

2022 REPORT ON THE APPLICATION OF THE EU CHARTER OF FUNDAMENTAL RIGHTS :

THE CIVIC SPACE AND ITS ROLE IN PROTECTING AND PROMOTING THE FUNDAMENTAL RIGHTS UNDER THE CHARTER

Contribution by Civil Society Europe to the Targeted Consultation

Introduction:

This response has been prepared by the civic space working Group of Civil Society Europe. We would like to thank in particular: the European Youth Forum, Reclaiming EU, the European Civic Forum, the European Network Against Racism, Philea, Civil Liberties Union, the Young European Federalists, the European Network for not-for Profit Law, and the European Partnership for Democracy for their contribution.

A – The role of CSOs and rights defenders in ensuring the effective implementation of the Charter

We welcome the decision of the European Commission to dedicate the annual report of the Charter of Fundamental Rights to civic space and the role of civil society in protecting and promoting the fundamental rights under the Charter.

We encourage the European Commission to ensure that the report does not just focus on describing the state of the art but also highlights existing gaps and opens the way for proposing concrete measures to be implemented at EU and national level. These policies and actions should be outlined in a comprehensive European civil society strategy as called for by civil society organisations all

across Europe, the European Parliament resolution of 8 March 2022 on the shrinking space for civil society in Europe ([2021/2103\(INI\)](#)) and recommendations in the [draft proposals of the Conference on the Future of Europe](#).

The strategy and the definition of civil society should be grounded on Article 2 and 11 of the TEU and embedded in international human rights standards, recognising the diversity of not-for-profit actors in terms of structures, modus operandi, scope and actions. It should also be based the four pillars of an enabling environment included in the FRA research on civic space: an enabling regulatory environment for and implementation of civic freedoms of association, assembly, expression and privacy online and offline; A supportive framework for CSOs' financial viability and sustainability; The right to participation and dialogue between the sector and governing bodies; safe space from interference and fear¹.

Civil society is on the front line to witness the precarious situations and rights violations people suffer from, trying to respond to people's needs, to alert on the limitations and adverse consequences of public policies. Both in its advocacy-oriented and action or service-oriented function, it contributes to making effective the access to civil, political, economic, social, cultural and environmental rights for many. Associations, social movements, grassroots groups and human rights defenders galvanise and empower people to participate in public life and protect the public good. For these reasons, vibrant and plural civic space is a precondition for democratic, cohesive and resilient societies and the functioning of the rule of law.

There is a close interlinkage of attacks on civic space and attacks to undermine democracy, fundamental rights, the rule of law and social justice. The definition of civic space should acknowledge that civic space is embedded within a wider democratic space. Civil society organisations play a key role in promoting fundamental rights and the protection of civic space helps guarantee fundamental rights, including the right to freedom of assembly, association and of expression. Further, civic space is a core pillar of the rule of law.

¹ Reference: Civil Society on the Frontline - 5 points for EU action 2019-2024

We call for a broad and inclusive definition of civic space, so as to cover civil society activists in various areas (human rights, environment, discriminated groups, women's rights organisations (SRHR), LGBTQI organisations, organisations active in support and legal protection of migrants, artists and cultural organisations, youth, students, education and training organisations, etc also different types of activism: associations, foundations, HRDs, social movements, informal groups).

The role of education in reinforcing and implementing fundamental rights should also be addressed. For instance education and training about fundamental rights should be part of education policies both in formal and informal education. The European Year of Youth is also an opportunity for the EU to reinforce this issue and also to look at structural inequalities in the access to civic freedoms..

1. How do CSOs contribute to activities aimed at making the fundamental rights enshrined in the Charter a reality on the ground? Please give concrete examples.

Civil Society Organisations contribute to awareness raising, empowering and building capacity of associations and NGOs at all levels as well as activists, and to holding public and private actors accountable through advocacy and also through engaging in legal action.

Furthermore civil society organisations ensure that there is a process for contribution from communities affected by discrimination and that the methodology on content can address the perspective and needs of vulnerable groups. For racialised minorities, it is key to ensure that civic spaces can also be safe.

Youth CSOs are advocating for equality and non-discrimination, notably on the grounds of age (Article 21). YFJ for example looks at mainstreaming youth rights, advocating against age-based discrimination that young people may face (i.e. when accessing social protection during COVID-19, youth minimum wages/unfair pay practices for youth because of their age). We also are beginning to work on intergenerational solidarity, by tackling ageism across the life course, and

partnering with CSOs (i.e. AGE Platform, as well as the WHO, OHCHR etc.) to strengthen this life course approach in policy-making.

The Young European Federalists (JEF Europe) and its member sections implement the annual campaign Democracy under Pressure (jef.eu/dup) to raise awareness of violations of human rights, including fundamental rights, across the EU and beyond. The campaign actions include country-specific events and debates dedicated to human rights, solidarity actions (writing letters to political prisoners, street protests, flashmobs), writing press releases and articles, and political advocacy with decision-makers to strengthen the EU mechanisms to defend its fundamental values, including the implementation of the Charter. In addition, JEF Europe is implementing a year-long project (Work Plan 2022) supported by the Council of Europe and dedicated to raising awareness of human rights among young people and developing their capacity to defend their rights. The project consists of an expert consultation, two capacity building trainings, a series of local advocacy actions and school interventions, and a closing conference (jef.eu/workplan/2022/).

