Challenges facing civil society organisations working on human rights in the EU

FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

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Luxembourg: Publications Office of the European Union, 2017

Print	ISBN 978-92-9491-773-7	doi:10.2811/53979	TK-02-17-839-EN-C
PDF	ISBN 978-92-9491-774-4	doi:10.2811/69672	TK-02-17-839-EN-N

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FRA
EUROPEAN UNION AGENCY
FOR FUNDAMENTAL RIGHTS

Challenges facing civil society organisations working on human rights in the EU

Foreword

Civil society organisations in the European Union (EU) play a crucial role in promoting fundamental rights, and so contribute to the functioning of democracies. The EU Fundamental Rights Agency cooperates and regularly consults with such organisations. They increasingly report that it has become harder for them to support the protection, promotion and fulfilment of human rights within the Union – due to both legal and practical restrictions.

While challenges exist in all EU Member States, their exact nature and extent vary across countries. How strongly these challenges are felt also varies depending on the type and size of organisation involved, and on domestic historical contexts of civil society development.

The lack of available data and research – including comparative research – on this issue is striking. For instance, most Member States do not have overviews of how much money – stemming from national or EU public funds – they spend on project implementation or to directly fund human rights civil society inside the EU. Furthermore, there are no data in the public domain across the EU regarding attacks and incidents against civil society activists.

The agency's look at the different types and patterns of challenges faced by civil society organisations is therefore particularly timely. This report also highlights promising practices that can counteract these worrying patterns.

We hope that the insights presented encourage policymakers to intensify their support for civil society efforts to protect, promote and fulfil human rights within the EU – to the same extent as they already do in the context of EU external relations.

Michael O'Flaherty
Director

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Key findings and FRA opinions

Pursuant to its Founding Regulation, FRA cooperates with non-governmental organisations and civil society institutions active in the field of fundamental rights. Such organisations have reported to the agency that it has become harder for them to contribute to the protection, promotion and fulfilment of human rights across the European Union (EU). FRA's research – focusing on 2011 to 2017 – revealed diverse challenges that potentially affect the work of civil society organisations (CSOs). These include: disadvantageous changes in legislation or inadequate implementation of laws; hurdles to accessing financial resources and ensuring their sustainability; difficulties in accessing decision-makers and feeding into law and policymaking; and attacks on and harassment of human rights defenders, including negative discourse aimed at delegitimising and stigmatising CSOs.

In their external relations, the EU and its Member States have placed great emphasis on supporting civil society, in particular with regard to funding, immaterial resources, engagement, and protection of human rights defenders. The EU internal dimension of civil society space has only more recently gained increased attention.

FRA's opinions presented below are based on the findings outlined in this report. They are far from exhaustive. They focus on areas where Member States may easily find themselves acting within the scope of EU law, and where legal or policy action is most urgently required. Additional actions at Member State and international levels – including beyond EU competence – could further help CSOs protect, promote and fulfil human rights in the EU.

Enabling regulatory environment

To do their work, civil society actors involved in promoting fundamental rights need to be able to exercise their rights fully and without unnecessary or arbitrary restrictions. This necessitates that states fully implement their positive obligations to promote human rights and create an enabling environment for CSOs. Article 51 (1) of the EU Charter of Fundamental Rights obliges the Union and Member States to respect all Charter rights and "observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties". The rights to freedom of association, freedom of peaceful assembly (Article 12 of the EU Charter of Fundamental Rights), and freedom of expression and information (Article 11 of the Charter) are of particular importance in this context and apply to EU Member States when they are acting within the scope of EU law.

Member States have a variety of legitimate interests in adopting legislation and administrative rules that might affect civil society organisations, including in the area of tax law, or with respect to transparency, electoral and lobbying laws. However, even if not meant to negatively affect CSOs, such measures can have an undue impact on them and hence have a chilling effect. Effects of single legislative or administrative acts can be difficult to assess in isolation. Given the interdependencies in a legal-political system, the whole is often greater than the sum of its parts: although individual legislative measures in a given area may not necessarily violate fundamental rights, a series of measures taken in different areas may, when taken together, increase the regulatory burden on civil society actors to such an extent that it may undermine their ability to operate. This is relevant where Member States are transposing and implementing EU legislation – for instance, in the area of border controls, counter-terrorism or money laundering.

Civil society organisations identified the following challenges regarding the regulatory environment:

- Recognition or registration of CSOs can be problematic. Examples include one Member State failing to recognise unregistered CSOs, and another requiring double registration of CSOs. In another Member State, registration documents had to be amended after a new law was introduced – a time- and resource-intensive process.

- Transparency laws that require entities involved in political campaigns to register as third-party campaigners (either in general or during election periods) as well as lobbying laws can serve a legitimate purpose, but can also risk restricting CSOs' ability to inform the public on matters of general interest or carry out advocacy, if drafted or applied in a disproportionate manner.

- Member States sometimes impose entry restrictions on non-EU nationals seeking to engage in human rights work in a Member State, without providing a sufficient explanation as to why this is done. One Member State also imposed a ban, which was later lifted, on a national of another Member State seeking to engage in human rights work.

- National rules sometimes go beyond the restrictions of the freedom of peaceful assembly that can

legitimately be imposed under international instruments. Measures taken to address terrorism have had a particularly negative impact on the freedom of peaceful assembly.

- States also sometimes impose, in law or in practice, general bans on assemblies at certain times or places – for example, by excluding some locations from the right to assemble, which limits the free expression of (potential) assembly participants.

- States do not always treat individuals seeking to assemble equally, and favour certain types of assemblies – for example, recurring assemblies – over others. They also do not always adequately police assemblies – for example, by providing insufficient police resources to protect participants in spite of their obligation to do so.

- Regarding the freedom of expression, a number of EU Member States have maintained criminal laws banning defamation or insult of state officials, the state itself, and (foreign) heads of state. Although such provisions may serve the legitimate interest of protecting the right to reputation, they should not disproportionately restrict the freedom of expression. Such restrictions can, if potential sanctions are excessive or laws are applied overly strictly, have a chilling effect on freedom of expression. This is particularly true for civil society actors working on human rights issues, who will frequently need to criticise the state or state officials, and who may feel less empowered to do so if they know they potentially face criminal sanctions for speaking out.

FRA opinion 1

Member States and the EU should pay increased attention when drafting and implementing legislation in areas which potentially (directly or indirectly) affect civil society space, including freedom of expression, assembly and association, to ensure that their legislation does not place disproportionate requirements on civil society organisations and does not have a discriminatory impact on them, thereby diminishing civil society space. In so doing, they should fully respect applicable EU and relevant international treaty law.

FRA opinion 2

The EU and Member States should ensure that lobbying regulations and transparency laws and their application comply with applicable EU and international law and do not disproportionately restrict or hinder human rights advocacy – including during election periods, such as for European Parliament elections.

Finance and funding

Access to resources is an integral part of the right to freedom of association, as defined in Article 22 of the International Covenant on Civil and Political Rights and other human rights instruments, including the EU Charter of Fundamental Rights (Article 12).

Article 13 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders) enshrines the right to "solicit, receive and utilise resources" to promote and protect human rights. The concept of "resources" is broadly defined to include financial assistance, material resources, access to international funds, solidarity, the ability to travel and communicate without undue interference and the right to benefit from the protection of the state.

There seems to be wide agreement that legal frameworks and policies related to resources have a significant impact on the freedom of association and on the ability of CSOs to work effectively. Nonetheless, CSOs face a number of legal and practical obstacles to accessing funding, in spite of promising practices at both EU and Member State level.

Comprehensive data on the amount of public and private funding for human rights CSOs working within the EU are not available in most Member States. This is in part because funding comes from various sources, including different central government ministries, budget lines, levels of local and regional government, EU funds and EEA and Norway Grants, as well as private donations. Even from the data available, it is not possible to identify amounts of public funds specifically reserved for the promotion and protection of fundamental rights in a given EU Member State. Comprehensive data on private donations are also not available.

While the economic crisis has affected public budgets in general, with economic growth gaining pace in the EU, Member States and the EU may want to review their respective approaches to allocating public funds for civil society organisations, with a view to strengthening the promotion and protection of fundamental rights.

CSOs in the EU, the European Parliament, as well as the European Economic and Social Committee (EESC), have recently called for a European Endowment Fund for Democracy. Notably, the EECS has called on the Commission "to propose a European fund for democracy, human rights and values within the EU, to be equipped with an ambitious budget, directly open to CSOs across Europe and managed independently, similarly to the

European Endowment Fund for Democracy" which exists for civil society operating outside the EU.

In this context, FRA welcomes the European Commission's suggestion – made in its proposed revision of the EU Financial Regulation – to take into account as eligible expenses the hours incurred by volunteers and to facilitate the inclusion of contributions in kind as co-financing.

FRA's research revealed a number of challenges in accessing funding. These include:

- Overall amount of available funding: shrinking budgets in some, though not all, EU Member States;
- Funding cuts for some CSOs or certain activities, with a move away from advocacy, litigation and awareness-raising activities and towards the provision of health care or social services;
- Obstacles to obtaining funding, including burdensome, complex and not always transparent procedures for accessing it;
- Cumbersome reporting procedures that can be disproportionate to the funding amount received;
- Funding often comes in the form of (short-term) project funding; more long-term funding, as well as infrastructure funding, is often not available;
- Co-financing often constitutes a challenge, as do delays in payments of grants, leading among others to cash flow problems;
- Some European Commission grants pose geographical restrictions that prevent CSOs from attending meetings at the United Nations in Geneva, which hinders effective human rights advocacy at UN level, such as the contribution of CSOs to key human rights treaty processes when the EU and EU Member States are under review;
- Unfavourable tax regimes in some Member States, both for CSOs themselves (charitable/public benefit/public utility status) as well as for physical and legal persons who donate to CSOs;
- Negative media and smear campaigns against CSOs that receive foreign funding, including, in some cases, the demand for them to brand themselves as foreign-funded organisations on all their materials;
- Organisations representing persons with disabilities at EU level and in the Member States have limited financial resources and are not always able to independently monitor state actions regarding the rights of persons with disabilities.

FRA opinion 3

EU institutions and Member States are encouraged to ensure that funding is made available for CSOs working on the protection and promotion of the EU's foundational values of fundamental rights, democracy and the rule of law; including for small grassroots organisations. Such funding should cover, as appropriate, the variety of activities of CSOs, such as service provision, watchdog activities, advocacy, litigation, campaigning, human rights and civic education and awareness raising.

As part of the free movement of capital, CSOs should be free to solicit, receive and utilise funding not only from public bodies in their own state but also from institutional or individual donors, and public authorities and foundations in other states or from international organisations, bodies or agencies.

FRA opinion 4

Member States and EU institutions should make sure that organisations that represent persons with disabilities are provided with funding, including for personal assistance, reasonable adjustments and support, to enable them to fulfil their role under the Convention on the Rights of Persons with Disabilities (CRPD).

FRA opinion 5

The European Commission should further improve the availability of information regarding existing funding schemes by ensuring easy one-stop-shop overviews of funding made available to CSOs that work in the field of fundamental rights; by promoting its one-stop-shop portal on funding possibilities; and by expanding its database on projects funded in different areas to highlight particularly successful and impactful projects.

The European Commission should consider adopting guidance for Member States clarifying the applicability of the four 'fundamental freedoms' under the EU common market regime to CSOs, including foundations and philanthropic organisations.

FRA opinion 6

The European Commission and Member States should consider favouring multi-annual and core funding over short-term project-based funding, which would allow for a more sustainable basis for the work of CSOs as well as long-term planning. For the sake of more effective application procedures, two-step procedures could be used more frequently, where initial applications are short, and only preselected projects from the first round are required to deliver a full application file.

Audit and reporting requirements placed on CSOs and other associations should be proportionate to public funding made available and to the size and structure of the receiving organisation. In the context of co-funding, the requirements should be proportionate and take better account of the scope of projects and the type of organisations applying.

Right to participation

Article 11 of the Treaty of the European Union (TEU) specifies that EU institutions "shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action" and "shall maintain an open, transparent and regular dialogue with representative associations and civil society". The right to participation in public affairs is also recognised in Article 25 of the International Covenant on Civil and Political Rights and was recently reaffirmed in the Council of Europe Guidelines for civil participation in political decision-making, as adopted in September 2017 by the Council of Europe's Committee of Ministers. One of its components is civil participation, which the guidelines define as "the engagement of individuals, NGOs and civil society at large in decision-making processes by public authorities".

The CRPD obliges states to closely consult with and involve persons with disabilities and their representative organisations in all decisions that are relevant to them. The EU and 27 of the 28 EU Member States have ratified this convention. In practice, there is often a lack of measures to ensure full accessibility to websites, and to offer information in adequately accessible formats. The resulting lack of information can impede full involvement by persons with disabilities and organisations that represent them.

The UNECE Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, which links environmental rights with human rights, grants the public rights and imposes obligations on parties and public authorities regarding access to information, public participation and access to justice. The EU has been a party to the convention since 2005.

Seeking input into law and policy proposals by stakeholders, including from civil society, is one of the tools for democratic, evidence-based policymaking. It adds democratic legitimacy and CSO expertise and a "reality check" to a process or legal/policy proposal, and helps increase ownership among constituencies. Although national consultation and participation procedures are a matter for the national authorities, reducing civil society's vital role in decision-making processes may increase the risk that Member State measures transposing or implementing EU law violate the EU Charter of Fundamental Rights.

There seems to be wide agreement on the need to involve civil society organisations in policymaking, from local to EU levels. However, in the practical implementation of this concept, the various possible levels of CSO involvement and the diverse methods available for involving them are often not fully made use of. In addition, there is often a lack of clear criteria that need to be fulfilled to be recognised as a legitimate actor.

Some form of access to the decision-making process exists across all EU Member States, as well as at the level of EU institutions. Although there are a number of promising practices – particularly at the local level – access to (and real impact on) the decision-making process is generally inconsistent and not very transparent.

Member States have put in place some form of consultation procedures, but these are not always as meaningful and effective as they could be. Notably, interviews with CSOs, public servants and experts indicate that even when the political will for at least consultation exists, public administrations seem to lack awareness of, and skills in, the various methods available to more meaningfully and effectively involve stakeholders in law- and policymaking. Both CSOs and public servants report that there is often a lack of trust between public administrations and civil society organisations.

CSOs and experts have specified a number of obstacles that hamper full and effective participation and access to the decision-making process. These include:

- Limited access to information about policy or legal initiatives;
- Lack of minimum standards or clear rules on the implementation of the right to participation, or lack of knowledge about these and hence inconsistent implementation;

- Lack of political will or understanding that consultation is not a 'box ticking exercise' but, if done well, contributes to better policymaking;
- Lack of awareness by public services of, and skills in, the various methods to involve stakeholders in law- and policymaking in a meaningful and effective way;
- Specific challenges regarding, and barriers to, involving persons with disabilities – including the lack of necessary measures to ensure full application of web-accessibility standards, and the need to offer official information, as applicable, in various accessible formats;
- Tight timelines for participation/consultation processes (including for administrations themselves) as well as tight budgets and human resource allocations in public services;
- Lack of clarity regarding who is consulted before decisions are made, with CSOs also reporting that often there is no systematic consultation of all key players;
- Cutting of relevant funds can indirectly affect CSOs' ability to participate in decision-making in a meaningful way;
- Lack of trust between public services and civil society organisations.

