

# TOWARDS AN ENABLING ENVIRONMENT FOR CIVIL SOCIETY IN EUROPE



In Europe, today we are increasingly witnessing barriers to access fundamental rights. Austerity measures and shrinking social policies, as well as a distorted idea of democracy that does not include social justice hamper civic actors from fully playing their role. Moreover, in some countries, civic actors are being stigmatized, oppressed or even criminalized precisely because they defend a vision of democratic society based on social justice and inclusion.

On 10 December 2018, as the world celebrates the 70th anniversary of the Universal Declaration of Human Rights, hundreds of civil society organisations (CSOs) and movements mobilise across European countries. They share the same vision for making Europe a place where the access to fundamental rights is a reality for all and they call for more recognition and support for their action at local, national and European level.

This paper provides recommendations to European policy-makers towards creating an enabling environment for civil society all over Europe. The recommendations are based on the analysis of the challenges perceived by our members and on the evidence collected through the platform **Civic Space Watch**, the **CIVICUS Monitor** and the **report on civic space in 2017** by Civil Society Europe. The trends observed across these monitoring tools are confirmed by the European Union Agency for Fundamental Rights (FRA) report on **Challenges facing civil society organisations working on human rights in the EU (2017)**.

## **We call on all the European institutions to:**

- **Fully respect and promote through the policies implemented the European Union (EU)'s values enshrined in art. 2 of the TEU and the Charter of Fundamental Rights of the EU;**
- **Refuse complacency with measures that disregard these values and play a proactive role in promoting and ensuring fundamental rights and democracy, respect for the rule of law and civic freedoms in the EU as it does beyond external borders;**
- **Coordinate responses to shrinking civil society space in the EU with other international institutions defending human rights;**
- **Promote and commit to a meaningful and transparent dialogue with independent civil society at all levels of engagement;**
- **Identify civic space as a crucial element of the democratic health of our societies and develop civic space indicators while assessing the implementation of EU values, the Rule of Law and the Charter of Fundamental Rights;**
- **Put the common good before private interests and recognise associations' and NGOs' specificity and role in defending fundamental rights and values, not only through advocacy and campaigning, but also through delivery of services, assistance and care.**

**OPEN CIVIC SPACE IS CRUCIAL TO ACHIEVE THE PRINCIPLES  
OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS  
AND BUILD DEMOCRACIES RESPONDING TO ALL NEEDS**

Civic space is the political, legislative, social and economic environment which enables citizens to come together, share their interests and concerns and act individually and collectively to influence and shape the policy-making<sup>1</sup>. **The rights to associate, protest, access information, speak up and act are recognized and protected by international and European legislation**, including the Universal Declaration of Human Rights (1948) and its implementation UN conventions, the Charter of Fundamental Rights of the European Union (2000), and European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

**A vibrant and independent Civil society is vital for an open civic space, a healthy democracy and strong social justice** as it allows people to organize themselves, amplify their voices and be heard at local, national and supranational level. This notion was recently stressed in resolutions endorsed by EU Member States and the European Representation at the Human Rights Council (HRC), the Resolution on civil society space (**HRC Res 32/31**, 2016), the resolution on civil society space: engagement with international and regional organisations (**HRC Res 38/12**, 2018).

The European Parliament also adopted resolutions on the issue, including the Resolution on addressing shrinking civic space in developing countries (**2016/2324(INI)**, 2017) and the Resolution with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights (**2015/2254(INL)**, 2016).

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1 ECF, Civic Space Watch (2018), **What is civic space**

**EMERGING CHALLENGES  
TO THE ENABLING ENVIRONMENT  
FOR CIVIL SOCIETY  
IN THE EUROPEAN UNION**

The European Civic Forum bases its analysis of challenges for civil society in Europe on four elements<sup>2</sup> that we believe are crucial for an enabling environment:

1. **A conducive political, cultural and socio-economic landscape:** the historical legacy on political culture, together with socio-economic structures and contingent events profoundly shape the public's understanding of the role of civil society and the values it embodies, the activities it pursues, thus influencing public trust and support.
2. **Respect of fundamental freedoms of expression, association and peaceful assembly:** a supportive legal and regulatory framework, its effective implementation and a balance of powers between authorities, economic, social and civic actors ensure the full-stretching, correct functioning and protection of civil society space. Governing bodies have the duty to refrain from, investigate and discipline actions, legislation and statements that create barriers to participation.
3. **A supportive framework for CSOs' financial viability and sustainability:** supportive legislation on funding, including foreign and international funding, and availability of sufficient and predictable resources allow for civil society capacity-building, independence, long-term strategic planning and, ultimately, their delivery.
4. **The dialogue between civil society and governing bodies:** governing bodies must pursue policies and narratives that empower citizens and CSOs to be meaningfully engaged in the public debate and policy-making.