Philea and the European Center for not-for-profit law also issued a [handbook on how to use EU law to protect civic space](#).

2. How do CSOs contribute to activities aimed at implementing EU policies or strategies related to fundamental rights at EU and/or national level? Please give concrete examples.

The importance of civil society in fostering and protecting the EU values and advancing European aspirations on rule of law, democracy, fundamental rights, and equality is reflected in a wide variety of EU policies and strategies such as the Strategy for the Implementation of the Charter of Fundamental Rights, the European Democracy Action Plan and in a number of sectoral policies such as in the areas of rule of law, anti-racism, LGBTQI+ equality, Roma inclusion, children's rights, disability, victims' rights, women's rights and migrant integration.

Civil society actively promotes and strengthens a democratic and rule of law culture by sharing trustworthy information, promoting civic education, raising

awareness, and understanding of human rights and democracy, countering discrimination and disinformation.

Civil society contributes to the implementation of the European charter of fundamental rights by providing crucial public services to population, advocating for rights-based policies, 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. It also feeds and supports the work of independent authorities and bodies including courts and national human rights institutions.

Civil society also enables and empowers people to freely participate in matters of common 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. Civil society 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 the possible limitations and adverse consequences of public policies.

Civil society organisations and movements act on a daily basis to address the root causes laying behind the deterioration of the rule of law, democracy and fundamental rights by building bridges within divided societies, filling the gaps left by public actions (or lack of thereof) through their services, contributing and maintaining media pluralism (for example, through civic journalism).

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, democracy and human rights when they are under pressure.

The EU cannot foster and protect rule of law, democracy, fundamental rights, and equality without a vibrant civil society.

Civil society organisations' contribution is critical as we share information, provide timely updates, collect feedback to consultations, ensuring an overview in implementation of policies and legal frameworks, suggesting new policy developments yet not covered by EU institutions, providing feedback on loopholes, inconsistencies and violations of Fundamental rights under the rule of law mechanism.

As the European rule of law review's objective is to start dialogues and public debates on rule of law nationally, its success is intrinsically linked with the ability and capacities of civil society – next to journalists – to reach and mobilise the public on the European Commission's findings.

But this is increasingly difficult in the context of shrinking civic space where those that engage with the mechanism are side-lined, underfunded or even attacked through smear campaigns, or by restricting their ability to act or operate.

Our respective responses to the rule of law consultation are a good example on how civil society fosters, strengthens and protects rule of law and democracy across the European Union as well as the challenges it faces at national level².

Civil society organisations are also active in a variety of other Consultation processes i.e. the recent EC consultation on equality bodies and in Advocacy and strategic dialogues organised by the Commission i.e. advocacy around the MFF and Youth Guarantee, invitations to strategic dialogues on platform work and minimum income to provide a youth perspective that are in-line with promoting equality and non-discrimination. However, while the consultation processes are available, it's often difficult to partake in any follow-up/monitoring work at EU level.

Civil Society also plays an important role in addressing fundamental rights, and civic space issues also in EU policies and legislation in different fields, especially when these are not considered from the onset. An example is the ongoing

² *European Civic Forum's response to the 2022 European Commission rule of law consultation containing country chapters written by national watchdog: [Civic Space Watch | RULE OF LAW](#) (January, 2022).*

contributions of several networks of associations and foundations in the EU antimoney laundering and financing of terrorism policies and legislations or on issues regarding artificial intelligence³.

We also work towards strengthening the EU's fundamental rights protection mechanisms in our regular political advocacy (social media, statements, meetings). For instance over 82 organisations at European level gathered together through the Civil Society Convention for the Conference on the Future of Europe in order to ensure that civil society concerns, but also civic space and fundamental rights would be part of the process, achieving to be included as members of the plenary as civil society and in the different working groups such as on democracy and values, as well as contributing to the digital platform. The Civil Society Convention also prepared its [own recommendations](#) through a bottom up approach involving national organisations and people living in Europe, which were the basis for its contribution to the Conference as well as its follow up.

Regrettably civil society was not included from the onset in the Conference, and contrary to the social partners was not part of the Executive Board, and we had to struggle to be part of the plenary.

3. In your view, in which areas do CSOs contribute the most to the protection of fundamental rights in the EU?

Civil society organisations such as associations and public benefit foundations work in a wide variety of areas of public concern whether they focus more on advocacy or on the delivery of services. Their activities are at the core of the rights enshrined in the Charter.

Civil Society Organisations contribute actively to all the areas of the Charter: dignity, freedoms, equality, solidarity, citizens rights and justice.

3

<https://civilsocietyeurope.eu/wp-content/uploads/2020/08/CSE-EFC-ECNL-HSC-EFA-joint-policy-paper-on-EC-AML-action-Plan-2020.pdf> or <https://reclaimyourface.eu/>

In addition they contribute to Victims centered feedback, as well as to the implementation of EU policies at national level by addressing its inconsistencies according to the Charter, as well as promoting access to justice, non discrimination and equality.

