



European Civic Forum response to the 2022 European Commission stakeholder consultation on rule of law in the EU

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The European Civic Forum (ECF) is a trans-European network gathering more than one hundred NGOs and associations in 27 European countries that work every day to improve people's lives by addressing issues concerning the common good (citizenship, democracy, human rights, civil liberties and social and environmental justice). ECF works with CSOs national platforms on issues related to the enabling environment for civil society, both at the EU and grassroots level. Since 2018, we have been collecting resources from civil society at the national and European level on the state of civic space in the European Union on the platform Civic Space Watch (<http://civicspacewatch.eu>). The ECF is a research partner of the CIVICUS Monitor and an active member of Civic Society Europe.

The European Civic Forum response to the 2022 European Commission consultation on the state of rule of law in the European Union is constituted of the following analysis of horizontal developments, country-chapters written by civic organisations on the ground and a policy paper assessing the methodology of the European Commission rule of law review regarding civic space and involvement of civil society.

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Introduction

The proper functioning of the rule of law cannot rely only on state institutions. It lives and breathes through culture, values, and principles embedded in societies. For this reason, the societal component of the rule of law ecosystem is vital to the check and balances allowing the proper functioning of institutions. An open, plural, and vibrant civic space is a precondition for democratic, cohesive and resilient societies. It is also an integral component of the rule of law as civic actors are vital players to strengthen, implement and, when needed, defend the rule of law. On a cultural level, civil society actively promotes and strengthens the rule of law by sharing information, promoting civic education, raising awareness, and understanding of the interlinks between fundamental rights, democracy and the rule of law. It fosters a culture of active participation in public and community life, reinforcing the enjoyment and protection of human rights, civil liberties and inclusion for all, countering discrimination and disinformation. Civil society also plays an instrumental part in the implementation and functioning of the rule of law when it supports access to justice, monitors legality and proportionality of laws, measures, and practices, and supports the work of independent authorities and human rights bodies.

Over the last years, civil society and social movements, journalists, academics, and other public watchdogs institutions, *inter alia* national human rights institutions, have alerted and made more visible a continuous deterioration of the rule of law and democratic backsliding in some European Union Member States. All these actors have been at the forefront of advocating, mobilising, and acting in defence of democratic frameworks. In doing so, some have become the target of restrictive laws, orchestrated media disinformation or delegitimising campaigns, judicial and administrative harassment, physical and verbal attacks, while their economic

resources and ability to engage with policymakers were shrunk. In some countries, authorities have done so systematically to counter the activities of those who defend the effectiveness of the rule of law. Pressure on civic actors is now widely recognised as one of the first indications of deterioration of rule of law and democratic backsliding. Attacks against organised civil society actors continued during the COVID-19 pandemic, despite that their action was most needed to answering people's needs in face of the health, socio-economic and democratic crisis unfolding.

The rule of law backsliding that we observe in a significant number of European Union Member States, although with different intensities, reflects tensions and divisions that are present in our societies. The increasing social and economic vulnerabilities, people's fear and feelings of insecurity for their future go hand in hand with distrust in the ability of democratic institutions and policies to deliver for all.

Democracy, fundamental rights, and the rule of law are interlinked. Positive developments in one area trigger progress in all areas and vice-versa. Moreover, they are interlinked with the general cultural, socio-economic context. After decades of globalisation that led to growing inequalities, the general situation in the EU is not providing a framework spontaneously supportive to a reinforcement of the rule of law. Therefore, in the present context, the EU monitoring of the rule of law has a crucial importance to counter deterioration.

Civic space developments in the European Union in 2021

The following analysis looks at horizontal developments of civic space and enabling environment for civil society in the European Union focusing on the year 2021. It is built on the country contributions written by the above-mentioned CSOs operating in the respective countries as well as on the findings of the Civic Space Watch (<https://civicspacewatch.eu>) and the ongoing research carried out by the European Civic Forum, including through its working group on national platforms.

The institutional, political, cultural and socio-economic landscape

Prolonged crises

COVID 19 pandemic continues to represent a challenges

In 2021, the Covid-19 pandemic continued to represent a challenge for democratic and rule of law institutions as well as for civic actors. A number of countries continued to impose far-reaching restrictions to manage the pandemic, with an impact on fundamental rights and the enabling environment for civil society in all countries under examination. In several countries, court rulings have highlighted the unlawfulness of certain measures introduced with the pretext of the pandemic that have disproportionately restricted civic space. In addition to the democratic questions posed by the pandemic, the social and economic crisis has continued to deepen, expanding the number of people and categories experiencing vulnerability. Civil society's role has remained crucial to respond to the emerging social needs and keep the institutions and political representatives accountable throughout the pandemic.