FRA opinion 7

EU institutions and Member States should uphold their obligations under Article 4 (3) of the CRPD to consult closely with and involve persons with disabilities and their representative organisations in all decisions that are relevant to them. Participation of persons with disabilities in public and political life should be encouraged in line with Article 29 (b) of the CRPD. More generally, EU institutions and Member States should maintain an open, transparent and regular dialogue with CSOs active in the area of human rights to guarantee that EU legislation and EU policies as well as national legislation and policies implementing the latter are in line with the EU Charter of Fundamental Rights.

Where relevant rules in support of CSOs' active participation in human rights are already in place, authorities should ensure that these are implemented in practice. This involves making available adequate human and financial resources to allow for proper participation processes, and providing public servants with training on, and sufficient time for, engaging such organisations. Tools and methods used by public authorities for implementing participation could be diversified and improved. Full use should be made of the newly adopted Council of Europe 'Guidelines for meaningful civil participation in political decision-making'.

Ensuring a safe space for civil society

CSOs and activists in the EU face physical and verbal attacks, harassment and intimidation by non-state actors. These incidents take place both online and offline. Some state officials even engage in verbal attacks and create negative narratives that stigmatise CSOs or discredit their work, harming both the support base for CSOs in society and activists' morale and motivation. It is vital for public officials to refrain from attacks, including verbal attacks, and unfounded attempts to discredit organisations that promote human rights and non-discrimination. Neither public authorities nor civil society organisations are properly recording – at the EU or national level – data on attacks and threats against CSOs.

FRA opinion 8

Member States should refrain from the stigmatisation of human rights CSOs and their members. Moreover, they should actively condemn any crimes – including hate crimes – committed against CSOs and their members and fully implement their positive obligations under international law and applicable EU law to protect CSOs and their members. Data on hate crimes against human rights CSOs should be collected and published.

Space for exchange and dialogue

Various actors from civil society and beyond raised with FRA the lack of reliable and comparable data on attacks against CSOs across the EU. They also noted a lack of information on available funding schemes and expenditure for human rights focused CSOs, the regulatory environment and channels for civil society organisations' participation in policy-making. The need for exchanging promising practices across the EU was expressed by many interlocutors. More specifically, it was felt that the following activities should be carried out at the EU level:

(a) collecting data on attacks against human rights CSOs;

(b) observing developments of relevance to civil society across the EU, including those affecting the availability of financial resources;

(c) advising on the administration of EU funds dedicated to civil society;

(d) supporting resource building for CSOs; and

(e) allowing for "an open, transparent and regular dialogue with representative associations and civil society" and strengthening the European Commission's capacity to carry out "broad, consultations with parties concerned" as required by Article 11 of the TEU.

FRA opinion 9

The EU should consider supporting the establishment of an appropriate space for exchange and dialogue to promote the support of civil society actors engaged in the protection and promotion of fundamental rights in the EU. This would also allow for an enhanced regular dialogue between civil society organisations and the EU institutions.

Introduction

Note on terminology

Civil society space is "the place civil society actors occupy within society; the environment and framework in which civil society operates; and the relationships among civil society actors, the State, private sector and the general public."

For more information, see Office of the United Nations High Commissioner for Human Rights (OHCHR), A Practical Guide for Civil Society: Civil Society Space and the United Nations Human Rights System.

CSOs have an important role in the EU's democracies: they help "give a voice" to people on issues that matter to them, assist rights holders, monitor governments' and parliaments' activities, give advice to policymakers, and hold authorities accountable for their actions. Throughout the EU, various forms of civil society engagement exist, owing to different historical developments. The scope and size of CSOs can also vary considerably,[1] ranging from large well-resourced international entities to small, volunteer-based grassroots organisations.

In recent years, CSOs that FRA cooperates with[2] have made the agency increasingly aware[3] of difficulties they are facing to help protect, promote and fulfil human rights in the EU. To date, attention has largely been focussed on threats to civil society space outside the EU. As a result, most research on civil society space so far also relates to non-EU countries.[4] To better understand challenges faced by CSOs within the EU, FRA gathered its own information[5] through its research network FRANET,[6] and from interviews with experts as well as an expert meeting.[7] FRA also took into account relevant work by the Council of Europe's Commissioner for Human Rights, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, the UN Special Rapporteur on the situation of human rights defenders, the European Economic and Social Committee (EESC) and the Open Government Partnership (OGP). This report also draws on expertise as well as studies by civil society organisations, funders and foundations, and research institutes.

FRA has clustered its findings[8] into four categories, which broadly mirror the "conditions for creating and maintaining civil society space" proposed by the UN High Commissioner for Human Rights.[9] These four categories are:

- **Regulatory environment:** (changes in) legislation that affect CSOs' work;
- **Finance and funding:** hurdles to accessing, and ensuring the sustainability of, financial resources – including long-term support and immaterial resources;
- **Right to participation:** difficulties in accessing decision-makers and providing input into law- and policymaking;
- **Ensuring a safe space:** attacks on, and harassment of, human rights defenders, including negative discourse aimed at delegitimising and stigmatising CSOs.

Difficulties falling into one or more of the categories can be observed – to differing degrees – across all EU Member States. Challenges in just one category can be problematic, but they also reinforce each other. In addition, laws and provisions that do not actually target CSOs can have unintended side effects that have a negative impact on their work.

These challenges make it difficult for CSOs to promote and support human rights and their implementation. Beyond the impact that this has on the organisations themselves and on human rights, it can also have wide-ranging negative consequences for the democratic functioning of our societies. It is therefore vital that policymakers understand the role of civil society and its importance, and publicly support and adequately finance civil society organisations – both those engaged in service provision and those engaged in watchdog activities and advocacy.[10] FRA's research did also find promising practices in each of the areas mentioned – these are highlighted in the respective sections. Past FRA opinions addressing matters that affect CSOs, particularly in the agency's Fundamental Rights Reports, provide further insights into ways to support their important work.

For a full mapping in the EU in each of these four areas, more data collection and research is needed. This report therefore also points to the lack of consistent and systematic data on civil society space. In addition, there is a notable lack of (independent) comparative research covering the situation across all EU Member States, including on gender-, disability-, age- or ethnicity-related aspects. This report can therefore only provide a first overview of patterns based on the evidence collected. More research, analysis and concrete action will be needed to better understand and address the factors that enable or hamper civil society activity inside the EU. FRA intends to contribute to these efforts.

Note on terminology

For purposes of this report, civil society organisations are defined – as per FRA's Founding Regulation – as "non-governmental organisations and [...] institutions of civil society, active in the field of fundamental rights", and in accordance with the Council of Europe Committee of Ministers' Recommendation 14 (2007) as "voluntary self-governing bodies or organisations established to pursue the essentially non-profit-making objectives of their founders or members". They do not include political parties.

This report covers CSOs that work, as specified in the UN Declaration on Human Rights Defenders, to "promote and [...] strive for the protection and realization of human rights and fundamental freedoms" at the national and/or international level. (Under the declaration, the scope of those who may be defined as a 'human rights defender' is not limited to human rights NGOs/CSOs, but may include individuals and other groups as well. For more details, see *the OHCHR webpage on human rights defenders*.)

Although religious and faith communities and organisations make valuable contributions to human rights implementation, they are not covered *per se* by this report.

For more information, see Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights (the Founding Regulation), OJ 2007 L 53, Art. 10; Council of Europe, Committee of Ministers (2008), Recommendation CM/Rec(2007)14, para. I (1); Commission of the European Communities (2000), "The Commission and non-governmental organisations: building a stronger partnership", Commission discussion paper, COM(2000) 11 final, para. 1.2; and United Nations (UN) General Assembly (GA), Declaration on Human Rights Defenders, A/RES/53/144, 8 March 1999, Art. 1.

Endnotes

1 For more refined descriptions of different civil society categories, see Salamon, L.M. and Anheier, H.K. (1999), 'Civil society in comparative perspective' in *Global Civil Society: Dimensions of the Nonprofit Sector*, Baltimore, John Hopkins Center for Civil Society Studies; Kalm, S. and Johansson, H. (eds.) (2015), *EU Civil Society: Patterns of Cooperation, Competition and Conflict*; Desse, F., AUGUR, (2012), *Challenges for Europe in the world in 2030*, Project No. SSH-CT-2009-244565, The Role and Structure of Civil Society Organizations in National and Global Governance Evolution and outlook between now and 2030; Buyse, A. (2017), *Squeezing Civic Space. Restrictions on Civil Society Organizations and the Linkages with Human Rights* (draft manuscript). For an in-depth analysis of CSOs in Central and Eastern Europe, see Stiftung, E. (2017), Civil Society in Central and Eastern Europe: Challenges and Opportunities.

2 In the framework of its 'Fundamental Rights Platform', see Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights (the Founding Regulation), OJ 2007 L 53, Art. 10.

3 Information received through FRA's Fundamental Rights Platform (FRP), notably, FRP meeting 2014 and FRP Advisory Panel meetings 2015, 2016 and 2017; as well as information received through email exchanges and online and face-to-face conversations with Platform organisations.

4 See for instance, European Parliament (2017), Report on addressing shrinking civil society space in developing countries (2016/2324 (INI)), 5 September 2017.
Some of the few attempts to cover all EU Member States on this topic are: The CIVICUS Monitor, October 2017, which offers a regularly updated interactive world map based mostly on civil society sources, focusing on freedom of association, freedom of peaceful assembly, and freedom of expression; and the Civil Society Europe together with CIVICUS online survey of NGOs in Europe in 2016. The survey was repeated in Spring 2017.

5 For more detail about the methodologies used, see the Annex.

6 See FRANET's website for more information on the network. The wording of questionnaire can be found in the Annex.

7 FRA expert meeting, 'Supporting an enabling and protective space for civil society', Vienna, May 2017. Meeting with 30 experts from civil society, foundations and funders, international organisations and equality bodies.

8 Information received in particular through FRA's Fundamental Rights Platform (FRP), notably FRP meeting 2014 and FRP Advisory Panel meetings 2015 and 2016; FRA expert meeting, 'Supporting an enabling and protective space for civil society', Vienna, May 2017. See also the Civil Society Europe and CIVICUS online survey of NGOs in Europe in 2016 and the CIVICUS Monitor, October 2017.

9 UN High Commissioner for Human Rights (2016), *Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned*, UN Doc. A/HRC/32/20, 11 April 2016 (a supportive legal framework and access to justice; conducive public and political environment; access to information; participation in policy development, planning and decision-making; long-term support and resources for civil society organisations). These categories also broadly mirror the elements of the 'Monitoring matrix on enabling environment for civil society development', developed in part by the European Centre for Not-for-Profit Law and used by DG NEAR in the European Commission.

10 See also European Parliament, Directorate General for Internal Policies (2010), *Financing of Non-governmental Organisations (NGO) from the EU Budget*.

1 Civil society and fundamental rights

1.1. Civil society vital for human rights protection

Civil society is a vital component of functioning democracies and indispensable for the full protection of human rights. The UN Human Rights Council has repeatedly emphasised that undue restrictions of civil society space have a negative impact on implementing international human rights standards.[1] The Council of Europe has pointed to CSOs' essential contribution to developing democracies and human rights, in particular through promoting public awareness, participating in public life, and securing transparency and accountability of public authorities.[2] Civil society plays an important role in promoting the rule of law and accountability, empowering persons belonging to minorities and vulnerable groups, combating racism and racial discrimination, combating human trafficking, empowering women and youth, promoting the rights of the child, and advancing social justice, consumer protection and transitional justice processes.[3] A recent report by the UN Special Rapporteur on the freedom of peaceful assembly and of association highlights civil society's contribution to protecting civil and political rights, advancing development objectives, moving societies towards freedom and equality, achieving and upholding peace, regulating corporate behaviour, protecting the environment, delivering essential services, and advocating for economic, social and cultural rights.[4]

CSOs also have a crucial role in implementing the full range of EU policies. Article 11 (2) of the TEU specifies that the EU institutions "shall maintain an open, transparent and regular dialogue with representative associations and civil society". Article 15 of the Treaty on the Functioning of the European Union (TFEU) recognises civil society's role in the EU's good governance.[5] In addition, appropriate civil society space is vital to achieve the 2030 Agenda for Sustainable Development,[6] to which the EU has committed itself in all its internal and external policies.[7]

The Council has underlined civil society organisations' important role in fundamental rights implementation on the ground, raising awareness and supporting rights holders, as well as fighting misinformation, and has noted that they can only fulfil these tasks if they are "empowered and enabled to carry out their work".[8] The European Commission has described CSOs' role in "renewing engagement for democracy, rule of law and fundamental rights" as something to "cherish" and "preserve".[9]

The EU offers a range of support (especially via REC and Erasmus+) for specific civil society projects, such as in the field of combating racism and xenophobia and other forms of intolerance, the rights of the child and education, including on democracy and democratic participation. EU programmes also offer support to the functioning and capacity of EU umbrella organisations, such as the European Network of National Human Rights Institutes and Equinet (European Network of Equality Bodies) or sectoral EU level organisations in thematic areas, such as the European Network of Ombudspersons for Children (ENOC) or the European Network Against Racism (ENAR).

1.2. Human rights protection vital for civil society

Just as human rights need civil society, civil society organisations need their human rights to be protected to carry out their work.[10] The UN Human Rights Council has called upon all states to create and maintain, in

law and in practice, a safe and enabling environment in which civil society can operate free from hindrance and insecurity.[11] States should do so by strengthening the rule of law, the administration of justice, social and economic development, access to information, the promotion of the rights to freedom of opinion and expression online and offline, and of peaceful assembly and association, among others.[12]

In addition, the Human Rights Council has called on states to promote "the real and effective participation of people in decision-making processes, and to take steps to ensure that all domestic legal provisions with an impact on civil society actors, including counter-terrorism measures, comply with relevant international human rights obligations and commitments [...] and to maintain accessible domestic procedures for the establishment or registration of organizations and associations, and access to national, regional and international human rights mechanisms."[13]

The UN Declaration on Human Rights Defenders highlights, in particular, the importance to those defending human rights of "the right to meet or assemble peacefully, the right to form, join and participate in non-governmental organizations, associations or groups, and the right to communicate with non-governmental or intergovernmental organisations for the purpose of promoting and protecting human rights and fundamental freedoms".[14]

The EU has long considered support to those defending human rights to be an established element of its external relations policy.[15] As the Council noted in its Guidelines on Human Rights Defenders, "[h]uman rights defenders can assist governments in promoting and protecting human rights. As part of consultation processes they can play a key role in helping to draft appropriate legislation, and in helping to draw up national plans and strategies on human rights. This role too should be recognised and supported."