In the case of youth organisations, this is linked to youth rights, and social and economic inclusion of young people.

They also work on the defense of political and civic rights and freedoms as well as access to fair and independent judiciary.

4. Which are the main obstacles that CSOs face in carrying out their activities aimed at protecting fundamental rights? Please give concrete examples.

Across EU member states, civil society organisations are 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 extremists such as 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.

The pan European trends have been widely analysed by civil society. See, for example, <https://civicspacewatch.eu/activizenship-6/>. The COVID-19 pandemic has also further exacerbated restricting trends: https://www.eesc.europa.eu/sites/default/files/files/qe-07-22-057-en-n_0.pdf

One of the main obstacles faced by CSOs in carrying out their activities is the adoption of legislative measures which, under false pretenses of increasing transparency or ensuring burden-sharing, discourage CSOs to perform their activities and limit their potential to seek and secure funds to conduct them.

An example of this trend is the imposition of foreign agents laws, which stigmatise CSOs receiving funding from abroad by abusing transparency obligations. For instance, these laws impose disproportionate reporting obligations, such as making public the list of donors, and foresee severe penalties in case of breaches, including dissolution. Other tactics include forcing human rights organisations to insert in a public registry all details on the exact amount of the funds they receive from abroad, costs and types of activities conducted. CSOs may also be obliged to brand themselves as “foreign-funded organisations” in all their publications. In so doing, “foreign agents” laws create a climate of distrust among the population against CSOs and their staff members, which has a direct impact on CSOs' reputation and ability to operate and raise funds. Such a climate of distrust may even degenerate into harassment and/or threats towards CSOs and their staff members. In practice, legislation of this kind has been adopted in [Hungary](#) and is currently under consideration in countries as diverse as [Poland](#) and [the Netherlands](#).

A further example is the over-enforcement of Member States' [AML/CF](#) (Anti-money laundering/counter-terrorism financing) obligations under EU law to disrupt CSOs' ability to raise and transfer funds, stir suspicion, and consolidate the illusion of a link between NGOs receiving foreign funding, money laundering and the financing of terrorism. To do so, some Member States (Bulgaria and Romania) have required CSOs to undertake the same level of enhanced

counter-terrorism financial checks on the vulnerable populations they serve that banks must perform on their customers⁴. Others (e.g., Hungary) used EU obligations as a justification to pass foreign agents/transparency laws⁵. In addition, some Member States (e.g. France) have imposed mechanisms of control over donations, such as the obligation of notification to or approval from public authorities prior to accepting donations from abroad, and foresee disproportionate penalties, including dissolution, in case of non-compliance⁶. Overall, these measures are particularly effective in reducing the use of funds for CSOs' planned activities by redirecting their limited resources into performing unnecessary financial checks.

Civil Society organisations are also increasingly targets of smear campaigns. As documented by [CSE response to the 2022 rule of law consultation](#), 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 emergency measures, 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. 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.

Public or private funding for advocacy is becoming scarcer or ill adapted to advocacy or watchdog work, but increasingly focused on services/activities or on projects.

In some countries we observe the creation of GONGOs, complacent civil society organisations to legitimize power in place or economic/commercial interests.

⁴ See, for Romania, [Law n. 129 of 11 July 2019](#), and for Bulgaria, [Law on the Measures Against Money Laundering of 27 March 2018](#) and the [relevant website page](#) of the Bulgarian State Agency for National Security.

⁵ See, for Hungary, [Law on the Transparency of Organisations Supported from Abroad](#).

⁶ See, for France, [Loi du 24 aout 2021 confortant le respect des principes de la République](#)

CSOs representing racialised minorities have increasingly faced the risk of deregistration or dissolution in a sort of witch hunting tactics from certain member states. 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. 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. 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.

At EU level, some policies, such as Anti Money Laundering, migration policies, state aid and VAT regulations, or in the area of digital, have had unintended consequences on civil society work. It is therefore critical that civic space is considered from the onset when developing new policies and legislation as part of the impact assessment and that dialogue with civil society is reinforced through a more structural approach.

Also there is an increasing trend to move from operating support to organisations to project based funding that tends to weaken civil society.

Another problem is the lack of recognition at the highest level of the role of civil society beyond external action and humanitarian work. Even in those cases policies do not always provide the means for civil society to perform their mission of defending or reinstating fundamental rights.

Problems in transparency in decision making as for instance the limited access to the preparatory works of the Council or to trilogues, the lack of balance as compared to business in access to meetings or dialogue prevent civil society to exercise fully their watchdog role as regards the implementation of the Charter of fundamental rights.

The EU Treaty and policy framework must be further reviewed and strengthened to enable civic space. For instance the Unanimity-based decision-making in the Council with regards to key procedures (Article 7), as well as the delay in triggering the rule of law conditionality mechanism by the Commission is affecting civil society organisations on the ground.

5. Are there examples of good cooperation between CSOs within the EU and with CSOs in non-EU countries, which strengthen the protection of fundamental rights?

Many civil society organisations established at European level include organisations from non EU countries. The existence of such organisations is the proof of that successful cooperation. The Council of Europe provides support for this cooperation, as well as EU funding in the framework of EU accession or EU partnership programmes. Also organisations working on an international level engage in cooperation with civil society from non EU countries. An example of this cooperation is for instance the [International Disability Alliance](#) of which the European Disability Forum is an active member.

