

## **RULE OF LAW REPORT 2022 TARGETED STAKEHOLDERS' CONSULTATION**

### **Joint Contribution from Civil Society organisations to the pillar checks and balances - civic space**

#### **1. INTRODUCTION**

This paper has been prepared with the support of the European Civic Forum based on country contributions<sup>1</sup> and the [Civic Space Watch](#) run by the European Civic Forum in cooperation with the European Centre for not for profit Law and Civil Society Europe. It includes contributions from the European Youth Forum, PICUM, Philea, ILGA-Europe, The European Network Against Racism, and the International Planned Parenthood Federation.

#### **2. THE RULE OF LAW AND CIVIC SPACE**

Our contribution focuses on civic space which is one of the checks and balances of the rule of law.

An open, plural, and vibrant civic space is a precondition for a democratic, cohesive and resilient society. 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. Civil society actively promotes and strengthens the rule of law by sharing information, promoting civic education, raising awareness, and understanding of the rule of law, and countering discrimination and disinformation. It fosters a culture of active participation in public and community life. Civil society also plays an instrumental part in the implementation and functioning of the rule of law: by supporting access to justice and human rights, monitoring legality and proportionality of laws, measures, and practices, and by supporting the work of independent authorities and human rights bodies.

Over the last years, civil society and social movements, academics, media and activists, as well as national human rights institutions, have alerted on a fast deterioration of the rule of law and democratic backsliding in some European Union Member States. These groups have often been at the forefront of advocating, mobilising, and acting in defence of democratic frameworks. In doing so, they have become the target of restrictive laws, orchestrated media disinformation or delegitimizing campaigns, judicial and administrative harassment, physical and verbal attacks, while their economic resources and ability to engage with policymakers were shrunk. Pressure on civic actors is widely recognised as one of the first indications of deterioration of rule of law and democratic backsliding. The COVID-19 pandemic contributed to accelerate these trends in several

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<sup>1</sup> See: <https://civicspacewatch.eu/elementor-16622/>

countries at a time when civic actors' role was most needed to face the health, socio-economic and democratic crisis unfolding.

The rule of law backsliding that we observe across some European Union Member States reflects tensions and divisions that are increasingly present in our societies, resulting also from the rising social and economic vulnerabilities, fear, and insecurity regarding the future and growing distrust in the ability of our democratic institutions and policies to deliver for all. Democracy, fundamental rights, and the rule of law are interlinked. Positive developments in one area triggers progress in all areas and vice-versa. Moreover, they are interlinked with the general cultural, socio-economic context.

We have observed that this backsliding in the last year is in particular linked to the impact of COVID 19, its socioeconomic consequences, an increased polarisation in society favouring the rise of anti rights groups and hate narratives, as well as an exacerbation of tensions linked to migration.

### **3. THE IMPACT OF COVID 19**

The health crisis has developed quickly into a social and economic crisis, with tens of millions of people put out of work, many losing partially or fully their sources of income and becoming unable to meet the basic needs of their families for food, housing and health protection. The economic shock triggered by the consequences of the health emergency is exacerbating societal needs and existing inequalities. Adding to those who were already fragile, entire groups are exposed to socio-economic difficulties. Further difficulties are expected to emerge in the coming year(s) with the increase of prices of energy supplies, increase in public debts and inflation in several countries.

This crisis has also an important impact on civil society organisations human and financial resources and their possibilities to undertake activities. A recent study carried out by the EESC shows that civil society organisations have been weakened by the consequences of the pandemic. This also emerges from the report of the FRA on protecting Civic Space in the EU<sup>2</sup>). Also reports at national level bring similar evidence. For instance in Poland a research report by Klon Jawor Involving 850 organisations and associations. It indicated that the pandemic deteriorated the situation of 65% of the NGOs. In particular almost a third had to suspend activities, increased stress levels of staff and volunteers were noted.

Some sectors of civil society were particularly affected by measures taken during the pandemic such as the cultural sector or the education sector. Also youth and youth organisations faced particular challenges. A European Youth Forum research shows that age creates a significant reduction in access to civic space. Additionally multiple discrimination plays a key role as groups of young people experiencing exclusion or intersional discrimination are those are both particularly excluded from civic space and suffer most from a closing of civic space.