Recently, the Council has – in the context of the EU's external action policy – expressed concern over "the current worrying trend of the shrinking space for civil society".[16] Similarly, the European Parliament has recognised that "shrinking civil society space is a global phenomenon, which is not restricted to developing countries but also, and increasingly, occurs in established democracies and middle- and high-income countries, including EU Member States and some of the EU's closest allies".[17]

Continuously strengthening human rights protection in the EU and its Member States relies greatly on states fulfilling their positive obligations under human rights law to promote and protect civil society space. The following chapters highlight the challenges to this civil society space and discuss how to deal with them.

Endnotes

1 UN, HRC (2016), *Resolution on Civil Society Space*, preamble. See also UN, HRC (2017), *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, A/HRC/35/28, 8 May 2017.
2 Council of Europe (CoE), Committee of Ministers (2007), *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007.
3 UN, HRC (2016), *Resolution on Civil Society Space*, para. 3. See also OSCE/ODIHR-Venice Commission (2015), *Joint Guidelines on Freedom of Association*, para. 9; on transitional justice, see UN, OHCHR (2016), *Rule of Law tools for post-conflict states, national consultations on transitional justice*.
4 UN, HRC (2017), *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, A/HRC/35/28, 23 June 2017.
5 European Union (EU) (2012), Treaty on the Functioning of the European Union (TFEU), Art. 15, OJ C 326/47, 26 October 2012.
6 UN, HRC (2016), *Resolution on Civil Society Space*, para. 3. See also UN, OHCHR (2015), *A central role for a civil society is the only way to guarantee inclusive post-2015 development goals*, 18 May 2015.
7 EU (2017), *The new European Consensus on Development 'Our world, our dignity, our future'*, Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission, OJ C 210, 30 June 2017. See also European Commission (2012), *The roots of democracy and sustainable development: Europe's engagement with civil society in external relations*, COM (2012) 492, 12 September 2012.
8 Council of the European Union (2016), *Council conclusions on the application of the Charter of Fundamental Rights in 2016*, para. 7.
9 European Commission (2017), *Report on the Application of the EU Charter of Fundamental Rights*, 18 May 2017, p. 14.
10 Civil society organisations also enjoy protection of their human rights as legal persons. See Chapter 2.
11 UN, HRC (2016), *Resolution on Civil Society Space*, para. 4.
12 *Ibid*., para. 14 (b).
13 *Ibid*.
14 UN, GA (1998), Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, (the Declaration on Human Rights Defenders), Art. 5; UN, HRC (2016), *Resolution on Civil Society Space*, para. 14 (b). See also CoE, Committee of Ministers (2008), *Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities*, 6 February 2008, para. vi; OSCE (1990), Copenhagen Document, para. 10.
15 EU (2004), *Ensuring Protection-Guidelines on Human Rights Defenders*.
16 EU (2014), Regulation (EU) No 235/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide, Annex, Art. 1, OJ L 77, 15 March 2014.
17 See European Parliament, Addressing shrinking civil society space in developing countries. See also European Parliament, Directorate-General for External Policies (2017), *Shrinking space for civil society: the EU response*, p. 35.

2 Regulatory environment

This chapter outlines the main regulatory hurdles encountered by CSOs across the EU. Civil society actors involved in promoting fundamental rights – both CSOs and their members – need to be able to exercise their rights fully and without unnecessary or arbitrary restrictions to carry out their work (see Chapter 1). CSOs also need states to fully implement their positive obligations to create an enabling environment that allows CSOs to fully enjoy their rights, including, among others, the right to access public funding and resources and the right to take part in public affairs.[1] Associations, including human rights CSOs, also enjoy human rights, such as the rights to freedom of peaceful assembly, to an effective remedy, to a fair trial, to the protection of their property, private life and correspondence, and to be protected from discrimination.[2]

CSOs particularly face challenges in the following areas:

- **Freedom of association**: registration of NGOs, lobbying regulations and advocacy restrictions; counter-terrorism and emergency laws; changes in legal status, liability of officers and members, and scope of activities; public interest litigation and entry restrictions;
- **Freedom of opinion, expression and information:** defamation legislation and restrictions on the content of speech;
- **Freedom of peaceful assembly**: policing of assemblies, simultaneous assemblies; counter-terrorism and emergency laws.

It is also vital for CSOs to effectively enjoy other rights, including the rights to a fair trial and to an effective remedy, as well as access to justice more broadly. According to Article 51 (1) of the EU Charter of Fundamental Rights, both the EU as well as its Member States are obliged to respect all Charter rights and to observe the principles and promote the application thereof "in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties".

However, the requirement to respect fundamental rights guaranteed in the legal order of the EU is binding on the Member States "only when they are acting within the scope of EU law".[3] This is obviously the case when Member States implement EU legislation, such as in the areas of asylum, migration, anti-terrorism, anti-discrimination and any other areas for which the EU has developed policies. However, even when acting autonomously – in areas of national competence, for example – Member States have to make sure that they do not encroach on fundamental freedoms or discriminate against EU citizens.[4] As a result, it is possible that Member States might sometimes act within the scope of EU law when implementing freedoms – such as the freedom of assembly and association – even if the policy field is dominated by national law. For example, assembly participants might exercise their right to freedom of movement within the Union to assemble in a particular location or an assembly might affect the free movement of goods in the internal market.[5]

2.1. Freedom of association

Various legal instruments recognise the right to freedom of association.[6] States have a negative obligation not to unduly obstruct the right to freedom of association[7] and any restriction imposed on this right should be prescribed by law and necessary in a democratic society[8]. States also have positive obligations. As the Venice Commission and the OSCE/ODIHR have noted, these "may include

simplifying regulatory requirements, ensuring that those requirements are not unduly burdensome, facilitating access to resources and taking positive measures to overcome specific challenges confronting disadvantaged or vulnerable persons or groups."[9]

2.1.1. Registration of NGOs

The UN General Assembly has called upon states "to ensure, where procedures governing registration of civil society organizations exist, that these are transparent, non-discriminatory, expeditious, inexpensive, allow for the possibility to appeal and avoid requiring re-registration".[10] A notification procedure rather than a prior authorisation procedure complies better with international law.[11] This includes setting registration fees at a level that does not discourage CSOs or make applying for registration impractical.[12] The UN Special Rapporteur has noted that the registration process for CSOs should at least be as easy as setting up a business.[13] The right to freedom of association equally protects registered and unregistered associations. Individuals involved in unregistered associations should be free to carry out any lawful activities, including the right to hold and participate in peaceful assemblies, and should not be subject to criminal sanctions.[14]

In Greece, in January 2016, a Ministerial Decision put all NGOs in Lesbos directly under state control and refused to recognise the operations of independent and unregistered NGOs, effectively criminalising them. NGOs and volunteers helping refugees were asked, starting in February 2016, to fill out forms providing personal details of all their members to the government.[15] In Slovakia, CSOs must register with the Interior Ministry and foundations face a double registration requirement, as they must also register with the central body in their field of work.[16] In Hungary, after the introduction of a new Civil Code, registered CSOs were required to go through a lengthy and resource-intensive process of amending their founding documents, which included deleting references to legal acts that had lost force.[17]

2.1.2. 'Political' activities and CSO advocacy

Legislation should take a broad view on the scope of activities CSOs can engage in.[18] Associations should be free to determine their activities and make decisions without state interference. As such, they should be free to enjoy the rights to express opinion, disseminate information, engage with the public and advocate before governments and international bodies.[19] They should also be free to engage in any lawful economic, business or commercial activities to support their not-for-profit activities without any special authorisation being required, but subject to any licensing or regulatory requirements generally applicable to the activities concerned.[20] In its Guidelines on civil participation in political decision-making, the Council of Europe has noted that civil participation in political decision-making is distinct from political activities in terms of direct engagement with political parties and from lobbying in relation to business interests.[21] CSOs have noted that while it is important that states adopt and adequately implement transparency laws, lobbying regulations could potentially be over applied to CSOs if the same rules apply for those advocating human rights issues and those involved in corporate lobbying, despite the differences in resources and interests between the two.[22]

In Ireland, concerns were expressed over the vague wording and overly broad application of the Electoral Act 1997 as amended in 2001, which imposes restrictions and reporting obligations on 'third parties' who accept donations over € 100 for 'political purposes'. This provision was introduced to regulate political campaign funding. However, 'political purposes' are defined as "to promote or oppose, directly or indirectly, the interests of a third party in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to a policy or policies or functions of the Government or any public authority". This broad definition can potentially cover the activities of a wide range of CSOs, including human rights NGOs, and in the past year, it appears that the regulatory body has applied the law in a more expansive way. In addition, investigations are often triggered by complaints to the regulatory body, so enforcement can inadvertently be selectively targeted. The effect of applying this law to CSOs is that they are thereby prohibited from receiving any donations from foreign sources and from any individual exceeding € 2,500 in any year. The blanket ban on foreign funding can have a particularly serious impact in Ireland, where most independent funding of human rights work comes from trusts and foundations based outside of Ireland.[23]

In the United Kingdom, civil society and the former UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, expressed concern about the 2014 Lobbying Act. It requires campaigners, including charities, to register with the Electoral Commission if their spending during an election period passes a certain threshold, and if their activities could be perceived as intended to influence how people vote.[24] This placed CSOs in a dilemma of whether they should register as a party-political organisation, endangering the public's view of CSOs as independent and non-partisan or continue advocacy during election period and face being fined. As the former UN Special Rapporteur pointed out, charities proved reluctant to register, fearing that this would be misunderstood as engaging in prohibited party-political activity.[25] A survey among CSOs indicated that 63 % of respondents felt that compliance with the Act would make "some or all of

their organisational or charitable objectives harder to achieve", mostly as a result of a lack of clarity as to what was covered by the Act.[26] Greenpeace and Friends of the Earth were fined for breaching the Act after carrying out an anti-fracking poster campaign in the run-up to the 2015 general election without having registered as non-party campaigners with the commission.[27]

There are also concerns that CSOs funded by the government may be restricted in their ability to engage in advocacy vis-à-vis governments.[28] In the United Kingdom, an advocacy clause was initially added to regulations on government-funded NGOs, prohibiting the use of government funds to engage in advocacy activities. This was withdrawn after pressure from CSOs.[29]

There have also been legislative developments in this area to help facilitate the work of CSOs. In Slovenia, the law exempts activities aimed at promoting democracy, human rights and the rule of law from registration and reporting requirements on lobbying.[30] In addition, in Germany, a court restored the tax exempt status of an NGO (Attac Germany) after it had been revoked because some of its activities – such as promoting more effective taxation on financial incomes and large properties – were deemed 'political' in nature by the authorities. The Kassel Fiscal Court clarified that the term 'political activities' was to be understood as activities supporting political parties, not political activities in general.[31]

2.1.3. Prohibition or dissolution of CSOs

One example of a measure frequently considered or taken in the fight against terrorism is the prohibition or dissolution of certain organisations. While such measures serve a legitimate aim, any prohibition or dissolution of an association should always be a last resort – all restrictions must be based on the particular circumstances of the case and no blanket restrictions should be applied.[32] Furthermore, the principle of proportionality dictates that prohibition or dissolution should never be used to address minor infractions.[33]

In this context, CSOs have expressed concerns about the effect on civil society of the Counter-terrorism Act of Bulgaria, which allows public prosecutors to ask courts for permission to close non-profit entities where there is information leading to the 'justified assumption' that the entity in question is linked to the "preparation, support of or carrying out of terrorism".[34] This provision has been criticised as overly vague by civil society, as it does not specify what criteria would be used to determine what constitutes a 'justified assumption'.[35] A number of UN human rights mandate holders expressed similar criticism in the context of France's emergency legislation, noting the lack of judicial scrutiny prior to the dissolution of certain organisations.[36]

2.1.4. Entry restrictions

Freedom of movement across borders can greatly help the work of human rights CSOs. States should aim to facilitate visits by CSOs from other states – including from outside the EU – for the purpose of participating in meetings, attending trials as observers, engaging in advocacy and other human rights activities. Visa regimes and procedures should not impose undue obstacles for human rights defenders to travel to another state for the purpose of their human rights work.[37] In case a visa application is refused, the applicant should be duly informed of the reasons for such a decision and of the available remedies to challenge it. Those working for human rights CSOs who are denied entry into a country because they have been included on a list prohibiting their entry to one or a group of participating states should also be entitled to know of the reasons why and to challenge these prohibitions.[38]

CSOs have reported on entry bans for human rights campaigners from outside the EU wishing to document alleged human rights violations in EU Member States. An international NGO has claimed that in a number of cases, Greece denied entry to activists from Albania, the former Yugoslav Republic of Macedonia and Turkey, allegedly working on minority rights, without providing specific explanations as to why such restrictions were imposed.[39] In Lithuania, on 25 August 2015, an ethnic-Russian human rights defender from Latvia was denied entry into Lithuania and banned from entry for five years. When asked for an explanation, authorities told him and his lawyer that they had to translate and certify his passport to see the order on which his ban was based. After a further exchange of letters to obtain the decision, as a basis on which to file an administrative appeal, the Lithuanian Ministry of Interior informed him in September 2016 that the ban had been cancelled. According to the notice he received, the ban had been lifted at the end of 2015, without his notification or responses to the preceding three letters of his attorney.[40]

2.2. Freedom of opinion, expression and information

The right to freedom of opinion and expression is protected by various international and regional human rights instruments.[41] It includes the right to impart and the right to receive information[42] as well as protection for activities aimed at promoting human rights.[43] This right is therefore a vital tool for human rights civil society actors, both for advocacy purposes and to scrutinise public actions and hold authorities accountable. It provides states with a duty not to disproportionately interfere with the freedom of expression,[44] and also with

an obligation to protect against third parties seeking to interfere with the enjoyment of this freedom.[45]

2.2.1. Defamation legislation

Civil society often makes statements impugning violations of human rights to the state or its officials. Such statements may sometimes be perceived to be defamatory or insulting by politicians or state officials (see Chapter 5). In such cases, it is important that a fair balance is struck between civil society actors' freedom of expression and the right to reputation to ensure that protecting the right to reputation does not – in practice – stifle freedom of expression.[46] Care should be taken by states to avoid disproportionately punitive measures and penalties, and they should consider decriminalising defamation.[47] The UN Human Rights Council has called on states to ensure that "penalties for defamation are limited in order to ensure proportionality and reparation commensurate to the harm done".[48]

Regarding politicians, the European Court of Human Rights (ECtHR) has held that "the limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance."[49] The UN Special Rapporteur on freedom of opinion and expression has called for defamation to be decriminalised completely and transformed from a criminal to a civil action, with corrections or apologies being applied as remedies.[50]

