies (public meetings, mass actions, flash mobs), demonstrations, sit-ins, pickets and moving assemblies (parades, processions, funerals, pilgrimages, convoys, etc.).⁹ There should be a presumption that assemblies are legal; this should be clearly and explicitly established in law.¹⁰

Lockdowns, physical distancing and other health precautionary measures adopted to contain the Covid-19 pandemic have severely affected the exercise of freedom of assembly.¹¹ Although governments generally made efforts to facilitate the exercise of the right to freedom of peaceful assembly while safeguarding public health, CSOs noted that the exercise of this right was restricted disproportionately on a number of occasions.

Almost one third of responding organisations to FRA’s civic space consultation said they had faced difficulties related to freedom of peaceful assembly in 2020. These were often, but not only, related to restrictions under Covid-19 measures.

In connection with Covid-19-related restrictions on assemblies, CSOs and other stakeholders were concerned about issues such as general bans on assemblies, disproportionate surveillance, sanctions and tracking down protesters, including through the use of digital technology, in Cyprus,¹² France¹³ and Slovenia,¹⁴ even if this was covered by law. In France, on two occasions the Council of State suspended the police’s use of drones for surveillance of public demonstrations in Paris in the absence of an adequate legal framework to safeguard freedom of peaceful assembly and the protection of personal data.¹⁵ Human rights groups criticised the rules included in the new bill on global security preserving freedoms¹⁶ to regulate this matter.¹⁷

In a number of Member States, Franet research pointed out that courts had confirmed concerns raised in particular about general bans on assemblies during the pandemic. In France, for instance, the Council of State suspended the general and absolute ban on demonstrations in public as well as new rules on prior authorisation for demonstrations as being a disproportionate violation of the freedom of peaceful assembly.¹⁸ In Germany, the Federal Constitutional Court ruled against a general Covid-19-related ban on assemblies, clarifying that public health concerns cannot automatically outweigh freedom of assembly.¹⁹



The media, CSOs and other bodies reported in Belgium,²⁰ Greece,²¹ Slovenia,²² Spain²³ and Poland²⁴ that protesters were on occasion subject to high fines or arrests, which in a few cases the courts later revised. Depending on the country, these could be focused on unregistered assemblies; however, in some cases people respecting physical distancing rules were also allegedly affected.

PROMISING PRACTICE

Improving the legislative framework regulating the right to peaceful assembly

Following a campaign by a group of human rights and watchdog CSOs, steps were taken in **Romania** in 2020 to modernise and improve the legislative framework regulating the right to freedom of peaceful assembly.

A bill was submitted and approved by the Senate, aiming to eliminate disproportionate administrative restrictions affecting the exercise of the right to freedom of assembly, clarify and eliminate ambiguities in the grounds for banning public assemblies, increase proportionality of sanctions and police interventions, and regulate spontaneous assemblies. The bill is under debate in the Chamber of Deputies.*

In addition, the procedures related to the registration of an association or foundation were simplified.**

**Romanian Parliament (Parlamentul României) (2020), Legislative proposal for the amendment and completion of the Law on the organization and conduct of public assemblies (Propunere legislativă pentru modificarea și completarea Legii nr.60 din 23 septembrie 1991 privind organizarea și dășurarea adunărilor publice), September 2020.*

***Law 276 of December 2020 (Legea nr. 276 din 27 noiembrie 2020 pentru modificarea și completarea Ordonanței Guvernului nr. 26/2000 cu privire la asociații și fundații).*

Measures affecting freedom of assembly in 2020 were not limited to those adopted in response to the Covid-19 pandemic. Moreover CSOs expressed concern that restrictions might extend beyond the pandemic.²⁵ For example, NGOs in Denmark criticised a bill under debate for failing to strike a fair balance between the exercise of freedom to peaceful assembly and the protection of public security and public order, and for its potential discriminatory application;²⁶ the Danish Parliament subsequently voted down the bill in June 2021.²⁷

In France, the new bill on global security preserving freedoms extends the range of authorities with access to images recorded by law enforcement officers' cameras and introduces amendments to the law on the press to sanction the "malicious" release of identifying images of law enforcement officers during interventions.²⁸ International monitoring bodies,²⁹ the equality body *Défenseur des droits*, and civil society organisations criticised³⁰ these planned measures for their potential impact on freedom of assembly as well as freedom of expression. The equality body *Défenseur des droits* stressed that informing the public and publishing images and recordings relating to police interventions constitute a legitimate exercise of the rights to freedom of expression and freedom of information.³¹ In Greece, civil society criticised a new law on assemblies that was recently adopted for restricting the right to peaceful public assemblies.³²

Some progress as regards the improvement of the legal framework for the exercise of freedom of assembly was registered in Romania.

However, restrictions did not halt mobilisation through peaceful assemblies in 2020, and civil society also made use of digital protest modalities, beyond online petitions. In Belgium, for example, over 1,500 people mobilised in an online meeting on the occasion of the 2020 International Day against Racism.³³

3.2. FREEDOM OF EXPRESSION

However, restrictions did not halt mobilisation through peaceful assemblies in 2020, and civil society also made use of digital protest modalities, beyond online petitions. In *Belgium*, for example, over 1,500 people mobilised in an online meeting on the occasion of the 2020 International Day against Racism.³⁴

The right to freedom of expression, protected by Article 11 of the EU Charter of Fundamental Rights and by international and regional human rights instruments,³⁵ is particularly important for CSOs working on human rights, both for advocacy purposes and for scrutinising public actions and holding authorities accountable.³⁶

Laws and measures affecting freedom of expression and of information

In total, 25 % of respondents to FRA's civic space consultation indicated that they were facing difficulties in regard to freedom of expression in 2020.³⁷ Provisions criminalising certain forms of expressions are considered to have a potentially chilling effect on free speech in some EU Member States. The urgency to contain the spread of disinformation and fake news in connection with the Covid-19 pandemic raised issues linked to the criminalisation of certain forms of expression.

In Hungary, new rules were introduced to specify that the scope of the long-standing criminal offence of fearmongering committed at a site of public danger applies to the special situation of the periods of special legal orders³⁸ (such as 'state of danger'). These rules attracted some criticism for their vague wording, which could give rise to a range of interpretations.³⁹ CSOs reported an attempt to introduce a similar law in Bulgaria,⁴⁰ where the leader of a CSO was prosecuted for inciting panic and disseminating misleading information, and later acquitted, when he criticised local health authorities for not testing people at high risk of infection.⁴¹

In Spain, more than one million sanctions had been issued based on the Law on the Protection of Citizens' Security since the declaration of the State of Alarm⁴² in March 2020, including for online statements and expressions.⁴³

In certain Member States, CSOs expressed concern about the criminalisation of speech beyond the pandemic context. For example, in Spain, the NGO Rights International Spain claimed that there was a sharp rise in the number of prosecutions of activists, artists, journalists and lawyers for the crime of "glorification or justification" of terrorism, based on an application of relevant criminal provisions which, according to the NGO, is inconsistent with human rights standards.⁴⁴ According to the Irish Council for Civil Liberties, rules in Ireland on political advertising continue to affect advocacy efforts of CSOs.⁴⁵

Estonia partly lifted restrictions on political campaigning.⁴⁶ In France, an Independent Commission on Relations between Journalists and the Police was set up on 21 January 2021. The commission was tasked with proposing measures to better reconcile the work of journalists and the police during demonstrations or law enforcement operations.⁴⁷

Online censorship

Faced with the challenge of tackling illegal content and harassment online, governments are trying to improve their existing legal frameworks and enhance monitoring and quick remedial action, including taking down and removing content. Some measures, however, have raised concerns because of the risk of a disproportionate impact on freedom of expression.

"We have not faced challenges in court – but had to ask ourselves how to speak about and address Covid emergency laws [...] without fear of negative consequences on our experts."

(Respondent to FRA's civic space consultation 2020)

In France, for example, the Constitutional Council deemed various provisions of a bill to combat hate speech on the internet, known as the Avia bill (named after the member of parliament who submitted it) unconstitutional for being incompatible with the right to freedom of expression.⁴⁸

In Ireland, CSOs expressed concern over the possible chilling effect on freedom of expression that might derive from the Harassment, Harmful Communications and Related Offences Act, signed into law in December 2020. The law, which provides, among other things, for a new offence relating to the distribution, publishing or sending of threatening or grossly offensive communication, has been criticised as vague and open to arbitrary interpretations in terms of the threshold for harm.⁴⁹

Countering hate speech

Measures to prevent and combat hate crime and hate speech are essential elements of an enabling environment for civil society.⁵⁰

In 2020, the European Commission launched a series of infringement proceedings⁵¹ against Member States for failure to correctly transpose Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.⁵² In Estonia, the parliament rejected a bill to criminalise hate speech, which was presented following the Commission's legal action, for being regarded as placing excessive restrictions on freedom of expression; however, critics have pointed out that rules on hate speech could be used to punish those with different views and political opinions.⁵³

Elsewhere, steps to counter hate speech are carefully scrutinised to ensure that the right to freedom of expression is not affected. For instance, in France, the Council of State recommended the removal of a provision in the law on consolidating the respect for the principles of the Republic presented in December 2020; according to this provision, the dissemination of ideas, speeches or activities that incite discrimination or that incite, facilitate or encourage the committing of offences would lead to the closure of places of worship. At the same time, the Council of State considered closing places of worship where ideas, speeches or activities are promoted that incite hatred or violence to be lawful and proportionate.⁵⁴

In Sweden, the government has assigned an inter-parliamentary committee the task of exploring the possible introduction of a special criminal liability for certain forms of association with racist purposes and a ban on establishing racist organisations altogether, amid concerns that this might run contrary to constitutionally protected rights.⁵⁵ A bill that would provide for grounds to ban CSOs that pose a threat to democracy and public order, including by inciting hate and violence, is also pending in the Netherlands.⁵⁶

Academic and artistic freedom

Academic and artistic freedom are specifically recognised by Article 13 of the EU Charter of Fundamental Rights, and closely interlinked with the right to freedom of expression.⁵⁷ These rights encompass the right to create, express, pursue and disseminate one's thoughts, ideas, information or other cultural expressions, as well as society's right to know, obtain and receive them.⁵⁸ In 2020, reports by international organisations such as the Council of Europe's Commissioner for Human Rights⁵⁹ and international civil society reports⁶⁰ raised concerns about challenges to artistic freedom in Europe; a few incidents concerned EU Member States.⁶¹

The CJEU ruled, in October 2020, that certain conditions introduced by Hungary in relation to foreign higher education institutions intending to carry out their

PROMISING PRACTICE

Citizens' panel on freedom of expression

A Citizens' Panel was organised to discuss measures that should be taken in Finland to protect people who are in the public eye because of their professions from hate speech and to safeguard free expression of opinion.

The Citizens' Panel is a deliberative method in which a number of ordinary citizens discuss a social issue after in-depth familiarisation and produce recommendations for decision-makers or a wider audience. Different sociodemographic groups and regions were represented in the composition of the Citizens' Panel, which proposed a total of 25 measures to prevent hate speech and online shaming.*

** Finland, Ministry of Finance, Ministry of Justice and Åbo Akademi University (2021), **Citizens' Panel on the Freedom of Expression: Recommendations for measures to be taken in Finland to protect people in public professions from hate speech and to safeguard free expression of opinion.***

activities in its territory was incompatible with EU law, including academic freedom enshrined in the EU Charter of Fundamental Rights and the freedom to found higher education institutions.⁶² The Central European University, affected by the measures, transferred its educational activities from Budapest to Vienna.⁶³ Seven months after the judgment, the Hungarian Parliament adopted an act in May 2021 intended to implement the CJEU ruling.⁶⁴

Elsewhere, a debate over societal cohesion and values, exacerbated by terrorist incidents, has also raised questions about the acceptable limitations to freedom of thought and academic freedom. In Denmark, for example, the Ombudsperson opened an inquiry into the increased supervision of the National Agency for Education and Quality over independent private schools, which led to the withdrawal of government subsidies from several Islamic schools. Seven of these school were eventually forced to close.⁶⁵

3.3. FREEDOM OF ASSOCIATION

The right to freedom of association is protected by Article 12 of the EU Charter of Fundamental Rights as well as international and regional human rights instruments.⁶⁶ In a recent ruling, the CJEU recognised that the right to freedom of association constitutes one of the essential foundations of a democratic and pluralist society. This is because it enables citizens to act collectively in areas of common interest and, in doing so, contribute to the proper functioning of public life.⁶⁷

According to the OSCE/ODIHR and Venice Commission guidelines on freedom of association, respect for this right requires states not only not to interfere with its exercise but also to secure its enjoyment. This may include simplifying regulatory requirements, ensuring that those requirements are not unduly burdensome, facilitating access to resources and taking positive measures to overcome specific challenges confronting disadvantaged or vulnerable people or groups.⁶⁸

Some 18 % of respondents to FRA's civic space consultation said they had faced challenges in relation to freedom of association in 2020.⁶⁹

Regulatory environment for registration and functioning of associations

General improvements as regards governments' efforts to facilitate the exercise of the right to freedom of association were reported in a number of EU Member States. In countries such as Finland⁷⁰ and Luxembourg,⁷¹ initiatives to ease administrative requirements for CSOs were part of the measures to alleviate the hardships facing civil society during the Covid-19 pandemic.

Long-term improvements were equally registered. In Denmark, measures to reduce the administrative burden related to data protection for CSOs have been proposed,⁷² whereas in Romania amendments were enacted to simplify administrative procedures for the registration and operation of associations and foundations.⁷³ In Finland, similar measures are under discussion. In addition, a sectoral initiative strengthened the data protection framework for CSOs.⁷⁴

Austria is investing in modernising and digitalising the administrative system governing the civil society sector.⁷⁵ In Lithuania⁷⁶ and Slovakia,⁷⁷ rules and procedures related to associations' registration have recently been revised to promote transparency and trust in the sector.



However, CSOs face problems as regards registration in a number of countries. In Cyprus, a legislative amendment exposed CSOs to deregistration as a means to enforce the more burdensome requirements for the registration and functioning of CSOs imposed by a law adopted in 2017⁷⁸ (see also 'Dissolution and deregistration of associations' below).

In Germany, the framework regulating CSOs' charitable status continues to be criticised for hindering the advocacy role of human rights groups; a reform of the related rules has been criticised as inadequate.⁷⁹ There is also concern over a proposed bill on foundations, which was put forward without prior consultation with civil society. According to the National Association of German Foundations (*Bundesverband Deutscher Stiftungen*), the bill introduces stricter requirements instead of reforming the legal framework.⁸⁰ In Lithuania, stricter reporting requirements and new rules on lobbying based on an unclear definition of public benefit status associations are seen as potentially having a negative impact on politically engaged CSOs.⁸¹

In France, the bill on consolidating the respect for the principles of the Republic introduces a new system for the authorisation of religious associations, which was questioned by the equality body *Défenseur des droits* and the Council of State⁸² (see also 'Dissolution and deregistration of associations' below).

The Conference of International Non-governmental Organisations of the Council of Europe (Expert Council on NGO Law) issued an opinion on the compatibility of recently adopted and planned legislative provisions and ministerial decisions in Greece on the registration and certification of Greek and foreign NGOs engaged in activities related to asylum, migration, and social inclusion with European legal standards and best practices. The opinion considers that the new rules raise both procedural and substantive difficulties with respect to freedom of association and the protection of civil society space.⁸³ Although the law is aimed at implementing the obligation of the state authorities to ensure accountability and financial stability of CSOs receiving EU or national funding and increase transparency and efficiency, CSOs have highlighted that the law requires expensive and bureaucratic obligations from CSOs, prevents CSOs from accessing vulnerable groups, and has led to grassroots organisations not being able to continue their work.⁸⁴

Dissolution and deregistration of associations

The OSCE/ODIHR and Venice Commission guidelines on freedom of association recommend that associations should not be prohibited or dissolved owing to minor infringements, in particular infringements that may be easily rectified. In any case, they should be provided with adequate warning and given ample opportunity to correct infringements and minor infractions, particularly if they are of an administrative nature.⁸⁵

In Cyprus, the parliament adopted a new law on the registration and functioning of CSOs in 2017.⁸⁶ This law, which was subsequently amended three times, brought significant changes to the registration and operation of CSOs. Although, on the positive side, it is now possible to register federations of organisations,⁸⁷ the implementation of this law also led to the deregistration of a large number of CSOs in the autumn of 2020.⁸⁸ Some CSOs highlighted that they faced challenges with complying with the provisions because of their inability to hold general assemblies during the Covid-19 pandemic, and that they had no access to an effective remedy against the decision.⁸⁹ The Council of Europe's Human Rights Commissioner criticised the adoption of this measure in a public letter.⁹⁰

PROMISING PRACTICE

Simplifying registration to reduce bureaucracy and increase transparency and trust

In **Lithuania**, newly adopted registration rules for non-governmental CSOs revolve around self-declaration and a free-of-charge registration procedure.* In **Slovakia**, the registry system was streamlined and improved to ensure better transparency, in consultation with CSOs.**

Such measures also serve to obtain a better picture of the sector and make available to the public more information about CSOs and their work. This contributes not only to better informing policymaking to better support the development of civil society, but also to building trust and credibility both within the institutions and among the general public.