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<sup>2</sup> <https://fra.europa.eu/en/publication/2021/civic-space-challenges>

In several countries emergency measures linked to the Covid pandemic have been in breach of the rule of law, or have lacked proportionality.

For instance in the **Czech Republic** the Government declared a new state of emergency Mid-February in spite of the disapproval by the Chamber of Deputies. Many experts on constitutional law identified that as an unconstitutional step, and the [NGO sector mobilised quickly](#) to collectively call on the government, deputies and senators to remedy the illegal situation. [The Constitutional Court did not cancel the declaration](#) (due to the procedural limits), however it did confirm that the

#### 4. POLITICAL CRISES

As a result of the state of emergency in **Poland**, implemented at the beginning of September and extended in December, civic space on the borders was closed as NGOs, humanitarian workers, health workers, media and independent observers were prevented from accessing the area. At the same time, journalists, activists and the local community active in helping the migrants have been targeted by smear and intimidation campaigns and repressive actions, including threats, brutal stop and search operations.

In 2021, civic space in Bulgaria was heavily influenced by the complicated political and public health situation.

#### 5. ANTI-RIGHTS GROUPS AND HATE NARRATIVES AFFECTING THE DEMOCRATIC SPACE

In late 2020 and throughout 2021, in several EU countries, regressive, racist narratives and anti-rights groups have become more prominent and aggressive in the public sphere notably by capturing emerging societal grievances linked with COVID-19 exhaustion, unanswered social needs and growing distrust in institutions. In most EU member states, these tensions have been fuelled also by polarising public narratives and policies linked to COVID-19 vaccinations.

Public authorities have been often unable to deal with these developments, which has contributed to increased polarisation in society.

This has also been the consequences of existing systemic inequalities and deeply rooted, more socially accepted prejudices, that have been used or instrumentalised (including by governments in some cases) to further stigmatise the most marginalised (as first easy targets) and to weaken the rule of law as well as the enjoyment of fundamental rights.

##### a) 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, Finland, Croatia, Belgium, Romania, the Netherlands, Lithuania, Slovenia and Ireland**. For example, in **Poland**, leaders 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<sup>3</sup>. 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)<sup>4</sup>. These episodes create a climate of fear and insecurity and can lead to self-censorship. Such incidents are even more worrying when they are carried out, encouraged or enabled by representatives of the institutions, as it might be conducive to a sense of impunity for perpetrators.

### **b) Marginalisation and targeting of vulnerable voices and those who defend them**

Across European Union member states, racialised groups, migrants and asylum seekers, women and the LGBTI+ 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 faced specific challenges to their actions linked with discriminatory and exclusionary trends promoted, enabled or tolerated by authorities. As a consequence, they have been further marginalised, silenced and made invisible.

In **Poland**, women's rights organisations defending sexual and reproductive rights have been targeted by state and non-state actors. LGBTI+ and women's rights activists have faced persecution for the "*crime of offending religious feelings*" and have been targeted with SLAPPs for "defamation". In **Hungary**, anti-pedophilia legislation was adopted in Parliament including provisions which ban the "portrayal and the promotion of gender identity different from sex at birth, the change of sex and homosexuality" for persons under 18, and applying these to the Child Protection Act, the Act on Business Advertising Activity, the Media Act, the Family Protection Act and the Public Education Act. The government and pro-government media also carried out systemic smear campaigns against organizations working on the rights of LGBTI+ people. As a consequence, the number of - especially verbal – attacks on and conflicts with LGBTI+ people has increased. A similar law has been tabled in Slovakia, is being drafted in Romania, and has been suggested for drafting in Poland and Croatia. In **Bulgaria**, a surge of physical attacks and violent threats against LGBTI+ organisations, activists and mere members or perceived members of the LGBTI+ community became particularly visible from 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 2021, offices of LGBTI+ civil society organisations were attacked in Belgium, Bulgaria, Ireland, the Netherlands, Romania, and Spain. Staff and volunteers of LGBTI+ organisations were also attacked in Bulgaria, Croatia, Finland, Lithuania, Romania and Slovenia, many of which happened after anti-LGBTI+ smear campaigns in the media.