The OSCE/ODIHR has reported that "[i]n a number of OSCE participating States, defamation laws are reportedly used to silence, and sometimes even imprison, human rights defenders."[51] In Austria, it has been reported that the ability and willingness of police to sue for libel or slander discouraged individuals from reporting police abuses.[52] In Hungary, there were civil society reports that public officials, especially in small towns, continued to use libel and defamation laws to silence criticisms from citizens and journalists; there were allegedly several dozen cases per year in which public officials pursued both criminal and civil charges (often simultaneously) against individuals for criticising officials or their policies.[53]

Private actors can also engage in lawsuits in the area of defamation. On 28 June 2017, a lawsuit brought by the VINCI construction company against the NGO Sherpa before the Paris Court of Appeal was rejected. The construction company's lawsuit alleged that Sherpa had violated its presumption of innocence. Sherpa had filed a complaint in March 2015 alleging that the company and its French executives belonging to their Qatari subsidiary were responsible of having conducted forced labour, reduction to servitude and concealment. The alleged victims were migrant construction employees who the Qatar government had entrusted to these companies for work related to the 2022 World cup.[54]

A recent OSCE report outlines a range of laws criminalising insults or defamation in the EU.[55] Belgium, Denmark, Estonia, Luxembourg, Malta and Poland criminalise abusive, offensive or insulting conduct directed at public officials in the course of official business.[56] Belgium, Estonia, Lithuania and Malta have criminal laws prohibiting insults to courts and other court officials.[57] Bulgaria, France, Germany, Italy, the Netherlands and Portugal have increased penalties for defamation where public officials are concerned.[58] Belgium, Denmark, the Netherlands, Spain and Sweden have criminalised *lèse majesté*.[59] Germany, Greece, Italy, Malta, Poland, Portugal and Slovenia have laws criminalising the insult and/or defamation of heads of state.[60] Austria, Croatia, Germany, Italy, Poland, Portugal, Slovenia and Spain have criminal laws prohibiting insults of the state. With the exception of Italy and Spain, imprisonment is a possible penalty in all cases. Criminal laws prohibiting the insult of state symbols exist in Bulgaria, Greece, Poland, Portugal and Spain. Austria, Belgium, Cyprus, Germany, Greece, Italy, Luxembourg, the Netherlands, Poland, Portugal and Spain criminalise defaming or disparaging various state institutions, such as governments, parliaments, courts, the armed forces and public bodies or authorities in general. [61] Cyprus, Denmark, Estonia, Germany, Greece, the Netherlands, Poland, Portugal, Slovenia and Sweden criminalise defamation of foreign heads of state.[62] Croatia, Denmark and Slovenia prohibit the insult of foreign states.[63]

2.3. Freedom of peaceful assembly

International human rights law protects the right to freedom of peaceful assembly.[64] It covers a range of different public gatherings, such as static assemblies (public meetings, mass actions, flash mobs), demonstrations, sit-ins, pickets and moving assemblies (parades, processions, funerals, pilgrimages and convoys, etc.).[65] The right also covers individual pickets or sit-ins, which, although not assemblies in the strict sense, are protected by the same set of standards. There should be a presumption that assemblies are legal, which should be clearly and explicitly established in law.[66]

2.3.1. Content restrictions

Limitations imposed on the right to freedom of peaceful assembly should, in principle, only concern the time, place and manner of assemblies, not the content of their message.[67] As the ECtHR has stated, it is "unacceptable

that an interference with the right to freedom of assembly could be justified simply on the basis of the authorities' own view of the merits of a particular protest".[68]

In the Netherlands, however, a mayor imposed a requirement that during the arrival festivities of *Sinterklaas* (St. Nicholas), demonstrators were only allowed to convey positive messages, and "no messages on racism in connection with the St. Nicholas festivities in all its dimensions". This decision was later rescinded on appeal, but after police confiscated placards bearing anti-racist messages during the event.[69] Poland has also introduced content restrictions, banning abuse of the 'Fighting Poland' sign, with police pressing charges against a demonstration participant for allegedly doing so by amending the sign to appear to show a woman's breasts; a court has since found the protester in question not guilty.[70] Speech criticising the government or heads of state during assemblies may also be restricted on the basis of criminal laws on defamation and insult.

2.3.2. Blanket restrictions and bans on assemblies

Civil society organisations have noted that blanket restrictions as to the modalities of assemblies are also contained in legislation regarding peaceful assemblies in a number of EU member states. In Brussels, for example, by-laws impose specific restrictions on the time and place assemblies can occur, with certain zones requiring explicit permission from the relevant authorities.[71] In Spain, the Basic Law for the Protection of Public Security imposes fines for conduct, such as 'disrupting citizen safety' near legislative buildings or for photographing or video recording security forces without authorisation, which limits the right of public assembly. The law also imposes fines of up to € 600 for failing to notify authorities about peaceful demonstrations in public areas, up to € 30,000 for protests resulting in 'serious disturbances of public safety' near parliament and regional government buildings, and up to € 600,000 for unauthorised protests near key infrastructural facilities.[72] In Bulgaria, the law prohibits public gatherings within a security zone around the National Assembly, the Council of Ministers and presidency buildings.[73] In Lithuania, Article 4 of the Law on Meetings specifies that public meetings may be held from 8 am to 10 pm and only at the time coordinated by the organisers of a meeting and the head of the executive body of the municipal council or an authorised representative. After coordination, meetings may also be organised at a different time but only in places with fixed lighting and without disturbing local residents.[74]

Authorities have also issued bans on assemblies. The Government of Romania informed the OSCE/ODIHR of complaints from CSOs regarding the decisions of local authorities to restrict freedom of peaceful assembly, by establishing official protest areas located 'infrequently' and in 'marginal spaces', outside of sight and sound of the intended audiences of public assemblies.[75] In the Czech Republic, police banned a protest demonstration against the violation of human rights in China during the visit of the president of China to Prague in March 2016, allegedly for security reasons, despite notification having been given in compliance with the law.[76] In Greece, in January 2016, police issued a statement forbidding public gatherings in central Athens for a single 12-hour period from 6 am until midnight, citing reasons of public order.[77] In July 2016, police banned a demonstration of 100 individuals planned by the Facebook group 'For a Democratic Hungary' to take place on 24 July at the prime minister's residence. Police based their decision on the protection of privacy rights of the residents of the area. An appeal of the police ban submitted to the Budapest Metropolitan Administrative and Labour Court failed.[78]

2.3.3. Policing of assemblies

The state has a positive duty to actively protect peaceful assemblies, which requires the state to protect participants of a peaceful assembly from any persons or groups (including *agents provocateurs* and counter-demonstrators) that attempt to disrupt or inhibit them in any way.[79] States also have a negative obligation not to interfere with the right to peaceful assembly and any restriction imposed should be prescribed by law and necessary.[80] These principles apply to the use of force during assemblies: force should only be used on an exceptional basis and – if necessary – should be used proportionally.[81] In this regard, soft law provisions aim to guide law enforcement officials when policing peaceful protests.[82]

The UN Special Rapporteur on Human Rights Defenders has noted reports that in Hungary, demonstrations by human rights activists promoting the rights of the Roma and of lesbian, gay, bisexual, transgender and intersex communities are held in a climate of fear and are strictly controlled for safety reasons.[83] The Special Rapporteur also noted reports of indirect intimidation of teachers and trade unionists from Miskolc, who organised a national protest in Budapest on 13 February 2016.[84] In the Netherlands, civil society reported on a case of alleged use of excessive force against peaceful anti-racism protesters and the subsequent impunity of the officers involved, despite video evidence showing white police officers punching a black activist in the face.[85] In Bulgaria, in the context of the annual pride parade, two men snuck into the parade and tried to rip one participant's rainbow flag out of his hands. Three anti-pride protesters intimidated a couple leaving the party held after the march, one of whom used pepper spray for self-protection. Police briefly detained four persons, including the couple, at the police station. Pride organisers claimed police did nothing to protect the couple as they left, despite taunts and threats by a group of anti-pride demonstrators who had gathered outside.[86]

In Estonia, in November 2015, more than 30 individuals at the Harku detention centre for irregular migrants were involved in a detainee protest sparked by one detainee's refusal to accept his deportation order. Media reported that the police made several management errors in suppressing the protest, fired rubber bullets at a peaceful person, and later lied to the public about the events. As a result of an internal police control service investigation, in 2016, a senior police official admitted that the use of rubber bullets to suppress the protest in the Harku centre was not in accordance with the Law Enforcement Act. According to a June opinion issued by the legal chancellor, police may not have been justified in using cable binders as handcuffs to suppress the protest.[87]

In France, between March and September 2016, there were 14 demonstrations in the country to protest against the labour law, leading to violent clashes between protesters and police forces. Several demonstrators and unions claimed police used excessive force during the demonstrations.[88] In Malta, the courts ordered the police commissioner and the attorney general to pay € 2,000 in compensation to a man whom the police had arrested following his one-man protest outside the prime minister's office in 2014.[89]

The policing of certain types of assemblies has, however, gradually improved in a number of Member States. For example, civil society actors report that policing of the annual pride parade in Cyprus ran smoothly, with police making extra efforts to ensure all participants felt safe.[90] The Commissioner for Human Rights of the Council of Europe has welcomed improved policies to protect freedom of assembly and expression of LGBTI persons in Latvia, as reflected in measures to protect gay pride events.[91] In Slovakia, the Bratislava Rainbow Pride parade took place in July 2016 without incident for the first time in two years. The annual gay pride parade in Kosice also took place in September 2016 without incident.[92]

2.3.4. Simultaneous assemblies

All persons and groups have an equal right to be present in public places to express their views. Where notification is submitted for two or more assemblies for the same place and time, the events should be held together if they can be accommodated, or, if this is not possible, the parties should be encouraged to engage in dialogue to find a mutually satisfactory resolution.[93]

In Poland, however, new legislation adopted in 2016 gave priority to 'recurring' assemblies (assemblies taking place at regular time intervals) over others, and limited the scope of counter-demonstrations against them.[94] CSOs have expressed concern that this puts some assembly organisers at a disadvantage, as the legislation prevents proposed assemblies from taking place at the same location or time as a recurring assembly.[95] The act is now in force, having been ruled constitutional by the Constitutional Tribunal in March 2017.[96]

2.3.5. Counter-terrorism/state of emergency laws

New counter-terrorism measures and state of emergency laws may also have an impact on the right to freedom of peaceful assembly.

In France, the state of emergency initially allowed authorities to ban gatherings as a precautionary measure on the grounds of 'threat to public order'. CSOs have expressed concerns that the powers granted to the government under the state of emergency were subsequently used (or threatened to be used) against those protesting a new labour law and environmental activists at the UN Climate Conference (COP21).[97] The Constitutional Council found the provision that allows barring people from participating in protests to be too broad and lacking sufficient safeguards.[98]

In Belgium, civil society expressed concerns that a new constitutional amendment in the counter-terrorism context extended the period of judicial arrest from 24to 48 hours, and included a proposal – which was ultimately defeated – to extend this period to 72 hours for offences to be defined by law.[99] They noted that this could be applied to protesters for what the law refers to as "participating in public meetings which pose a current threat to public order".[100] In Hungary, proposed assemblies have been prevented by the courts based on the opinion of the counter-terrorism centre, without specific substantiation of the reasons for the decisions in question.[101]

In Bulgaria, civil society expressed concerns that a 2016 counter-terrorism bill would, in the event of a terrorist attack, allow the government to impose a blanket ban on all public gatherings, including those unrelated to the terrorist attack in question.[102] In Poland, CSOs have raised concerns regarding the Counter Terrorism Act adopted in June 2016, provisions of which allegedly disproportionately infringe upon a number of rights, including the freedom of peaceful assembly. The definitions and terms provided in the Act did not appear to meet the requirement of foreseeability of a law in relation to freedom of peaceful assembly. As regards possible bans on public gatherings or mass events if heightened security levels were declared, the lack of temporal limitations on such bans in the law – and the impossibility of appeal against the decision to declare a heightened state of security itself – could also potentially lead to excessive interferences with key human rights and fundamental freedoms, including to freedom of peaceful assembly.[103]

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3 Finance and funding

This chapter provides a brief overview of (public) funding sources and frameworks, challenges and good practices in providing material resources to CSOs that promote and protect fundamental rights. Access to resources is an integral part of the right to freedom of association, as defined in Article 22 of the International Covenant on Civil and Political Rights and other human rights instruments, including the International Covenant on Economic, Social and Cultural Rights and the EU Charter of Fundamental Rights (Article 12). Legal frameworks and policies related to resources have a significant impact on the freedom of association; they can strengthen the effectiveness and facilitate the sustainability of associations or, alternatively, subjugate associations to a dependent and weak position. Undue restrictions on resources available to associations also affect the enjoyment of the rights to freedom of association and expression, and undermine other civil and political rights as well as economic, social and cultural rights.[1]

Article 13 of the UN Declaration on Human Rights Defenders recognises the important role civil society actors play in defending the principles that support human rights,[2] and enshrines the right to "solicit, receive and utilise resources" to promote and protect human rights. The concept of 'resources' is broadly defined to include financial assistance, material resources, access to international funds, solidarity, the ability to travel and communicate without undue interference, and the right to benefit from the protection of the state.

3.1. Funding sources

CSOs rely on funding and income from a variety of sources, including the public sector (national, regional or local level in Member States, EU level), international organisations, individual donors, foundations and philanthropies, corporations and (self) income generating activity.

3.1.1. Lack of data

Comprehensive data on public or private funding for human rights CSOs working within the EU are not available in most Member States.[3] This is in part because funding comes from various sources, including different central government ministries, budget lines, levels of local and regional government, as well as EU funds, EEA and Norway Grants, and private donations. From the data available, it is not possible to identify amounts of public funds specifically reserved for promoting and protecting fundamental rights in a given EU Member State. Comprehensive data on private donations are also not available. The lack of available data substantially restricts the scope of analysis on funding and shifts in public funding. More research and official data collection are therefore needed.

3.1.2. Government funding

The data that do exist on government funding of CSOs are not comparable between Member States. Most Member States do not differentiate between funding in the area of human rights for internal and external (EU) purposes. In addition, legal definitions of non-governmental or civil society organisations vary from one Member State to another, or do not exist at all – as is the case for Cyprus and Luxembourg.

Although overall comparisons are not possible, available figures do show reductions in funding in some EU Member States. In Greece, Ireland and the United Kingdom,[4] public funding has dropped significantly. There were reductions in at least two

other Member States (Denmark and Finland).[5] In Ireland, public funding of NGOs fell by 41 % in the period 2008–2014, with the total employment in CSOs falling by 31 % by the end of 2015.[6] In the United Kingdom, the total amount of government funding for civil society has seen a steady decrease since 2009, with a particular dip between 2010/11 and 2011/12. Figures from 2013/14 show an increase of GBP 0.5 billion from the previous financial year; however, this is still GBP 600 million below the amount spent in 2009/10. Furthermore, the increase in funds mostly occurred for larger organisations with an income of over GBP 100 million.[7] Much of the sector's funding is awarded by local government authorities who, in England, have faced a 40 % reduction in funding over the last five years.[8] In a 2015 report,[9] the Local Government Association estimated that, based on the same trajectory, the funding gap for local government would rise to GBP 10.8 billion by 2019/20. Local councils have a number of statutory duties. Their budgets have to be allocated to certain areas in accordance with those duties, which affects the amount of funding available for the voluntary sector.