**Lithuania, Parliament of the Republic of Lithuania (Lietuvos Respublikos Seimas) (2020), Amendment of Law on Charity Foundations (Labdaros ir paramos fondų įstatymo pakeitimas), 1 June 2020; Parliament of the Republic of Lithuania (2020), Amendment of Law on Associations (Asociacijų įstatymo pakeitimas), 1 June 2020.*

***Slovakia, Law no. 346/2018 Coll on the register of non-governmental non-profit organizations and on amendments to certain acts, 27 November 2018.*

“Some laws like anti-money laundering and counter-terrorism envisage additional requirements and procedures only for NGOs. These requirements are not applicable for business-companies for example. While we completely agree that the finances of our organization should be transparent there is disproportionate burden on NGOs.”
(Respondent to FRA’s civic space consultation 2020)

In the wake of terrorist attacks, governments are exploring ways to better reconcile the right to freedom of association and the protection of national security and democratic values. Although the protection of national security is a ground that may justify restrictions to freedom of association, and associations that engage in activities contrary to democratic values may not benefit from the protection of the right to freedom of association, measures proposed in certain Member States have attracted criticism in terms of the legality and proportionality of such restrictions.

New rules on dissolution of CSOs included in the bill on consolidating respect for the principles of the Republic debated in France were met with interrogations by the Council of State⁹¹ as well as by the Council of Europe’s Expert Council on NGO Law.⁹² CSOs also raised concerns about the proposal included in the bill to make the registration and operation of CSOs conditional on a “contract of republican engagement” (*“contrat d’engagement républicain”*). They are concerned that the broad and vague formulation of the scope of such a “contract” could give a wide margin of discretion to administrative authorities and thus lead to disproportionate and/or discriminatory restrictions on freedom of association.⁹³ In 2020, a CSO was dissolved by decree.⁹⁴ In the Netherlands, similar provisions are included in a pending bill on grounds to suspend and dissolve CSOs that pose a threat to democracy.⁹⁵

CSOs and the fight against money laundering and terrorism

CSOs in a number of Member States complained that the application of rules on combating money laundering and terrorist financing reportedly continues to disproportionately affect them.

For example, in Romania, according to the Civil Society Development Foundation, new rules are still not based on a proper risk analysis for the civil society sector.⁹⁶ In Cyprus, a recent report by the Council of Europe’s Committee of Experts on the Evaluation of Anti-money Laundering Measures and the Financing of Terrorism (Moneyval) urged the government to conduct a risk assessment and adopt a targeted approach in monitoring the activities of CSOs, to avoid disrupting or discouraging legitimate activities.⁹⁷

In Latvia, CSOs report facing increasing difficulties in opening bank accounts following the adoption of more stringent rules in 2019.⁹⁸ However, authorities in Latvia engaged in discussions with CSOs to consider their concerns. A promising practice is also reported in Luxembourg, where the authorities are raising CSOs’ awareness of risks in this area and possible measures to address them.⁹⁹

Endnotes

- 1 Council of Europe, Committee of Ministers (2018), **Recommendation CM/Rec(2018)11 of the Committee of Ministers to member states on the need to strengthen the protection and promotion of civil society space in Europe**, 28 November 2018, paras. 1.b and c.
- 2 Article 51 (1) of the EU Charter of Fundamental Rights. An attempt to provide guidance on cases in which national laws and practices affecting civil society space may be considered implementing EU law for the purpose of Article 51 (1) of the EU Charter of Fundamental Rights can be found in the Handbook of the ECNL: ECNL (2020), **Handbook – How to use EU law to protect civic space**.
- 3 CJEU, C-617/10, **Åklagaren v. Hans Åkerberg Fransson**, 26 February 2013.
- 4 CJEU, C-61/11 PPU, **El Dridi**, 28 April 2011, para. 55.
- 5 See, for example, CJEU, C-235/17, **Commission v. Hungary**, 21 May 2019.
- 6 CJEU, C-112/00, **Eugen Schmidberger, Internationale Transporte und Planzüge v. Republik Österreich**, 12 June 2003.
- 7 CJEU, C-78/18, **Commission v. Hungary**, 18 June 2020.
- 8 FRA (2021), 'FRA 2020 consultation on experiences of civil society organisations working on human rights in the EU'.
- 9 OSCE/ODIHR and Venice Commission (2010), **Guidelines on Freedom of Peaceful Assembly**, para. 17.
- 10 *Ibid.*, para. 30.; and OCHCR (2020), '**General Comment No. 37 on Article 21 of the International Covenant on Civil and Political Rights – Right of peaceful assembly**', 17 September 2020.
- 11 FRA (2020), Covid consultation. For details, see Chapter 1.3 of this report.
- 12 Cyprus, Trimikliniotis, N. and Demetriou, C. (2020), **Coronavirus Covid-19 outbreak in the EU: Fundamental Rights Implications: Cyprus country report**; Kathimerini (2020), '**Στις 7.500 ευρώ τα πρόστιμα από την πορεία διαμαρτυρίας στο Προεδρικό**', 30 October 2020.
- 13 France, *Le Monde* (2020), 'Demonstration against police violence: Castaner promises 'a penalty' for 'every offence' or racist word by the police' ('**Manifestation contre les violences policières: Castaner promet « une sanction » pour « chaque faute » ou mot raciste dans la police**'), 3 June 2020.
- 14 Slovenia, *Amnesty International Slovenija* (2020), '**Navedbe o prekoračitvi policijskih pooblastil je treba preiskati**', press release, 16 June 2020; *Amnesty International Slovenija* (2020), '**Odziv na petkove proteste: Covid-19 vladi ne daje prostih rok, da "potepa" mednarodne standarde**', press release, 12 October 2020; Human Rights Ombudsman (*Varuh človekovih pravic*) (2020), '**Policijski postopki ugotavljanja identitete ob protestu 19. 6. 2020 v Ljubljani**', press release, 25 August 2020.
- 15 France, Council of State (*Conseil d'État*) (2020), Order No. 440442, 440445 (**Ordonnance n° 440442, 440445**), 18 May 2020; Council of State (*Conseil d'État*) (2020), Decision n°446155 (**Décision n°446155**), 22 December 2020. See also the National Data Protection Authority (*Commission nationale de l'informatique et des libertés*) (2021), Deliberation SAN-2021-003 (**Délibération SAN-2021-003**), 12 January 2021.
- 16 France, French National Assembly (2020), Bill on global security (**La proposition de loi relative à la sécurité globale**).
- 17 See Amnesty International (2021), '**France: New security law risks dystopian surveillance state**', 3 March 2021; Civic Forum (2020), '**The European Civic Forum warns about rapid deterioration of civic space and the rule of law in France**', 1 December 2020; Civicus (2021), '**Controversial global security law adopted, creating a state of generalised surveillance**', 18 May 2021; Civicus (2020), '**Polish authorities must stop persecuting and intimidating protesters**', 24 November 2020.
- 18 France, Council of State (*Conseil d'État*) (2020), Order No. 440846, 440856, 441015 (**Ordonnance n° 440846, 440856, 441015**), 13 June 2020.
- 19 Germany, Constitutional Court (*Bundesverfassungsgericht*) (2020), **Decision 1 BvR 828/20**, 15 April 2020.
- 20 Belgium, Gabriëls, N. (2020), 'Defend the defenders! Fifty social organisations raise the alarm' ('**Defend the Defenders! Vijftig sociale organisaties trekken aan de alarmbel**'), *MO*, 10 December 2020; Callewaert, C. (2020), 'Imprisonment (with suspension) for trade union action? In Belgium it is now possible' ('**Gevangenisstraffen (met uitstel) voor een vakbondsactie? In België kan het voortaan**'), *De Wereld Morgen*, 10 December 2020.
- 21 Greece, Hellenic League for Human Rights (*Ελληνική Ένωση για τα Δικαιώματα του Ανθρώπου*), 'The existence of limits by law is necessary in every direction' ('**Η ύπαρξη ορίων από το νόμο είναι αναγκαία προς κάθε κατεύθυνση**'), press release.
- 22 European Civic Forum (2020), **Activizeship: Civic Space Watch report 2020 – Stories from the lockdown**.
- 23 Spain, *Amnistia Internacional* (2020), '**5 años de mordazas. ¡Basta! Por una nueva legislación que garantice los derechos humanos**', press release, 18 June 2020. See the **webpage** on the 'Manifiesto 5 years of gags. Enough! For a new legislation that guarantees human rights' ('**Manifiesto 5 años de mordazas ¡Basta! Por una nueva legislación que garantice los derechos humanos**').
- 24 Poland, Ombudsman's Office (2021), '**Jak poprawić zachowania policji – raport KMPT z komisariatów po protestach Strajku Kobiet**', 14 January 2021; SZPIL(A) (2020), '**Raport antyrepresyjny**', Facebook, 22 December 2020. See also, for example, decisions of the Appellate Court in Warsaw of 15 May 2020 (case no. VI ACz 339/20), District Court in Warsaw (V W 1847/20) and District Court in Rzeszów (II W 539/20). In addition, see Civicus *et al.*, **Letter to UN Special Rapporteurs on Poland: Concerns over intimidation, violence and detentions of peaceful protesters**.
- 25 European Civic Forum (2020), **Activizeship – Civil Space Watch report 2020: Stories from the lockdown**.
- 26 ECNL (2021), '**Security for all Danes – A serious threat to freedom of assembly**', 10 February 2021; Statewatch (2021), '**Denmark: Reject discriminatory "Security for all Danes" Act and respect freedom of assembly**', 26 March 2021; European Civic Forum (2021), '**Denmark: Reject discriminatory "Security for all Danes" Act and respect freedom of assembly**', 25 March 2021; Civicus (2021), '**Denmark: Reject discriminatory "Security for all Danes" Act and respect freedom of assembly**', 23 March 2021; Civicus (2021), '**Draft law threatens freedom of peaceful assembly and targets minority groups**', 29 January 2021.
- 27 Amnesty International Denmark (2021), '**Organisationer roser Folketingets afvisning af regeringens opholdsforbud**', 3 June 2021.
- 28 France, Government of France (2021), Bill on global security preserving freedoms (**LOI n° 2021-646 du 25 mai 2021 pour une sécurité globale préservant les libertés**).
- 29 OHCHR (2020), '**France must revise bill on universal security – UN experts**', 3 December 2020; Council of Europe, Commissioner for Human Rights (2020), '**Letter to Senate**', 15 December 2020. Civicus (2021), '**Controversial global security law adopted, creating a state of generalised surveillance**', 18 May 2021.
- 30 Ligue des droits de l'Homme, '**Loi Sécurité globale mais libertés minimales**'.
- 31 France, Public Defender of rights (*Défenseur des droits*) (2020), Opinion no. 20-05 (**Avis no. 20-05**), 3 November 2020.
- 32 Greece, Law 4703/10.7.2020 'Public, outdoors gatherings and other provisions' ('**Δημόσιες υπαίθριες συναθροίσεις και άλλες διατάξεις**') (O.G.G. Issue A' 131/10.7.2020). See also the position of the Hellenic League for Human Rights (*Ελληνική Ένωση για τα Δικαιώματα του Ανθρώπου*), 'The existence of limits by law is necessary in every direction' ('**Η ύπαρξη ορίων από το νόμο είναι αναγκαία προς κάθε κατεύθυνση**'), press release.
- 33 Mrap (2020), 'National protest against racism' ('**Manifestation nationale contre le racisme, dimanche 24 mars**'), press release, 14 March 2020.