### **c) Racism, islamophobia and xenophobia**

As racist narratives are one the rise, civic space for racialised groups has narrowed. In **France** organisations fighting discrimination of migrants and Muslim people have faced harassment and criminalisation. The administrative dissolution of the Collective Against Islamophobia in France (CCIF) is a case in point. In **Sweden**, delegitimising and stigmatising campaigns against Muslim and migrants civic organisations and rights defenders carried out by

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<sup>4</sup> <https://civicspacewatch.eu/italy-calls-to-ban-neo-fascist-groups-after-a-violent-attack-against-trade-union/>

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 a 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. In **Poland**, volunteers and NGOs providing humanitarian relief to migrants at the borders with Belarus have been harassed and smeared. In **Austria**, in November 2020, heavily militarised police forces raided houses of Muslim activists based on unfounded terrorist allegations. Following this large operation, no charges were found nor arrests happened. In 2021, the raid was declared unlawful.

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. They contribute to legitimise deeply rooted racial prejudices against Muslims and migrants, by further essentializing them as problematic groups that need to be controlled, and this way justifying major infringements to fundamental rights. There is also a risk that proposed EU legislation would further hinder the work of NGOs defending the rights of refugees/migrants. The proposed Screening Regulation, while allowing Member States to authorise relevant NGOs to provide relevant information to refugees and migrants and monitor the implementation of fundamental rights at borders, does not include any obligation to grant access to border facilities to NGOs. Also the 2020 Commission Guidance on the implementation of the Facilitation Directive invites Member States not to criminalise acts that are mandated by law with a risk of excluding NGOs that provide information, food or shelter without being explicitly mandated even if these activities are permitted by law.

On a positive note in Romania a law criminalising hate crimes against the Roma community came into effect in January 2021.

#### **d) Criminalisation of solidarity**

As said above, over the past couple of years, several states adopted increasingly restrictive legal frameworks for NGOs 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, 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 – both in the language and narrative, and 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' possibility 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.

Another example is linked to the tensions at the border between the EU and Belarus (Poland, Latvia and Lithuania) following the arrival of thousands of migrants and asylum seekers. **Poland, Lithuania, and Latvia** have declared a state of emergency as a result of a warfare situation. This has entailed systematic violations of migrants, 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 well as the possibility for NGOs to exert their watchdog and humanitarian role.

In 2021, there have been a few positive court rulings: in May 2021, the Public Prosecutor of Agrigento, Sicily, dismissed the case against Carola Rackete, in March 2021, the French Court of Appeal dismissed the case against Cédric Herrou. 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.

## 5. 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 NGOs, concrete measures and activities carried out by institutions have affected the enjoyment of this right in several EU member states.

### a) Smear campaigns against civil society

It is worrying that in some countries, anti-rights narratives emerging from the far-right are channelled and mainstreamed by democratic institutions. Reputational attacks 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.

Senior politicians at the highest levels, including prime ministers and presidents have targeted democratic civil society – especially when involved in public advocacy - and watchdog work. They have been discrediting the work and framing targeted individuals and groups as politicised or illegitimate in **Bulgaria, Hungary, Czech Republic, Croatia, Romania, Slovenia and Poland**. This also affects youth organisations that are often labelled as political and therefore less credible. Anti-NGO campaigns have been also further magnified by politically affiliated media outlets and worsening freedom of press situation in these countries. In some countries, smear campaigns by authorities target specific sectors of civil society, such as organisations working on Islamophobia (e.g. in **France**), on migrants rights (e.g. in **Italy**), or women's and LGBTI+ rights (**Poland**).

## b) Restrictive legislation

Laws on transparency, anti-money laundering, security, regulating CSO operations, including registration, licensing, reporting, and accountability, have had an unintended impact on the right of association in a number of countries.

These requirements while having a legitimate objective to fight corruption, money laundering, or terrorism create a complex legal environment that limits, restricts and controls civil society. This is also due to the fact that many of these provisions are not aimed or designed for civil society and in the context in which they operate. They affect the sector's capacity to operate and act. Burdensome legislation drains CSOs resources and capacities and contributes to negatively affecting their ability to focus on their mission. By doing so, it puts CSOs that advocate for the common good at a disadvantage with other groups who should be the main targets of these provisions, weakening their watchdog role.