Decreasing budgets have in some cases been the result of public spending cuts that form a part of broader austerity measures resulting from the economic crisis. For example, in Greece, according to Greek CSO representatives, NGOs receive no government funding from the state budget and their main source of funding comes from international and European private and public sources.[10]

However, available data also suggest that, in a number of countries, funding levels have remained relatively stable over the years or even increased somewhat.[11] CSOs in some countries – such as Croatia, Hungary and Poland – have reported that, while funding increased in the period 2011–2016, its distribution lacked transparency.[12]

Promising practice

Funding from lottery revenues

In a few EU Member States, CSOs benefit from lottery revenues (Croatia, the Czech Republic, Finland and Hungary). In Croatia, a 2016 governmental decision prompted funding available from such revenues to drop significantly – from 14.21 % to 6.88 % – for CSOs active in human rights, democratisation and development. Following a CSO campaign to amend this decision, the government increased the funding to 11.18 %. However, practical implementation of this decision is proceeding slowly.

Sources: M. Mrakovčić (2016), 'Bad decisions, the devastating effects' (Štetne odluke, razorne posljedice), 10 November 2016; Finland, Lotteries Act (arpajaislaki/lotterilagen), No. 1047/2001 as amended by Act No. 1286/2016; Libela (2016), 'Platform 112: How many voters would vote for the government if they knew that Mr. Hasanbegović will be the Minister of culture?' (Koliko bi ljudi glasalo za Vladu da su znali da će Hasanbegović biti ministar?), 29 April 2016.

In Hungary, between 2011 and 2016 (and even before then), organisations involved in litigation and advocacy in the fields of domestic violence, women's rights and gender equality did not receive any direct government funding other than the 1 % contributions from personal income tax.[13]

Promising practice

Tracking government funding

In Slovenia, an umbrella NGO – the Centre for information service, co-operation and development of NGOs (CNVOS) – provides useful analysis on the overall amount of government funding and its distribution. According to CNVOS, such funding obtained by NGOs grew until 2011, when there was a slight decline compared to the previous year. Since 2012, the amount of these funds has been decreasing.

In Estonia, a network of Estonian NGOs in cooperation with the Centre for Applied Social Sciences is developing a methodology on how and from where to collect data on government funding of NGOs. The project was ordered and is financed by the Estonian Ministry of the Interior.

For more information, see the CNVOS website and their webpage on financial transparency. See also Estonia, Network of Estonian Nonprofit Organizations (Vabaühenduste liit EMSL), personal communication with FRA on 23 February 2017.

Dependency on government funding

As complete data are not available for EU Member States, it is not possible to provide a concise overview of CSOs' dependency on public government funding. However, the reported degree is overall rather

high (ranging between 56 % and 85 %).[14] A notable exception is Italy, where 86.1 % of CSOs reported that their main source of funding comes from the private sector.[15] In France, only 7 % of all CSOs receive 70 % of government funding, yet their dependency rate is around 50 %.[16] In Portugal, for example, the breakdown of funding among CSOs working on fundamental rights showed a better balance among the three main income sources (public, private and own funding) than among other types of CSOs. In Slovenia, although only 20 % of NGOs have obtained the status of operating in the public interest, in 2015, these NGOs received 76.78 % of the total amount of all government funds allocated to NGOs by ministries (€ 55.84 million from the total of € 79.5 million). At the municipal level, their share was slightly lower, as they received 70.94 % of all municipal public funds allocated to NGOs (€ 70.50 million from € 99.46 million).

Earning an income from entrepreneurship allows NGOs in Estonia to achieve financial independence from funders. In 2009 and 2013, nearly one third (28 % each year) of NGOs reported that they earned income from entrepreneurship.[17] In addition to funding from the state and local governments, the main sources of income for NGOs in Estonia include donations from businesses and private persons, revenue from entrepreneurship and from member fees.[18] Fees may also be charged, for example, for conducting training, offering counselling, providing public services and selling merchandise (such as promotional items with the organisation's logo and/or slogan). Unless the funder sets any specific restrictions, training fees may even also be collected from participants when the organisation has received funding for carrying out the training.[19] In Estonia, changes in tax laws affecting NGO funding from other sources between 2011 and 2016 were related to the adopted changes in § 11 of the Income Tax Act[20] *(Tulumaksuseadus)* (effective as of 1 January 2015). Previously, the procedure for granting tax incentives to NGOs was unnecessarily complex, and the boundaries set by the decision-makers were blurred.[21] The changes of the Income Tax Act[22] has made applying for income tax incentives[23] clearer, faster and less bureaucratic for NGOs.[24]

3.1.3. Funding by foundations, private individuals and fundraising

The influx of international donors and funds from privatisation of economies helped to create and fund more CSOs, particularly during the EU enlargement periods in 2004 and 2007. This lead on the one hand to the creation of infrastructure and know-how in human rights advocacy, and on the other to dependency and lack of sustainability upon a donor's withdrawal.

While no official information is available on funding from private individuals, the culture of donating to CSOs varies between Member States and the types of issues. Although data are generally lacking with regard to contributions from private donors and foundations to CSO budgets, there are some notable exceptions – such as, for example, the Ariadne Foundation's and Erste Foundation's work on mapping and identifying trends in funding.[25] Individual and corporate donors have taken a more active role in countries where the tax percentage rule allows for donations to CSOs (the Czech Republic, Estonia, Germany, Hungary, the Netherlands, Poland, Romania, Slovakia and Spain).[26]

Most EU Member States have also experienced increased diversification of funding, which resulted, among others, from many private donors withdrawing their funding in 2004 and 2007, economic crises, and the increased trend in promoting social entrepreneurship, where other funding sources, such as crowdfunding, have taken prominence. Crowdfunding refers to a practice where a project is funded, typically via the internet, by a relatively large number of individual donors who each contribute a relatively small amount of money.

For private donors and institutional philanthropy to maximise their full potential, a favourable legal and tax environment is needed. A number of Member States already provide a good operating environment and tax incentives for donors, yet more could be done to encourage philanthropy.[27] With the EU, there is a need for better implementation of the non-discrimination principle and freedom of capital in guaranteeing free philanthropic flows. As cross-border philanthropy within the EU increases, the fiscal and administrative environment for this is not conducive. Several Member States have not yet removed tax discrimination, which is in conflict with the TFEU. Even where they have done so, practical or legal problems persist.[28] At a Spring of Philanthropy event in May 2017, the President of the European Parliament, Antonio Tajani, also raised the importance of a better environment for philanthropy and called for removing tax discrimination.[29]

3.2. Challenges in accessing funding

The UN Special Rapporteur on human rights defenders has pointed out repeatedly that laws curtailing civil society activities and their funding have been proposed and enacted recently in more than 90 states, including EU Member States.[30] Likewise, the former UN Special Rapporteur on the rights to freedom of peaceful assembly and of association continuously raised concerns regarding the availability of funding for civil society organisations.[31] In EU Member States, access to funding seems to have become particularly

challenging for human rights-focused CSOs in recent years, following the economic crisis.

The challenges reported by CSOs include:[32]

- Overall amount of available funding: shrinking budgets in some, but not all EU Member States;
- Funding cuts for some CSOs or certain activities, with a move away from funding watchdog functions and fundamental rights promotion and protection, and toward funding the provision of health care or social services;
- Obstacles to accessing available funding, including burdensome, complex and not always transparent procedures;
- Cumbersome reporting procedures;
- Funding often comes in the form of (short-term) project funding, while more long-term funding, as well as infrastructure funding, is often not available;
- Co-financing often constitutes a challenge, as do delays in payments of grants, leading among others to cash flow problems;
- Some European Commission grants pose geographical restrictions that prevent CSOs from attending meetings at the United Nations in Geneva, which hinders effective human rights advocacy at UN level, such as the contribution of CSOs to key human rights treaty processes when the EU and EU Member States are under review;
- Negative media and smear campaigns against CSOs that receive foreign funding, including, in some cases, the demand for them to brand themselves as foreign-funded organisations on all their materials;
- Organisations that represent persons with disabilities at EU level and in Member States face particular challenges with regard to limited financial resources, and are therefore not able to independently monitor the actions of their state on the rights of persons with disabilities.

3.2.1. Shifts in the allocation of public funding

Where data are available, it can be noted that the majority of government public funding has been directed at service provision in different fields (health, education, social affairs) at the expense of advocacy, litigation and public education in the period 2011–2017. This appears, among others, to be due to efforts in dealing with specific challenges, such as the accommodation of large numbers of recently arrived migrants, and/or to replace public services that have been cut as part of austerity measures.

In all EU Member States, human rights CSOs have continued or taken on the role of service providers. Generally, the degree to which CSOs are able to fulfil or retain their role as watchdog and to receive government funding for advocacy and litigation activities to address different human rights issues varies among EU Member States; more detailed data on allocation are not available.

Promising practice

Promoting advocacy activities

In Estonia and Poland, a specific amount of public government funding is dedicated to the promotion of advocacy and litigation activities.

Estonia has previously funded such projects. For example, in 2014, in its third round of applications via the Open Estonia Foundation (Avatud Eesti Fond), six projects aiming to increase NGOs' advocacy capacity were funded. Since October 2016, 25 NGOs have been participating in a two-year advocacy programme (*Huvikaitselabor*) that aims to support NGOs in setting targets and implementing advocacy activities.

Sources: Open Estonia Foundation (2017), 'Projektid vabaühenduste huvikaitsevõimekuse suurendamiseks'; Estonia, Poliitikauuringute Keskus PRAXIS (2016), 'Ootame vabaühendusi kandideerima huvikaitselaborisse', Press Release, 13 September 2016.

At the same time, human rights CSOs report problems with securing funding for advocacy and litigation. For instance, in Slovenia, there are no public tenders for human rights advocacy, only for service provision or networking. Strategic litigation, which is crucial to achieve positive changes in the field of human rights, has to date never been funded. In Slovenia, funding is available for human rights through EU projects.[33] However, the lack of opportunities to obtain the required 20 % government co-funding for EU funded projects – which usually covers 80 % of the project costs – creates a large obstacle for advocacy work. In Ireland, there is some evidence that state agencies are increasingly using binding service level agreements, which specifically prevent state funds from being used for advocacy purposes. This trend will need to be monitored to ensure CSOs' continuing ability to advocate for human rights.[34]

CSOs also reported that many calls for proposals – particularly for work within the EU – currently exclude litigation as a fundable activity.

3.2.2. Sustainable and accessible funding

Many – in particular smaller – CSOs have difficulties ensuring their long-term financial sustainability.[35] This appears to be partly due to an over-reliance on single sources of funding, which leads to difficulties when donors shift their priorities or withdraw, and partly due to donors providing funding on a project basis rather than core funding to cover general running costs. This results in short-term planning and a lack of long-term strategic thinking. It can also make CSOs reluctant to take action that could jeopardise their relationship with donors, especially when these are government bodies, and places a drain on organisations.

Many CSOs have not invested in creating support and raising funds from a broad public base. As highlighted by experts during a meeting on 'communicating rights' organised by FRA in spring of 2017, this is partly due to CSOs not sufficiently investing in good communication on human rights problems towards the general public (often because of a lack of funding for such activities).[36] CSOs generally realise that it is crucial to positively frame public opinion on human rights issues, yet often fail to protect their own 'brand'. Without the effective defence of human rights in the public sphere, opponents of human rights can more easily shape public opinion.[37]

An additional challenge is the often overlooked fact that CSOs have to compete for the same funding. EEA and Norway Grants set a positive example by also supporting cooperation across civil society through funding platforms and networks among civil society, peer-to-peer learning and regional cooperation between civil society organisations.[38] Furthermore, awarding grants to operators that are independent from governments and are selected based on a tender procedure – as done successfully by EEA and Norway Grants – has proven to be a promising practice in advancing CSO support, project implementation, coaching, advice, resource building and organisational development.

Promising practice

Promoting sustainable forms of funding

In Sweden, the commission of the "Palette for a strong civil society" has proposed introducing more long-term funding and increasing the funding of non-profit organisations themselves rather than their projects – that is, changing from project funding to core funding. The report has been submitted for consideration by the government.

In the Netherlands, the government is moving towards funding large coalitions of NGOs on a more long-term basis, which also allows for 'core funding' and the covering of administrative costs.

In Latvia, in 2015, the government supported the establishment of an NGO fund financed by the state. One of the fund's specific priorities for 2016 was to strengthen democratic values and the observation of human rights, by promoting civil society activities, civic participation and social responsibility, and by strengthening human security as well as NGO advocacy efforts.

Sources: Sweden, Statens Offentliga Utredningar (2016), Palette for a strong civil society, government and inquiry report (Palett för ett stärkt civilsamhälle), SOU 2016: 13; The Netherlands government webpage on NGO funding; The Latvian Society Integration Foundation webpage on awarded projects; Latvia, Cabinet of Ministers (Ministru kabinets) (2015), On Concept Report "About Establishment of the State Funded Foundation for Non-governmental Organisations" (Par konceptuālo ziņojumu "Par valsts finansēta nevalstisko organizāciju fonda izveidi"), 16 December 2015.

There is a huge variety of CSOs in terms of size and professionalism – ranging from highly professional structures with permanent paid staff to small volunteer groups. Particularly smaller organisations can struggle with hiring staff skilled for tasks that require, for example, legal, communication and media, technical, fundraising or accounting expertise. The absence of core funding also means that staff are more likely to only be hired on short- or limited-term employment contracts, which can make it harder to attract and retain highly experienced and skilled experts.

Several organisations have made efforts to support CSOs in the EU by strengthening their resources. These include the OSCE/ODIHR; EEA and Norway Grants;[39] the European Committee of the Regions, with its 'massive open online courses' (MOOC)[40] on EU policies, including on Roma, access to EU funding, etc.; and the European Commission's 'Europe for Citizens' programme,[41] which offers operating grants for CSOs at the European level. (For civil society in developing countries, there are more programmes targeted at capacity building than for EU-internal organisations).[42]

Promising practice

Providing access to expertise

At the local level, the city of Utrecht established an online interactive platform that provides access to information and expertise on human rights impact assessments, entitled the Human Rights Impact Resource Centre (HRIRC).

The HRIRC provides Dutch intergovernmental organisations, national, regional and local governments, and companies, with instruments to better focus their human rights efforts. Activists and NGOs can also use the HRIRC as an analytical and lobbying tool.

For more information, see the 'resources' webpage of FRA's Toolkit for Joining up fundamental rights.

Strength through networks

Some CSOs support each other to enhance their resources. For example, the Human Rights House Zagreb shares computers and printers in a joint resource centre.