Tensions at the borders with Belarus lead to closing of civic space and massive rights violations

Following the arrival of thousands of migrants and asylum seekers at the borders between Belarus and the European Union, **Poland, Lithuania, and Latvia** have described the situation as hybrid warfare and have declared a state of emergency. Such militarised approach legitimised as trade off between the EU's policy on migration and Belarus black-mailing, has led to the systematic violations of migrants' rights, including asylum seeker pushbacks by Lithuanian and Polish border guards, the denial of the possibility to lodge an asylum claim, as well as inadequate food, water, and shelter.

As a result of the state of emergency **Poland** implemented at the beginning of September and extended in December, civic space on the borders was closed as CSOs, humanitarian workers, medical aid providers, media and independent observers have been denied access to the area. At the same time, journalists, activists and the local community engaged to help the migrants have been targeted by smear and intimidation campaigns and repressive actions, including threats, brutal stop and search operations. Following the appeal of three journalists who were punished for entering the emergency zone, in January 2022 the Supreme Court in Poland ruled that forbidding general access to the border was disproportionate.

Anti-rights groups and narratives become more visible in the public space, hate affects the democratic space

In Activizanship #5 – Civic Space Watch report 2020¹ we wrote that the societal despair caused by the socio-economic hardships and uncertainty for the immediate future threatened to fuel distrust in institutions. The widespread sense of joining forces in a common struggle and increased trust in Governments that has characterised the first phase of the emergency was quickly replaced by contestation, including in the form of street protests. Reactionary political parties and extremist movements had already started to surf these societal tensions with various degrees of success depending on the country.

In late 2020 and throughout 2021, in several EU countries, regressive narratives and anti-rights groups have become more prominent and aggressive in the public sphere. As anticipated in the previous report, they are capturing emerging societal grievances linked with COVID-19 exhaustion, social needs unanswered and growing distrust in institutions.

Threats and attacks

Episodes of hate, including threats and physical attacks, against vulnerable social groups (see below) and democratic civil society have been documented in **Sweden, Spain, Italy, Poland, France, Bulgaria**. For example, in **Poland**, leaders of the Polish Women's Strike movement and organisations supporting them have received death, rape and bomb threats. Due to severe escalating threats, in October 2021 Marta Lempart, co-founder of the Polish Women's Strike, was assigned police

protection. In **Italy**, representatives of the radical far-right and neo-fascist groups attacked the headquarters of Italy's largest trade union, the Italian General Confederation of Labour (CGIL). In **France**, a far-right website published sensitive data of hundreds of public figures, activists and associations so called 'Islam-leftists' ('Islamogauchistes' in French, i.e. a neologism applied from the French far-right to an alleged political alliance between leftists and Islamists)². These episodes create a climate of fear and insecurity and can often lead to self-censorship signaling a shrinking of civic space and a threat to European values. Such incidents are even more worrying when they are enabled by anti-rights narratives expressed or even led by representatives of the institutions, as it might be conducive to a sense of impunity for perpetrators.

Marginalisation and targeting of vulnerable voices and those who defend them

Across European Union member states, racialised groups, migrants and asylum seekers, the LGBTQI+ community have been particularly affected by the deterioration of the rule of law. Civil society organisations and rights defenders which represent and stand up for these groups, often face specific challenges to their actions linked with discriminatory and exclusionary trends promoted, enabled or tolerated by some authorities. As a consequence, they have been further marginalised, silenced and made invisible, as they become afraid of expressing themselves and exercising their rights in the public space.

LGBTQI+ rights under pressure

Threats to LGBTQI+ rights have continued. In **Poland**, LGBTQI+ activists have faced persecution for the *"crime of offending*

¹ <https://civicspacewatch.eu/activizanship-5/>

² <https://civicspacewatch.eu/france-far-right-website-published-lists-of-hundreds-of-islamogauchistes-and-csos-helping-migrants/>

religious feelings". In **Hungary**, anti-pedophilia legislation introduced to Parliament was hijacked through last-minute amendments banning "homosexual propaganda to minors," i.e. the appearance of LGBTQI+ people in media and schools. The government and pro-government media also carried out systemic smear campaigns against organizations working on the rights of LGBTQI+ people. As a consequence, the number of - especially verbal - attacks on and conflicts with LGBTQI+ people has increased. In **Bulgaria**, a surge of physical attacks and violent threats against LGBTQI+ organisations, activists and members (or perceived members) of the LGBTQI+ community has become particularly visible since 2020. Several attacks were not adequately investigated by the authorities, and there is no publicly available information about any actions taken by the police or the prosecution office. In the **Czech Republic**, while the situation regarding the rights of LGBTQI+ people is not as serious as in the rest of Central Europe, public policies concerning LGBTQI+ people have not improved since 2006 and the measures addressing the pandemics repeatedly ignored the special status of registered partners and denied them rights reserved for heterosexual married couples - e.g., no exception for travel bands. These errors were corrected only after a strong public pressure of LGBTQI+ organizations.