In March 2022, JEF Europe along with more than 15 youth councils and organisations established the Youth Response for Ukraine, a network of CSOs coordinating their efforts to support Ukrainian youth amid the Russian invasion, including the protection of fundamental rights.

Civil Society Europe has launched in February 2021 together with 82 pan European civil society organisations the Civil Society Convention on the future of Europe to ensure that civil society would be part of the Conference on the future of Europe, and that civic participation, civil dialogue, fundamental rights including civic freedoms would be part of this future, and that non EU countries would be involved. The Civil Society Convention has 5 plenary members in the Conference.

B – The work of EU institutions and the Member States to protect CSOs and rights defenders

6. Which EU or national initiatives/actions to promote a safe and enabling environment for CSOs in the EU do you consider as being effective? Please give examples.

Most initiatives that are efficient are CSO led and provide a mechanism of reflection from the victims perspective. At national level, coalitions for the development of National action plans against racism, such as in BE, can be good examples of safe spaces which led to great exchanges with national authorities. At EU level, the EC Anti racism platform led by the appointed EC Anti Racism coordinator is also an initiative with great potential

Today the European Union has unprecedented tools to foster and protect democracy, the rule of law and fundamental rights, such as the [European Rule of law toolbox](#), the European Democracy Action Plan (EDAP), the Strategy on the European Charter of Fundamental Rights. As part of these strategies, the European Commission has started a number of promising initiatives, in particular measures to tackle SLAPPs against public watchdogs and the Citizens, Equality, Rights and Values (CERV) funding programme. Throughout these actions, the European Commission mainstreams the acknowledgement of the fundamental contribution played by civil society. It also started two infringement proceedings against **Hungary**'s law on foreign funding for civil society and the bill criminalising helping asylum seekers setting a positive precedent for the rest of the Europe against similar moves and showing the role that the European Court of Justice (CJEU) can play in protecting civic space and fundamental rights both at national and European level.

While these measures are welcome, they mostly address in a piecemeal manner some of the most urgent problems with which CSOs are being confronted. An overarching solution has yet to surface. We call for the creation of a EU mechanism to protect rights defenders and civil society organisations contributing to EU processes from potential reprisals, as well as act as an early warning mechanism to alert on and address attacks, smear campaigns, hate speech and online harassment against civil society. A reference could be made to initiatives in the area of media freedom and journalists safety

such as the Recommendation on the Safety of Journalists and the code of conduct on disinformation, which could be taken as an inspiration for similar initiatives to also be developed for CSOs and rights defenders.

The civil society strategy should also include specific measures to implement article 11 of the TEU. For concrete recommendations: [Towards and Open, transparent and Structured civil dialogue](#)

7. Please give examples, and explain why you consider those examples relevant, of:

a. Any national system to monitor civic space?

b. Any international system to monitor civic space?

[The CSO Meter](#) supports regular and consistent monitoring of the environment in which civil society organizations (CSOs) operate in the Eastern Partnership countries. It consists of a set of standards and indicators in 10 different areas to measure both law and practice. It is based on international standards and best practices.

The [CIVICUS Monitor](#), an online research platform that tracks fundamental freedoms in 197 countries and territories.

[Civic Space Watch](#) collects findings and analyses from actors in Europe on the conditions for civil society to operate, capturing national and trans-European trends in civic space. Through ongoing monitoring of social media and regular contact and interviews with a strong network of members and partners on the ground, we strive to provide easy access to resources and improve information sharing within civil society across Europe with policy-makers and the media. The resources are categorised on the website and shared in monthly and ad-hoc [newsletters](#), and via social media alerts on recent civic space developments in the EU.

[The Expert Council on NGO Law](#) created in January 2008 by the Conference of INGOs of the Council of Europe carries out thematic and country studies on specific aspects of NGO legislation and its implementation that seem to pose problems of conformity with international standards, notably the European Convention on Human Rights and the [Recommendation \(2007\)14](#) on the legal status of NGOs in Europe. Its work covers the 47 member countries of the Council of Europe and Belarus

Finally the [Fundamental Rights Agency](#) monitors civic space through an annual survey.

c. Any alert mechanism and/or support services in case of physical and on-line attacks to CSOs activists at national level?

d. Any alert mechanism and/or services in case of physical and on-line attacks to CSOs activists at international level?

We would like to mention in particular the Council of Europe's media freedom platform, which traces attacks on journalists, indicating whether they are initiated by state actors, or non-state actors and the gravity of the attack.

[ProtectDefenders.eu](#) is the European Union Human Rights Defenders mechanism, led by a Consortium of 12 NGOs active in the field of Human Rights.

Front Line Defenders was founded in Dublin in 2001 with the specific aim of protecting human rights defenders at risk (HRDs), people who work, non-violently, for any or all of the rights enshrined in the [Universal Declaration of Human Rights](#) (UDHR). Front Line Defenders addresses the protection needs identified by HRDs themselves. Front Line Defenders provides rapid and practical support to human rights defenders at risk including through an emergency line.

e. Any measures to tackle Strategic Lawsuits Against Public Participation

(SLAPP) at national level?

f. Any national system that envisages the assessment of the impact on CSOs in the impact assessment of legislative proposals?