- 34 Mrax (2020) 'National protest against racism', ('**Sunday 24 March Manifestation nationale contre le racisme, dimanche 24 mars**'), Press release 14 March 2020.
- 35 Article 19 of the International Covenant on Civil and Political Rights; Council of Europe (1950), European Convention on Human Rights, Article 10.
- 36 Article 6 of the UN Declaration on Human Rights Defenders.
- 37 FRA (2020), 'FRA 2020 consultation on experiences of civil society organisations working on human rights in the EU'.
- 38 Hungary, see Article 337 (2) of the Act C of 2012 of the Criminal Code. See the **English translation** of the Criminal Code.
- 39 Hungary, Hungarian Helsinki Committee (2020), 'Scaremongering reloaded' ('**Rémhírterjesztés újratöltve**'), 27 March 2020.
- 40 Liberties and Greenpeace European Unit, **Locking down critical voices – How governments' responses to the Covid-19 pandemic are unduly restricting civic space and freedoms across the EU**, p. 20
- 41 Bulgaria, Mitov, B. (2020), 'His claims are not "misleading": Why the court acquitted Georgi Georgiev from BOEC for inciting panic' ('**Твърденията му не са „заблуждаващи“. Защо съдът оправда Георги Георгиев от БОЕЦ за всяване на паника**'), *Free Europe Bulgaria*, 11 September 2020.
- 42 Spain, Royal Decree 463/2020 declaring the state of alarm for the management of the health crisis situation caused by Covid-19 (*Real Decreto 463/2020 por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el Covid-19*), 14 March 2020. See also Civic Space Watch (2020), '**Spain: Human rights and support networks in time of pandemic**', 9 July 2020.
- 43 Spain, *Amnistía Internacional* (2020), '**5 años de mordazas. ¡Basta! Por una nueva legislación que garantice los derechos humanos**', press release, 18 June 2020; *La Vanguardia* (2020), '**España supera el millón de multas por violar las medidas del estado de alarma**', 20 May 2020.
- 44 See Rights International Spain (2011), **Legal standards on glorification – Case law analysis of the offence of glorification of terrorism in Spain**.
- 45 Irish Council for Civil Liberties, '**The Electoral Act: the Case for Reform**' (ongoing online petition).
- 46 Estonia, Act Amending the European Parliament Election Act, Local Government Council Election Act, Riigikogu Election Act, Referendum Act and Penal Code (abolition of election campaign restriction and ban on outdoor advertising on election day) (**Euroopa Parlamendi valimise seaduse, kohaliku omavalitsuse volikogu valimise seaduse, Riigikogu valimise seaduse, rahvahääletuse seaduse ja karistusseadustiku muutmise seadus (valimispäeval valimisagitatsiooni piirangu ja välireklaami keelu kaotamine)**), 11 December 2019.
- 47 France, Government of France (*Gouvernement*), 'Setting up of the Independent Commission on Relations between Journalists and the Police' ('**Mise en place de la Commission indépendante sur les relations entre journalistes et forces de l'ordre**'), 7 December 2020.
- 48 France, Constitutional Council (*Conseil Constitutionnel*) (2020), Decision No. 2020-801 DC (*Décision n° 2020-801 DC*), 18 June 2020.
- 49 Irish Council of Civil Liberties (2020), '**Re: S.4 Harassment, Harmful Communications and Related Offences Act 2020**'.
- 50 Council of Europe, Committee of Ministers (2018), **Recommendation CM/Rec(2018)11 of the Committee of Ministers to member states on the need to strengthen the protection and promotion of civil society space in Europe**, 28 November 2018, para. I.d.
- 51 European Commission (2020), '**October infringements package: key decisions**', 30 October 2020; and European Commission (2020), '**February infringements package: key decisions**', 18 February 2021.
- 52 Article 1 (1) of Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.
- 53 Estonia, See, among other sources, ERR (2020), '**Reformierakonna vaenukõne eelnõu langes parlamendi menetlusest välja**', 16 December 2020.
- 54 France, Council of State (*Conseil d'Etat*) (2020), Opinion on a bill to consolidate respect for the principles of the Republic by everyone (***Avis sur un projet de loi confortant le respect, par tous, des principes de la République***), 7 December 2020, paras. 101 and 102.
- 55 Sweden, Ministry of Justice (*Justitiedepartementet*) 'Ban on racist organisations' ('**Förbud mot rasistiska organisationer**'), press release, 4 July 2019.
- 56 The Netherlands, Minister for Legal Protection (*Minister voor Rechtsbescherming*) (2020), **Wijziging van Boek 2 van het Burgerlijk Wetboek ter verruiming van de mogelijkheden tot het verbieden van rechtspersonen**.
- 57 In other international and regional human rights instruments, these rights are protected under the right to freedom of expression (Article 19 of the International Covenant on Civil and Political Rights and Article 10 of the European Convention on Human Rights).
- 58 See UCI Law International Justice Clinic (2020), **Summary of Expert Consultation on Academic Freedom and Freedom of Expression**, para. 15; OHCHR, '**Artistic freedom**'.
- 59 See, for example, Commissioner for Human Rights (2021), '**Spanish authorities should amend the Criminal Code to strengthen existing safeguards of the right to freedom of expression**', 22 March 2021.
- 60 Freemuse (2021), '**Freemuse, PEN Catala and PEN International launch manifesto with MEPs calling for the release of rapper Pablo Hasel and the protection of artistic freedom in Spain**', 7 April 2021; Liberties (2019), '**Spain: Artistic freedom suffers new attack**', 4 April 2019; European Federation of Journalists (2021), '**Media and artistic freedom under attack: Europe has to act**', 22 February 2021.
- 61 See Rights International Spain (2021), **Legal standards on glorification – Case law analysis of the offence of glorification of terrorism in Spain**.
- 62 Judgment in CJEU, Case C-66/18, *Commission v. Hungary*, 6 October 2020.
- 63 Hungary Today (2020), '**CEU to stay in Vienna despite favorable ECJ ruling**', 7 October 2020; 444.hu (2020), '**Új intézetet alapít Magyarországon a CEU, de Bécsset sem hagyják ott**', 6 October 2020; Civicus (2020), '**Further erosion of media and academic freedom; attacks on LGBT-friendly children's book**', 26 October 2020.
- 64 Hungary, Act LIV of 2021 on amending the Act CCIV of 2011 on national higher education in order to implement the judgment of the Court of Justice of the European Union delivered in case C-66/18 (***Az Európai Unió Bírósága C-66/18. számú ügyben hozott ítéletének végrehajtása érdekében a nemzeti felsőoktatásról szóló 2011. évi CCIV. törvény módosításáról szóló 2021. évi LIV. törvény***).
- 65 Denmark, *Information* (2020), 'Several Islamic schools have had their government subsidies withdrawn – the Danish Ombudsman goes into the matter' ('**Flere muslimske friskoler har fået frataget statstilskud – nu går Ombudsmanden ind i sagen**'), 12 October 2020.
- 66 Article 22 of the International Covenant on Civil and Political Rights; Council of Europe (1950), European Convention on Human Rights, Article 11.
- 67 CJEU, Case C-78/18, *Commission v. Hungary*, para. 112.
- 68 OSCE/ODIHR and Venice Commission (2014), **Joint guidelines on freedom of association**, CDL-AD(2014)046, para. 27.
- 69 FRA (2021), 'FRA 2020 consultation on experiences of civil society organisations working on human rights in the EU'.
- 70 Finland, Act on Temporary Deviations from the Finnish Limited Liability Companies Act, the Cooperative Act, the Association Act and certain other community laws to restrict the spread of the Covid-19 epidemic (***Iaki väliaikaisesta poikkeamisesta osakeyhtiölaista, osuuskuntalaista, yhdistyslaista ja eräistä muista yhteisölaista Covid-19-epidemian leviämisen rajoittamiseksi/lag om temporär avvikelse från aktiebolagslagen, lagen om andelslag, föreningslagen och vissa andra sammanslutningslagar i syfte att begränsa***

- spridningen av Covid-19-epidemin*, Act No. 677/2020), 3 October 2020.
- 71 Luxembourg, Luxembourg government (2020), *New provisions for the holding of general assemblies and meetings of companies and legal persons such as public establishments and non-profit organizations (Nouvelles dispositions pour la tenue des assemblées générales et réunions des sociétés et personnes morales tels les établissements publics et ASBL)*, 20 March 2020.
- 72 Denmark, the Danish Parliament (*Folketinget*) (2020), Proposal for resolution B139 (*beslutningsforslag B139*).
- 73 Romania, Government of Romania (2000), Government Ordinance regarding associations and foundations (*Ordonanță nr. 26 din 30 ianuarie 2000 cu privire la asociații și fundații*), 31 January 2000. See the **unofficial translation**.
- 74 Finland, Government of Finland (2020), Government Bill No. 2/2020 to Parliament on amending certain provisions concerning the processing of personal data in the administrative branch of the Ministry of Justice (*Hallituksen esitys eduskunnalle laeiksi oikeusministeriön hallinnonalan eräiden henkilötietojen käsittelyä koskevien säännösten muuttamisesta/Regeringens proposition till riksdagen med förslag till lagar om ändring av vissa bestämmelser om behandling av personuppgifter inom justitieministeriets förvaltningsområde*), 2 February 2020.
- 75 Austria, Federal Ministry of the Interior (2020), **'Innenminister Karl Nehammer forciert Digitalisierung des Vereinswesens'**, press statement, 16 September 2020.
- 76 Lithuania, Parliament of the Republic of Lithuania (*Lietuvos Respublikos Seimas*) (2020), Amendment of Law on Charity Foundations (*Labdaros ir paramos fondų įstatymo pakeitimas*), 1 June 2020; Parliament of the Republic of Lithuania (2020), Amendment of Law on Associations (*Asociacijų įstatymo pakeitimas*), 1 June 2020.
- 77 Slovakia, **Law no. 346/2018 Coll on the register of non-governmental non-profit organizations and on amendments to certain acts**, 27 November 2018.
- 78 Cyprus, Law on organisations and foundations and other related matters of 2017 (**Ο περί Σωματείων και Ιδρυμάτων και για Άλλα Συναφή Θέματα Νόμος του 2017**), N. 104(I)/2017.
- 79 Germany, *Bundesministerium der Finanzen* (2020), **Jahressteuergesetz 2020**, 21 December 2021; *Deutsches Stiftungszentrum* (2021), **'Reform des Gemeinnützigkeitsrechts'**.
- 80 Germany, *Bundesministerium der Justiz* (2020), Draft Law on the harmonisation of foundation law (**Entwurf eines Gesetzes zur Vereinheitlichung des Stiftungsrechtes**), 28 September 2020; *Bundesverband Deutscher Stiftungen* (2020), **Stellungnahme zum Referentenentwurf eines Gesetzes zur Vereinheitlichung des Stiftungsrechts (Stand: 16.09.2020)**.
- 81 Lithuania, Law on lobbying activities (**Lobistinės veiklos įstatymas**), 26 June 2020.
- 82 France, Public Defender of Rights (*Défenseur des droits*) (2021), Opinion no. 21-01 (**Avis no. 21-01**), 12 January 2021; Council of State (*Conseil d'Etat*) (2020), Opinion on a bill to consolidate respect for the principles of the Republic by everyone (**Avis sur un projet de loi confortant le respect, par tous, des principes de la République**), 7 December 2020, paras. 73 and 74.
- 83 Council of Europe, Expert Council on NGO Law (2020), **Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration**; Council of Europe, Expert Council on NGO Law (2020), **Addendum to the Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration**.
- 84 Choose Love (2021), **'Under pressure – How Greece is closing in on civil society'**, 26 February 2021; Civic Space Watch (2021), **'Greece: Implementation of NGO register leaves NGOs in legal vacuum'**, 29 March 2021; Civicus (2020), **'New laws pose a threat to NGOs working on asylum issues and restrict the right to protest'**, 16 July 2020.
- 85 OSCE/ODIHR and Venice Commission (2014), *Joint guidelines on freedom of association*, CDL-AD(2014)046, para. 253.
- 86 Cyprus, Law on organisations and foundations and other related matters of 2017 (**Ο περί Σωματείων και Ιδρυμάτων και για Άλλα Συναφή Θέματα Νόμος του 2017**) N. 104(I)/2017.
- 87 Cyprus, Law on organisations and foundations and other related matters of 2017 (**Ο περί Σωματείων και Ιδρυμάτων και για Άλλα Συναφή Θέματα Νόμος του 2017**) N. 104(I)/2017, Article 44.
- 88 Cyprus Mail (2020), **'Thousands of NGOs face purge if not properly registered, minister says'**, 18 July 2020.
- 89 Cyprus Mail (2021), **'Amnesty raises concerns over deregistration of migrant support group'**, 3 March 2021; FIDH (2020), **'Cyprus: Deregistration of the NGO KISA'**, 23 December 2020; Front Line Defenders (2021), **'37 organisations denounce ongoing harassment against KISA and call on Cypriot authorities to reinstate its official registration as a non-governmental organisation (NGO)'**, 18 February 2021. Consultation by Franet contractor University of Nicosia, Cyprus, with NGO Support Centre and Civil Society Advocates, 27 and 28 January 2021.
- 90 Council of Europe Commissioner for Human Rights (2021), **'Cypriot authorities should investigate allegations of pushbacks and ill-treatment of migrants, improve reception conditions, and ensure an enabling environment for NGOs'**, 10 March 2021.
- 91 France, Council of State (*Conseil d'Etat*) (2020), Opinion on a bill to consolidate respect for the principles of the Republic by everyone (**Avis sur un projet de loi confortant le respect, par tous, des principes de la République**), 7 December 2020.
- 92 Council of Europe, Expert Council on NGO Law (2021), **Opinion on the compatibility with the European standards of the French Bill to ensure respect for the principles of the republic by all**, 31 March 2021.
- 93 See ECNL (2020), **'France aims to strengthen respect of Republican values: But how does this affect civic space?'**, 10 December 2020; *Ligue des Droits de l'Homme* (2021), **'A l'attention des Sénatrices et Sénateurs: Project de loi "confortant le respect des principes de la République"'**, 7 April 2021; Civic Space Watch (2021), **'France: Open letter – The French "separatism" bill raises concerns for rights and civil liberties: The EU Commission must question France'**, 3 June 2021; Civicus et al. (2021), **'The French "separatism" bill raises concerns for rights and civil liberties'**.
- 94 Civic Space Watch (2020), **'France: CSOs react to Minister of Interior order of dissolution of an organisation working on islamophobia'**, 22 October 2020.
- 95 The Netherlands, Minister for Legal Protection (*Minister voor Rechtsbescherming*) (2020), **Wijziging van Boek 2 van het Burgerlijk Wetboek ter verruiming van de mogelijkheden tot het verbieden van rechtspersonen**.
- 96 Romania, Civil Society Development Foundation (*Fundația pentru Dezvoltarea Societății Civile*) (2020), **'Indexul Sustenabilității Societății Civile 2018 – Romania'**. The abovementioned Law 276/2020 includes some exemptions for associations and foundations that are linked to the specific legislation on the prevention and combating of money laundering and the financing of terrorism.
- 97 Council of Europe, Committee of Experts on the Evaluation of Anti-money Laundering Measures and the Financing of Terrorism (*Moneyval*) (2019), *Anti-money laundering and counter terrorist financing measures: Cyprus – Fifth round mutual evaluation report*.
- 98 Latvia, Latvian Civic Alliance (*Latvijas pilsoniskā alianse*) (2020), **'Notikusi NVO tikšanās ar banku nozari uzraugošām institūcijām'**, press release, 17 July 2020.
- 99 Luxembourg, Ministry of Justice (2020), **'Raising awareness among NGOs of the risks of abuse by terrorists and terrorist organizations – Webinar of 26 November 2020'** (**'Sensibilisation des OBNL aux risques d'abus par des terroristes et organisations terroristes – Webinaire du 26 novembre 2020'**).

4

ACCESS TO AND USE OF FUNDING

CSOs rely on funding and income from a variety of sources, including the public sector (at national, regional or local level in Member States, EU level), international organisations, individual donors, foundations and philanthropic organisations, corporations, membership fees, and income-generating activities. The OSCE/ODIHR and Venice Commission guidelines on freedom of association note that “the ability to seek, secure and use resources is essential to the existence and operation of any association”.¹

Access to and use of funding provide associations with the means to operate and pursue their missions and are therefore an inherent element of the right to freedom of association.² This is particularly relevant to CSOs, given their not-for-profit nature and their importance to society, which places states under an obligation to facilitate or, at a minimum, not hinder the effective exercise of the right to access funding, as explicitly recognised in relation to CSOs working on human rights.³

According to the OSCE/ODIHR and Venice Commission guidelines on freedom of association, access to and use of funding refers to the ability to seek, receive and utilise resources of different types, including financial, in-kind, material and human resources, and state support, including public funding, for the establishment and operations of certain associations, such as NGOs.⁴

The Council of Europe’s Committee of Ministers asked member states to “take effective measures to promote civil society space, in particular to ensure access to resources to support the stable funding of human rights defenders, including NHRIs and civil society organisations, and increase efforts to promote their activities”.⁵ EU institutions recognise that adequate financial support for CSOs is key to a conducive and sustainable environment for civil society action.⁶

4.1. FINANCING OF CIVIL SOCIETY WORK

Although CSOs have already reported increasingly difficult access to resources including public funding in recent years, the year 2020 saw additional challenges because of the pandemic. These ranged from the diversion of public funds to pandemic-related priorities to a decrease in private donations, the inability to organise fundraising events and a decline in material contributions through volunteering.

In total, 60 % of CSOs participating in FRA’s civic space consultation had difficulties finding adequate funds in 2020,⁷ and 42 % of respondents to FRA’s Covid-19 impact consultation indicated that they were facing “financial difficulties” as a “direct result of measures related to the Covid-19 pandemic”.⁸

Public funding landscape

CSOs indicate in FRA's civic space consultation that they are facing obstacles in accessing national funding for a number of different reasons, including competition with other CSOs for limited funds, limited administrative capacity to apply for funding, lack of transparency and fairness in funding allocation, and restrictive eligibility criteria (Figure 8).⁹

As Franet reports indicate, advocacy organisations were generally affected more than CSOs providing services in most Member States in 2020, with funding being more focused on service provision than on advocacy.

In Czechia, a bill was proposed to exclude advocacy groups from state funding;¹⁰ however, the government considered the bill discriminatory and contrary to EU law, and thus recommended rejecting the draft law that was to be discussed in 2021.¹¹ In Lithuania, the Constitutional Court¹² found that specific laws that set a particular percentage of the state budget for a specific programme or fund violated the constitutional rights and duty of the government to form a state budget independently. These included laws on environmental protection, waste management and the Cultural Support Fund. This ruling prevents long-term (more than one year) financing programmes and is expected to have a negative effect on the sustainable financing of NGOs, until the government develops new sustainable financing mechanisms.

In Croatia, in the past few years challenges to accessing funding have particularly affected advocacy work, watchdog activities and the provision of social services to vulnerable groups in deprived communities.¹³

In some EU Member States, civil society actors claim that state funding practices lack transparency and seem discriminatory.

For example, in Poland, the National Freedom Institute—the Centre for Civil Society Development undertakes the disbursement of funds.¹⁴ The institute is a governmental executive agency governed by the Act on Public Benefit and Volunteer Work of 2003. It is open to public control through its board, which consists of 11 members, including five CSO representatives who also approve the principles of grant competitions. The Act on the Public Benefit and Volunteer Work also regulates the funding allocation procedure. Nevertheless, some media,¹⁵ CSOs¹⁶ and an international association of donors¹⁷ have criticised its work for allegedly favouring organisations that support government policy.