As a result burdensome reporting requirements disproportionately affect small organisations, and hence the diversity and plurality of the sector or contribute to the “institutionalisation” of organisations. In **Greece** legislation adopted in 2020 and 2021 created a right of approval for the Government as a precondition for organisations to operate and/or receive funding. This has also led to arbitrary decisions on registrations of organisations. In **Cyprus** an amendment of the 2017 law on associations and foundations introduced a disproportionate power of dissolution or deregistration based on lack of compliance of certain administrative requirements which can be applied in a very short timeframe. A decision targeted a leading NGO fighting for equality. Also in **Hungary** a 2021 law introduces fiscal inspections for organisations “capable of influencing public life”. A new law increasing administrative burden for the sector is also being prepared. 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 organizations that could introduce further reporting obligations is also underway.

In **France**, despite opposition from civil society, the so-called ‘Separatism Bill’ was approved last July. The law introduces a binding ‘republican engagement contract’ on CSOs, granting administrative authorities the power to withdraw public funding to organisations that do not comply with ‘the principles of the French Republic’. The bill will have a disproportionate impact on minorities and associations standing up for their rights.

In **Croatia**, the watchdog association Human Right House Zagreb reports that the “*general conditions for work of civil society have deteriorated in the past year due to the combination of continuing issues and additional challenges emerged in relation to the spread of COVID-19 epidemic. There were no public initiatives or policies adopted that would aim at strengthening civil society development in Croatia.*” The Croatian chapter of the rule of law report states that “*The Government is still preparing the National Plan for Creating and Enabling Environment for the Civil Society Development 2021-2027*” and that, according to authorities, the envisaged National Plan should support CSOs legally, financially and institutionally.<sup>18</sup> However, the Commission's review foregoes the fact that the National Plan for the development of civil society and National Program for Protection and Promotion of Human Rights expired in 2016 and have

been in a legislative limbo since then. As a result, the capacities and sustainability of the sector have shrunk over the years.<sup>19</sup>

In Greece, persisting concerns raised by civil society and international organisations relate to the new registration requirements for civil society in the field of migration and social inclusion. As reported by the European Civic Forum, by granting excessive discretion to public authorities, the register restricted the operation of a number of organisations while creating huge confusion and uncertainty for all organisations. Additionally, the aggressive narrative by the Government accompanying and justifying the law created a hostile environment for civil society activities and heightened tensions on the islands preparing fertile ground for the attacks by far-right groups against migrants and CSOs.

In Romania, several positive legislative developments were documented: after CSO lobbying, the government adopted legal amendments that significantly simplify bureaucratic procedures for CSOs.

#### c) A shrinking civic space for solidarity with migrants in the EU

Over the past couple of years, several states have adopted increasingly restrictive legal frameworks for NGOs working on migrants' rights. In **Hungary**, the reform in the Tax Laws in 2018 imposing a special tax of 25 per cent on financial support provided for any activities that support or promote immigration, is still in place. In **Greece**, the 2020 measures on registration for NGOs working in the fields of asylum, migration or integration has started being implemented despite wide concern. In **Italy**, the process of substantial revision of the Security Decrees, while presenting some positive elements (the restoration of humanitarian protection for asylum seekers and the doubling of the duration of migrant residence permit to two years) still maintains many problematic provisions.

#### d) Deregistration, dissolution of NGOs

In **Cyprus**, Amendment 118 (I)/2020 of the 2017 Law on Associations and Foundations and Other Related Issues gives the Minister of Interior the power to start a dissolution process for NGOs if certain regulatory requirements were not met within a two-month notice period.<sup>7</sup> 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 Register of Associations.<sup>8</sup>

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

In France the Collective Against Islamophobia was administratively dissolved. The decision has raised criticism at international level including by the Council of Europe, especially as one key argument used by the government supported by the Council of State has been the fact that CCIF was denouncing state islamophobia. It also led to a wave of dissolutions facilitated by the law on separatism.

## 6. RESTRICTIONS ON FREEDOM OF EXPRESSION, INCLUDING ONLINE

Through restrictions of freedom of expression, the ability of CSOs to spread information and raise awareness within society is weakened. There is a chilling effect on CSOs that refrain from raising “sensitive issues” that might make them a target for authorities or powerful individuals. NGOs affected might face severe consequences. A recent survey from the European Youth Forum shows one of out ten youth organisations fear retaliation if they publicly speak out to criticise government action. Censorship is the second trend emerging most often on the CIVICUS Monitor in the European Union in 2020.