A number of bigger CSOs or networks have developed capacity-building activities for their own structures, as well as for volunteers.

Nine established CSO accountability networks from across the globe together with the International Civil Society Centre (ICS) have developed a "Global Standard for CSO Accountability", which includes 12 commitments and associated key actions that CSOs promise to deliver and for which they can be held accountable.

For more information, see the Human Rights House, Amnesty International, European Disability Forum, International Lesbian and Gay Association - Europe, ICS and Global Standard for CSO Accountability websites.

3.2.3. Administrative requirements in applying and reporting

CSOs report various difficulties in accessing available funds.[43] In some cases, these result because donors impose conditions on CSOs, such as the requirement to find partner organisations in other countries. CSOs note that while this can be somewhat challenging, it is exacerbated by language barriers.[44] In addition, the requirement to attain a minimum threshold of annual turnover potentially excludes smaller organisations from applying in the first place.[45]

CSOs also report that drafting successful applications for funding requires highly trained, specialised and experienced staff, which they do not always have at hand (or cannot afford). These factors seem to disproportionately affect smaller CSOs and those with fewer resources, as well as volunteer organisations.[46]

Administrative requirements relating to reporting on the spending of grants are often not proportionate to administrative resources, or on some occasions to the (relatively small) amounts of funding. In Croatia, changes in accounting rules led to a higher compliance burden for NGOs. Hungary required NGOs with a public interest status to switch to double-entry bookkeeping.

Transparency requirements, although generally legitimate, can also place additional burdens on CSOs. This sometimes creates deep divisions among civil society actors in the same country, decreasing their effectiveness. Since 2015, in Latvia, annual reports of associations and foundations must contain information on every donor and how their donation was used, even if the donation was € 1. In France, the obligation to keep revenue and expenditure statements was eased for associations and foundations.[47] In Romania, a submitted draft law would oblige NGOs to publish biannual reports on their operating budgets. If enacted, any NGO that fails to publish these reports risks being closed within 30 days of non-reporting.[48]

With respect to Poland's 'National Freedom Institute' – a new central-level structure to support the development of civil society – the OSCE/ODIHR has noted that the executive branch appears to have decisive influence over the institute's governance, organisation and operation, including the planning and reporting of finances and programmes, as well as internal decision-making processes.[49]

3.2.4. Foreign funding rules

The ability to seek, secure and use financial resources from domestic, foreign and international sources is an essential element of the right to freedom of association. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has noted that states are obliged to facilitate, not restrict, the access of associations – both registered and unregistered – to funding, including from foreign sources. He also pointed out that any requirements in this area must conform with "those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability" and must comply with "generally applicable foreign exchange and customs laws".[50] Furthermore, "no laws should criminalise or delegitimise activities in defence of human rights on account of origin and funding thereto".[51] It has also been noted that within the EU, restrictions on the funding of CSOs from other EU Member States may violate the free movement of capital.[52] In addition, the right to private and family life and to protection of personal data may be violated when the names of (foreign) donors are required to be published.[53] When funding from abroad is treated differently to domestic funding, the principle of non-discrimination may also be violated.[54]

Currently, Hungary is the only EU Member State that has – with the aim, among others, of combating money laundering – introduced legislation obliging CSOs to declare themselves as 'organisations in receipt of foreign funding' for donations received from abroad above a certain threshold. Private funding obstacles also apply to donors.[55] Such obstacles have included changes in tax laws, added administrative burdens,[56] as well as difficulties in cross-border financial flows even within the EU.

The Hungarian law on foreign-funded NGOs, adopted on 13 June, introduced new obligations for certain categories of NGOs receiving annual foreign funding above HUF 7.2 million (approximately € 24,000) to register and label themselves in all their publications, websites and press material as 'organisations supported from abroad'. Such NGOs are also required to report specific information on the funding they receive from abroad to the Hungarian authorities, including when a donor provides funding above HUF 500,000 in a given year, detailing data concerning the donor and each donation. These data are included in a special registry, which is then made available to the public. The concerned organisations face sanctions if they fail to comply with the new registration, reporting and transparency obligations.

The Council of Europe Commissioner for Human Rights,[57] the Council of Europe's Parliamentary Assembly (PACE)[58] and the Venice Commission[59] all criticised (earlier versions of) the draft law for violating the freedom of association. Foundations as well as many CSOs have opposed the introduction of foreign funding restrictions and other limitations on civil society in Hungary, and the constitutionality of the law has been challenged by a group of CSOs before the Hungarian Constitutional Court.[60] In July 2017, the European Commission instituted infringement proceedings in relation to this law, taking the view that Hungary is failing to fulfil its obligations on the free movement of capital (Article 63 TFEU), as the law indirectly discriminates and disproportionately restricts donations from abroad to civil society organisations. The Commission also maintained that the law violates the right to freedom of association and the right to protection of private life and personal data enshrined in the EU Charter of Fundamental Rights.[61]

Similar provisions to label certain NGOs as 'foreign agents' were included in a Slovakian proposal,[62] which was ultimately defeated in parliament. The Commissioner for Human Rights of the Council of Europe noted that in Hungary, inspections took place in 2014 as a result of a governmental publication of a list of NGOs which had received financial support from EEA and Norway Grants. Those NGOs were referred to as 'paid political activists' aiming to 'enforce foreign interests' in Hungary. The government cited national sovereignty and security as justification for the measures targeting civil society groups.[63] The UN Special Rapporteur on the situation of human rights defenders indicated that Hungarian government officials had acknowledged that the investigation was 'political', and that the enormous amount of time and resources spent on the futile scrutiny of civil society could have been put to better use.[64] A group of UN Special Rapporteurs expressed their criticism regarding the above mentioned legislative changes both in a communication sent to the government of Hungary and in a subsequent press release.[65]

3.2.5. Addressing the financing of organised crime or terrorism

To pursue their objectives, associations should be able to both generate income from their activities and to seek funding from public and private sources within and beyond the state in which they are established. For this reason, it is important that associations are able to approach the widest range of possible donors.[66] Asset freezing and/or seizure, as well as financial controls, are measures often taken in the fight against terrorism. However, such measures should not target legitimate CSOs.[67] The ECtHR has ruled that the income and assets of associations should not be seized or confiscated as a means of preventing them from pursuing admissible objectives.[68]

Concerns were also expressed in this regard about the application of the UK government's Terrorist Asset Freezing Act of December 2010, which affected charities operating in areas under de facto control of proscribed groups, for example, in Syria. Media reports indicate that more than 300 UK-based charities have had their bank accounts closed in the past two years, and thousands more charities have had operations disrupted by delayed payments, including charities such as Oxfam and Save the Children; Muslim NGOs were particularly affected.[69] The government has since provided a guidance note on this issue.[70]

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4
Right to participation

The right to participation in public affairs is recognised in Article 25 of the International Covenant on Civil and Political Rights[1] and was recently reaffirmed in the Council of Europe Guidelines for civil participation in political decision-making.[2] One of its components is civil participation, defined as "the engagement of individuals, NGOs and civil society at large in decision-making processes by public authorities".[3]

Article 11 of the TEU mentions that the EU institutions "shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action" and that they "shall maintain an open, transparent and regular dialogue with representative associations and civil society". In fact, seeking input into law and policy proposals by stakeholders, including from civil society, is one of the tools for democratic, evidence-based policymaking. It serves to add democratic legitimacy, CSO expertise and a 'reality check' to a process or legal/policy proposal, and helps to increase ownership among constituencies.

There seems to be wide agreement on the need to involve civil society organisations in policymaking, from local to EU levels. However, in the practical implementation of this concept, the various possible levels of CSO involvement and the diverse methods available for involving them are often not fully made use of. In addition, there is often a lack of clear criteria that need to be fulfilled to be recognised as a legitimate actor.

The national legislator has a special responsibility to ensure that national legislation transposing EU law obligation is in conformity with fundamental rights.[4] In this context it is worthwhile to underline the watchdog role and the relevant expertise often delivered by civil society actors in the legislative process which can be of vital importance to assist states in complying with the Charter.

Some form of access to the decision-making process exists across all EU Member States,[5] as well as at the level of EU institutions.[6] Although there are a number of promising practices – in particular at the local level - generally access to (and real impact on) the decision-making process remains inconsistent and is not very transparent.

However, CSOs have identified a number of obstacles that hamper full and effective participation and access to the decision-making process. Challenges include:[7]

- Limited access to information on policy or legal initiatives;
- Lack of minimum standards or clear rules on implementing the right to participation, or lack of knowledge about them and hence inconsistent implementation;
- Lack of political will, or lack of understanding that consultation is not a 'box ticking' exercise but, if done well, contributes to better quality policymaking;
- Lack of awareness of the various modes and methods, and lack of skills, of how to involve stakeholders in law and policymaking in a meaningful and effective way;
- Specific challenges regarding, and barriers to, involving persons with disabilities, including the lack of necessary measures to ensure that web accessibility standards are met, and the need to offer

official information, where needed, in sign languages, Braille, augmentative and alternative communication, as well other accessible means, modes and formats of communication, such as easy-to-read formats;

- Tight timelines (including for administrations themselves) as well as tight budgets and human resource allocations in public services for this purpose;
- Lack of clarity and transparency regarding who is consulted before decisions are made. CSOs also report that often there is no systematic consultation of all key players;
- Cuts to relevant funds can indirectly affect CSOs' ability to participate in decision-making in a meaningful way;
- Insufficient or lack of feedback on CSO input or reasoned information on what was or was not taken into account;
- Lack of trust between public services and civil society organisations.

4.1. Obligations, guidelines and minimum standards

While there are a number of international guidelines and references,[8] there are no binding EU-wide rules, guidelines or minimum standards on access to the decision-making process. The UN Human Rights Council has emphasised "the crucial importance of the active involvement of civil society, at all levels, in processes of governance and in promoting good governance, including through transparency and accountability, at all levels", noting that this is "indispensable for building peaceful, prosperous and democratic societies".[9] Additionally, the UN Human Rights Council has also requested the UN Office of the High Commissioner for Human Rights to prepare a set of draft guidelines on the effective implementation of the right to participate in public affairs.[10] The Council of Europe has recommended that NGOs should be "encouraged to participate in governmental and quasi-governmental mechanisms for dialogue, consultation and exchange, with the objective of searching for solutions to society's needs."[11] In particular, they "should also be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation."[12] This has been further elucidated in the Code of Good Practice for Civil Participation in the Decision-Making Process, adopted by the Council of Europe Conference of INGOs in 2009.[13]

Promising practice

Guidelines for meaningful civil participation in political decision-making

The Council of Europe recently adopted new Guidelines for civil participation in political decision making. The guidelines are based on practices and standards in Council of Europe Member States, international standards and input received during public consultations. They outline key principles for promoting dialogue, consultation and cooperation between civil society and authorities, and contain recommendations focusing on four core types of public participation: the provision of timely information, the organisation of consultations, the encouragement of dialogue, and active public involvement.

Source: CoE, Committee of Ministers (2017), Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017 at the 1295th meeting of the Ministers' Deputies.

Promising practice

Effective participation in public affairs

The OHCHR is currently preparing draft guidelines on the effective implementation of the right to participate in public affairs.

For more information, see the OHCHR webpage on the draft guidelines process.

Promising practice

Promoting access to information and public participation

The UNECE Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was adopted in 1998. It links environmental rights with human rights, grants the public rights and imposes obligations on parties and public authorities regarding access to information, public participation and access to justice. The convention is not only an environmental agreement, but also a convention for government accountability, transparency and responsiveness. The EU has been a party to the convention since 2005. The Arhus Convention's approach to participation could serve as a good practice example for participation processes in the field of human rights.

For more information, see the webpage on the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

A few examples exist in EU Member States of binding guidelines or regulations on when and how decision-makers should involve CSOs (or other stakeholders) in law and policymaking.

Consulting with the public in law and policymaking

In Croatia, the Act on the Right to Access Information obliges government bodies (local, regional and national) as well as all public bodies to conduct public consultations before adopting laws, regulations, general acts or other strategic or planning documents that affect the interests of citizens and legal persons.

Source: Croatia, Croatian Government (Vlada republike Hrvatske) (2013), Act on the Right to Access Information (Zakon o pravu na pristup informacijama), Official Gazette 25/13, 85/15, 28 February 2013.

Promising practice

Involving stakeholders in the legislative process

In Estonia, a 'Good Practice of Involvement' (GPI) was created. This is a non-binding partnership and cooperation document that recommends that ministries and other administrative agencies involve stakeholders (interest groups affected by the planned change) in the preparation of strategic documents – for example, drafts of laws, regulations and directives, decrees, EU legislation, conventions and international agreements, etc. It is based on the Rules for Good Legislative Practice and Legislative Drafting regulation.

For more information, see Estonia (2011), Rules for good legislative practice and legislative drafting (Hea õigusloome ja normitehnika eeskiri), 22 December 2011.

States also have to involve civil society in the process of drafting reports to the Universal Periodic Review at the UN Human Rights Council. Under the provisions of Human Rights Council resolution 5/1, states are encouraged to prepare the information through a broad consultation process at the national level with all relevant stakeholders.[14] In addition, the International Convention on People with Disabilities prescribes detailed rules for its own implementation, including civil society involvement.

Promoting participation of persons with disabilities

The UN Convention on the Rights of Persons with Disabilities (CRPD) obliges states to closely consult with and involve persons with disabilities and their representative organisations in all decisions that are relevant to them. The EU and 27 of the 28 EU Member States have ratified this convention.

However, in practice, there is often a lack of necessary measures to ensure the full application of accessibility standards to websites, and to offer information in adequately accessible formats – including in sign languages, Braille, augmentative and alternative communication, and other accessible means, modes and formats of communication for persons with disabilities, such as easy-to-read formats – in official interactions.

The resulting lack of information can impede full involvement by persons with disabilities and organisations that represent them.

Source: European Disability Forum, communication by email, 10 October 2017.

However, even when rules are in place, they are not always known or transparent and consequently are not systematically implemented[15] or invoked. Systematic monitoring of the inclusion of CSOs in the decision-making processes very rarely occurs. In Slovenia, CNVOS advocacy experts have been monitoring the openness of governmental institutions towards the public and CSOs in policymaking since 2006. Through 'The Mirror to the Government' project, experts count the number of cases where different state bodies have breached consultation deadlines that are set in the government's rules of procedure, along with how severely each case was breached. Between its adoption in 2009 and 1 March 2017, the Resolution on Legislative Regulation (*Resolucija o normativni dejavnosti*) was breached 709 times.[16]

In Romania, although legislation deems public consultation compulsory when an executive agency proposes new legislation or regulations, only a limited number of legislative proposals actually observed this requirement in 2014: 18.2 % of the bills initiated by local councils; 8 % of those proposed by county councils; and 18.5 % of the bills initiated by ministries.[17]

In Spain, according to CSO reports, numerous reforms advocated by the government – such as the Organic Law on the Judiciary or the Law on Legal Aid – have allegedly been carried out without consultation of civil society, though international standards require such consultation.[18]

4.2. Methods and tools

Broadly speaking, five different levels of involvement can be distinguished:

1) **Inform:** one-way provision of information by public authorities, where no interaction with or involvement by CSOs or the public is required or expected.