In recent years, challenges to civil society space have concerned all four pillars of the enabling environment.

## 1. ADVERSE POLITICAL, CULTURAL AND SOCIO-ECONOMIC LANDSCAPE

As regressive forces are becoming more vocal, economic and corporate interests more heavily represented and security policies on top of the political agendas, human rights and fundamental freedoms are sidelined or disregarded. Not only restrictive mistargeted legislation weakens civil society's ability to operate, but also civil society representatives are increasingly becoming the target of legal, physical and verbal harassment<sup>3</sup> due to the values and the causes they fight for.

However, shrinking civic space is not only the result of an illiberal turn in some countries, but it is also the consequence of a neoliberal vision of society as a sum of individuals which discards the responsibility of public policies to ensure social justice and inclusion, thereby delimitating democracy in the eyes of many.

While challenges emerge across all regions in Europe, civil society is unevenly able to face them, depending on the cultural and historical development of civil society and its diverse forms of organization, social outreach and relations with the institutions. As an example, CSOs in Central and Eastern Europe are more vulnerable to attacks aimed at decreasing public trust and legitimacy of their work, partially because, for historical and cultural reasons, they do not have such strong constituencies as in Western European countries and the fact they are more dependent on foreign funding than their peers in Western Europe is used for denying their legitimacy to act.

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<sup>2</sup> Such categories are based on (I) the monitoring matrix elaborated by the Balkan Civic Society Development Network and used by DG NEAR in the European Commission, (II) the European Union Agency for Fundamental Rights (FRA)' report on challenges facing civil society organisations working on human rights in the EU, and (III) the recommendations for the creation and maintenance of a safe and enabling environment for civil society based on good practices and lesson learned by the UN Higher Commissioner for Human Rights

<sup>3</sup> CIVICUS Monitor (2018), **People Power Under Attack**

## 2. SHRINKING GUARANTEES OF FUNDAMENTAL FREEDOMS

Many resources including the Civic Space Watch and the CIVICUS Monitor have documented a relative decline of fundamental freedoms in Europe.

**Damaging consequences of legislation:** Legislation on terrorism, money laundering, transparency and lobbying translates in bureaucratic burden and obstacles for NGOs, including unnecessary or mistargeted administrative work, double reporting requirements and, in some cases, difficulties accessing banking services. The FRA's report, for example, highlights that disproportionate drafting or application of legislation on transparency or lobbying to CSOs can restrict their ability to carry out advocacy or inform the public on matters of general interest. These measures are affecting civil society's capacity to concentrate on their mandate.

**Chilling effect on advocacy and restrictive legislation on 'political' actions:** Legislation mentioned above has been used in some countries to impact CSOs working on issues deemed 'political' or sensitive, including migration, environment and social issues. In some case, these laws created a chilling effect on CSOs advocating on such topics, particularly smaller ones that do not have resources to request legal advice on the application of the law. In other instances, these groups have been deliberately put under control or targeted by these measures not because they were suspected of wrongdoing, but because the concerns they raise are pressing on the political agenda.

**Stigmatisation and criminalisation:** smear campaigns against CSOs, human rights defenders and journalists are emerging across Europe led by governments and far-right political parties. Legislation aiming at stigmatizing and criminalizing civic actors working on sensitive issues was passed in some countries. This is creating a distressing environment leading to cases of harassment, intimidation or even physical assault to premises and persons.

**Restrictive regulations and policing limiting the collective right to assembly and protest:** these include limitations of time, places or content of the demonstrations; disproportionate sanctions for failing to notify the police; discrimination between cyclic assemblies and spontaneous gatherings. In some countries, anti-terror arguments are used to justify such behaviours. A recurrent trend is banning or marginalizing demonstrations alongside gatherings of international leaders. In some countries, anti-terror strategies led to a transfer of powers from the independent judiciary to prefects and police authorities, who now have more discretion in regulating assemblies in public spaces. "Public order" arguments have been used to outlaw public gatherings. Heavy-handed policing of protests and attempts to impede journalists and citizens from covering rallies are increasing.

**Non-state actors harming civic activism:** Non-state actors (e.g., corporations, extremist groups, conservative groups) are playing a growing role in restricting civil society space. Alarms on strategic lawsuits against public participation (SLAPP), a form of legal harassment against whistleblowers and critical voices in order to deter actions aimed at corporate accountability, is coming from civil society and journalists in various EU member states. As found by the UN Special Rapporteur on Human Rights Defenders and civil society, states sometimes fail to investigate these violations<sup>4</sup>. Institutions have a core responsibility in reacting strongly to these trends. Recurrent failures to do so is a worrying signal.