8. Are there initiatives or actions, which raise concerns as regards the possibility of CSOs to effectively carry out their activities? Please give up to 10 most important examples and (possible) measures of improvement.

We have identified a series of legislative and non-legislative trends that are used to obstruct the activities of CSOs in the European Union.

The legislative trends are:

1. The formulation of transparency laws that have as unofficial goal to stigmatise organisations that receive foreign funding (e.g. [Hungary](#). See also [Poland](#) and [the Netherlands](#) where transparency laws are under consideration);
2. The imposition of strict financial rules to allegedly prevent money laundering and counter-terrorism. These rules end up stigmatising NGOs as they associate them with illegal activities, making it more difficult for organisations to raise funds (e.g. [Bulgaria](#) and [Romania](#));
3. The State centralisation of the fund allocation system so that governments can manage the inflow of foreign funds to human rights defenders (e.g. [Hungary](#) and [Poland](#));
4. The imposition of disproportionate taxes against CSOs and people who donate to CSOs (e.g. [Hungary](#)).

As for the non-legislative trends, we have identified the following:

1. The spread of smear campaigns to discredit CSOs and HRDs (see for instance the [Stop-Soros smear campaign](#) and the latest [defamation campaigns](#) against political opponents and HRDs in Hungary);
2. The intentional misuse of EU law to impose fines or criminal proceedings against HRDs and discourage them. Examples of this trend are the misuse of GDPR provisions to silence journalists (e.g. in [Romania](#), [Lithuania](#) and [Slovakia](#)) or of the EU Facilitation Directive to [discourage](#) search and rescue operations (e.g. [Italy](#));
3. The use of existing defamation and treason laws to sue and silence HRDs ([examples](#) include Poland, Italy, France, Croatia, Slovenia and Ireland);
4. The use of flaws and ambiguities in national legislation to undermine CSOs' work and reverse their status (examples include [Germany](#) and the [Czech Republic](#));
5. The adoption of dissuasive mechanisms such as audits and funding investigations (e.g. [intimidating auditing controls](#) in Hungary and [police raids](#) in Poland)

C – The work of EU institutions and the Member States to support CSOs and rights defenders

9. Are there effective public funding schemes that provide support to CSOs? If so, explain why that is a good financing mechanism? Please give examples.

The CERV programme foresees the possibility to support civil society organisations at national and local level in the area of advocacy and fundamental

rights through a regranting system. This is very positive. We regret however that co-funding requirements have been introduced, contrary to similar schemes that have been implemented in order to support civil society from accession/enlargement countries. This is particularly concerning given the increasingly difficult situation faced by civil society organisations at all levels to raise funds notably as a follow up of the pandemic crisis, or because of civic space restrictions.

In addition current EU funding mechanisms inside the EU are not flexible enough to address crisis situations. There should be an emergency funding for civic actors and rights defenders at risk.

Measures should be adopted in order to remove obstacles to cross border philanthropy and ensure equal treatment of donations across borders in line with rulings of the European Court of Justice.

Undue restrictions to foreign funding should also be systematically addressed.

**10. What are the shortcomings in the public funding mechanisms?
Please give examples and explain why you consider them not effective.**

At the EU level, concerns arise with regard to the enforcement of Regulation 2020/1092, which does not ensure sufficient protection of final beneficiaries. As currently drafted, the Regulation and the Commission's guidelines provide that Member States against whom the Regulation is enforced must honour their payment obligations towards final beneficiaries. In the event they do not comply, final beneficiaries need to exhaust national remedies before having the possibility to submit a complaint to the Commission. Following the complaint, the Commission may decide to launch an infringement action. However, such a mechanism does not address the unintended negative effects that such long-lasting procedures have on final beneficiaries' access to financial resources (i.e. project planning and management of co-funded projects). In addition, requiring civil society organisations to resort to national remedies seems illogical,

particularly in those cases where the regulation has been triggered due to lack of judicial independence in the concerned Member States.

The European Recovery Package was also not developed in consultation with civil society organisations. Regulations do refer to civil society, and Member States had to report on whether they had consulted CSOs in preparing their NRRPs. Nonetheless reports by Civil Society Europe and the European Center for not for Profit Law ⁷ show that consultation was limited and mostly a tick the box exercise. Few countries have so far included CSOs in the monitoring committees.

In certain EU programmes, like Erasmus + operating funding has been restricted to a smaller number of organizations, creating an unhealthy competition. In the health programme EC planned initially to discontinue operating grants.

Also the effectiveness of disbursement of EU funding at national level targeting CSOs should be better controlled and managed. Requirements are so heavy and ill adapted to needs on the ground that organisations do not apply (eg Croatia). Also the allocation of funds lacks transparency.