PROMISING PRACTICE

Offering innovative funding instruments

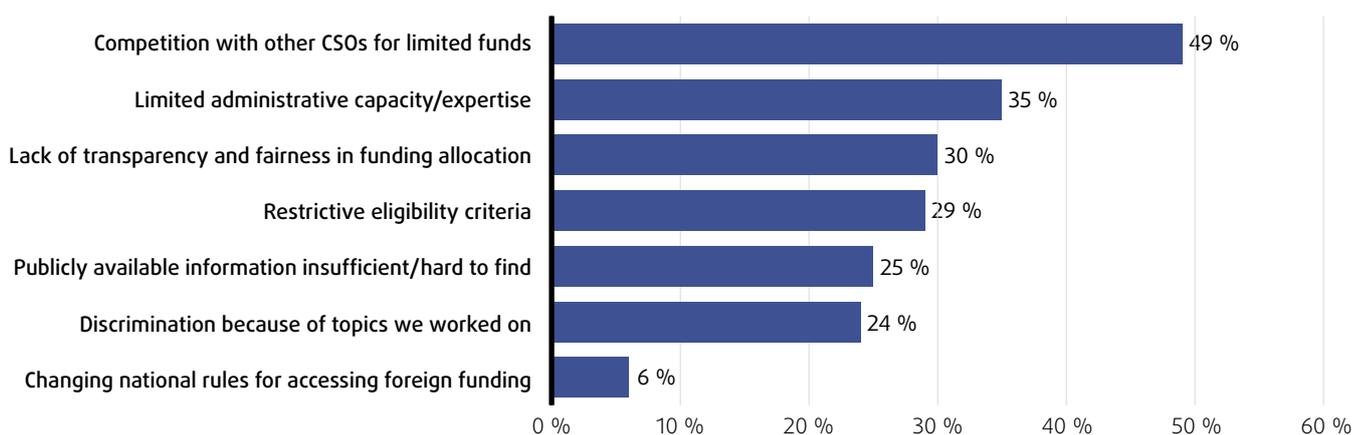
In **Lithuania**, the European Social Fund Agency introduced an innovative funding instrument, the Alternative Investment Detector (AID), to support NGOs working in the field of social inclusion. The scheme builds on an innovative application system, which substantively reduces bureaucracy in the application process and offers beneficiary CSOs expert consultations, as well as mentoring and support in meeting administrative requirements.*

**Lithuania, European Social Fund Agency (Europos socialinio fondo agentūra), 'Alternative Investment Detector' ('Alternatyvių Investicijų Detektorius (AID)'). See also Lithuania, European Social Fund Agency (Europos socialinio fondo agentūra) (2020), 'Kviečiame tapti projekto „Alternatyvių investicijų detektorius (AID)“ partneriais!'.*

Note:

Question: "In the last 12 months, did you experience any of the following difficulties when trying to access national funding? Please select up to three"; N=178.

FIGURE 8: DIFFICULTIES IN ACCESSING NATIONAL FUNDING



Source: FRA, civic space consultation, 2020

PROMISING PRACTICE

Investing in civil society development

The **Slovenian** Non-governmental Organisations Act was adopted in 2018. It set up a fund for the development of NGOs that provides resources for projects and programmes of horizontal networks and regional hubs, promoting the development of NGOs and of their support environment, including volunteering. The fund also provides match funding for EU projects facilitating the professional development of NGOs.*

Slovenia, **Non-governmental Organisations Act (Zakon o nevladnih organizacijah), 20 March 2018.*

“The funding environment for organisations conducting litigation and advocacy, such as ours, has been shrinking substantially in recent years [...].”

(Respondent to FRA’s civic space consultation 2020)

“We are worried that resources and funds for civil society organisations will starkly decrease next year, due to the economic crisis following the pandemic [...].”

(Respondent to FRA’s civic space consultation 2020)

In Slovakia, civil society actors criticised the government in January 2020 for reducing the funding of organisations working on gender equality.¹⁸

However, positive developments improving the financing landscape for CSOs were also registered during 2020. Finland, based on evidence from extensive research,¹⁹ adopted a new Fundraising Act²⁰ for CSOs. Promising practices in terms of state funding for CSOs are also reported in Malta²¹ and Slovenia.²²

Elsewhere, there was progress in specific sectors, such as raising awareness of funding opportunities for CSOs in the cultural sector in Luxembourg,²³ and promoting cross-border partnerships among CSOs with non-EU countries in Denmark. Through the establishment of the New Democracy Fund, the Ministry of Foreign Affairs in Denmark offers local CSOs in Eastern Partnership countries the opportunity to apply for grants in cooperation with Danish CSOs.²⁴

A number of countries have also made public associations, including CSOs, eligible for their Covid-19 emergency support measures. Some of them have set up targeted support schemes for CSOs. However, the funds provided have not always been sufficient, and support has often been provided late.²⁵

CSOs also reported cuts in public funding as a consequence of the Covid-19 pandemic. In Spain, several CSOs denounced funding cuts by the public administration, including at regional and local levels.²⁶ Cuts reportedly affected the work of CSOs providing social services, support and help to vulnerable groups, at a time of a profound socioeconomic crisis.²⁷

Private donors are reportedly taking on a positive role in supporting CSOs in certain countries. For example, in Bulgaria a private telecommunications company implements a successful grant programme that supports projects undertaken by CSOs to address specific community problems. In 2020, the Bulgarian Donors’ Forum recognised the company as the country’s largest corporate donor that year.²⁸

Funding challenges for organisations working with migrant communities and religious minorities

CSOs working with ethnic minorities, migrants and religious minorities faced a number of specific challenges in 2020, notably concerning funding.

For example, in Belgium, the Flemish government decided in November to stop supporting the National Minorities Forum, which works with ethnic-cultural minorities. However, the Council of State suspended the implementation order.²⁹ In 2020, Greece further defined the regulatory framework on the registration of NGOs³⁰ active in the area of asylum, migration and social inclusion, which could affect access to state funding.³¹

In Denmark, the National Council for Ethnic Minorities and the Danish Institute for Human Rights raised their concerns over a bill to hinder donations from certain natural or legal persons who are considered to be working against or attempting to undermine democracy and fundamental rights.³² CSOs fear that the proposal will give rise to more stigmatising language. The Danish Institute for Human Rights found the wording of what constitutes “undermining the democracy” to be vague and open to interpretation, and noted the risk of the law being arbitrary and giving rise to legal uncertainty.³³

In France, the equality body *Défenseur des droits* criticised the bill on consolidating the respect for the principles of the Republic³⁴ for proposing to make the awarding of subsidies to associations conditioned by a prior subscription to a ‘Republican commitment contract’. A breach of this contract would require the reimbursement of the subsidy.³⁵ In Sweden, a debate is

ongoing about a 'democracy requirement' for state funding for CSOs. There are concerns about data protection implications, among other things.³⁶

On a positive note, in Germany, increased funding for activities to prevent extremism and radicalisation was made available, including as part of the programme 'Living Democracy!'.³⁷ This can be seen as a step towards more sustainable and long-term funding for civil society to promote democracy; however, a draft law that proposed to set up a comprehensive funding framework for such associations has not gathered sufficient support to date from the different political forces in the parliament.

Role of EU and other regional donors

Financial support from EU funds and regional donors, such as the European Economic Area and Norway Grants, is an important source of funding for CSOs. CSOs have welcomed the new EU Citizenship, Equality, Rights and Values programme.³⁸ However, CSOs indicated in FRA's civic space consultation 2020 that they experienced challenges in accessing EU funding, such as bureaucratic procedures and strict eligibility criteria, including as regards co-financing requirements,³⁹ which are said to particularly affect smaller grassroots organisations.

In addition to direct EU funding for CSOs or their projects, other EU funds are also disbursed through Member States. In Croatia, an NGO report identified administrative barriers affecting the allocation of the European Stability Initiative funds, especially the European Social Fund, by national authorities. Management of these funds is shared between the EU and the Member States. The European Commission entrusts the Member States with implementing programmes at national level, and Member States then allocate these funds to end recipients.⁴⁰ NGOs also pointed to delays in the announcement of calls and the processing of applications for EU-funded project calls by national authorities.⁴¹

In some Member States, however, efforts are being made to promote and facilitate the creation of partnerships and coalitions between national CSOs, including for the purpose of enhancing EU financial support opportunities. The example of the Civil Society Fund in Malta illustrates this.

4.2. TAXATION FRAMEWORK

Although tax incentives, exemptions and relief can be an important form of support for CSOs, organisations in many Member States still regret inadequate or even penalising taxation frameworks. In Cyprus, for example, CSOs cannot claim back value added tax or benefit from tax exemptions. Despite repeated calls,⁴² In Germany, despite some improvements to tax exemptions, some advocacy NGOs have lost their charitable status, as a recent report by Liberties finds.⁴³

Progress in the area of taxation law was reported in some countries. In Denmark, a pending parliamentary resolution is proposing to investigate tax exemptions, among other measures to strengthen and support the civil society sector.⁴⁴ In France,⁴⁵ the 2020 finance law includes new fiscal measures in favour of associations, and Estonia⁴⁶ enables donations of income tax in a simplified way.

PROMISING PRACTICE

Investing in CSOs' engagement and participation in EU issues

In **Malta**, the Council for the Volunteer Sector published the Civil Society Fund guidelines in April 2020. The fund provides selected applicants with financial assistance to facilitate their affiliation with and participation in European groups, associations, federations and networks of European confederations, and their participation in training related to EU policies/programmes.*

Malta Council for Voluntary Sector (2020), **Civil Society Fund – Grants for civil society organisations – Guidelines for applicants.*

PROMISING PRACTICE

Facilitating the donation of income tax returns

Since 2020, in **Estonia**, returns of income tax can be donated, in whole or in part, using a simplified procedure in the Tax and Customs Board (*Maksu- ja Tolliamet*) self-service environment *e-MTA*, to a maximum of three associations.*

**Estonia, Tax and Customs Board (Maksu- ja Tolliamet), 'Submission income tax returns 2020'.*

4.3. ACCESS TO AND USE OF FOREIGN FUNDING

The OSCE/ODIHR and Venice Commission *Joint guidelines on freedom of association* state that “associations shall have the freedom to seek, receive and use financial, material and human resources, whether domestic, foreign or international, for the pursuit of their activities”.⁴⁷ According to the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, states have an obligation not to arbitrarily restrict or block CSOs’ access to resources on the grounds of the nationality or the country of origin of their source, or stigmatise those who receive such resources.⁴⁸

The judgment of 18 June 2020 by the CJEU concerning the law on foreign-funded CSOs in Hungary declared specific provisions of the law in question to be incompatible with EU law.⁴⁹ In February 2021, the European Commission sent a letter of formal notice to Hungary, calling for the implementation⁵⁰ of the CJEU ruling on foreign-funded NGOs.⁵¹ Hungary has since sent a draft amendment to the European Commission, and said that it was ready to comply with the ruling and take steps to implement it.⁵² The Hungarian government submitted the draft to the Hungarian parliament in April 2021. On 18 May 2021, the parliament adopted an act revoking the former Act on the transparency of civil society organisations supported from abroad and introduced new rules aiming to take into account the judgment of the CJEU.⁵³ CSOs welcomed the repeal of the 2017 law, although some considered the new provisions on the “transparency of civil organisations” problematic.⁵⁴

Concerns about – in some cases arguably disproportionate – restrictions on access to foreign funding were also raised by CSOs in other Member States. Over the past year, laws on foreign-funded CSOs have been proposed in Bulgaria⁵⁵ and Poland⁵⁶, attracting criticism from civil society.⁵⁷ In Poland, since the day the draft law was proposed by one of the government parties in August 2020, there have been no further legislative works in this regard.⁵⁸

Access to foreign funding has been reportedly affected in a disproportionate way because of the legal framework on money laundering in force in Cyprus.⁵⁹ New restrictions on foreign donations and stricter rules on reporting for CSOs benefiting from foreign funding are also included in the abovementioned bill on the protection of democracy in Denmark⁶⁰ and the bill on the protection of republican values in France,⁶¹ as well as in a bill for a Transparency Civil Society Organisations Act in the Netherlands.⁶² In France, the Council of State expressed reservations about the proposed provisions, clarifying that the collection of foreign funds may be opposed only if the actions of the beneficiary association or its members pose a real, present and sufficiently serious threat to a fundamental interest of society.⁶³