2) **Consult:** public authorities seek to obtain feedback on a specific, ready-made legal or policy proposal, or development.

3) **Involve:** working directly with the public and/or CSOs throughout the process to ensure that concerns are understood and considered.

4) **Collaborate:** partnership and co-creation in each aspect of decision-making.

5) **Empower:** final decisions are placed in the hands of the public.[19]

Throughout the EU, public services most often implement the first two levels of involvement. The three other levels – involve, collaborate and empower – are implemented to a much more limited extent. If collaboration or empowerment take place at all, they most likely occur at the local level. The terms 'consultation' and 'participation' are often used interchangeably, including in relevant legislation and guidelines, although these terms do refer to different degrees of involvement and to different methods.[20]

Among public administrations, there seems to be a lack of awareness of the various modes and methods,[21] and lack of skills, of how to involve stakeholders in law and policymaking in a meaningful and effective way. Some public authorities have started training public officials in the area of participation. This includes building capacity on how to design appropriate participation processes, and training in the use of specific participation methods – including facilitation techniques, such as appreciative inquiry processes,[22] focus groups and Wisdom Councils,[23] storytelling and story harvesting, visualisation tools, etc.[24]

Promising practice

Encouraging public participation

The Slovenian Ministry of Public Administration, in cooperation with CNVOS, held several training sessions for public officials and issued guidelines for public participation (in Slovene) as well as a tailored-made manual for public officials (in Slovene) on how to go about public participation.

For more information, see Slovenia, Ministry of Public Administration (Ministrstvo za javno upravo) (2015), Guidelines on inclusion of the public in decision-making processes: Recommendations and forms (Smernice za vključevanje javnosti v pripravo predpisov: Priporočila in obrazci); and Slovenia, Ministry of Public Administration (Ministrstvo za javno upravo) (2015), Involving the public in the preparation and planning of regulations: Manual for planning and implementation of processes of consultation (Vključevanje javnosti v pripravo predpisov: Priročnik za načrtovanje in izvajanje posvetovalnih procesov).

Promising practice

Participation and engaging the public

Under the lead of its ministry of agriculture and environment, Austria runs a resource website for 'participation and sustainable development in Europe' (in German and English). It gives an overview of methods and resources, and displays the Austrian 'Standards of Public Participation', which the Austrian Council of Ministers adopted in 2008 as a (non-binding) recommendation to be applied by the Austrian federal administration. The website also features an implementing guide.

For more information, see the Participation and sustainable development in Europe website.

Promising practice

Training and support in the European Commission

Over the past years, the European Commission's Human Resources Directorate has trained over 1,500 EU public servants in participation and engagement methods. There is an established community of practice on 'participatory leadership', as well as an internal consultancy team that supports participatory processes and events across the Commission and in other institutions.

Source: European Commission, DG HR Unit B3, communication by email, 15 September 2017.

A global framework for participation

The International Civil Society Centre (ICS) has compiled the Civic Charter – The Global Framework for People's Participation – to which CSOs are invited to subscribe.

For more information, see the Civic Charter and ICS websites.

Improving involvement in decision-making processes

Participants of the Civil Society Forum organised by OSCE/ODIHR in April 2015 developed Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes (launched in September 2015).

For more information, see OSCE (2015), Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes.

4.3. Participation in practice

4.3.1. Access to information

Generally, laws on access to information have been improved throughout the EU in recent years. At the same time, a survey among CSOs in Europe found that 43.4 % of CSOs consider access to government information not to have changed, but almost as many (38.9 %) see a worsening of the situation in practice. Respondents from Bulgaria and Romania particularly see a declining trend.[25]

CSOs report that different ministries or the EU Commission Directorates-General can have varying practices: some are more open regarding access to information for consultation purposes, while others are more closed. Furthermore, it can depend on the specific topic in question.[26] Other CSOs have pointed out that public consultations tend to be published on the relevant ministries' homepages at a rather late stage, which makes accessing information impossible or inefficient.[27]

Promising practice

Creating one-stop-shops for information on public consultations

A number of EU Member States, including Bulgaria, Finland, Greece, Malta, Romania and Slovenia, as well as the European Commission, have created special websites as one-stop-shops for information on upcoming and ongoing consultations.

However, the use of such websites is not always consistent among ministries or local authorities.

For Bulgaria, see the public consultation portal; for Finland, see the consultations website run by the Ministry of Justice; for Greece, see the consultation platform website; for Malta, see the public consultations webpage, established by the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties; for Romania, see the consultare website; for Slovenia, see the eDemokracija web portal and the Stop to Bureaucracy (Stop Birokraciji) website. See also the European Commission webpage for public consultations.

4.3.2. Consultation

Although a wide range of possible methods and tools are available for participation and consultation, most often only online consultations tend to be used.[28] If consultation meetings take place, these are often considered 'informal' and the criteria determining the choice of invitees are not always clear, including for consultation meetings by EU institutions.[29]

Timing

There are two aspects to the timing of consultations: what the timeline is for submitting contributions and at what stage of the process this can be done.

Civil society experts state that, on several occasions, consultations have come at such a late stage that input cannot or will no longer be taken into account.[30] In particular, there seems to be a growing trend of fast-tracking procedures relating to asylum and security.

As regards the timeframe given for consultations, there is no harmonised approach among Member States – and often not even within individual Member States. For example, in Latvia, mandatory public participation in the elaboration of legal provisions should be announced 14 days prior to the submission of a draft law to the relevant decision-making body. Meanwhile, Romanian law stipulates a minimum of 10 days for consultations.

Even where timeframes for consultations are set, they are not always respected – such as, for example, in an instance in Denmark.[31] Particularly in the area of asylum and migration, the timeframe given for recent consultations seems very limited. For example, in Germany, organisations were offered very short time periods – varying between 'a few hours', 30 hours and one week – to comment on ministerial draft bills, even though the bills had profound consequences for migrants and refugees.[32] In Cyprus, in October 2016, the asylum legislation was amended to transpose the recast Asylum Procedures Directive 2013/32 and the recast Reception Conditions Directive 2013/33. The texts of the bills were extensive, but the NGO – the main provider of legal advice to asylum seekers for over a decade – was only given 10 working days to go through them. Out of the several issues flagged, just one was taken on board.[33] Hungary and Poland have also had several instances of no notice or short notice for consultations.[34]

At times, NGOs have not been consulted at all. For example, in Slovenia, the National Assembly adopted an amendment to the Aliens Act (*Zakon o tujcih*) in an emergency legislative procedure. This means no time was provided for the necessary public consultation phase,[35] and CSOs were not involved in the preparation phase that took place in working bodies.[36]

Taking input into account

In several instances, CSOs report that consultations seem to be a mere 'box ticking' exercise.[37] There is often a lack transparency regarding how input is analysed or taken into account. For the most part, CSOs do not receive any information explaining what information was or was not taken into consideration and why.[38]

4.3.3. Involvement

Involvement beyond consultations is rarer. This includes public authorities working directly with the public and/or CSOs throughout the process to ensure that concerns are understood and considered – for instance, via joint working groups.[39]

Particularly at the local level, there are a number of interesting and successful examples of consultation and participation.[40]

Promising practice

Involvement at the local level

The 2012–2015 Barcelona Social Inclusion Plan was the result of the joint work between the Barcelona City Council and Barcelona civil society organisations, who came together under the framework of the Citizens' Agreement for an Inclusive Barcelona (ACBI). The plan was drawn up with the participation of citizens, organisations, municipal technical staff and representatives of all political groups of the Barcelona City Council, under the leadership of the office of the Deputy Mayor and the Department of Quality of Life, Equality and Sport of Barcelona City Council.

For more information, see the 'resources' webpage of FRA's Toolkit for Joining up fundamental rights.

In Austria, the province of Vorarlberg has trained around 100 public servants at regional and local levels in participatory methods. It systematically applies substantial methods of involvement at the local level – using, among others, the 'Wisdom Council' method.

For more information, see the Land Vorarlberg – Büro für Zukunftsfragen (Office for future-related issues (OFRI)) and Center for Wise Democracy websites.

Promising practice

Successfully engaging with persons with disabilities

The Maltese government's approach to adopting regulations that affect persons with disabilities represents good practice with respect to engaging in consultations and dialogues with civil society. The Committee for a Right Society, which is composed of persons with disabilities and their relatives, representatives of persons with disabilities and other experts, designed the first National Disability Policy for Malta (2014).

The Maltese government also promotes daily meetings with persons with disabilities, stakeholders and CSOs, and the Parliamentary Secretariat holds weekly meetings with the National Commission for the Rights of Persons with a Disability (NCRPD), the Support Agency, and other stakeholders. Through these meetings, the NCRPD and the Support Agency are informed about relevant governmental projects and policies.

In light of this framework, the Maltese Parliament passed the Sign Language Act (2015), which makes sign language an official language for the Republic of Malta. The first draft was discussed with the Malta Deaf Association and other experts. The Maltese Parliament also passed legislation that makes mandatory the inclusion of at least one person with disabilities within governmental boards.

Source: European Disability Forum, communication by email, 10 October 2017.

Promising practice

Involving CSOs in policy and decision-making processes

One of the outcomes of the EEA and Norway Grants' NGO programmes of the last financing period was to increase the involvement of NGOs in policy and decision-making processes with local, regional and national governments.

For more information, see EEA and Norway Grants, Annual Report 2016–2017: Working Together for a Better Future.

Long-term involvement at EU level

At EU level, examples of civil society platforms that were set up with the aim of a long-term involvement process include the European Migration Forum, run by European Commission's DG HOME and the European Economic and Social Committee (EESC); the Frontex Consultative Forum; the Fundamental Rights Agency's Fundamental Rights Platform (FRP); and the EESC itself.

For more information, see the 3rd meeting of the European Migration Forum, Frontex Consultative Forum, Fundamental Rights Platform and EESC websites.

Promising practice

Securing and monitoring government commitments

The Open Government Partnership (OGP) is a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption and harness new technologies to strengthen governance.

The OGP is overseen by a steering committee, including representatives of governments and CSOs. Apart from seven EU Member States (Austria, Belgium, Cyprus, Hungary, Poland, Portugal and Slovenia), all other Member States participate in the OGP. The OGP monitors the implementation of the commitments that participating countries have subscribed to, as well as the process of implementation and the extent to which civil society was involved.

For more information, see the OGP's website.

4.3.4. Collaboration and empowerment

Collaboration (co-creation) and empowerment in policymaking are rare. When they do take place, they do so mostly at the local level.

Community engagement

FRA's project on joined-up governance highlighted that the best advocates for fundamental rights are the people who hold these rights. Hence, "effective community engagement has proven to be a key success factor when implementing fundamental rights. Identifying partners in the community and sharing knowledge creates greater understanding and the basis for working together towards fundamental rights implementation".

For more information, see the 'engaging the community' webpage of FRA's Toolkit for Joining up fundamental rights.

4.4. Structures

Several Member States have set up fixed mechanisms for – regular and/or general – consultations and broader cooperation with CSOs, beyond consultations for specific legislative or policy proposals. These include, for example, the National Council of the Third Sector in Italy and the Government Council for Non-Governmental Non-Profit Organisations in the Czech Republic. In Slovakia, the Governmental Council for NGOs was established as an advisory body for the government. In Luxembourg, the Ministry of Foreign and European Affairs has set up an inter-ministerial committee for human rights.[41] In Bulgaria, the National Coordination Mechanism on Human Rights (NCMHR) was set up.[42]

At times, such mechanisms are theme- or sector-related, particularly with respect to disability. This again highlights how adoption of the CRPD has driven wide-ranging processes of change at the national level. For example, in Portugal, disability NGOs participate in the definition of policies and laws for the rehabilitation and integration of people with disabilities with a seat at the National Council for Solidarity, Volunteering, Family, Rehabilitation and Social Security. In the Netherlands, the 2015 Social Support Act, which aims to support independent living and is implemented by the municipalities, obliges local authorities to give citizens and other stakeholders an opportunity to participate in policymaking as part of the implementation of the Social Support Act. However, this is not the case everywhere: in Luxembourg, NGOs working for the rights of persons with disabilities have expressed disappointment that the government has not enabled a serious and regular dialogue with civil society.[43]

There are other examples of CSO representatives participating in advisory bodies or working bodies in which legislation is prepared. These include Portugal (on gender equality); Slovenia (in relation to the Volunteering Act and the Environmental Act); Italy (on gender-based violence); and Malta (on LGBTIQ), where an advisory body to the ministry was established, providing input on legislation, policies and other measures relevant to LGBTIQ rights. The Platform of Human Rights Organisations in Malta has hailed this as a best practice in the area of engagement between governmental and non-governmental entities.[44]

However, the practice is not homogenous among Member States and the reverse can also be seen in the reporting period. For example, in Poland, the Council on Preventing Racial Discrimination, Xenophobia and Related Intolerance, which was established in 2013 to coordinate the works of different public institutions in combating hate speech and other acts of intolerance, and was also a platform for discussions with CSOs, was abolished.[45] In the Netherlands, the Minorities Consultation Act was repealed in 2013. From 1997 to 2013, this act regulated consultations between a limited number of organisations representing the interests of a specific ethnic minority or migrant community and the national government. These organisations were statutory dialogue partners of the government and were consulted for all policies that affected minority communities.

In at least two Member States, special positions were created in government structures to foster civil society and state relations. In the United Kingdom, in October 2016, a Special Adviser was appointed to lead the development of the government's relationship with the voluntary sector. In Slovakia, the Plenipotentiary for Civil Society development was set up to facilitate communication and cooperation between CSOs and governmental institutions and to initiate policy and legislative changes with regards to the development of civil society and the participation of CSOs in decision-making.