At the national level, the availability of public funding for the civic sector to engage in rule of law and fundamental rights issues is a problem raised by civil society organisations in several countries (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 CSOs⁸

⁷ <http://civilsocietyeurope.eu/civil-society-the-national-recovery-and-resilience-plans-a-reality-check/> and <http://civilsocietyeurope.eu/civil-society-organisations-largely-sidelined-in-the-preparation-of-the-national-recovery-plans/>

⁸ See <https://civicspacewatch.eu/wp-content/uploads/2022/01/Horizontal-developments-.pdf>

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. Often funding programmes are Complex to navigate, especially for small civil society organisations (i.e. grassroots, those run by volunteers); co-financing rates are a great obstacle in the current context, the Covid 19 pandemic, the increasing inflation and the consequences of the war have amplified these tendencies and resulted in huge economic pressure on the sector ; there is as mentioned before an increasing trend to move to project-based calls only rather than operating grants. Overall most of the calls are not tailored to the work of a CSO.

Additional concerns must be raised as regards the practice of creating national institutions entrusted with the competence to decide on the allocation of public funds to civil society organisations in a centralised manner. Such a practice can be found, for instance, in Poland, with the creation in 2017 of the “[National Institute of Freedom - Center for Civil Society Development](#)”. The Centre is responsible for deciding on the allocation of funds to civil society actors at the national level. Participation of civil society representatives is merely illusory and the Director and the President of the Institute retains major powers to discretionary attribute funds to specific NGOs. Such practices have major negative effects on the civil society landscape, since they allow centralised powers to decide in a discretionary manner on how and to whom allocate public funds, thus having a chilling effect on CSOs working on politically sensitive matters.

Additional concerns at the national level stem from the increasingly widespread practice of cutting access to public funds for CSOs by considering CSOs’ advocacy activities as political activities. For instance, in 2020, the Czech Republic’s government issued a negative opinion against a draft bill that proposes

[excluding from public fundings](#) all advocacy organisations that might be considered political organisations. The government considered the bill an unjustified restriction to the freedom of association that opens the door to discriminatory abuses to limit the activities of CSOs in politically sensitive areas (particularly anti-discrimination awareness raising campaigns and migrants' reception and integration). Legislation that restricts access to public funds by equalling human rights advocacy activities to political activities is extremely worrying some: when poorly drafted, it leaves a wide margin of maneuver to public authorities to discriminately decides on the allocation of public money without proper accountability

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).

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

D – The work of EU institutions and the Member States to empower CSOs and rights defenders

Civil dialogue is a process that includes several steps including consultation throughout decision making from impact assessment to implementation. In order to function well, civil society organisations have to be considered as partners through a clear and structured process. The European Commission has developed guidelines and rules for consultation through the better regulation framework. This is positive, although improvements have to be made for tailoring questions to civil society organisations representing or working with citizens, or to the assessment of the results and the follow up, and consultation is often considered as a top down process. Findings from our survey in our report on civil dialogue show that 70% of respondents rated transparency and responsiveness of the European Commission within public consultation as either unsatisfactory, low or very low. The European Court of Auditors has also called the European Commission to better monitor and assess contributions to protect against manipulation of results. Civil dialogue in specific policy areas is happening at the initiatives of different sections of EU institutions, but there is a lack of a proactive and coordinated approach, and of a comprehensive regulatory framework or dedicated support and coordination structures. The obligations within Article 11.2 have never been implemented.

No investments have been made to build a culture of civil dialogue and participation within EU institutions. Also there is no definition and articulation of the concept of civil dialogue: definition of the scope, minimum standards, procedures and key players. Civil Society Europe has done a review of existing practices in the different DGs that have shown some positive practices ([link](#)) such as for instance in DG Employment or DG Trade, but these are not part of an overall strategy and approach. Also within key processes such as the rule of law, the dialogue with civil society has been limited to initial consultation with no real possibility to engage on the later stages of addressing the findings of the report. Also there is a lack of transparency. In addition there are no support and coordination structures that guarantee continuity and consistency. Furthermore there are currently no real examples of structured consultation of civil society on transversal issues within the different EU institutions and as a whole. Even the

Conference on the Future of Europe has been quite disappointing to that effect, and the role of civil society in relation to citizens has never been understood.

In the area of external relations and humanitarian policy, civil society organisations are perceived as key partners, but this is not yet the case in internal policies including in the area of fundamental rights.

We welcome the fact that the current Commission has a Vice President with a responsibility on relations with civil society. However this task has not been defined and implemented and does not trickle down to the different services of the European Commission. Also the Vice President does not seem to be proactively informed by her services on issues that affect civil society. A coordination should be organised with the support of the Secretariat General. Also it would be useful to organise regular meetings under the leadership of the Vice President with civil society to review the state of civil society within the different policy areas, inviting also relevant DGs, as well as the impact on civic space of legislative proposals. There should also be a civil society coordinator within every DG, to ensure regular and meaningful dialogue, coherence of approaches and learning across DGs.

We also welcome the decision of the President of the European Parliament to entrust a Vice President responsible for structured dialogue with civil society, as indicated in a letter to Civil Society Europe, and we are looking forward to a dialogue to implement this in practice.

11. Are there dialogues between CSOs and public authorities at national, EU or international level that work well? Which are the most effective forms of inclusion of CSOs in the decision making process and, more generally, on matters of public interest? Please give examples.