Racism, islamophobia and xenophobia

As racist narratives become more prominent in the public sphere, civic space for racialised groups is increasingly being narrowed. In **Denmark**, in June 2021, the Parliament adopted a new security package, known as 'Security for all Danes' increasing police powers in a way that risk to disproportionately affect racialised minorities as implied by the discriminating political narrative driving the new law. In **Sweden**, delegitimising and stigmatising campaigns against Muslim and migrants'

civic organisations and rights defenders carried out by representatives of far-right groups and parties have led to their growing marginalisation and exclusion from the public debate as well as to loss of public funding. In **Greece**, journalists and CSOs have been discredited for publishing reports on unlawful pushbacks of refugees and migrants. In few cases they have been threatened with criminal sanctions or even arrested for their work. CSO staff and migrants have been the target of racist violence from local groups.

It is also important to note that new European policies, in particular the new pact on migration and asylum and 2020 counter-terrorism agenda for the EU have raised great concerns on the potential threats posed on fundamental rights and civil society working with people on the move and of Muslim faith.

State's duty to protect

Country submissions in **Bulgaria, Poland, Spain, Italy, Greece** show how attacks against vulnerable groups, human rights defenders and CSOs at hands of third parties or police officers in the case of public demonstrations were not adequately investigated by the authorities, and there is no publicly available information about any actions taken by the police or the prosecution office. If targeted groups and individuals fear lack of action or even reprisal for seeking justice, they might be discouraged from doing so. It deteriorates trust in the functioning of institutions whose role is to ensure accountability and justice.

The regulatory environment for and implementation of civic freedoms

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

Restrictions on freedom of association

While laws regulating the right to association across European Union member states generally conform with international human rights standards and do not directly restrict the operation of CSOs, measures carried out have affected the enjoyment of this right in several EU member states.

Restrictive legislation

Laws on transparency, public funding, anti-money laundering, security, regulating CSO operations, including registration, licensing, reporting and accountability, impact the freedom of association in a number of countries. These include:

- Burdensome reporting requirements that disproportionately affect small organisations;
- Government approval or registration as precondition to operate and receive funding (i.e. in the case of the 2020 and 2021 laws in **Greece**, new 'republican engagement contract' in **France** introduced by the 2021 'Separatism Bill' granting administrative authorities the power to withdraw public funding to organisations that do not comply with 'the principles of the French Republic');
- Disproportionate sanctions in case of non-compliance, including dissolution or de-registration (i.e., deregistration of human rights

organisations in **Cyprus** and arbitrary refusal of registration in **Greece**);

- Discrimination of CSOs vis-à-vis other entities (like private companies) that are not subject to the same requirements;
- Increased interference by public authorities (such as laid down in the new 2021 law on organisations "capable of influencing public life" in **Hungary** that replaced the repealed 2017 act on foreign funded organisations empowering the State Audit Body to carry out inspections at CSOs with an annual income above 20 million HUF, ~60,000 €).

In **Poland**, 2021 amendments to the Act on Counteracting Money Laundering and Financing of Terrorism established new troublesome and disproportional registration requirements. A draft act on reporting by non-governmental organisations was also prepared that could introduce additional reporting obligations.

These restrictions create a complex legal environment that limits, restricts and controls civil society. They drain CSOs resources and capacities and contribute to negatively affecting their ability to focus on their mission. By doing so, it puts CSOs that advocate for the general interest and European values at a disadvantage with other groups lobbying for private interests.

A shrinking civic space for solidarity with migrants in the EU

Over the past couple of years, several states adopted increasingly restrictive legal frameworks for CSOs working on migrants' rights. The 'Stop Soros' legal package criminalising aid to asylum-seekers passed in the **Hungarian** Parliament in 2018 was ruled to be in breach of EU law in November 2021 by the Court of Justice of the European Union, yet it is still in effect in the country. In **Greece**, the 2020 measures on registration for CSOs working in the fields of

asylum, migration or integration has started to be implemented despite wide concerns around this policy (see below). In **Italy**, the process of substantial revision of the Security Decrees, while presenting some positive elements notably the restoration of humanitarian protection for asylum seekers and the doubling of the duration of migrant residence permit to two years, still maintained many problematic provisions. Thus, the risk of a sanction against NGOs or individual defenders remains high, even if these comply with the rules of the international law of the sea.