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4 UN, General Assembly (2017), Situation of human rights defenders

### 3. REDUCTION AND RESTRICTION OF FUNDING FOR CIVIL SOCIETY'S ACTIVITIES

While comprehensive data on public funding are unevenly accessible, according to the FRA<sup>5</sup>, in many EU countries **resources available for civil society to act have seen a significant reduction as compared to the objectives they have to achieve**. The first and more impacting cause is austerity measures that are applied to civil society organisations as they appear to decision-makers more vulnerable, less able to defend their budget. Core funding and funding for advocacy and litigations are even more scarce and more subject to restrictions.

NGOs whose activity is deemed 'political' in authorities' eyes, as they advocate or act in defence of rights for all, are more exposed to these threats<sup>6</sup>.

Additionally, in some countries, such attacks have a broader impact, as reported by civil society representatives. Private donors are becoming more cautious of financing organisations publicly smeared by authorities<sup>7</sup>, while in others governments' smear campaign and widespread mistrust lead to a decrease of individual giving<sup>8</sup>.

Some NGOs also report witnessing **informal barriers to access funds**, including opacity of the distribution criteria and disproportionately burdensome bureaucratic requirements.

In a growing number of countries, **foreign funding has been targeted by authorities** through vilification statements, restrictive legislation or punishing regulations.

### 4. TROUBLING RELATIONSHIP BETWEEN CIVIL SOCIETY AND GOVERNING BODIES

All these elements are reflected in the 2017 report on civic space in Europe by Civil Society Europe<sup>9</sup>. It highlights how all across Europe civil society perceives increasing difficulties in its relationship with authorities including **declining support for critical voices**.

The participation of civil society in the policy-making is affected on the one hand, by the decrease of resources available; on the other hand, by the lack of understanding or lack of political will to pursue meaningful civic dialogue<sup>10</sup>. Challenges include problems accessing information of public interest; opaque involvement in the decision-making process; restrictions to advocacy; lack of minimum standards on practices of public consultations.

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5 FRA (2018), **Challenges facing civil society organisations working on human rights in the EU**

6 Negri G. and Gilbert C. (2018), **Alarm bells ring as EU governments target "political" NGOs**

7 Civil Society Europe (2018), **Civic Space in Europe 2017 report**, p. 36.

8 This information emerged from the interviews with civil society representatives from several EU countries, including Italy and the Czech Republic.

9 Civil Society Europe (2018), **Civic Space in Europe 2017 report**

10 Civil Society Europe (2018), **Civic Space in Europe 2017 report**



**RECOMMENDATIONS  
TO EUROPEAN INSTITUTIONS  
AND MEMBER STATES**

While breaches of fundamental freedoms were witnessed in a majority of EU Member States<sup>11</sup>, the European Institutions have left the issues upon national competency, while implementing a reactive, crisis-driven, case by case, an approach that was not able to prevent the fast worsening of conditions across Europe.

The European Civic Forum calls for a well-rounded strategy to address the challenges civil society is facing. Some are obviously structural (austerity, shrinking social policies), others are connected with the rise of political forces that do not recognise themselves in the European values enshrined in art. 2 of the TEU and in the Charter of Fundamental Rights of the European Union. The EP report on addressing shrinking civil society space in developing countries, adopted in October 2017, is obviously a possible starting point to foster a debate on the need of coherent action internally and externally.

## **1. STAND UP FOR EU VALUES**

The EU stance on human rights and civil society should be more visible within its borders. In order to promote tolerance and democracy, the European institutions should launch an awareness-raising campaign on the fundamental rights everyone is entitled to benefit from and on the role of civil society in upholding them. The added value that CSOs bring to European democracies by daily acting for making rights effective for all, educating citizens on EU values, alerting on breaches to the rule of law should be publicly supported and recognized. Civil society should also be fully involved in the planning and implementation of such campaigns.

Because civil society is crucial to engage citizens, advocate for rights and hold governments accountable, the EU should devote significant means in support of building the capacities of CSOs to reach out to broader constituencies, to organise into alliances inside and across the countries, to make better use of EU law in defense of fundamental rights and values. Central and Eastern Europe countries deserve special attention due to the current wave of illiberal ruling, considering also the specific patterns of CSOs development in the region. Nevertheless, more generally, CSOs face increased pressure systematically when far-right parties join or support from outside government coalitions all across Europe.

Organised civil society is a sustainable actor defending EU values and social justice in the long run. Alongside, more spontaneous, often issue-driven and short-lived citizens' movements emerge. They can be very impactful on short-term demands. The potential of all these different forms of engagement to revive democracy depends on the institutions' capacity and willingness to recognize them, engage into dialogue and answer their claims!