Endnotes

- 1 OSCE/ODIHR and Venice Commission (2020), *Joint guidelines on freedom of association*, CDL-AD(2014)046, para. 200.
- 2 See European Court of Human Rights, *Parti nationaliste basque – Organisation régionale d’Iparralde v. France*, 7 June 2007, paras. 37 and 38; CJEU, Case C-78/18, *Commission v. Hungary*, para. 14.
- 3 UN, General Assembly (2011), *Report of the UN Special Rapporteur on the situation of human rights defenders*, A/66/203, para. 68. See also the UN Declaration on Human Rights Defenders, which explicitly recognizes the right to access funding as a self-standing substantive right under Article 13.
- 4 OSCE/ODIHR and Venice Commission, *Joint guidelines on freedom of association*, CDL-AD(2014)046, paras. 201–203. See also Council of Europe, Committee of Ministers (2007), Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, 10 October 2007, paras. 9, 14, 50, 51, 52, 53, 54, 55 and 56.
- 5 Council of Europe, Committee of Ministers (2018), *Recommendation CM/Rec(2018)11 of the Committee of Ministers to member states on the need to strengthen the protection and promotion of civil society space in Europe*, 28 November 2018, para. III.a.
- 6 See in particular the [webpage](#) for the Citizens, Equality, Rights and Values Programme.
- 7 FRA (2021), ‘FRA 2020 consultation on experiences of civil society organisations working on human rights in the EU’.
- 8 FRA (2021), ‘**Covid-19 impact on civil society work – Results of consultation with FRA’s Fundamental Rights Platform**’, 24 February 2021.
- 9 FRA (2020), ‘FRA 2020 consultation on experiences of civil society organisations working on human rights in the EU’.
- 10 Czechia, Chamber of Deputies (2020), Draft Law on the Provision of Subsidies to Non-governmental Non-profit Organizations from the State Budget of the Czech Republic (*Návrh zákona o poskytování dotací neziskovým org. ze st.rozpočtu*), 24 March 2020
- 11 Czechia, Government of the Czech Republic (2020), Government opinion on the press 792/0 (*Stanovisko vlády k tisku 790/0*), 21 April 2020.
- 12 Lithuania, Constitutional Court of the Republic of Lithuania (*Lietuvos Respublikos konstitucinis teismas*) (2020), ‘**The laws governing the financing of programmes and funds must not set a specific amount of state budget funds allocated to them**’, 3 November 2020.
- 13 Human Rights House Zagreb (2020), *Access to financing for civil society organizations in Croatia: EU programs, ESI funds and state budget*; Civic Space Watch (2019), ‘**Croatia: Civil Society Strategy in limbo puts at risk CSOs’ financial sustainability**’, 6 June 2019; and Gong (2020), *Government attacks on civil society in Croatia*.
- 14 Poland, Narodowy Instytut Wolności, ‘**National Freedom Institute**’
- 15 Poland, Baczyński M. (2020), ‘**Miliony dla swoich. Tak PiS wspiera swoje organizacje**’, 15 September 2020; Oko.press (2021), ‘**Instytut Glińskiego rozdał 11 mln zł organizacjom nacjonalistycznym, katolickim i PiS-owskim**’, 3 May 2021.
- 16 Helsinki Foundation for Human Rights, ‘**The situation of civil society organisations in Poland**’; Pazderski, F. (2020), *2019 Civil Society Organisation Sustainability index: Poland*, pp. 9–10.
- 17 Dafne – Donors and Foundations Networks in Europe (2019), *Countering shrinking space in Poland*, 26 June 2019.
- 18 See Gehrerová, R. (2021), ‘**Krajniak útočí na feministické organizácie, dotácie vraj nedostali, lebo v minulosti ich mali priveľa**’, 22 January 2021; The Voice of Civil Society Organizations Platform (*Platforma Hlas občianskych organizácií*) (2021), ‘**Ministerstvo práce, sociálnych vecí a rodiny rozdeľuje občiansky sektor**’, 22 January 2021; Civic Space Watch (2021), ‘**Slovakia: Government move risks polarising the civil society sector**’, 9 April 2021.
- 19 Finland, Ruuskanen, P., Jousilahti, J., Faehnle, M., Kuusikko, K., Kuittinen, O., Virtanen, J. and Strömberg, L. (2020), *Kansalaisyhteiskunnan tila ja tulevaisuus 2020-luvun Suomessa*, Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja 2020:47, 22 October 2020, (in Finnish, with an abstract in English).
- 20 Finland, Fundraising Act (*rahankeräyslaki/lag om penninginsamlingar*, Act No. 863/2019), 1 March 2020.
- 21 Malta Council for Voluntary Sector (2020), *Civil Society Fund*, 1 April 2020.
- 22 Slovenia, *Non-governmental Organisations Act (Zakon o nevladnih organizacijah)*, 20 March 2018.
- 23 Luxembourg, see the [Facebook page of CLAE](#) for details of the event ‘Ministry of Culture: What financial support for associations?’ (*‘Ministère de la culture: quel soutien financier pour les associations?’*), 26 November 2020.
- 24 Denmark, Ministry of Foreign Affairs (*Udenrigsministeriet*), ‘**Naboskabsprogrammet**’; Danish Cultural Institute (*Dansk Kulturinstitut*) (2020), ‘**The New Democracy Fund’s rapid response is open for application**’, 23 December 2020.
- 25 Civic Space Watch (2021), ‘**Ireland: Interview with The Wheel – Civic actors were crucial to respond to the crisis**’, 15 March 2021; and European Civic Forum (2020), *Activizenship – Civic Space Watch report 2020: Stories from the lockdown*.
- 26 Spain, Cenizo, N. (2020), ‘**La Junta de Andalucía avanza los primeros recortes: las ONG denuncian una reducción drástica del presupuesto para cooperación**’, *elDiario.es*, 7 May 2020.
- 27 Spain, European Anti-Poverty Network (2020), ‘**Denuncian la decisión de recortar la financiación a las ONG estatales de Acción Social en plena pandemia**’, press release, 22 May 2020.
- 28 Bulgaria, VIVACOM Fund (2020), ‘**VIVACOM Regional Grant: General information**’ (*‘VIVACOM Регионален грант: обща информация’*).
- 29 Belgium, Raad van State (Council of State) (2020), *Afdeling Bestuursrechtspraak Voorzitter van de Xe Kamer – Arrest No. 249.047 van 25 november 2020*; Brussels Times (2020), ‘**Flemish government cuts its ties with Minority Forum**’, 11 November 2020.
- 30 Greece, Joint Ministerial Decision 10616/2020 (*Κοινή Υπουργική Απόφαση*), ‘**Defining the operation of the “Register of Greek and Foreign Non-Governmental Organizations (NGOs)” and the “Register of Members of Non-Governmental Organizations (NGOs)”, which are active in fields of international protection, immigration and social inclusion**’ (*Καθορισμός λειτουργίας του «Μητρώου Ελληνικών και Ξένων Μη Κυβερνητικών Οργανώσεων (ΜΚΟ)» και του «Μητρώου Μελών Μη Κυβερνητικών Οργανώσεων (ΜΚΟ)», που δραστηριοποιούνται σε θέματα διεθνούς προστασίας, μετανάστευσης και κοινωνικής ένταξης*) (O.G.G. Issue B’ 3820/9.9.2020).
- 31 Choose Love (2021), ‘**Under pressure –How Greece is closing in on civil society**’, 26 February 2021.
- 32 Denmark, the Danish Parliament (*Folketinget*) (2020), Bill L81 (*Forslag til lov om forbud mod modtagelse af donationer fra visse fysiske og juridiske personer*). See public consultation responses (*høringssvar*) to proposal L81 (in Danish).
- 33 See public consultation responses (*høringssvar*) to proposal L81 (in Danish).
- 34 France, Minister of the Interior (*Ministère de l’intérieur*) (2020), Bill on consolidating respect for the principles of the Republic (*Projet de loi confortant le respect des principes de la République*).
- 35 France, Public Defender of Rights (*Défenseur des droits*) (2021), Opinion no. 21-01 (*Avis no. 21-01*), 12 January 2021.

- 36 Sweden, Ministry of Justice (*Justitiedepartementet*) and Ministry of Culture (*Kulturdepartementet*) (2021), 'The government takes a new step towards sharpened democracy requirement in state funding to civil society' (**'Regeringen tar nytt steg för skärpt demokrativillkor vid statsbidrag till civilsamhället'**), press release, 1 November 2020. See also Ministry of Culture (*Kulturdepartementet*) (2018), 'Democracy requirements in state funding' (**'Demokrativillkoren i statlig bidragsgivning'**), 16 March 2018; Ministry of Culture (*Kulturdepartementet*) (2020), 'Complementary terms of reference to the inquiry on treatment of personal data in matters concerning funding to the civil society' (**'Tilläggsdirektiv till utredningen om personuppgiftsbehandling i ärenden om stöd till det civila samhället'**), 18 November 2020; and Ministry of Culture (*Kulturdepartementet*) (2020), 'Treatment of personal data in matters concerning funding to the civil society' (**'Personuppgiftsbehandling i ärenden om stöd till det civila samhället'**), 3 November 2020.
- 37 Germany, *Bundesministerium für Familie, Senioren, Frauen und Jugend* (2016), **Strategie der Bundesregierung zur Extremismusprävention und Demokratieförderung**, 13 July 2020.
- 38 European Commission (2021), **The new 1,55 billion CERV programme is coming: Learn more and get ready to apply**, press release, 2 March 2021. See also European Civic Forum (2020), **'Civic organisations to secure a historic victory!'**, press release, 13 November 2020.
- 39 FRA (2021), 'FRA 2020 consultation on experiences of civil society organisations working on human rights in the EU'.
- 40 Human Rights House Zagreb (2020), **Access to financing for civil society organizations in Croatia: EU programs, ESI funds and state budget**; Gong (2020), **Government attacks on civil society in Croatia**.
- 41 Human Rights House Zagreb (2019), **Joint NGO submission on behalf of the coalition of Croatian human rights NGOs in relation to Croatia's 3rd UN Universal Periodic Review**, para. 22.
- 42 House of Representatives (2019), **'Minutes of the 8th Convention of Civil Society'**, 6 March 2019.
- 43 Liberties (2020), **Germany's civic space problem**; *Die Zeit* (2021), **'Berliner Finanzamt erkennt Change.org Gemeinnützigkeit ab'**, 18 March 2021.
- 44 Denmark, the Danish Parliament (*Folketinget*) (2020), Proposal for resolution B139 (**beslutningsforslag B139**).
- 45 France, Law No. 2019-1479 on finances for 2020 (**Loi n° 2019-1917 de finances pour 2020**), 28 December 2019.
- 46 Estonia, Tax and Customs Board (*Maksu- ja Tolliamet*), **'Submission income tax returns 2020'**.
- 47 OSCE/ODIHR and Venice Commission, **Joint guidelines on freedom of association**, CDL-AD(2014)046, para. 32.
- 48 UN, General Assembly (2013), **Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association**, A/HRC/23/39, 24 April 2013, especially para. 20.
- 49 CJEU, C-78/18, **Commission v Hungary**, 18 June 2020.
- 50 EU Observer (2020), 'EU commission warns Hungary on "foreign-funded" NGO law', 4 November 2020; Tempus Pulic Foundation (2020), 'Response to the complaint registered under No. TKA-00135-002/2020' (**'Válasz a TKA-00135-002/2020 nyilvántartási számú panaszra'**), 27 October 2020. See also Horváth. B. (2020), 'An NGO lost EU grant money, because it wouldn't confirm or deny foreign funding' (**'EU-s pályázati pénzt bukott egy civil szervezet, mert nem volt hajlandó igazolni, hogy külföldről támogatott-e'**), *444.hu*, 28 September 2020.
- 51 European Commission (2021), **'Letters of formal notice, Art.260 – NGO Law: Commission is calling on Hungary to implement the Court of Justice ruling on the Hungarian law on foreign-funded NGOs'**.
- 52 Hungary today (2021), 19 February 2021.
- 53 Hungary, Act XLIX of 2021 on the transparency of civil society organizations carrying out activities capable of influencing the public life (**a közélet befolyásolására alkalmas tevékenységet végző civil szervezetek átláthatóságáról szóló 2021. évi XLIX. Törvény**).
- 54 Civilisation coalition, **'Retraction of the LexNGO: important step, but more is needed'**.
- 55 Bulgaria, National Assembly (*Народно събрание*), Draft Amendment to the Non-Profit Legal Entities Act (**Законопроект за изменение и допълнение на Закона за юридическите лица с нестопанска цел**), 1 July 2020.
- 56 Poland, Ministry of Justice (2020), **'Nowe prawo wzmocni przejrzystość finansowania organizacji pozarządowych'**, 7 August 2020.
- 57 See, for example, Bulgarian Center for Not-for-Profit Law (*Български център за нестопанско право*) (2020), 'Over 300 civil society organisations in defense of the freedom of association' (**'Над 300 граждански организации в защита на свободата на сдружаване'**), press release, 20 July 2020; Civic Space Watch (2020), **'Poland: The Minister of Environment is planning a law on foreign funding for NGOs'**, 11 May 2020; Notes from Poland (2020), **'Polish ministers propose law making NGOs declare foreign funding and creating public register'**, 9 August 2020.
- 58 See Franet report on Poland on FRA's [website](#), p. 8.
- 59 Cyprus, Civil Society Advocates (2020), **'Μερικώς συμμορφώνεται η Δημοκρατία με τις συστάσεις του MoneyVal για τους μη κερδοσκοπικούς οργανισμούς'**, press release, 22 February 2020.
- 60 Denmark, the Danish Parliament (*Folketinget*) (2020), Bill L81 (**Forslag til lov om forbud mod modtagelse af donationer fra visse fysiske og juridiske personer**).
- 61 France, Minister of the Interior (*Ministère de l'intérieur*) (2020), Bill on consolidating respect for the principles of the Republic (**Projet de loi confortant le respect des principes de la République**).
- 62 The Netherlands, Minister for Legal Protection (*Minister voor Rechtsbescherming*) (2020), **Wetsvoorstel Wet transparantie maatschappelijke organisaties**, 20 November 2020.
- 63 France, Council of State (*Conseil d'Etat*), Opinion on a bill to consolidate respect for the principles of the Republic by everyone (**Avis sur un projet de loi confortant le respect, par tous, des principes de la République**), 7 December 2020, para. 82.

5

ACCESS TO AND PARTICIPATION IN DECISION-MAKING

Article 11 of the TEU defines civil dialogue as an essential component of participatory democracy and requires EU institutions to “give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action” and to “maintain an open, transparent and regular dialogue with representative associations and civil society”.

The European Commission considers the participation of civil society to be key to ensuring good quality legislation and the development of sustainable policies that reflect people’s needs.¹ Effective and sustainable mechanisms for dialogue, consultation and cooperation between civil society and decision-makers are needed at all levels.² An open, transparent, regular civil dialogue at national level can also offer important avenues for providing fundamental rights-relevant evidence and advice in law and policymaking, including in the many contexts in which national law is directly or indirectly influenced by EU legislation.³

CSOs play a prominent role in representing, organising and channelling the views and concerns of citizens.⁴ Effective participation in decision-making, including especially when it may affect civil society, is particularly relevant for human rights defenders and CSOs working on human rights.⁵

5.1. CIVIL DIALOGUE AND CONSULTATION PRACTICES

According to FRA research as well as civil society reports, despite efforts in some Member States to improve consultation with civil society, channels for CSOs’ access to and participation in decision-making remain overall patchy and are not properly supported by access to relevant information, clear standards or guidelines.

In FRA’s civic space consultation, responding CSOs point to key concerns about access and participation at national level. These include a lack of adequate information about participation/consultation processes (46 %), a lack of trust between civil society and public authorities (35 %), consultations organised after decisions were taken (29 %) and unequal opportunities to participate (24 %).⁶

Some efforts to improve consultation with civil society were reported, for instance, in Italy. For example, the Ministry of University and Research opened up the draft multiannual National Research Programme to public consultation for the first time.⁷ In Slovakia, important policy processes were opened up in 2020 to the participation of CSOs, including the election of the general prosecutor,⁸ the preparation of anti-corruption legislation⁹ and investment partnership agreements.¹⁰ In Austria, the national contact point for the **OECD Guidelines for Multinational Enterprises** actively involves CSOs, including in the steering committee; discussions with civil society take place on a regular basis.¹¹

PROMISING PRACTICE

Civic space commitments in Open Government Partnership national action plans

The OGP is a multilateral, multistakeholder partnership initiative that combines the forces of government leaders and civil society advocates to promote accountable, responsive and inclusive governance that serves the needs of citizens. In total, 21 EU Member States participate in the OGP, as do a growing number of local jurisdictions.^a

All OGP participants sign the Open Government Declaration^b and are required to work with CSOs to co-create reforms as part of a national action plan, adhering to the OGP Participation and Co-Creation Standards.^c The OGP

monitors the implementation of the commitments, as well as the process of implementation and the extent to which civil society was involved, through an Independent Reporting Mechanism.^d

Bulgaria, Croatia, Czechia, Denmark, Estonia, France, Italy, Latvia, Lithuania, Luxembourg, Romania, Slovakia, Spain and Sweden have included various commitments in view of strengthening the enabling space for civil society in their respective national action plans since 2012.^e

^a See the OGP's [webpage](#) for more details.

^b See the *Open Government Declaration on the OGP's dedicated [webpage](#).*

^c See OGP (2019), *OGP Participation and Co-Creation Standards*.

^d *The Independent Reporting Mechanism is an independent body guided by but not directly accountable to the Steering Committee of the OGP. An International Experts Panel directly oversees this body. For more information, see the OGP's [website](#).*

^e See OGP's [overview of civic space](#) as well as the current national action plans of OGP members.

Elsewhere, CSOs are mobilising to improve governments' practices, such as in the case of a draft law in the area of corruption in Czechia.¹² Progress on the creation of infrastructure to facilitate CSOs' cooperation with national authorities and their participation in decision-making affecting the civil society sector is reported in Bulgaria.¹³

A number of initiatives by national authorities drawing on CSOs' expertise in specific policy areas were also reported, for instance, in Belgium and Malta in respect to the drafting of national action plans against racism.¹⁴ In Denmark, a handbook for municipalities published in spring 2020 by the National Centre for Prevention of Extremism and the Centre for Voluntary Social Work highlights the value added and offers tools for the involvement of CSOs in local programmes for the prevention of extremism.¹⁵

In Finland, a multiannual working group was set up in September 2020 to strengthen cooperation between the government and CSOs involved in the prevention and fight against domestic violence, including when implementing obligations under the Council of Europe Convention on preventing and combating violence against women and domestic violence.¹⁶

PROMISING PRACTICE

Establishing a council for civil society development

Following the establishment of the Bulgarian Council for Civil Society Development in 2016* and the adoption of implementing rules in 2019,** the members of the council were elected in May 2020 for the first time.*** The council is meant to facilitate the drafting and implementation of policies in support of civil society in **Bulgaria**.

Among its tasks, the council is expected to give opinions on all draft normative acts, strategies, programmes and action plans concerning CSOs to coordinate, monitor, evaluate and contribute to the advancement of the national civil society strategy and related action plans. It is also expected to facilitate cooperation between authorities, including at local level, and civil society.

*Bulgaria, Article 4 of the Non-Profit Legal Entities Act (**Закон за юридическите лица с нестопанска цел**), 6 October 2000 (last amended 18 December 2020).

Council of Ministers (Министерски съвет) (2019), Rules on the organisation and activity of the Council for Civil Society Development (Правилник за организацията и дейността на Съвета за развитие на гражданското общество**), 10 September 2019.

***Bulgarian National Radio (Българско национално радио) (2020), 'The first Council for Civil Society Development was elected' (**'Избраха първия Съвет за развитие на гражданското общество'**), Bulgarian National Radio, 14 May 2020.