Some examples of these restrictions include:

- **Restrictions on “political” campaigning and action.** As an example the decision of tax authorities in **Germany** to remove charitable status from certain NGOs involved in public campaigning, provisions in the Electoral Act in **Ireland**, clauses in public grants preventing advocacy or other forms of pressure on CSOs requiring to abstain from advocacy or watchdog activities); Laws and policies on disinformation such as the 2018 ‘Holocaust law’ in **Poland** that induce censorship as well as intimidation, including the use of criminal law to obstruct free speech, as well as the change to the criminal code in **Hungary** and **Spain in 2020 all currently enforced**);
- Restrictions to access to information were increased during the COVID 19 pandemic with limited transparency on decision making processes, use of technocratic language, and tick the box exercise. There is also often a lack of information on governments’ performance. As an example in **Poland** a decree of the President of the Republic introduced a ban on access to the area of the border between Poland and Belarus covered by the state of emergency and on recording the appearance of this area using technical means. Access to public information on the activities carried out was also restricted. There were arguments about the threat to national security posed by people providing humanitarian aid who supposedly made it difficult for Border Guard officers and Armed Forces soldiers to perform their duties. It was also argued that providing access to information would have reduced their efficiency, which in turn would be a danger for citizens<sup>5</sup>;
- **Unintended consequences of provisions to counter fake news:** in November 2021 a new criminal code provision in **Greece** made ‘fake news’ a criminal offence, punishable with up to five years in prison. The vague definitions and punitive sanctions of the new law could negatively affect free speech as it could be used to punish civil society actors who criticise the government.<sup>7</sup>

### a) Prosecution and criminalisation of CSOs and human rights defenders

The use of legal frameworks, strategies and political and legal actions with the intention of treating actions defending human rights as illegitimate and illegal includes: Legislation criminalising specific actions (for instance , 2018 “Stop Soros” Law in **HU**, 2019 Security decrees I

<sup>5</sup> PL <http://www.sejm.gov.pl/sejm9.nsf/PrzebiegProc.xsp?nr=1512>

and II in **IT**); Prosecution of NGOs, human rights defenders or other critical voices for their actions (i.e. Sarah Mardini and Seán Binder in **Greece**, providing solidarity to migrants), words (the musician and rapper Pablo Hassel in Spain) or organising and participating in peaceful demonstrations (i.e. criminal charges against leader of the Polish Women's 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 carried out usually by business abusing the judicial system with the aim of draining the target through long Court processes. These legal proceedings often do not lead (nor even aim to lead) to a conviction, and many complaints often end in acquittal or dismissal. Nevertheless, they have huge material and symbolic costs such as damage to reputation. They also divert resources away from the mission of the organisations to defend itself in Court and in the public, as well as constitute a misuse of taxpayers money and put an additional strain on the justice system. These proceedings may also lead other associations and human rights defenders to self-censor for fear of reprisal.

## 7. RESTRICTION OF FREEDOM OF PEACEFUL ASSEMBLY AND RIGHT TO PROTEST

### a) Freedom of assembly

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 2020 Global security law in **France**, 2018 Law on freedom of assembly in **Hungary**, 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 assemblies in **Greece**. These sanctions target different behaviours such as organising or attending unauthorised gatherings and wearing items impairing identification and might act as a deterrent 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 organize public demonstrations are currently under discussion in **Slovenia**.

This situation has been aggravated with the pandemic and most countries now apply in practice a system of authorisation of demonstration instead of a notification system for peaceful assemblies.

In October 2021, in **Poland**, 235 MPs voted in favour of the "STOP LGBT" bill in Parliament, including 17 government ministers and deputy-ministers, of whom the Minister of Justice, Government Plenipotentiary for Equal Treatment, Minister of Education and Minister of Family and Social Policy. The bill aims to ban LGBTI+ Pride events, with the stated intention of stopping "*homosexual propaganda in public space*" and making it illegal to "*promote sexual orientations other than heterosexuality*", and has been sent for further work in Committees. 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.