## **2. ENSURE THE RESPECT OF FUNDAMENTAL FREEDOMS, RULE OF LAW, DEMOCRATIC CONTROL AND INVOLVE CIVIL SOCIETY**

The mandate of the European Agency for Fundamental Rights should be expanded and strengthened in order to carry out more values-based policies and ensure that European legislation does not downplay rights. Crucially, the mandate should allow the agency to carry out in-depth country by country assessments about the respect and implementation of fundamental rights both by EU institutions and Member States and to receive and investigate complaints. Such assessments should include the state of civic space across EU countries. Its civil society Platform, which structures dialogue between the FRA and hundreds of CSOs, should be given a more prominent role and resources to collect civil society input and formulate recommendations.

In conjunction with the FRA extended mandate we argue for herein, the EU should establish a "Democracy, rule of law, and fundamental rights" country by country monitoring mechanism, set up and implemented in coordination with civil society actors as called by the 2016 EP resolution<sup>12</sup>. Freedom of association and expression should be included, alongside the freedom and pluralism

11 **CIVICUS Monitor** (2018)

12 **European Parliament resolution of 25 October 2016** with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights

of media, among the indicators for democracy. The monitoring should be based on operational benchmarks evaluating the legal and regulatory environment and its implementation, as well as the broader enabling environment. Early warnings of deterioration, including smear campaigns, should be heeded and relevant data should be collected. The institutional monitoring should be linked to a more effective sanctioning system. The EU cannot become complacent with breaches of its values: it should condemn and have the tools to hold governments accountable for them. A reflection on positive conditionality and new forms of sanctioning which target governments and simultaneously engage societies is needed.

The EU institutions should appoint an EU Coordinator on civic space and democracy with the task to coordinate EU and Member States work in this area, have a monitoring role and to whom NGOs would report incidents related to restriction to any harassment or restriction of their work.

EU institutions should engage civil society at all stages from drafting to evaluating European policies. Transparency and inclusivity should be the guiding principles. Ambitious standards should be set, and best practices should be shared among units of each institution to ensure structured dialogue with national and European civil society alongside art. 11 of the TUE.

The EU should encourage Member States to fully investigate and sanction violations and threats to fundamental freedoms by non-state actors. The EU should also cooperate with Member States to follow UN Guiding Principles on Business and Human Rights and make full use of the Council of Europe recommendations on human rights and business and hold third parties accountable for civic space violation, including SLAPP lawsuits. The EU should be actively involved in the UN Working Group on Business and Human Rights where developed international binding guidelines in line with the EP resolution on addressing shrinking civic space<sup>13</sup>.

### **3. INVEST IN CSOS' FINANCIAL VIABILITY AND SUSTAINABILITY**

EU institutions should increase the budget allocated to civil society promoting European values as defined in Article 2 of the EU Treaty, both inside countries and transnationally. The ongoing negotiations on the Multiannual Financial Framework are an opportunity for doing so and the Rights and Values Programme proposal is partly answering to this demand. In order to ensure this new programme reaches its full potential, we call on EU institutions to:

- Increase the budget allocated. CSOs have expressed a minimum amount needed of 1 400 000 000 EUR;
- Provide specific and adequate funding for grassroots organisations through the creation of a fourth objective to the Rights & Values Programme, as called for in the EP resolution on the European Values Instrument<sup>14</sup>;
- Narrow eligibility for funding under this fourth objective solely to not-for-profit organisations, which would be granted by independent national sub-granting operators.

More simple rules to access EU funding are crucial to support to local actors, including by limiting reporting obligations and co-funding requirements.

Where national or regional independent fund operators would be in charge of the distribution of the funding, similarly as in NGO programmes of EEA/Norway Grants<sup>15</sup>, a transparent management of the grants should be ensured. EU institutions should also call upon member states to ensure the financial sustainability of civil society, including eliminating formal and informal barriers to access foreign funding.

<sup>13</sup> European Parliament (2017), [Resolution on addressing shrinking civil society space in developing countries \(2016/2324\(INI\)\)](#).

<sup>14</sup> European Parliament (2018), [European Parliament resolution on the need to establish a European Values Instrument to support civil society organisations which promote fundamental values within the European Union at local and national level \(2018/2619\(RSP\)\)](#).

<sup>15</sup> Stefan Batory Foundation (2018), [Opinion on the proposal of the European Commission' Regulation on the Rights and Values programme](#).

The European Civic Forum (ECF) is a transnational network gathering over one hundred NGOs and associations across 28 countries in Europe that are committed to the general interest and work in various fields such as education to citizenship and democracy, culture, defense of Human rights, environmental protection, development cooperation or enabling environment for NGOs.

## European Civic Forum - 2018



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