Deregistration, dissolution of CSOs

In **France**, the dissolution of the French Collective against Islamophobia (CCIF) was validated by the Council of State. The dissolution came after a public smear campaign, with the Interior Minister labelling the organisation as “enemy of the Republic”.

In **Cyprus**, 2020 Amendments of the Law on Associations and Foundations and Other Related Issues gave the Minister of Interior the power to start a dissolution process for CSOs if certain regulatory requirements were not met within a two-month notice period⁷. Shortly after, this power was used to remove KISA, a leading non-governmental organisation fighting for equality in Cyprus, and many other civil society organisations, from the Registry of Associations.⁸

In **Greece**, the 2020 law on the new registration requirements for organisations working on migration issues continues to be implemented despite international criticism, leading to arbitrary refusals of registration of established organisations, including the Refugee Support Aegean (RSA).

Restrictions on freedom of expression, including online repression

Freedom of expression includes citizens' right to access information from multiple and reliable sources and the right to formulate

opinions freely and critically, and to openly express them. Freedom of expression is ensured not only when media ownership is plural and transparent, but also when journalists, CSOs and citizens can collect and spread information of public interest without fear of retaliation, and are able to choose the most appropriate means to voice their opinions.

While freedom of expression is considered a fundamental right, there are high-risk factors that are emerging across Europe, including pressures and changes in the media landscape, as highlighted in **Czech Republic** and **Poland**. Freedom of expression is also hindered by attacks and restrictions on independent journalism, civil society and critical voices. These include police interference, obstruction to covering public authorities' actions and strategic lawsuits against the public (SLAPPs).

In **Poland**, the introduction of a state of emergency on the border with Belarus, included a ban on staying in the area covered by the state of emergency and on the appearance of this area in recordings using technical means. Access to public information on the activities carried out in the areas covered by the state of emergency was also restricted. In short, citizens were cut off from access to information. Volunteers, CSOs providing humanitarian relief to migrants and journalists have been harassed and in some instances their equipment confiscated. As said above, the restriction was found disproportionate by the Supreme Court.

In **Greece**, a new criminal code provision made ‘fake news’ a criminal offence, punishable with up to five years in prison.

These restrictions weaken the ability of CSOs to inform and raise awareness on issues of general interest, including rule of law and democracy, within society. There is a chilling effect on CSOs from raising certain sensitive issues that might make them a target for authorities, big companies or powerful individuals. CSOs or activists affected might

face severe repercussions, including restitutions of funding (like in the case of laws restricting political campaigning), hefty fines and imprisonment.

Limiting civic organisations' ability to express themselves on issues deemed 'political' is a form of intimidation that breaches freedom of expression. Indeed, freedom of expression should guarantee and protect public debates on political issues for all stakeholders. In **Germany**, restrictive tax law for charities is still in place. On a positive development, the Electoral Act in **Ireland** which hindered CSOs campaigning is in process of reform³. Civil society's action, regardless of the type of activity (advocacy, service provision, watchdog...), deals with the protection of common goods and values. It responds to societal problems and needs thus it might target topics that become high on the political agenda. In this regard, it is important to notice how a wide range of issues of public interest has been interpreted as 'political' in different countries and therefore deemed outside of the scope of civil society's action.

Negative public discourse and smear campaigns, labelling

Smear campaigns against democratic civil society – especially when acting as public watchdog or in the advocacy function - and critical voices have been carried out by political representatives, including in the Government, in **Bulgaria, Hungary, Czech Republic, Croatia** and **Slovenia**. In particular, in **Croatia** and **Czech Republic**, watchdog NGOs have been discredited as "political" for raising awareness at national and EU level of developments linked to conflict of interest and corruption. Anti-CSO campaigns are also amplified by politically affiliated media outlets and the worsening of media freedom in these countries. In some

countries, smear campaigns by authorities target specific sectors of civil society, such as organisations working on Islamophobia (such as in **France**) or migrants rights (such as in **Italy**). It is worrying that in these countries, anti-rights narratives emerging from the far-right are channelled and mainstreamed by democratic institutions.

Reputational attacks can create a distressing environment for affected NGOs and activists and produce fear of speaking out on sensitive issues. They also often create the impression that critical voices are 'legitimate targets' for other measures and often anticipate the deployment of other legal, judicial or financial obstacles. It can also affect public trust in the sector and, as a result, its ability to mobilise citizens on matters linked to democracy and the rule of law.

Restriction of freedom of peaceful assembly and right to protest

The right to peaceful assembly and to protest are crucial means for political participation, and they gain special importance at times when far-reaching decisions are taken impacting people's rights. Additionally, freedom of assembly is especially important to give visibility to matters of general interest, including linked to the rule of law and democracy, in contexts where channels for dialogue between authorities and civil society are not functioning well.