COVID-19 restrictions have often involved a restriction of the right to peaceful assembly. In **Hungary, Greece, Slovenia** and **Poland**, a ban 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. Issue of Lawfulness in Slovenia and Poland. An issue raised in several countries is that of legal uncertainty regarding the arbitrary application of rules (e.g. in **Spain**) and the unpredictability of constantly changing governmental decrees (e.g. in **Poland, Czech Republic**). In **Romania** Covid-19 restrictions were used as an excuse to try to ban Pride parades in a number of cities, despite permission being given for other, sometimes larger, public assemblies.

In Denmark, CSOs [have flagged concerns](#) over the introduction of the ‘[Security for all Danes](#)’ bill which sought to give more power to the police to take action against ‘insecurity-creating behaviour’, limiting the right to freedom of peaceful assembly and targeting minority rights. Of concern were proposals to give the police power to issue a general ban on access to a geographically defined area for 30 days if a group of people exhibited ‘insecurity-creating behaviour’ in the area. However, after CSOs raised concerns directly with Members of Parliament, Parliament [rejected](#) this clause when it adopted the law.

#### **b) Heavy-handed policing**

The use of administrative sanctions against peaceful protesters were reported in **Italy, Spain, and Poland**. Particularly worrying are episodes involving the use of excessive charges, specifically penal charges, against protesters or human rights defenders to discourage others from undertaking similar actions.

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

**Civil society** and individuals fearing lack of action or even reprisal for seeking justice, might be discouraged from doing so. Country submissions in Bulgaria, Poland, Spain show how attacks against vulnerable groups and human rights defenders at hands of third parties or police officers 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. It deteriorates trust in the functioning of institutions whose role is to ensure protection from violence, corruption and abuse of power.

#### **c) Surveillance**

Many civil society organisations have raised concerns about the development of surveillance technologies and its impact on freedom of assembly as well as expression, and the right to privacy. We have unfortunately witnessed moves in some member states to provide law enforcement agencies with powers to collect and use private data including on mobile phones or through tracing apps such as in Poland, Slovenia and Croatia.

## **8. THE RIGHT TO PARTICIPATION AND CIVIL DIALOGUE**

Overall challenges to the right of participation have increased consistently as a result of the pandemic, as policy-making processes were accelerated and a general shift of power toward the Executive occurred with a decrease of parliamentary control. They have reduced the ability of civil society, as an intermediary body between individuals and public authorities, to contribute to policy-making. The right to participation and Civil dialogue are an essential element of the respect of the rule of law and a key precondition for public trust.

Key problems witnessed over last year include the lack of minimum standards or clear rules on implementing the right to participation, or its inconsistent implementation; a Box ticking' approach and non transparent processes for consultation which were poorly communicated; short deadlines; Reduced ability of civil society to engage due to reduced resources, lack of adequate skills to address complex processes. There is also a trend in some countries of establishing of top-down advisory bodies, councils, etc. to take over the function of representation from democratic and grass roots based NGOs, effectively preempting their work in some spaces by having a parallel body, less independent and critical (see the case for National Youth Councils).

As an example of the issues raised above in **Bulgaria**: While the legal framework for civic freedoms and civil dialogue can be considered good and in line with international human rights standards, lack of implementation is often an issue. In particular, 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 and disburse funding to the sector, is stalled.

In **Hungary** often decisions are 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, abolishing or not convening earlier existing consultative bodies and committees.

The European Recovery package has constituted the opportunity to foster participation of civil society organisations in the development of strategic and innovative measures and reforms notably to contribute to national recovery and resilience after the pandemic. EU provisions included obligations to report on the involvement of civil society in drafting the national recovery and resilience plans and on monitoring and implementation.

While some positive practices have emerged, most CSOs who participated in consultations found them to be mostly a tick box exercise rather than meaningful engagements, with little material supplied prior to meetings or requests to make inputs or comments on prepared documents, and with limited time available, Not all CSO sectors were involved or were involved to the same extent: environmental NGOs were more involved; social NGOs were able to influence plans in some countries; NGOs representing youth were little involved despite European Commission calls; and cultural NGOs appear to have had the least influence despite being one of the sectors most affected by the crisis, Implementation mechanisms are not well specified or defined in the

NRRPs. When it comes to monitoring, only a few plans explicitly foresee CSO representatives in Monitoring Committees<sup>6</sup>.