Nevertheless, often CSOs' access to and participation in decision-making remain patchy and are not properly supported by clear standards or guidelines.¹⁷

In Cyprus, according to Franet, efforts to set up structured consultation with CSOs within the UN 'Parallel parliaments' initiative did not improve the framework for consultation and participation of CSOs.¹⁸ In 2020, the government tried to modify the Act on the Social Dialogue Council – a platform of cooperation between representatives of employers, employees and the government –¹⁹ by giving the Prime Minister the competence to dismiss any member of the council in the event of "loss of trust in a relation to an information concerning member's work performance". CSOs criticised this provision as an attempt to widen governmental control over the works of the council.²⁰ This provision was eventually abolished in December 2020.²¹

In Slovenia, the Centre for Information Service, Co-operation and Development of NGOs (CNVOS) – an umbrella NGO – set up a 'violation meter' (*števček kršitev*), a tool to monitor how often provisions related to public consultations are breached. The meter covers all regulations for which the resolution sets a minimum time for public consultations, as well as all other acts for which such consultations are laid down in the government's rules of procedure. Since the current government took office in March 2020, the relevant provisions regarding public consultations were not observed in 66 % of monitored cases until 25 January 2021.²²

PROMISING PRACTICE

Involving CSOs in national action plans against racism

In its EU Anti-Racism Action Plan 2020–2025,* the European Commission encourages Member States to adopt national action plans by the end of 2022. Several Member States have already adopted or are in the process of developing these action plans.

In **Belgium**, the Federal Minister of Equal Opportunities announced that the federal and regional governments had reached an agreement to draw up a National Action Plan against Racism (NAPAR) in September 2020. A starting paper was adopted, which proposed a process and working method and set out the content of the future action

plan. The action plan will be developed together with the NAPAR Coalition, a group of 60 CSOs.**

In **Greece**, the National Council against Racism and Intolerance, which was established with the participation of representatives of the administration and civil society and chaired by the General Secretary of Justice and Human Rights, adopted the first National Action Plan against Racism and Intolerance on 8 December 2020. The council brings together national governmental actors, stakeholders, (independent) organisations, human rights organisations, social partners and 47

CSOs under the umbrella of the Racist Violence Recording Network.***

**European Commission (2020), A Union of equality: EU anti-racism action plan 2020–2025, COM(2020) 565 final, Brussels, 18 September 2020.*

** *Belgium, Muylle, N. (2020), 'Outline of action plan against racism approved' ('Krijtlijnen voor actieplan tegen racisme goedgekeurd'), 25 September 2020.*

*** *Greece, Ministry of Justice, 'Developing a comprehensive strategy against racism, intolerance and hate crime'.*

“In some instances [...], the consultations were organised, but it was more for a show, as something a government felt it had to do, but the decisions were made without taking into account the opinions expressed during these consultations.”

(Respondent to FRA's civic space consultation 2020)

A few problems are also reported in countries with traditionally strong civil society participation. For example, in Finland, a government-funded research project 'The State of Finnish Civil Society in the 2020s' ('Kansalaisyhteiskunnan tila ja tulevaisuus 2020-luvun Suomessa') found that some civil society actors – notably small or informal actors – felt that they had not been sufficiently consulted in legislative drafting processes that had an impact on civil society.²³

PROMISING PRACTICE

Encouraging youth participation

In 2019, in **Poland**, the Council for Dialogue with the Young Generation was established. In 2021, the Polish parliament, *Sejm*, adopted an act enabling and facilitating the appointment of youth councils at all levels of local government, and strengthened the position of youth and senior councils in the local government. The appointed councils will also gain new competences, such as issuing opinions on projects concerning young residents, participating in the creation and monitoring of local and government youth strategies or initiating own activities in this area.*

*Detailed information is available on the Polish government's [website](#).

CSOs faced additional challenges because of Covid-19 restrictions in 2020. Many CSOs reported that access to and participation in decision-making processes had been more difficult than in previous years. In the pandemic context, most Member States applied fast-track and emergency legislative procedures, with little, if any, opportunities for consultation.²⁴

5.2. PARTICIPATION AND REPRESENTATION OF MINORITIES AND OTHER VULNERABLE GROUPS

Although the principles of equality and non-discrimination enshrined in Articles 20 and 21 of the EU Charter of Fundamental Rights require inclusiveness and equal participation opportunities for all groups in society, participation is reported as particularly challenging for CSOs representing minorities and other groups in situations of vulnerability.²⁵ The European Commission has recently acknowledged the need to address existing hurdles limiting democratic participation and representation for those susceptible to marginalisation, such as people with a minority racial or ethnic background.²⁶

At the same time, progress in the participation of vulnerable groups is also reported. For instance, in Italy, the government recently established a permanent consultative board with CSOs for the promotion of the rights and the protection of LGBT people.²⁷ In the Netherlands, the NHRI has published a comprehensive report on challenges affecting the participation of people with disabilities in policymaking. The report includes a set of recommendations for the authorities to enhance the participation of people with disabilities and cooperation with CSOs acting in their interest.²⁸

PROMISING PRACTICE

Conveying the voice of civil society to shape the future of Europe

The Civil Society Convention on the Future of Europe was initiated by Civil Society Europe in 2021 to gather European CSO networks and platforms across Europe. The aim is to coordinate civil society and convey its voice to the Convention on the Future of Europe.*

The Civil Society Convention encourages CSOs to contribute to thematic reflections to advise on the direction Europe should take in the future and provide expertise on how the change should happen. Among the themes identified, CSOs will focus on the EU's democratic foundations and how to strengthen democratic processes governing the EU, including through a better dialogue with CSOs at national and EU levels.

**See [Civil Society of Europe's website](#) for more information.*



Endnotes

- 1 European Commission (2013), *Guidelines for EU support to NGOs in enlargement countries (2014-2020)*.
- 2 See, to that effect, Secretary General of the Council of Europe (2015), *State of democracy, human rights and the rule of law in Europe – A shared responsibility for democratic security in Europe*.
- 3 Article 10 (3) of the TEU.
- 4 For the interconnection between civil dialogue, civil society and participatory democracy, see European Economic and Social Committee (2011), *Participatory democracy in 5 points: Group III ‘various interests’*.
- 5 Council of Europe, Committee of Ministers (2018), *Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe*, 28 November 2018, paras. 1.e and f.
- 6 FRA (2021), ‘FRA 2020 consultation on experiences of civil society organisations working on human rights in the EU’.
- 7 Italy, MIUR (2020), ‘Programma Nazionale per la Ricerca 2021-2027: aperta la consultazione pubblica’, 11 August 2020.
- 8 Slovakia, Via Iuris (2020), ‘Špeciálny prokurátor/Úrad špeciálnej prokuratúry’.
- 9 See the information published on the [Facebook page](#) of the Stop Corruption Foundation on 27 August 2020; Slovakia, *Law no. 312/2020 Coll. on other enforcement of decisions on seizure and administration of seized property and amendments of other laws*, 21 October 2020.
- 10 Slovakia, Ministry of Investments, Regional Development and Informatization of the Slovak Republic (*Ministerstvo investícií, regionálneho rozvoja a informatizácie SR*) (2020), ‘*Národná konzultácia k eurofondom 2021-2027*’.
- 11 Austria, Ministry of Digital and Economic Affairs, ‘*The OECD Guidelines for Multinational Enterprises and the Austrian National Contact Point*’.
- 12 Czechia, Rekonstrukce státu (2020), ‘The government has removed discussion of the act on the registration of beneficial owners from the agenda. Will it delete the suspicious exception from the legislation?’ (*‘Vláda stáhla z programu jednání zákon o evidenci skutečných majitelů. Vypustí z návrhu podezřelou výjimku?’*), 16 March 2020.
- 13 Bulgarian National Radio (*Българско национално радио*) (2020), ‘The first Council for Civil Society Development was elected’ (*‘Избраха първия Съвет за развитие на гражданското общество’*), *Bulgarian National Radio*, 14 May 2020. The 14 CSOs represented in the council are Bulgarian Center for Not-for-Profit Law (*Български център за нестопанско право*, БЦНП), Bulgarian Donors Forum (*Български дарителски форум*, БДФ), Workshop for Civic Initiatives Foundation (WCIF) (*Фондация „Работилница за граждански инициативи“*, ФРГИ), Maria’s World Foundation (*Фондация „Светът на Мария“*), Bulgarian Fund for Women (BFW) (*Български фонд за жените*, БФЖ), Association of European Journalists – Bulgaria (*Асоциация на европейските журналисти – България*, АЕЖ – България), Teach for Bulgaria Foundation (*Фондация „Заедно в час“*), Bulgarian Red Cross (BRC) (*Български червен кръст*, БЧК), Bulgarian Helsinki Committee (*Български хелзинкски комитет*, БХК), For Our Children Foundation (*Фондация „За нашите деца“*), Association of Parks in Bulgaria (*Асоциация на парковете в България*, АПБ), Bulgarian Association for Alternative Tourism (*Българска асоциация за алтернативен туризъм*, БААТ), Association of Parents (*Асоциация „Родители“*), and Karin dom (*Карин дом*).
- 14 See, respectively, Belgium, Muylle, N. (2020), ‘Outline of action plan against racism approved’ (*‘Krijtlijnen voor actieplan tegen racisme goedgekeurd’*), 25 September 2020; and Parliamentary Secretariat for Equality and Reforms (2020), *Towards a National Action Plan against Racism and Xenophobia*, 9 October 2020.
- 15 Denmark, Ministry of Immigration and Integration (*Udlændinge- og Integrationsministeriet*) (2019), *Handbook Kommuners inddragelse af civilsamfundet i forebyggelse af ekstremisme - Potentialer og værktøjer*.
- 16 Finland, Ministry of Social Affairs and Health (*sosiaali- ja terveysministeriö/social- och hälsovårdsministeriet*) (2020), *Naisiin kohdistuvan väkivallan ja perheväkivallan torjunnan toimikunnan alainen järjestöryhmä*.
- 17 European Civic Forum (2021), *Towards an open, transparent, and structured EU civil dialogue*.
- 18 See Franet report on Cyprus on FRA’s [website](#), p. 5 and 6.
- 19 Poland, Act on the Social Dialogue Council (*Ustawa z dnia z dnia 24 lipca 2015 r. o Radzie Dialogu Społecznego i innych instytucjach dialogu społecznego*) 24 July 2015.
- 20 Ogólnopolska Federacja Organizacji Pozarządowych (2020), ‘*Problemy z programami współpracy*’, 14 June 2020.
- 21 See Franet report on Poland on FRA’s [website](#).
- 22 For more information, see the [webpage](#) of the Centre for Information Service, Co-operation and Development of NGOs (*Center za informiranje, sodelovanje in razvoj nevladnih organizacij*).
- 23 Ruuskanen, P., Jousilahti, J., Faehnle, M., Kuusikko, K., Kuittinen, O., Virtanen, J. and Strömberg, L. (2020), *Kansalaisyhteiskunnan tila ja tulevaisuus 2020-luvun Suomessa*, Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja 2020:47, 22 October 2020 (in Finnish, with an abstract in English).
- 24 FRA (2020), ‘FRA 2020 consultation on experiences of civil society organisations working on human rights in the EU’; FRA (2020), FRA (2021), ‘*Covid-impact on civil society work – Results of consultation with FRA’s Fundamental Rights Platform*’, 24 February 2021.
- 25 FRA (2020), ‘FRA 2020 consultation on experiences of civil society organisations working on human rights in the EU’; Max-Planck-Institute for Comparative Public Law and International Law (2000), *The participation of minorities in decision-making processes*.
- 26 European Commission (2020), *A Union of equality: EU anti-racism action plan 2020-2025*, COM(2020) 565 final, Brussels, 18 September 2020, p. 22.
- 27 Italy, Office against Racial Discrimination (UNAR), Permanent Consulting Board for the Promotion of the Rights and the Protection of LGBT people (*Tavolo di consultazione permanente per la promozione dei diritti e la tutela delle persone LGBT*), 17 May 2020.
- 28 The Netherlands, Netherlands Institute for Human Rights (*College Rechten van de Mens*) (2020), *Participatie van mensen met een beperking bij de totstandkoming van wetgeving en beleid. Jaarlijkse rapportage over de naleving van het VN-verdrag handicap in Nederland 2020*.

6

A SAFE SPACE FOR CIVIL SOCIETY

According to the Council of Europe’s *Recommendation CM/REC(2018)*¹¹ of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe, civil society and human rights defenders need a safe space to operate, and states have a duty to ensure their safety. They must also ensure the independent and effective investigation and prosecution of any criminal acts that endanger their safety and apply civil and administrative laws and procedures in a way that does not hinder the work of human rights defenders.¹

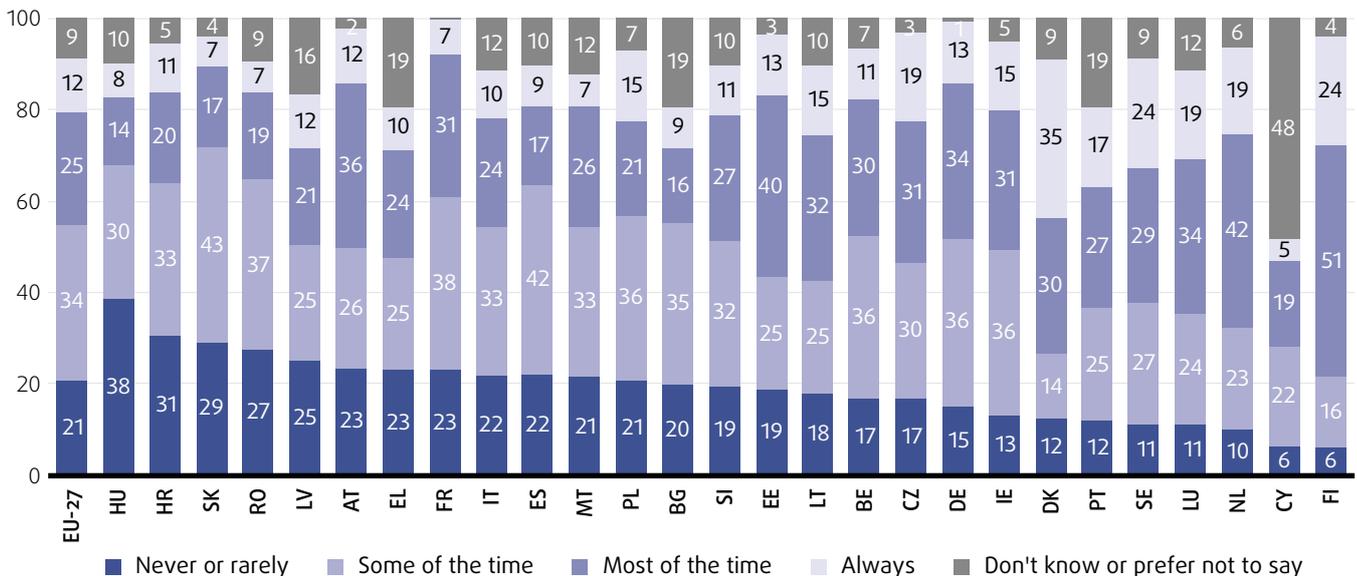
The public’s perceptions about the ability of NGOs to work free from government intimidation differ greatly across the EU. FRA’s Fundamental Rights Survey 2019 asked a representative sample of respondents from the general population about their perceptions of how freely NGOs and charities could do their work. The results show significant differences between countries.² (See Figure 9.)

Notes:

^a Out of all respondents in the 27 EU Member States, the United Kingdom and North Macedonia who were asked to complete the ‘Rights awareness and responsibilities’ section of the survey (n = 26,045); weighted results.

^b The answer categories used in the survey were ‘Never’, ‘Rarely’, ‘Some of the time’, ‘Most of the time’, ‘Always’, ‘Prefer not to say’ and ‘Don’t know’. In the figure above, some of the original answer categories have been combined, as indicated in the category labels.