In recent years several countries have passed legislation restricting the right to peaceful assembly and toughening sanctions related to assemblies, including 2019 Security decrees I and II in **Italy**, 2019 Anti-rioters law and 2021 Global security law in **France**, 2016 Law public assemblies in **Poland** (introducing 'cyclical assemblies'), 2015 Organic law on Citizens security (known as "gag law") in **Spain**, 2020 law on public outdoor

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https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_housing_local_government_and_heritage/reports/2021/2021-08-

19_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-electoral-reform-bill-2020_en.pdf

assemblies in **Greece**. These sanctions target different behaviours such as organising or attending unauthorised gatherings and wearing items impairing identification and might act as deterrents to public participation. These restrictions limit the capacity of civic actors to organise public demonstrations and mobilise people in the public space. Changes to the Law on Protection of the Public Order Act which would restrict the ability to organise public demonstrations are currently under discussion in **Slovenia**.

During 2021, in **Poland**, a law aiming to ban LGBTQI+ Pride events, with the stated intention of stopping "*homosexual propaganda in public space*" and making it illegal to "*promote sexual orientations other than heterosexuality*", has been approved to be discussed in Parliament. Such restrictions on the content of assemblies are considered particularly serious according to international human rights standards as the approach of the authorities to peaceful assemblies and any restrictions imposed must in principle be content neutral.

As reported in the 2021 response of the European Civic Forum to the rule of law consultation, COVID-19 restrictions have often involved a restriction of the right to peaceful assembly. In **Hungary, Greece, Slovenia** and **Poland**, a total or de-facto ban on public demonstrations – disproportionately restricting the right to protest in a blanket way - was in effect for most of 2020 and part of 2021. Court rulings in **Slovenia** and **Poland** found such restrictions unlawful. An issue raised in several countries is that of legal uncertainty regarding the arbitrary application of COVID-19 rules (i.e. in **Spain**) and the unpredictability of constantly changing governmental decrees addressing the pandemics (i.e. in **Poland, Czech Republic**).

Heavy-handed policing

The use of administrative sanctions against peaceful protesters, a phenomenon known in Spain as *bureaurepression*, was reported in

Italy, Spain, Poland, France, Greece. Particularly worrying situations involve the use of excessive charges, specifically penal charges, against protesters or activists (see below) to discourage others from undertaking similar actions.

Episodes of violence by the police against peaceful assemblies have been reported in **Italy, Spain, Poland, Greece, France**. The use of excessive and unjustified violence on protesters can lead to disengagement of people if citizens feel that it is dangerous to participate.

Prosecution and criminalisation of human rights actions

The use of legal frameworks, strategies and political and legal actions with the intention of treating actions for human rights as illegitimate and illegal includes:

- Legislation criminalising specific actions (i.e., 2018 "Stop Soros" Law in **Hungary**);
- Prosecution of CSOs, activists or other critical voices for their actions (i.e. Sarah Mardini and Seán Binder in **Greece**, see below criminalisation of solidarity to migrants), words (i.e. the musician and rapper Pablo Hassel in **Spain**) or organising and participating peaceful demonstration (i.e. criminal charges against leader of the Polish women Strike in **Poland**, prosecution of the NO TAV and NO TAP movements in **Italy**);
- Strategic lawsuits against public participation (also known as SLAPPs): malicious civil lawsuits abusing the judicial system with the aim of draining the target through long court processes (such as those initiated by anti-rights groups against LGBTQI+ NGOs in **Poland**).

These legal proceedings often do not lead (or even aim to lead) to a conviction and many complaints often end in acquittal or dismissal. Nevertheless, these proceedings have serious material and symbolic costs such as reputational damage or intimidation. They also divert capacities and resources

away from the mission of the organisation to defend itself in Court and in the public. These proceedings may also generate self-censorship among other associations and activists for fear of punishment or deter them from pursuing certain actions (i.e. search and rescue) for fear of reprisal. Finally, in case of conviction, the consequences are assessed in terms of huge fines or prison sentences.

Criminalisation of solidarity⁴

As said above, over the past couple of years, several states adopted increasingly restrictive legal frameworks for CSOs working on migrants' rights. This phenomenon is well known as "*criminalization of solidarity*". Increasingly, all acts around the migration journey can be criminalised: from steering a boat which is going adrift, to rescuing people at sea, to providing essential services, basic humanitarian aid, information, a roof, assistance during the asylum procedure, denouncing human rights violations at borders, to helping people in return procedures. At the core of these trends, there is the criminalisation of migration itself, a denial of human dignity – both in the language and narrative, as well as in the legal framework of several EU member states.