## **9. THE FRAMEWORK FOR CIVIC ORGANISATIONS' FINANCIAL VIABILITY AND SUSTAINABILITY**

### **a) Impact of the pandemic**

Civil society organisations faced reduced availability of funding from public institutions and this despite the critical role that organisations played to mitigate the impact of the pandemic. Also because of the emergency measures, it was very difficult for organisations to hold fundraising events or activities. While some governments had adopted incentives for donations such as tax exemptions in 2020, these were not always renewed in 2021. Also only a few countries used national recovery plans to develop activities benefiting the civil society sectors or associating them in the implementation.

As a result of the pandemic, CSOs have less means and resources to dedicate to their mission. Reduced sources of funding also increase competition among Civil society organisations and make it more difficult to diversify income, thus making organisations dependent on few donors and susceptible to influence. As a result, these challenges put at risk the existence, effectiveness and independence of civic organisations.

The economic and financial impact of COVID-19 crisis is weakening or threatening the long- term sustainability of the sector. This issue has a short-term impact, with many organisations being forced to stop or downscale their operations. It also has long- term consequences: the landscape of civic organisations is undergoing a fast and profound change as many will stop existing or completely change their activities, in the absence of meaningful support from public institutions and shifting of priorities for donors.

The COVID-19 pandemic resulted in huge economic pressure on the sector because organisations were not being able to run fundraising or economic activities to support their operations; in some countries, public funding for service provision was prioritised; in many countries, only a part of civic organisations was eligible for public measures supporting employers and businesses whether funded at national level or through the EU Recovery package; private funders have shifted their priorities to support hospitals or direct support to reduce the COVID-19 impact on society; organisations in some fields (i.e. LGBTI+ rights) had to shift their focus and redirect their limited resources to provide humanitarian assistance to their beneficiaries and the wider population, thus weakening their capacity to carry out their regular mission, including policy and advocacy work.

This adds to a number of pre-existing challenges, such as unnecessary red tape and excessive use of market indicators to evaluate performance, limited funding available for advocacy and watchdog activities.

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<sup>6</sup> Civil Society and the Recovery and Resilience Plans: A reality Check:  
<https://civilsocietyeurope.eu/wp-content/uploads/2021/12/CSOs-NRRPs-A-Reality-Check.pdf>

## **b) Restrictions and barriers to access to funding**

In some countries, laws have been adopted in recent years restricting (i.e. Electoral Act in **Ireland**) or over-regulating funding from abroad (i.e. 2017 Law on the transparency of organisations supported from abroad in **Hungary**, draft Transparency Act in **the Netherlands**, draft NGO law in **Bulgaria**;

Counter terrorism and anti-money laundering laws lead to refusal to provide funding to certain organisations (i.e. organisations led by Muslims in **Sweden**) or asset freezing and/or seizure, as well as financial controls.

In recent years, we have seen restrictions imposed on the operating environment for the philanthropy sector, such as the introduction of so-called foreign funding/foreign agent restrictions which severely restrict cross-border philanthropy. Moreover, certain aspects of money laundering and terrorism financing policy was limiting both the operating space for philanthropy and wider civic space. Even though not required by the relevant EU directive, a few countries are considering associations and/or foundations as “(quasi) obliged entities” and hence put them under more strenuous reporting requirements, without clearly identified risks. While the security agenda is of great importance, policy measures must be risk-based and proportionate, and caution is needed to avoid unintended consequences for the philanthropy sector.

Recognition of foreign-based public benefit organisations and their donors remains very complex and some EU governments still discriminate against foreign-based organisations. This slows down some of the philanthropic cross-border initiatives that play an important role in overcoming the COVID-19 crisis. More information can be accessed in [this study](#).

## **c) Controlling CSO activities through funding policies**

Public funding agencies put pressure on CSOs in order to refrain from expressing criticism towards the Government (i.e. in **Sweden, Ireland, Finland, Germany, France**) or sanction civic organisations for their work through cut of funding (i.e. cases collected in France).