FIGURE 9: PERCEPTIONS ABOUT THE ABILITY OF NGOS AND CHARITIES TO WORK FREE FROM GOVERNMENT INTIMIDATION, BY COUNTRY (%)^{a,b}



Source: FRA, Fundamental Rights Survey 2019 [data collected in cooperation with the Dutch Central Bureau of Statistics (NL), the Government Information Technology Centre (CTIE) (LU) and Statistics Austria (AT)]

In FRA's civic space consultation 2020, 20 % of responding CSOs also indicate that they can only 'sometimes', 'rarely' or 'never' carry out their work free from government intimidation. In both the Fundamental Rights Survey 2019 shown above and the civil society consultation 2020, there are stark differences between countries. In the responses to the 2020 consultation, responding organisations in a number of countries (in particular Austria, Belgium, Czechia, Denmark, Finland, Germany, Greece, the Netherlands, Luxembourg, Ireland, Italy, Latvia, Portugal, Romania, Spain and Sweden) indicate particularly low levels of perceptions of intimidation.³

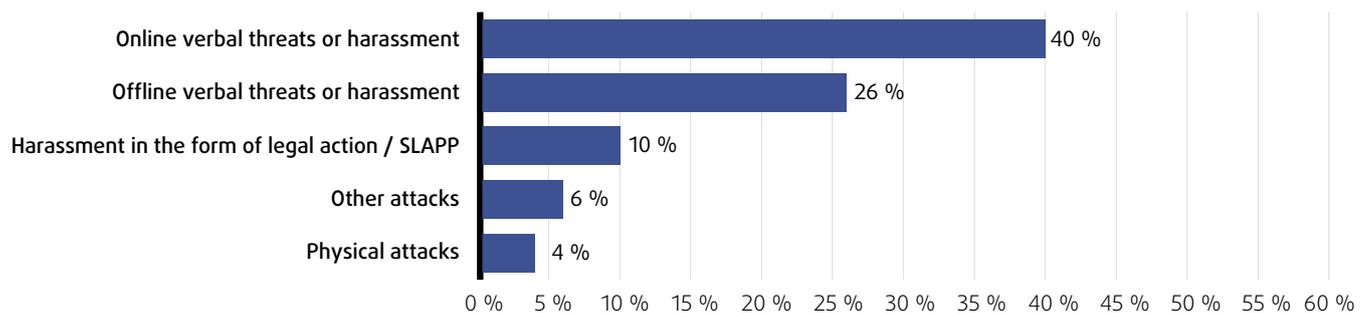
Participants in FRA's civic space consultations have reported threats and attacks against CSOs and human rights defenders across the EU over the years. These have included allegations of negative public statements and smear campaigns, online as well as offline intimidation and harassment, and verbal threats and even physical attacks (Figures 10 and 11).⁴ As many as 39 % of respondents that experienced threats and attacks reported consequent psychosocial suffering among their employees' or volunteers'.⁵ In one third of cases of threats and attacks, respondents to FRA's consultation said that a state actor was known or suspected to be the perpetrator.⁶

Notes:

Question: "In the last 12 months, have any of your employees/volunteers experienced any of the following due to their work?"; N=302.

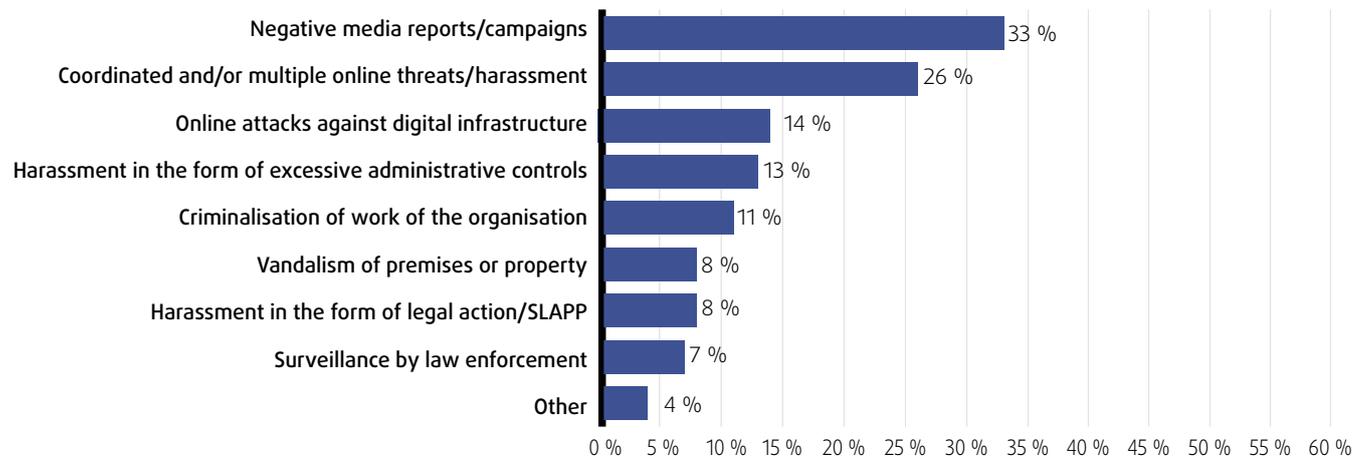


FIGURE 10: EXPERIENCES OF CSO STAFF/VOLUNTEERS WITH THREATS AND ATTACKS IN THE EU IN 2020



Source: FRA, civic space consultation, 2020

FIGURE 11: EXPERIENCES OF CSOS WITH THREATS AND ATTACKS IN THE EU IN 2020



Source: FRA, civic space consultation, 2020

Notes:

Question: "In the last 12 months, has your organisation experienced any of the following?"; N=302.

6.1. THREATS, ATTACKS AND EXPERIENCES OF UNDERREPORTING

Online verbal threats or harassment were the most frequently reported incidents. In total, 40 % of all CSOs that responded to FRA's civic space consultation 2020 reported such attacks. No less than 26 % of the organisations reported offline verbal threats or harassment (e.g. via telephone calls). More than 7 % reported vandalism of their premises or property, and as many as 4 % of respondents said that an employee or volunteer had experienced a physical attack in 2020.⁷

The majority (72 %) of CSOs that reported threats and attacks in the context of FRA's civic space consultation 2020 indicated being aware of the context for the threats or attacks. Work related to gender and sexual orientation was mentioned most often. CSOs working with minority groups appear to be particularly vulnerable to threats and attacks.

Women human rights defenders are facing particular challenges – that is, all women and girls working on any human rights issue (“women defenders” and “girl defenders”) and people of all genders who work to promote women's rights and rights related to gender equality, including lesbian, gay, bisexual, transgender and intersex (LGBTI) activists.⁸

NGOs published reports on intimidation of CSOs and human rights defenders promoting and protecting the rights of LGBTI+ people or women's rights in 2020. Some made reference to Poland⁹ and Estonia,¹⁰ and others concerned racism and migrants in Croatia,¹¹ Greece¹² and Portugal.¹³

The level of underreporting of incidents is very high, as is CSOs' frustration with the way the problem is dealt with by the authorities. Among the respondents to FRA's civic space consultation 2020 that indicated having experienced threats and attacks over the past year, only 32 % said they had reported incidents to the authorities. Of those that reported incidents to the authorities, only 12 % said they were satisfied with the way the authorities had acted on the report. Of those that did not report incidents to the authorities, 33 % had not done so, since they thought that nothing would come from reporting, 8 % said they feared reprisals, and 7 % said they did not trust the police.¹⁴

6.2. ADMINISTRATIVE AND LEGAL HARASSMENT

Some CSOs also report administrative and legal practices that hamper their work. In total, 13 % of respondents to FRA's civic space consultation with CSOs reported excessive administrative controls, audits or legal action, 11 % mentioned the criminalisation of their work, and 10 % reported legal action or strategic lawsuits against public participation (SLAPPs) during 2020.¹⁵

Any legal action that would cause people to hesitate to exercise a legitimate right for fear of legal action against them – such as the passing of a law, the decision of a court or the threat of a lawsuit – can cause a chilling effect. A lawsuit initiated specifically for the purpose of creating a chilling effect can be called a ‘strategic lawsuit against public participation’ or a ‘SLAPP’ suit.

SLAPPs seem to be increasingly used across Member States.¹⁶ In some countries, CSOs claim that these lawsuits sometimes rely on overly strict interpretation of EU law, such as the General Data Protection Regulation. Legislative proposals to address the issue of SLAPPs have been tabled in Italy¹⁷ and Malta,¹⁸ with little progress to date. The European Commission announced in its European Democracy Action Plan¹⁹ that it has commissioned a comprehensive study on how SLAPPs affect watchdogs, including CSOs and human rights defenders across the EU,²⁰ and will on that basis propose an initiative to counter SLAPPs by the end of 2021.

PROMISING PRACTICE

How to respond to threats and challenges: CSOs sharing knowledge, experiences, and best practice

The Solidarity Action Network of the International Civil Society Centre has created, in cooperation with international and local CSOs, a Solidarity Playbook that collects and shares knowledge, experiences and inspiring actions to enable CSOs to support each other when faced with threats and challenges to their operations or civic space restrictions.* The Solidarity Playbook is meant to inspire CSOs' resilience and to foster joint actions among CSOs on challenges and opportunities related to civic space.

**See the International Civil Society Centre's [website](#) for more information.*

“Neo-nazi stickers were added to our mailbox and entrance door, our billboard posters were vandalized [...]”

(Respondent to FRA's civic space consultation 2020)

“We have reported several incidences of hate speech and death threats to the police. As of today, we haven't heard anything more about proceedings against these individuals.”

(Respondent to FRA's civic space consultation 2020)

“Constant battling of SLAPP lawsuits and coordinated campaigns by officials is preventing us from doing what we really want to do, which is work in the community, advocating for positive change and creating a digital commons of tools for activists, journalists and human rights lawyers.”

(Respondent to FRA’s civic space consultation 2020)

Prosecutions target, for example, humanitarian workers assisting migrants in Croatia,²¹ as mentioned earlier, and human rights defenders in Poland. Over 40 LGBTI activists were arrested in Poland during a mass protest for alleged civil disobedience.²²

CSOs,²³ opposition parties²⁴ and journalists²⁵ feared that a new law in Hungary,²⁶ which specified that the scope of the long-standing criminal offence of fearmongering committed at a site of public danger applied to the special situation of the periods of special legal orders²⁷ (such as ‘state of danger’), might be misused. According to a CSO source, most proceedings initiated by the police after the entry into force of the new criminal provisions on fearmongering (134 in the first three months after the entry into force of the new provisions, including against civil society activists)²⁸ were terminated either by the prosecutor’s office or by the court for *non-lieu*.²⁹ The Constitutional Court in a related constitutional complaint procedure found the amendments to be in line with the Fundamental Law.³⁰

In Slovenia, the Ministry of Culture issued a proposal for an amicable termination of a lease to almost 20 NGOs that were tenants in a government-owned building. The building had been devoted to the use of NGOs since a government decision in 1997. The reasons for termination that were given in the proposal were that the building was dilapidated, needed renovation and should be converted into a museum.³¹ For a number of reasons, the concerned CSOs saw this as an attack on civil society and refused to leave.³² The Ombudsman looked into the matter and called on the Ministry of Culture to engage in constructive dialogue with the concerned organisations.³³ The case is pending before the courts.

6.3. LEGAL PROCEEDINGS AGAINST CSOS INVOLVED IN SEARCH-AND-RESCUE OPERATIONS

Criminal investigations and legal or administrative proceedings based on rules about the facilitation of irregular migration brought against NGOs deploying search-and-rescue (SAR) vessels in recent years have been documented by, among others, FRA³⁴ and the Council of Europe’s Commissioner for Human Rights.³⁵

In Malta, measures to prevent the entry of SAR vessels led by CSOs intensified in the context of the Covid-19 pandemic, when SAR vessels were routinely refused disembarkation and were blocked off the Maltese coasts.³⁶ In Croatia, NGOs complained about prosecutors’ and courts’ broad interpretations of criminal provisions on the facilitation of irregular migration targeting people providing humanitarian assistance to migrants.³⁷

A parliamentary motion in the Netherlands urged the government not to endorse the guidance provided by the European Commission on the implementation of EU rules on the facilitation of unauthorised entry, transit and residence of irregular migrants.³⁸ The guidance stresses that the criminalisation of NGOs or any other non-state actor that carries out SAR operations at sea, while complying with the relevant legal framework, amounts to a breach of international law and is therefore incompatible with EU law.³⁹

A positive development has been reported in Italy, where a new law governing the activities of CSO vessels carrying out SAR operations limits the possibility of preventing disembarkation in Italian ports for solid reasons of public safety or the violation of anti-trafficking legislation. This law also no longer allows confiscation of a vessel in the event of non-compliance with official refusal to disembark.⁴⁰



6.4. CONTROL AND SURVEILLANCE

In total, 7 % of respondents to FRA's civic space consultation 2020 claimed that they had experienced surveillance by law enforcement authorities in 2020.⁴¹

Examples of authorities' monitoring practices reported over the past year included monitoring by the Department of Justice in Ireland of social media accounts of public figures, CSOs and activists campaigning on issues relating to asylum,⁴² and a large-scale monitoring and data collection activity carried out by the Ministry of Defence in the Netherlands, including on the activity of anti-lockdown groups. An investigation of these groups by the National Data Protection Authority is pending.⁴³

Against this background, increasing attention on the part of the authorities in some countries, such as Finland⁴⁴ and Sweden,⁴⁵ is being paid to the implications of national laws and practices affecting CSOs on the protection of CSOs' personal data.

6.5. PUBLIC DISCOURSE AND THE IMPACT OF NEGATIVE NARRATIVES

One third (33 %) of CSOs responding to FRA's civic space consultation 2020 claimed that negative media reports or campaigns had affected them in 2020, and 27 % claimed that coordinated or multiple online threats or harassment had affected them.⁴⁶

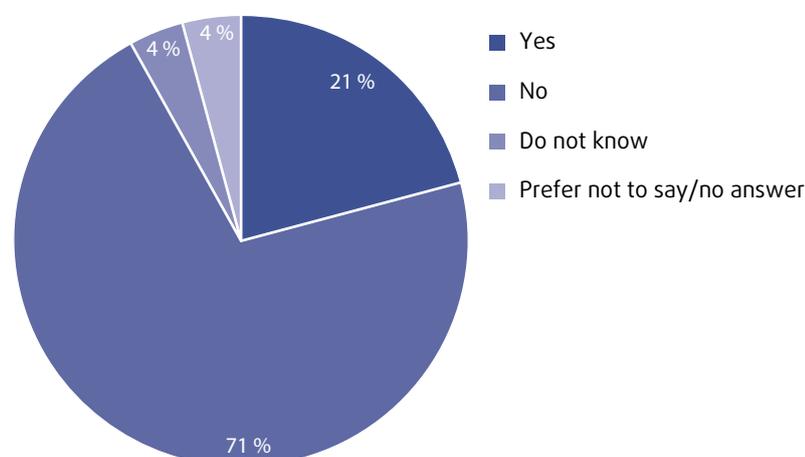
CSOs in a number of Member States cited examples of smear campaigns reproducing stereotypes of CSOs as promoting foreign interests and working against traditional national values. In some cases, CSOs took legal action to seek redress for alleged defamatory statements, as examples from Czechia⁴⁷ and Poland⁴⁸ show.

In FRA's civic space consultation 2020, 21 % of respondents who had experienced threats and attacks said that these had resulted in their organisation discontinuing or reducing activities (Figure 12).⁴⁹ CSOs report that, to some extent, there is also self-censorship.⁵⁰

“As a result of external pressure and negative campaigns against our organisation, we no longer provide one of the services for children who we had provided for the last 10 years.”

(Respondent to FRA's civic space consultation 2020)

FIGURE 12: INCIDENTS OR THREATS/ATTACKS AFFECTING THE ACTIVITIES OF ORGANISATIONS



Source: FRA, civic space consultation, 2020

◀ **Notes:**

Question: “In the last 12 months, has any of these incidents resulted in the organisation discontinuing or reducing activities due to external pressure?”; N=183, i.e. all respondents having indicated that threats and attacks had affected them.

PROMISING PRACTICE

Research on public perception of CSO work

Smear campaigns by various actors, including by public authorities and the media, often depict CSOs as promoting foreign interests and working against traditional values.