Migrants who act in solidarity with other migrants are disproportionately hit by criminalisation policies. Indeed, criminal proceedings, including when they end in acquittals, can have a life-long impact on migrant human rights defenders' ability to live regularly in the EU. A first instance conviction, or even just reliable proof for suspicion, can have the effect of excluding them from the right to apply for asylum and from future applications for residence status. Even after an acquittal, migrants who have been accused of smuggling often have difficulties accessing

asylum procedures, and they are often excluded from official reception centres.

In 2021, there have been a few positive court rulings: the case against Carola Rackete in **Italy** and the trial against Cédric Herrou in **France** were dismissed. These two examples seem to indicate that, when independent judges are called to decide, there is hope for justice to be achieved. Indeed, in most cases, judges have found no sound evidence for convictions. While this gives hope for the independence of the judiciary system, it also highlights how trials against migrants' rights defenders are, from the very beginning, merely political acts. And even when they end in acquittals – which, sadly, is very far from being always the case – the impact of lengthy processes, often lasting years and characterised by repeated appeals by the prosecutor against first-instance acquittals, is extremely harmful.

The right to participation and dialogue between the civic sector and governing bodies

Legality, implying a transparent, accountable, democratic and pluralistic process for enacting laws, is a key principle of the functioning of the rule of law. Civil dialogue is an essential component of participatory democracy. Civil society, both organised and spontaneous movements, enables and empowers people to freely participate in matters of the public good and contribute to building a culture of active participation in public and community life, which is a prerequisite for the inclusiveness, the quality and transparency of law-making. Civic organisations are at the frontline to witness precarious situations and rights' violations that people suffer from while trying to respond to people's needs. So, they are in a privileged position to contribute to policy making and alert on

⁴ Based on PICUM analysis for upcoming ECF Activizenship #6 report on civic space in the EU

the possible limitations and adverse consequences of public policies. Authorities must create and maintain a safe and enabling environment for exercising the right to watch institutions and hold them to account, participate in decision-making through accessible, inclusive and effective mechanisms of consultation and dialogue between civil society and decision makers. Authorities need to consider those most affected, and support participation of civil society in these mechanisms with financial and human resources.

In most EU member States, while the legal framework for civil dialogue can be considered satisfactory and in line with international human rights standards, lack of implementation is often an issue. This is particularly true in the **Central-Eastern region and Greece** where the participation of civil society in policy-making is often formalised through different bodies, but the functioning and effectiveness of these bodies is often questionable. In **Croatia** and **Bulgaria**, the establishment of the Council for the Development of the Civil Society, which is designed to act as a venue of cooperation between the government and CSOs, is stalled. In the latter country, as this body is in charge of distributing funding to the sector, the national fund for civil initiatives, with repercussions not only on the right to participation but also on the financial viability of the sector. In several countries, these bodies for dialogue were not used in the context of consultation for the National Recovery and Resilience Plans (i.e. in **Bulgaria, Denmark, Czech Republic, Croatia...**) or only after pressure from the sector (i.e. in **Latvia**).

In many countries, the participation of civil society in 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 engage in meaningful civil dialogue. A general tendency exacerbated by the pandemic is the shortening of consultation

periods and to adopt a “box ticking” approach that does not meaningfully reflect inputs of civil society in the policy output. Additionally, in some countries, critical voices engaged in advocacy activities are often isolated and targeted by authorities with stigmatising campaigns (see above).

In **Hungary**, the functioning of formal consultation and dialogue mechanisms remains obstructed. Decisions are often made behind closed doors, without any involvement by the affected stakeholders. The Government often circumvents existing consultation mechanisms, e.g. through submitting significant bills by individual governing party MPs.

A risk raised in several EU member states is that participatory mechanisms privileging direct participation of individual citizens tends to replace – instead of complement – collective participation through associations, CSOs and other intermediary bodies.

On a positive note, in the last years there have been promising steps taken in **Latvia** (new strategy for the Implementation of the Memorandum of Co-operation between Non-governmental Organisations and the Cabinet of Ministers) and **Czech Republic** (Strategy of cooperation of public administration with CSOs 2021 – 2030) towards more participatory approaches to drafting state policies and consultative bodies, thanks to efforts of civil society. However, the real challenge is in how these positive plans will be implemented and how they manage to change the practices of state administration.

The framework for civic organisations’ financial viability and sustainability

The right to freedom of association includes the ability to seek, receive and use resources – human, material and financial – from domestic, foreign and international sources. Thus, the right to mobilise resources, including human and financial, is a direct and

essential component of freedom of association. Access to and use of funding provide associations with the means to operate and pursue their missions and are therefore essential for civil society's ability to operate as part of the rule of law ecosystem.