In 2021, a French Minister tried to interfere in the allocation of EU funds by sending a letter to the European Commission to prevent the community organising NGO Alliance Citoyenne, selected by independent auditors, to receive EU money, based on the fact that they were defending Muslims. Although the European Commission stuck to its initial decision the NGO could not get the money in the end due to a partner pulling out for fear of political repercussions. This has sent a bad signal to NGOs who now fear public and political backlash if they apply to EU funding while being critical to EU Member States policies.

In some countries, Governments have made moves to starve economically critical civic organization, including though funding cuts for some CSOs or certain activities (i.e. cuts for anti-corruption NGOs in CZ); Centralisation of distribution of funding (i.e. ; National Cooperation Fund in Hungary, or the National Institute of Freedom – the Centre of Civil Society Development in Poland); Favouring the establishment and financing of parallel organisations (quasi GONGOs) while diverting funding away from the legitimate CSO sector (i.e. in Poland and in Hungary) or

jeopardising negotiations for funding from international organisations such as in Hungary for the Norway and EEA grants.

In the short-term, civic organisations targeted by funding cuts are destabilised and their sustainability is put at risk, placing a heavy burden on the association's capacity for action while leaving marginalised groups with fewer means to protect themselves and claim their rights. These moves lead to the self-censorship and de-politicisation of organisations in order to preserve access to funding. Other organisations opt for financial precariousness in order to preserve a certain autonomy, which nevertheless weakens their ability to act.

Governments have also used less direct forms of harassment such as introducing measures restricting access to funding for CSOs such as in [Hungary](#) by preventing anonymous donations or in [Slovenia](#) by introducing discriminatory access to funds from the Norway and EEA grants.

## 10. RECOMMENDATIONS

Based on the findings above, we would like to address the following recommendations:

- Add **civic space as a separate pillar of the rule of law reports**, with an additional chapter systematically **analysing the state of civic space in EU Member States and its connections to the rule of law context or strengthen civic space within the chapter on checks and balances**.
- Develop a **consistent methodology for assessing civic space** which should be clear, transparent, co-created with civil society and building on benchmarking mechanisms already used by the Commission (e.g. in the accession countries or in the Eastern Partnership) and the work of the European Union Agency for Fundamental Rights.
- Cover the following elements: **enabling legal environment**: not just change in legislation but also its implementation; **framework for civil society organisations' financial viability and sustainability**; **access to participation in decision-making**, including the right to access information; **safe space** including the state duty to protect from verbal and physical attacks, smear campaigns, judicial harassment and criminalisation of human rights and watchdog activities; **contribution to the functioning and protection of the rule of law framework**; Make connections between civic space restrictions and rule of law deficiencies in other areas: judicial, media, corruption.
- Include **country specific recommendations to address civic space issues in all countries**.
- Ensure **broader involvement of civil society** in the preparation of the report: in particular as regards discussion on methodology; exchange on country specific recommendations and on follow up, as well as review and assessment of the rule of law cycle.
- **Foster dialogue** both at EU and national level with civil society, also reaching out to most affected sectors and constituencies of civil society, including youth, discriminated and excluded groups, minorities, etc.
- Foster **citizenship education covering rule of law and fundamental rights**, and the role of civil society in upholding it.
- **Set up an alert and rapid action mechanism** open to civil society organisations to signal to the European Commission serious threats to the civic freedoms

- Ensure that the **rule of law is also upheld in the digital sphere.**
- **Promote more effectively the right to participation, by reviewing and improving mechanisms for participation of civil society in all processes resulting from EU funding,** such as the monitoring of the EU Recovery Package as well as structural funds, capacity building, so as to support CSOs' watchdog role and hence their contribution to upholding the rule of law.
- Set an example by the development of an enabling civic space framework at EU level: proposing an **interinstitutional agreement on civil dialogue** and access to information based on Article 11 TEU.
- Develop **concrete guidance to member States** on the right of expression, association and assembly and its key aspects such as access to funding, peaceful assemblies, etc based on International law
- **Include civic space & rule of law checks and balances in the impact assessment of EU legislation** based on an agreed checklist as well as in the guidance for its implementation and review once adopted
- Develop and implement guidelines and programmes for the **protection of Human Rights Defenders in the EU**
- Foster and support cross border activities of civil society organisations by **removing obstacles to free movement of persons and capitals, discrimination in taxation.**