At EU level the Civil Dialogue on the Common Agricultural Policy is a good example of a Commission Civil Dialogue underpinned by a comprehensive policy framework defined in a Commission decision. It is organised through 13 Civil

Dialogue Groups that meet on a regular basis to address all matters related to the CAP and its implementation. It is composed of CSOs registered in the TRansparency Register.

Another example is within DG Trade where a dedicated unit informs and discusses civil society developments of the EU Policy on Trade. Also topics of meetings are defined with civil society. However business tends to be overrepresented as compared to CSOs.

Another interesting examples of sectoral dialogue are linked to the implementation of the UN Convention on the rights of persons with disabilities to which the EU is party to and of the Aarhus Convention on the consultation of civil society on environmental matters. It would be interesting for the EU to consider how these principles can be applied to civil society as a whole.

The inclusion of minorities, excluded and discriminated groups is also an important element to be considered. In addition to persons with disabilities we can refer for instance to the CSO Forum led by the EU anti racism coordinator.

As highlighted in the CSE-ECF report on Civil Dialogue, national civil society organisations consulted have highlighted general gaps in CSOs' access to and participation in decision-making at national level. In countries where a legal framework is in place, gaps relate to the lack of structure and regularity, inadequate publicity, poor feedback and follow up.

National Governments rarely organise consultations on draft EU laws and policies. When this happens, mostly where CSOs involvement is a requirement from EU laws or policies, often impossible deadlines of a few days are given or decisions are taken before consultations are closed, or it is just a tick the box exercise.

Regrettably the EU does not engage in facilitating or in monitoring the implementation of civil dialogue and CSOs participation. Often also the EC sees CSOs as implementers of EU policies rather than partners in decision-making.

The study notes as a positive example the dialogue organised by Denmark with national CSOs on the European Semester because of its cross sectoral dimension, being structured and regular allowing CSOs to effectively input into the national implementation reports.

Among national frameworks on civil dialogue, but also on recognition of the role of civil society, we would like to highlight the “[Charte d’engagement Reciproque](#)” in France, between the national civil society platform (Mouvement associatif), the State and the local authorities

At international level, it is interesting to note the [Council of Europe participatory status to NGOs](#), the establishment of an INGO Conference, as well as the [code of good practice for civil participation in decision-making process](#).

Interestingly the European Parliament has adopted in 2022 two reports: one on a [cross border statute for associations](#), proposing also the adoption of minimum standards at EU level for national associations and a [report on shrinking civic space](#) calling for an EU strategy on civic space.

12. Please give examples of effective EU or national processes where CSOs are systematically consulted regarding legislative proposals with potential impact on CSOs/civic space?

The EU Youth Dialogue (formerly EU Structured Dialogue with young people and youth organisations) is a flagship youth participation mechanism on the EU level aiming to bring youth voice to EU policy-making. Its main element is the dialogue between young people, youth organisations and policy and decision-makers, as well as experts, researchers and other relevant civil society actors. It serves as a forum for continuous joint reflection and consultation on the priorities, implementation and follow-up of European cooperation in the field of youth. Particular attention is given to the inclusion of young people with fewer opportunities in decision-making processes and in the implementation of the EU Youth Strategy. This mechanism is steered by the Trio Presidency in close cooperation with the European Commission and the European Youth Forum. During each 18-month work cycle, every EU country conducts a national

consultation with young people and youth organisations, including International Non-Governmental Youth Organisations to ensure quality input on the transnational dimension.

The Conference on the Future of Europe is also an interesting undertaking to engage citizens, including discussions and proposals related to the EU's fundamental values.

We also welcome the Commission's CSO and key stakeholder consultations before each annual rule of law report, although we believe that this process should be further reinforced through a clearer, more transparent and inclusive methodology for involving civil society organisations throughout the process, and on by developing a dialogue on its follow up⁹.

13. Could you give examples of the impact or result on adopted legislation and its implementation when CSOs were not consulted beforehand?

National legislative and funding Measures to address the consequences of the pandemic were mostly adopted without consulting civil society, as a result disadvantaged groups of the population were not taken into account and were left behind. Also civil society organisations are asked because of their expertise on the ground to implement measures, while they have not participated in their design, leading to a lesser impact and quality (see for instance the Red Cross in Hungary).

The development of the National Recovery and Resilience Plans were often done without consulting CSOs and so there may be gaps between the needs on the ground and where the recovery funds are going (+ see separate PDF for concrete examples).

⁹

<https://civilsocietyeurope.eu/wp-content/uploads/2021/10/joint-statement-on-rule-of-law-reports-22-09-21.pdf>

Research conducted by the European Center for Not-for-Profit Law (ECNL) and Civil Society Europe has shown that the participation of civil society in the preparation of the National Recovery and Resilience Plans and its inclusion as beneficiaries of the funding was perceived by CSOs as far from satisfactory in many EU countries.