Availability of public funding for the civic sector to engage in rule of law and fundamental rights issues is a problem raised in several country responses (e.g. **Latvia, Spain, Bulgaria, Czech Republic, Italy**). In many EU member states, funding is mostly distributed to CSOs involved in social care, service provision and sport activities. In the Central-Eastern region, the EEA and Norway grants represent an important source of funding, in many countries the main one, in the field of rule of law and democracy. Challenges regarding this stream of funding that emerged in **Hungary** and **Slovenia** (then resolved) particularly affect the capacities of the sector to act on these issues. In **Hungary**, the unsuccessful conclusion of the negotiations concerning the third period of the EEA & Norway Grants means a loss of 10 million € for the coming years in the context of already difficult access to funding for critical CSOs.

In most EU countries, the COVID-19 pandemic amplified these tendencies and resulted in huge economic pressure on the sector. The participation of civil society in the preparation of the **National Recovery and Resilience Plans** and their inclusion as beneficiaries of the funding is also perceived by CSOs as far from satisfactory in many EU countries. A positive exception in **Latvia**, where the NRRP provides funding for NGO support, social innovation and representation.

In the **Czech Republic**, the difficulties to secure sufficient financial funding will even worsen under the new Multiannual Financial

Framework as tax exemption for entities carrying out public benefit activities will no longer apply. Additionally, NGOs working with refugees will therefore not be eligible for funding of Asylum, Migration and Integration fund (AMIF) which will not only significantly worsen their financial stability, but also the long-term expertise of the NGO sector will be lost.

Common **obstacles of access to funding** include burdensome, complex, not always transparent procedures and challenging eligibility criteria, as well as the lack of internal capacity. Transparency, counter terrorism and anti-money laundering laws also in some cases lead to restrictions to access to public funding by introducing new, sometimes unrealistic requirements (i.e. in **France** and **Greece**, organisations led by Muslims in **Sweden**).

Controlling CSO activities through funding policies

Governments have used funding policies in an attempt to curtail the work of CSOs in **Hungary**⁵, **Croatia** and **Slovenia**⁶.

In **Hungary** and **Poland**, the opaque distribution of public funding has sometimes resulted in critical civic organisations' inability to access funding. In these countries, governments have made moves to economically starve critical civic organisations, including through centralisation in increasing direct control of distribution of funding (i.e. ; National Cooperation Fund in **Hungary**, National Institute of Freedom – the Centre of Civil Society Development in **Poland**) and through this favouring the establishment and financing of parallel organisations (quasi GOCSOs) that could be used for political purposes while diverting funding away from

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<https://monitor.civicus.org/updates/2021/08/18/orban-government-alleged-have-used-pegasus-spyware-investigative-journalists/>

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<https://monitor.civicus.org/updates/2021/08/02/more-200-days-without-funding-slovenian-press-agency-attempts-block-funds-ngos/>

the CSO sector with a transparent and proven track record.

These moves can lead to the self-censorship of organisations in order to preserve access to funding. Other organisations are in a situation of financial precariousness in order to preserve a certain autonomy, which nevertheless weakens their ability to act.

CSOs contribution to the rule of law

Civic actors are vital players between the state and the market to strengthen, implement and, when needed, defend the rule of law. Both in their advocacy-oriented and action or service-oriented function, they contribute to making the access to civil, political, economic, social, cultural, and environmental rights for many effective and real.

Civil society actively **promotes and strengthens a rule of law culture** by sharing trustworthy information, promoting civic education and participation, raising awareness and understanding of the interlinks between fundamental rights, democracy and the rule of law, as well as countering discrimination and disinformation. For example, in **Czech Republic**, CSOs have had an instrumental role in raising awareness of instances of conflict of interests linked to political representatives at national level and EU level, leading to recent actions by the European Commission and European Parliament.

Civil society contributes to **the implementation of the rule of law** by supporting and enabling access to justice through judicial and non-judicial mechanisms to those that are affected by violations or lack of access to human rights (including socio-economic and environmental rights), monitoring the legality and proportionality of laws, measures and practices, and triggering their

review when unlawfulness is observed. For example, in **Spain**, civil society have been monitoring the implementation of the Citizens security law and supported victims to appeal against violations enabled by the bill since it entered into force⁷. CSOs and social movements are now mobilising to ensure the reform of the gag law currently ongoing meaningfully addresses the most restrictive provisions that have negatively affected rights of protest and expression.

Civil society also feeds and **supports the work of independent authorities and bodies** including courts and national human rights institutions. An important victory in this sense took place in **Poland**, where the participation and pressure of civic organizations ensured the independence of the new Ombudsman that was feared would have been hijacked by the governing majority. This civic engagement led to an ongoing cooperation of organizations that now monitor what is happening with the Ombudsman's budget, check how public institutions respond to the Ombudsman's general comments and take action in this matter, and finally work out their demands and cooperate with the Ombudsman's office in their implementation.