The Centre for Non-for-Profit Law in Bulgaria explored public attitudes towards CSOs, which showed an overall positive trend, such as an increase in public support and in public trust.*

In Slovakia, the CSO coalition Voice of Civil Society Organisations engaged in surveying public opinion on CSOs amid negative narratives on CSOs. In total, 55 % of respondents indicated that they trusted CSOs, and 64 % indicated that they thought that CSOs were able to meet the needs of citizens in some areas better than the state.**

*Bulgarian Center for Not-for-Profit Law (Български център

за нестопанско право) (2020), 'Public attitudes to the civil society organisations' ('Обществени нагласи към гражданските организации'), 21 September 2020.

**The Voice of Civil Society Organisations Platform (Platforma Hlas občianskych organizácií) (2019), 'Väčšina ľudí na Slovensku dôveruje mimovládnyim organizáciám', 28 November 2019.

PROMISING PRACTICE

A guide to crafting effective narratives

The International Service for Human Rights has developed a practical handbook for human rights defenders: *A seat at the table: A guide to crafting effective narratives at the UN about human rights and the people who defend them*. A central recommendation is that the narrative focus of the human rights movement should be on the motivations, objectives and achievements of the people who defend human rights, rather than the dangers and risks they face.*

*International Service for Human Rights (2021), 'A seat at the table: A guide to crafting effective narratives at the UN about human rights and the people who defend them', 21 June 2021.

Media and political narratives about human rights defenders and other civil society actors play a significant role in shaping public attitudes and contributing, positively or negatively, to their recognition and protection, and an enabling environment for their work.⁵¹ Human rights organisations are increasingly interested in improving their communication strategies.⁵²

PROMISING PRACTICE

Governments highlighting the contribution of civil society

A number of EU governments showed public appreciation for the role and contribution of CSOs in the efforts to contain and recover from the pandemic.

For example, in **Germany**,* the Parliament's Subcommittee on Civic Engagement held a public hearing in December 2020 in which they discussed the role of civil society and civic engagement during the pandemic and formulated recommendations to the federal government on how to better support CSOs.

In **Czechia**, the Government Commissioner for Human Rights for Non-governmental Non-profit Organisations addressed an open letter to CSOs, thanking them for their contribution to addressing the consequences of the pandemic and committing to supporting them.**

*Deutscher Bundestag (2020), *Bericht der öffentlichen Anhörung vom 15. Dezember 2020*.

**Government of the Czech Republic (2020), 'Covid-19: Letter from the Government Commissioner for Human Rights to non-governmental non-profit organisations' ('Covid-19: Dopis zmocněnkyně vlády pro lidská práva nestátním neziskovým organizacím'), 26 March 2020.

Endnotes

- 1 Council of Europe, Committee of Ministers (2018), **Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe**, 28 November 2018, paras. II.a and b.
- 2 FRA (2020), **Fundamental Rights Survey – What do fundamental rights mean for people in the EU?**. FRA's Fundamental Rights Survey collected data from 35,000 people about their experiences, perceptions and opinions on a range of human rights-related issues. These included awareness of rights, crime victimisation, discrimination and equality of treatment, and data protection and privacy. The following question was asked to obtain the data shown in Figure 9: "In [this country], are non-governmental organisations and charities able to do their work free from government intimidation if they oppose the current government's policies?"
- 3 FRA (2020), 'FRA 2020 consultation on experiences of civil society organisations working on human rights in the EU'.
- 4 FRA civic space consultations (2020, 2019, 2018).
- 5 FRA (2020), 'FRA 2020 consultation on experiences of civil society organisations working on human rights in the EU'.
- 6 *Ibid.*
- 7 *Ibid.*
- 8 OHCHR, 'Women human rights defenders'; Commissioner for Human Rights of the Council of Europe (2020), 'Statement: Let us all rise to the challenge of making a world where gender equality is a reality', 5 March 2020; and Commissioner for Human Rights of the Council of Europe (2020), 'Statement: Hate mongering against LGBTI people has no place in today's Europe', 15 May 2020.
- 9 See, for example, Human Rights Watch (2020), 'Poland: Crackdown on LGBT activists', 7 August 2020; The Guardian (2020), 'Polish president issues campaign pledge to fight "LGBT ideology"', 12 June 2020; Civicus (2021), "'I am not safe here": Women's rights activists under attack for work on abortion rights', 9 April 2021.
- 10 Kala, A. (2019), 'The situation of LGBT persons', *Human Rights in Estonia 2020*, Tallinn, Estonian Human Rights Centre.
- 11 See, for example, Front Line Defenders (2020), 'Croatia: Pressure on family member of migrant rights defender Tajana Tadić', 30 October 2020.
- 12 See, for example, Refugee Support Aegean (2020), 'Timeline of attacks against solidarity'. This documents the attacks during the Greece-Turkey border crisis in February and March 2020. See also Civic Space Watch (2020), 'Greece: Violence against migrants, volunteers and NGOs intensifies in the Islands – Interview with Greek Forum of Refugees', 17 February 2020.
- 13 European Network Against Racism (2020), 'Urgent solidarity call to support Portuguese anti-racist activists'.
- 14 FRA (2020), 'FRA 2020 consultation on experiences of civil society organisations working on human rights in the EU'.
- 15 *Ibid.*
- 16 Commissioner for Human Rights of the Council of Europe (2020), 'Human rights comment: Time to take action against SLAPPs', 27 October 2020. EU-Citizen Academic Network on European Citizens Rights (2020), *Ad-hoc request: SLAPPs in the EU context*, p. 4. Additional research and reports on SLAPPs and the scale of the problem in Europe are available on the [website](#) of the European Coalition Against SLAPPs in Europe.
- 17 Senato della Repubblica (2018), *Disegno di legge n. 835*, 2 October 2018.
- 18 Malta Today (2020), 'PN tables anti-SLAPP draft law aimed at protecting journalists', 26 February 2020.
- 19 European Commission (2020), *The European Democracy Action Plan*, COM(2020) 790 final, Brussels, 3 December 2020, p. 14.
- 20 Report is forthcoming. For more information on the chilling effect, see also Open Society Foundations (2021), *The concept of chilling effect*.
- 21 Front Line Defenders (2020), 'Croatia: Pressure on family member of migrant rights defender Tajana Tadić', 30 October 2020.
- 22 Human Rights Watch (2020), 'Poland: Crackdown on LGBT activists', 7 August 2020; Civicus (2020), 'Crackdown on LGBTI rights continues; feminists protest over withdrawal from domestic violence treaty', 5 October 2020; Balkan Insight (2020), 'Mass arrest of LGBT people marks turning point for Poland', 13 August 2020; Politico (2020), 'Polish police crack down on LGBTQ protesters', 5 August 2020; Reuters (2020), 'Thousands protest in Poland demanding release of LGBT activist', 8 August 2020.
- 23 Human Rights Watch, *World Report 2021: Hungary*; Freedom House, 'Hungary: Freedom on the Net 2020 Country Report'.
- 24 BalkanInsight (2020), 'Hungarian Police Accused of Abusing Powers to Arrest Critics', 13 May 2020.
- 25 The Guardian (2020), 'Hungarian journalists fear coronavirus law may be used to jail them', 3 April 2020.
- 26 Hungary, *Act C of 2012 on the Criminal Code (A büntető törvénykönyvről szóló 2012. évi C törvény)*. See also Politico (2020), 'Orbán critics fall foul of Hungary's controversial corona law', 14 May 2020.
- 27 See Article 337 (2) of the Act C of 2012 of the **Criminal Code**. On the contrary, Article 337 (1) had not substantially been a new provision; this original offence of fearmongering has had a long-standing tradition in the Hungarian Criminal Law.
- 28 Communication Service of the National Police Headquarters (2020), 'Statistics of criminal cases in connection with the new Coronavirus situation' ('Az új koronavírus-helyzettel összefüggő büntetőügyek statisztikái'), 15 July 2020.
- 29 Telephone interview with the Hungarian Civil Liberties Union, 13 January 2020.
- 30 **Constitutional Court Decision 15/2020. (VII. 8.) AB**.
- 31 Slovenia, Ministry of Culture (*Ministrstvo za kulturo*) (2020), 'Odziv ministrstva v zvezi s stavbo na Metelkovi ulici 6', press release, 6 November 2020; See Franet report on Slovenia on FRA's [website](#).
- 32 Peace Institute, 'We are not leaving Metalkova'.
- 33 Slovenia, Human Rights Ombudsman (*Varuh človekovih pravic*) (2020), 'Varuh ministrstva za kulturo pozval k dialogu z nevladnimi organizacijami, to se ni odzvalo', press release, 31 December 2020.
- 34 See FRA (2020), *December 2020 update – NGO ships involved in search and rescue in the Mediterranean and legal proceedings against them*.
- 35 Council of Europe (2019), *Lives saved. Rights protected. Bridging the protection gap for refugees and migrants in the Mediterranean*.
- 36 European Council on Refugees and Exiles (2020), 'Med: 150 Stranded at Sea as Malta and Italy Declare Ports "unsafe"', 20 April 2020; Malta Today (2020), 'Malta tells Germany it will refuse disembarkation to rescued Sea-Eye migrants', 7 April 2020; Times of Malta (2020), '95 migrants drifting in Malta's SAR zone – NGO', 26 July 2020; Council of Europe Commissioner for Human Rights (2020), 'Letter: Commissioner urges Malta to meet its obligations to save lives at sea, ensure prompt and safe disembarkation, and investigate allegations of delay or non-response to situations of distress', 11 May 2020; Council of Europe Commissioner for Human Rights (2020), 'Statement: Immediate action needed to disembark migrants held on ships off Malta's coast', 4 June 2020.
- 37 See, for example, Front Line Defenders (2020), 'Croatia: Pressure on family member of migrant rights defender Tajana Tadić', 30 October 2020.
- 38 The Netherlands, House of Representatives (*Tweede Kamer der Staten-Generaal*) (2020), *Moties ingediend bij het VAO JBZ-Raad op 13 november 2020 (behandelvoorbehoud migratie-pact). Plenaire vergadering 12 november 2020*.
- 39 European Commission (2020), *Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of*

- unauthorised entry, transit and residence*, C(2020) 6470 final, Brussels, 23 September 2020, p. 7.
- 40 **Decreto-legge 21 ottobre 2020, n. 130, "Disposizioni urgenti in materia di immigrazione, protezione internazionale e complementare, modifiche agli articoli 131-bis, 391-bis, 391-ter e 588 del codice penale, nonché misure in materia di divieto di accesso agli esercizi pubblici ed ai locali di pubblico trattenimento, di contrasto all'utilizzo distorto del web e di disciplina del Garante nazionale dei diritti delle persone private della libertà personale", convertito con modificazioni dalla L. 18 dicembre 2020, n. 173.**
- 41 FRA (2020), 'FRA 2020 consultation on experiences of civil society organisations working on human rights in the EU'.
- 42 The Irish Independent (2020), '**Department of Justice officials monitor posts criticising Direct Provision on social media**', 16 August 2020; Irish Examiner (2020), '**Government monitoring social media of journalists, Tony Holohan, Vicky Phelan and others**', 11 November 2020.
- 43 The Netherlands, Minister of Defence (*Minister van Defensie*) (2020), '**Reactie op NRC-artikel van 15 november over LIMC**', Letter to House of Representatives, 27 November 2020.
- 44 Finland, Government Bill No. 2/2020 to Parliament on amending certain provisions concerning the processing of personal data in the administrative branch of the Ministry of Justice (***Hallituksen esitys eduskunnalle laeiksi oikeusministeriön hallinnonalan eräiden henkilötietojen käsittelyä koskevien säännösten muuttamisesta***)/Regeringens proposition till riksdagen med förslag till lagar om ändring av vissa bestämmelser om behandling av personuppgifter inom justitieministeriets förvaltningsområde), 2 February 2020.
- 45 Sweden, Ministry of Culture (*Kulturdepartementet*) (2020), *Treatment of personal data in matters concerning funding to the civil society (Personuppgiftsbehandling i ärenden om stöd till det civila samhället)*, terms of reference, 3 November 2020; Ministry of Culture (*Kulturdepartementet*) (2020), *Complementary terms of reference (Tilläggsdirektiv till utredningen om personuppgiftsbehandling i ärenden om stöd till det civila samhället)*, 18 November 2020.
- 46 FRA (2020), 'FRA 2020 consultation on experiences of civil society organisations working on human rights in the EU'.
- 47 Czech Television (2020), '**Babiš se Transparency International za slova o korupci omlouvat nemusí, rozhodl soud. Organizace chystá odvolání**', 21 February 2020; *Aktualne.cz* (2020), '**Filip se musí omluvit spolku Milion chvilék, že ho spojil s kyberútokem na nemocnici**', 9 September 2020; Czech Television (2020), '**Babiš se nemusí omlouvat za výrok o placených demonstrantech**', 16 September 2020.
- 48 *Kampania Przeciw Homofobii* (2020), '**Sąd nakazał TVP usunięcie „Inwazji” z Youtube'a. To sukces KPH, które uruchamia zbiórkę na kolejne sprawy przeciw Telewizji**', 8 June 2020.
- 49 FRA (2020), 'FRA 2020 civic space consultation on experiences of civil society organisations working on human rights in the EU'.
- 50 See, in particular, Open Society Foundations (2021), ***The concept of chilling effect***; and Reliefweb (2018), '**Central and eastern Europe: Children endangered by the chilling effect of anti-NGO laws**', 7 April 2018.
- 51 International Service for Human Rights (2021), '**A seat at the table: A guide to crafting effective narratives at the UN about human rights and the people who defend them**', 21 June 2021.
- 52 FRA (2018), ***10 keys to effectively communicating human rights***; Thomas Coombes (2020), 'Instead of shrinking space, let's talk about humanity's shared future', *Open Global Rights*, 8 January 2020; Liberties (2021), '**Activists: How not to talk about toxic laws**', 18 June 2021.

Conclusion

Human rights civil society plays a crucial role in the EU. It promotes fundamental rights and thus contributes to the functioning of democracy. Civil society supports the implementation of EU policy in the area of fundamental rights, such as the EU Strategy to strengthen the application of the Charter of Fundamental Rights, the European Democracy Action Plan, and relevant sectorial action plans on anti-racism, LGBTIQ equality, Roma inclusion, rights of the child, disability, victims' rights, gender equality and migrant integration.

Norms and practices affecting the operation of civil society, the 'civil society space', which includes the relevant regulatory framework, access to resources, participation in policy and decision-making, and a safe environment, were examined. The evidence shows that in 2020 it became harder for CSOs to operate and contribute to the implementation of EU policy, despite positive developments at both EU and national levels, partly but not only because of the pandemic situation. The nature and extent of the challenges that CSOs and human rights defenders face vary across the EU.

Governments should support the development of the civil society sector and strengthen mutual engagement between public authorities and CSOs through relevant policy frameworks and by establishing permanent dialogue structures. In some EU Member States, CSOs are particularly active in trying to improve the policy framework in which they operate, including through coalition building.

Civil society actors need to be able to operate without unnecessary or arbitrary restrictions. Member States should take measures to create a more enabling environment for CSOs. A conducive legal environment for civil society requires laws that protect and promote the rights to freedom of association, peaceful assembly and expression in conformity with EU and international human rights law and standards. Member States should also ensure that crimes committed against CSOs and human rights defenders are publicly condemned and properly recorded, investigated and prosecuted. Public authorities at EU, national and local levels should further develop their tools for more meaningful participation in policymaking.

A number of international and EU guidelines exist to support the creation and maintenance of an enabling space for (human rights) civil society to operate. All actors involved are invited to take inspiration from these guidelines, to further enhance the implementation of human rights across the EU.

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EUROPEAN UNION AGENCY
FOR FUNDAMENTAL RIGHTS

PROMOTING AND PROTECTING YOUR FUNDAMENTAL RIGHTS ACROSS THE EU —

Civil society organisations play a vital role in promoting fundamental rights, but they face diverse challenges across the European Union. This report presents FRA's findings on a range of such challenges. The findings are based on research, and on two online consultations with civil society organisations, carried out in 2020.

The research underscores that the situation varies considerably across Member States. Yet it also shows that the situation in 2020 was generally more difficult than in previous years, often due to the Covid-19 pandemic. Despite this reality, the research also points to some positive developments.



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