A few reports by civic organisations have also shown how - while civil society was often marginalised in the preparations, the National Recovery plans have instead been shaped by lobbying corporations. Recovery Watch, a collaborative project by Observatorio de la Deuda en la Globalización, Observatoire des Multinationales, Re:common, Corporate Europe Observatory, Friends of the Earth Europe, Food and Water Action Europe, Greenpeace Europe found that despite the calls for the European Recovery Fund to be a driver for the green transition, *“industry lobbying at both national and EU level has ensured oil and gas firms and utilities remain some of the biggest beneficiaries in Italy, the Spanish State, Portugal and France.”*

Lack of transparency and public disclosure of the draft recovery plans was also identified as a challenge to external scrutiny by NGOs or sectoral experts which could have guaranteed that harmful measures were identified, modified or rejected. On the contrary, the “do not significant harm” assessment that member states presented to the European Commission regarding the planned investments was of poor quality and did not reflect the views of third-party experts. This was identified as a factor which contributed not only to planned investments that do not meet the green ambitions set by the European commitments but also to the approval of measures harmful to the environment and the climate¹⁰.

In many countries, CSOs were not consulted when the confinement measures were introduced and lack of meaningful dialogue with the sector is deemed to be an important factor for lack of reactivity of the government to many societal emergencies. For example in the Czech Republic LGBTI couples were left out from public policies allowing reunification of married couples; in Greece and Germany, the government mismanagement of the migrants’ situation was also linked to lack of involvement of CSOs¹¹.

¹⁰ <https://civicspacewatch.eu/activizenship-6/>

¹¹ https://civic-forum.eu/wp-content/uploads/2020/11/INT_ACTIVIZEN5_BAF.pdf

14. Are CSOs or, where relevant, NHRIs included in the national committees set up to monitor the implementation of EU funded programmes under the Common Provisions Regulation (CPR) and are they involved in the arrangements set up under the horizontal enabling condition to ensure compliance with the Charter? If so, what is their role in this context?

The involvement of Civil Society Organisations in the different funds under the Common Provision Regulation remains still too limited, as well as the impact of their participation.

In 2014, the partnership principle was significantly strengthened with the introduction of the [European Code of Conduct on Partnership](#) as a legal act attached to the Common Provision Regulation. This document gives clear guidelines on the involvement of partners, who have to be consulted in a timely, meaningful and transparent way, throughout the whole programming cycle, from the planning of investments to the implementation, from monitoring to evaluation. This includes: early identification of partners and involvement in the programming process early with the required information, possibility for partners to be reimbursed, receive capacity building and technical assistance, feedback on contributions received.

A step forward with the current programming period has been the granting of voting rights to all participants to the monitoring committees. However a key problem is how members are selected as this remains at the discretion of Member States, who may want to choose more complacent organisations. It is critical that a transparent process is put in place.

Another issue is the need to ensure that all partners are involved in an equal way both in programming and monitoring, and that associations and NGOs do have equal place as compared to other partners.

The implementation of the code of partnership is not satisfactory, as indicated by several civil society organisations reports¹².

Furthermore the participation of civil society organizations in monitoring committees involves an important investment in terms of time and human resources that few organisations are able to sustain. There is also a lack of investment to build their capacity to address very technical discussions. In some countries technical assistance has been used successfully to support the participation of civil society organisations in the monitoring committees such as for instance in the case of the National Confederation of Disabled People in Greece, who has been able to produce toolkits and train their members at regional level to participate in the monitoring committees. There is however a lack of a proactive approach at both national and European Level on supporting their involvement. Since the current programming period, the regulation foresees the possibility to dedicate a percentage of the resources for capacity building of CSOs, but it is not an obligation “where relevant”.

The Technical support instrument should be used for this and the European Commission should encourage member States to do so. It should also dedicate one of the flagship projects to the involvement of civil society organisations. Civil Society Organisations also play an important role in signaling projects that are not compliant with EU legislation and that relate to social rights, environmental rights, accessibility of persons with disability, transparency, etc, but often they remain as an isolated voice, and there is rarely a follow up by the Commission representative. Civil society contributions are not valued enough. Peer learning among organisations should be encouraged both at European and national level.

It would be useful to organise a meeting gathering only civil society organisations participating in the monitoring committees and the European Commission to discuss challenges that they face, the most common shortcomings that they see in the use of funds and measures that can be taken to address these. Currently structural dialogue has involved a very wide variety of partners.

¹² See for instance:

<https://bankwatch.org/blog/more-stakeholders-participation-needed-in-new-cohesion-programmes-preparation> and <https://public.tableau.com/app/profile/bankwatch/viz/Partnershipagreement/Story1?publish=yes>

The European Commission should promote the implementation of article 8 of the Common Provision Regulation on the partnership principle within the Monitoring Committees and ask explicitly member States authorities or managing bodies to report on CSOs participation and on the various phases of the use of funds. This should cover

all projects monitored. Moreover the quality of consultation and involvement needs to be improved as well as the take up of contributions of Civil society organisations. A positive development is the partnership between OECD and DG Regio for the development of innovative projects for cooperation between civil society organisations and public authorities.

In particular the European Commission should develop common guidelines for monitoring committees within the cohesion funds and the European Recovery Facility addressing the composition, selection, functions and rules of procedures for the committees that should also have a clear and deliberative role and provide for meaningful involvement of civil society. Civil society organisations should be able to nominate their representatives independently through an adequate and transparent system. In addition the participation of the different stakeholders should be balanced including by limiting Government participation to below 50%¹³

¹³ See letter by CEE Bankwatch Network to Commissioner Ferreira of 6 December 2021