As said above, civil society also contributes to a **transparent, accountable, democratic and participatory process for preparing laws and policies**. For Example, in **Latvia**, thanks to the advocacy of civil society, when a law is developed, public administration has to assess the impact on human rights, democratic values and the development of civil society.

Civic organisations and movements act on a daily basis to **address the root causes** laying behind the **deterioration of the rule of law** by building bridges within divided societies, filling the gaps left by public actions (or lack of thereof) through their services, contributing and maintaining

⁷ See for example:
<http://defenderaquiendefiende.org>.

media pluralism (for example, through civic journalism). An emblematic case is **Italy**, where associations and social movements have played a crucial role in supporting public institutions fighting against organised crime, raising awareness on the phenomenon and encouraging the creation and the development of local communities that could be a valid alternative in the areas where the Mafia is strong. A number of municipalities are now implementing participatory processes to make social use of goods and lands confiscated from Mafia organizations or families⁸.

By monitoring and keeping the powerful accountable, carrying out crucial litigation to challenge unlawful political decisions, galvanising and mobilising people to action – including through public demonstrations – they contribute to **defending rule of law when it is under pressure**. In **Slovenia**, protests have been carried out for over one year on a weekly basis against anti-democratic moves by the current government, including the controversy over the European Public Prosecutor and the attacks on the Slovenian Press Agency. In **Bulgaria**, CSOs are advocating for a much-needed reform of the judiciary and are leading a number of protests against the election of the highly controversial head of the prosecution. In **Hungary**, civil society is mobilising to monitor the conduct of upcoming elections.

Conclusions

Across EU member states, civil society is experiencing restrictions and challenges to its actions that affect its ability to fully act in the rule of law ecosystem. In particular, these challenges include:

- an unfavorable political landscape characterized by, on one hand, (1) institutional disregard to the role of civil society as intermediary between the citizens and their governing

authorities, and, on the other hand (2) the growing threat of far-right narratives and attacks in the public space, that creates fear and further marginalises racialised communities, migrants and LGBTQI+ people and those who defend them;

- complex bureaucratic legal environment and restrictive laws that negatively affect civic freedoms and weak implementation of civil dialogue infrastructures;
- insufficient availability of funding for the civic sector to engage in rule of law and fundamental rights issues and growing obstacles (including bureaucratic ones) to access them;
- prosecution of human rights defenders and criminalisation of human rights actions.

In **Hungary**, democratic civil society is sidelined from accessing funding and policy-making, creating a strong chilling effect for many CSOs to be engaged and speak out on sensitive issues linked with rule of law and democracy. In **Poland**, CSOs and movements friendly to the Government are flourishing thanks to public support, while critical CSOs and movements are targeted. In these countries the civic space is obstructed in the context of backsliding democracy and fundamental rights, in particular sexual and reproductive rights and rights of migrants. In **Slovenia**, the deterioration of rule of law and democracy is systematically happening at worrying speed as the Government is unlawfully restricting the right to peaceful assembly and harassing critical NGOs and journalists while repeatedly attempting to weaken the legislative framework and financial viability of the sector. For civic actors in these countries, the challenges mentioned above tend in combination, creating a toxic atmosphere for organisations and citizens to engage on rule

⁸ See: <https://www.libera.it>

of law and democracy issues as well as on other causes of general interest.

In **Bulgaria** and **Croatia**, public participation and civil society capacities remain low due to lack of public policies (or lack of implementation of thereof) aimed at developing the sector and appropriate funding for advocacy work, in the context of weak rule of law infrastructures.

In **France** and **Greece**, the respective Governments passed new laws restricting freedom of association with detrimental consequences for NGOs including their ability to operate and access funding. The right to peaceful assembly and protest continues to be challenged by police management measures, while violent policing is increasing. In **Spain**, which has been characterised by similar developments, the reform of the gag law opens opportunities to widen civic space; however, the current government proposal is insufficient to redress the repressive potential of the law.

In **Latvia**, positive developments in the field of civil dialogue and access to funding will need to be confirmed in the coming period.

Recommendations

For more information on how the European rule of law mechanism can better reflect and respond to these challenges, see the European Civic Forum's report "Civic space in the rule of law framework. Assessing the inclusion of civil society in the consultation, methodology and follow up of the European rule of law mechanism 2 years on": <https://civicspacewatch.eu/wp-content/uploads/2021/12/Report-Civic-Space-in-the-European-Rule-of-Law-Framework.pdf>