Endnotes

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20 CoE (2009), Code of Good Practice for Civil Participation in the Decision-Making Process, CONF/PLE (2009)CODE1, 1 October 2009.
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22 See the David Cooperrider website.
23 Developed by the Center for Wise Democracy, and applied, for example, by the regional and local public services in the Austrian region of Vorarlberg, see the website of Land Vorarlberg – Büro für Zukunftsfragen (Office for future-related issues).)
24 For a more comprehensive overview of methods available, see for example, Unites States Environmental Protection Agency, Public Participation Guide; Slovenia, Ministry of Public Administration (2015), Involving the public in the preparation of regulations: Manual for planning and implementation of processes of consultation (*Vključevanje javnosti v pripravo predpisov: Priročnik za načrtovanje in izvajanje posvetovalnih procesov*); Art of Hosting, resources webpage.
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26 FRA expert meeting, 'Supporting an enabling and protective space for civil society', Vienna, May 2017.
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31 The Danish Bar and Law Society (*Advokatsamfundet*) (2016), "*Mange lovforslag overholder ikke den anbefalede høringsfrist*", 8 July.
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37 FRA expert meeting, 'Supporting an enabling and protective space for civil society', Vienna, May 2017.
38 *Ibid.*
39 See CoE, Committee of Ministers (2017), Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017 at the 1295th meeting of the Ministers' Deputies, paras. 27 and 28, ["27. Active involvement refers to opportunities for civil participation in decision-making processes provided by public authorities to individuals, NGOs and civil society at large that extend beyond the provision of information, consultation or dialogue. *It may include working groups or committees for the co-development of documents as well as of policies and laws ultimately requiring a decision by the appropriate public authority.* 28. Where joint working groups or committees exist, public authorities should adopt transparent criteria and processes for the representation of individuals, NGOs and civil society at large" (emphasis added)].
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45 Poland (2016), Regulation No. 53 of the Prime Minister on Liquidation of the Council on Preventing Racial Discrimination, Xenophobia and Related Intolerance (*Zarządzenie nr 53 Prezesa Rady Ministrów z dnia 27 kwietnia 2016 r. w sprawie zniesienia Rady do spraw Przeciwdziałania Dyskryminacji Rasowej, Ksenofobii i związanej z nimi Nietolerancji*), 27 April 2016.

5 Ensuring a safe space for civil society

Within the EU, the main challenges to ensuring a safe space for civil society are acts of intimidation and violence by non-state actors and smear campaigns. Human rights CSOs have been subjected to verbal attacks, such as online hate speech, threats, damage to their property, and even violent attacks. In addition, the 'normalisation' of intimidation is seen as a key issue by civil society experts consulted by FRA. Activists seem to accept intimidation and even attacks on people and property as 'part of the job'.[1] Civil society is often unprepared for these kinds of attacks. It was noted during one of FRA's meetings with experts that human rights CSOs are used to defending others, not themselves.[2]

This chapter provides an overview of the challenges that CSOs and activists face. These include:

- physical attacks;
- threats and intimidation;
- negative public discourse and smear campaigns.

5.1. Physical attacks, threats and intimidation

The duty on states to protect civil society actors from physical attacks by third parties comes from their positive obligation to protect the rights to life, physical integrity and freedom from ill-treatment for everyone in their jurisdiction.[3] This includes a duty to prevent and to investigate promptly and impartially.[4] State authorities violate these obligations if they know or have reasonable grounds to believe that threats to the right to life or acts of torture or ill-treatment are being committed by non-State officials or private actors and fail to exercise due diligence to prevent, investigate, prosecute and punish such persons.[5]

The Human Rights Committee has also established that positive obligations under the freedom of expression require states to vigorously investigate attacks on persons who collect and analyse human rights information and who publish human rights-related reports in a timely fashion, ensuring that the perpetrators are prosecuted and that the victims, or, in the case of killings, their representatives, receive appropriate forms of redress.[6]

In relation to CSOs as such, states also have a positive obligation under the right to freedom of association.[7] As the ECtHR has held, "it is incumbent upon public authorities to guarantee the proper functioning of an association [...], even when they annoy or give offence to persons opposed to the lawful ideas they are seeking to promote".[8]

The UN has repeatedly called on states to take appropriate measures to end impunity for attacks, threats and acts of intimidation committed by state and non-state actors against human rights defenders.[9] The Council of Europe has equally called on states to "take effective measures to prevent attacks on or harassment of human rights defenders, ensure independent and effective investigation of such acts and to hold those responsible accountable through administrative measures and/or criminal proceedings".[10]

In the agency's discussions with civil society, including at its expert meeting, civil society interlocutors noted a wide range of threats and acts of intimidation against them, but also that there is no central collection point for these data.[11]

A number of examples of physical attacks and acts of intimidation can be found in civil society reporting. These include, among others, a physical attack by two men on a member of the Human Rights Institute in Slovakia[12] and a physical attack on the head of the Bulgarian Helsinki Committee and member of the FRA Management Board.[13] In Romania, prosecutors in Brașov initiated legal proceedings against a village police chief in March 2016 for organising a group attack by four villagers against a Roma human rights defender, who was seriously injured in the incident. The attack occurred in April 2015, after the defender in question visited the village to educate members of the local Roma community on how to "exercise their right of petition against the police staff from the village's precinct, who allegedly abused them repeatedly", according to the government. There was no indication of the reason for the delay in filing charges.[14]

The premises of human rights CSOs have also come under attack. In Spain in 2014, the premises of an anti-racism NGO were attacked by individuals who placed a large banner with hanging puppets on the front of the building, containing xenophobic phrases such as "Stop the invasion!", criticising the human rights organisation for its "anti-Spanish" activities of "denouncing those who protect [Spanish] borders" and throwing firecrackers into the offices. [15] In Poland in 2016, the headquarters of several Polish LGBTQI rights NGOs were attacked; the phrases 'white power' and 'no queering' were written on their doors, and young men shouting insults later entered.[16]

CSO meetings have also been disrupted by outsiders. In December 2016, a Human Rights Day conference organised by the Greek Helsinki Monitor was violently interrupted by six parliamentarians of the Golden Dawn party, who shouted racist slogans and threatened participants.[17]

Other acts of intimidation include threats made against Greek human rights NGO members in 2011 for filing complaints about racism against members of the Coast Guard during an Independence Day parade.[18] In Poland, an activist of the Stop Hate Project was subjected to a significant number of incidents of hate speech when she reported an alleged racist statement by a sportsman to the administrators of Facebook.[19] In Romania, civil society reports that blacklists of CSO leaders are circulating in nationalist media outlets.[20] In the Czech Republic, a website hosted abroad but run by Slovak white supremacists, listed the names and addresses of many Czech lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons as well as Romani activists and advocates. In some cases the supremacists hacked webpages, such as that of the Czech Helsinki Committee, and called for violence against individuals, such as the director of a major Romani NGO.[21]

There have also been cases of alleged harassment by the state. In Hungary, in 2014, in the midst of a controversy around the possibility of a new body distributing EEA and Norway grants, three members of the consortium responsible for the operation of the EEA/Norwegian NGO Fund were audited by the national audit office. Four fund distributors had their tax number suspended during the audit.[22] In Poland, in 2017, authorities raided offices of women's organisations in Warsaw, Gdańsk, Łódź and Zielona Góra, which help victims of domestic violence and which participated in anti-government protests.[23] In Bulgaria, an NGO reporting allegations of hate speech against a politician was subsequently audited, allegedly at the initiative of the politician in question.[24]

There have also been concerns about defenders working on migrant rights. This includes the case of a migrant rights defender who, according to civil society reports, has frequently been subjected to intimidation and insults by members of the police in the French border region Alpes Maritimes. Other migrant rights defenders complain of a surge in cases of being summoned to police stations, remanded in custody and prosecuted for 'aiding an unauthorised resident'.[25] Another migrant rights defender in Spain was harassed on Twitter and by telephone after complaining of racism at the border with Morocco, with individuals threatening her and publishing details of her personal life. [26]

Attacks and acts of intimidation and harassment not only affect the directly targeted individuals, but also intimidate other CSO members, which can hamper the activities of the organisations in question. Participants in FRA's expert meeting noted that many more cases of intimidation and harassment occur, including online, without necessarily being reported either nationally or internationally (see below under 'data collection').[27] There is no research on the gender, disability, or ethnic dimension of such attacks.

5.2. Wellbeing and mental health of activists

Expert interviews and reports indicate that burnout, depression, 'compassion fatigue' and 'helping-induced trauma' is prevalent among civil society activists, not only in disaster and war zones, but also in western societies. There are a multitude of reasons for this, ranging from direct contact with severely traumatised people to advocating for difficult issues, sometimes against majority views or state positons. Further reasons include feeling personally attacked by negative

discourse and smear campaigns, working long hours and a lack of recognition.

Mental health effects on human rights workers and advocates in the EU are under-researched and likely to be underestimated. Mental health should be protected and promoted by states as part of workers' right to health, which is protected by the EU Charter of Fundamental Rights and other international instruments.[28] More research is needed on the mental health and wellbeing of civil society advocates and activists in the EU.

Compassion fatigue or secondary traumatic stress is fairly common among individuals who work directly with trauma victims, and CSO activists often face issues similar to police officers, social workers or doctors. Sufferers can exhibit several symptoms, including hopelessness, a decrease in experiencing pleasure, constant stress and anxiety, sleeplessness or nightmares, and a pervasive negative attitude. However, trauma symptoms are not always recognised.

A refugee support volunteer reports from Greece: "As a volunteer, it was impossible to separate myself from the trauma and heartache of the refugees, and I saw this inability in other volunteers too. (...) Many of the volunteers, short-term and long-term, are exhausted and unable to establish boundaries to keep their own mental and physical health in check. (...) Volunteers, like myself, are ill-equipped to deal with these serious mental health issues. We can only do our best to hold space for the refugees, and, eventually, we all go home."

There are resources available to activists, some of which are free. Along the Balkan refugee route, a volunteer network of psychotherapists offer psychological support to volunteers via skype. However, generally speaking, there seems to be insufficient psycho-social support available for organisations and volunteers operating inside the EU, and the topic appears to be taboo.

5.3. Negative public discourse and smear campaigns

CSOs that promote human rights need to be able to carry out their work in an atmosphere free from hostility and attacks on their legitimacy and reputation. Hostile public discourse, including by state officials and politicians, has negative consequences for CSOs. First, it undermines public trust in CSOs, which makes citizens less likely to associate themselves with these organisations, support them, donate funds or treat them as credible sources of information. Second, it demotivates staff and reduces their ability to function effectively.[29] In other words, it has a chilling effect on civil society.

In serious cases, and if it prejudices a person's enjoyment of their right to private life, attacks on the reputation of human rights CSOs may engage the negative obligation of states under the right to private life and protection of reputation where the acts in question, such as defamatory comments about crimes committed by human rights CSOs, are committed by state officials. It may also engage a state's positive obligations if the acts in question are committed by non-state actors.[30] At the same time, in relation to statements attacking the reputation of CSOs, states must be careful not to disproportionately interfere with the freedom of expression, striking a fair balance with the right to reputation.[31]

The UN Human Rights Council has urged states "to acknowledge publicly the important and legitimate role of human rights defenders in the promotion of human rights, democracy and the rule of law as an essential component of ensuring their protection, including by respecting the independence of their organizations and by avoiding the stigmatization of their work".[32] It has also invited leaders in all sectors of society and respective communities, including political, social and faith leaders, and leaders in business and media, to express public support for the important role of human rights defenders and the legitimacy of their work.[33]

There may also be a connection between hostile public discourse and physical attacks. Such attacks may "create an atmosphere that provokes verbal or physical attacks against human rights defenders and encourages their harassment and persecution, thereby putting their security at risk."[34] A hostile public discourse often creates the impression that human rights defenders are 'legitimate targets' for harassment and intimidation.

Civil society actors have reported to FRA that anecdotal and media reports suggest an increase in negative public and political discourse against CSOs and activists in a number of countries.[35] This includes belittling CSOs or accusing them of allegedly serving as people smugglers, undermining security, or acting as foreign agents. There is also an emerging narrative distinguishing 'good' versus 'bad' CSOs.[36] This in particular affects CSOs working on human rights issues (advocacy or litigation), pitting them against service providing CSOs, which are often depicted as 'genuinely useful' or 'good' CSOs in the public discourse.[37]

In terms of specific rhetoric, a range of different types may be distinguished, but a number of common themes emerge. Activists in Romania were accused of 'serving foreign interests' and of being part of a conspiracy led by George Soros. The TV station behind such accusations was fined € 23,000 for repeatedly disseminating such allegations.[38] On 14 and 15 August 2013, newspapers published articles stigmatising Őkotàrs and 13 other

NGOs receiving EEA grants, calling them NGOs "serving foreign interests". On 8 April 2014, Mr Jànos Làzàr, Head of the Prime Minister's Office in Hungary, wrote to the Norwegian Government claiming that funds for NGO programmes were distributed to NGOs related to an opposition party, and also questioned the independence of Őkotàrs. On 30 April 2014, another senior official from the Prime Minister's Office called the Consortium "party-dependent, cheating nobodies".[39]

Moreover, a number of organisations that receive such funding – including human rights and women's rights organisations as well as Transparency International – and that were stigmatised by the media in August 2013 have been blacklisted by the government. In July 2014, the Council of Europe Commissioner for Human Rights firmly condemned the stigmatisation by the Hungarian authorities of NGOs promoting human rights and democratic values and called on the latter to reconsider the basis of the audits conducted. In a speech of 26 July 2014, the Hungarian Prime Minister, Mr Victor Orbàn, referred to the NGOs receiving EEA grants as "paid political activists who are trying to help foreign interests", and made other critical comments (using the term 'mercenaries') with regard to such NGOs in another speech of 15 September 2015.[40]

In October 2016, the Vice-Chair of the Fidesz party and of the Parliamentary Committee on National Security announced his proposal to the Committee to investigate CSOs "cooperating with the (George) Soros network".[41] In 2017, the government specifically targeted human rights NGOs in a questionnaire sent out to citizens in the framework of 'national consultations', dealing with the 'personal plan' of George Soros and accusing NGOs of undermining national security.

In Croatia, CSOs were referred to as a "sick part of society", leading to protests and the resignation of the individual who made this statement as human rights adviser to the Minister of Foreign and European Affairs.[42] In Bulgaria, there were reports of increasing public rhetoric opposing human rights and the work of CSOs. Some political parties, civic movements, and media outlets advocated closing certain CSOs because they obtained funding from foreign donors.[43] In Italy, a Roma women's network reported that widespread anti-Roma attitudes manifest themselves in public hate speech, street harassment, and smear campaigns against Roma people in the media, which populist politicians reportedly tacitly encourage. As a result, Roma human rights defenders and CSOs reported lacking the resources to challenge commonplace "antiziganism" in the public arena and in the media, which marginalised them in public media, as "so very few non-Roma public figures denounce the situation or champion for Roma."[44]

According to CSO experts consulted by FRA, there also seems to be a change from general to personalised and individualised verbal attacks.[45] In Poland, for example, the public media accused a number of specific CSOs of having obtained funds in a fraudulent manner, for example through family and personal ties. The National Broadcasting Council ruled that these reports "lacked information about the actual work of such organisations and their social role" and "failed to emphasize the social purpose served by NGOs and objectives they need to achieve".[46]

Such statements have a negative effect on social cohesion and also have potentially negative effects on the implementation of the principle of sincere cooperation, which obliges the Union and the Member States to, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.[47]

5.4. Data collection

To ascertain the state of civil society in the EU and its Member States, it is important to have reliable data on attacks, threats and acts of intimidation against human rights CSOs. This would assist in complying with the UN Declaration on Human Rights Defenders, which calls on states to "take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration".[48]

Neither EU Member States, civil society nor the EU itself currently systematically monitor or collect data on attacks – physical or verbal – against human rights CSOs or activists in the EU (unlike the situation outside the EU, which is regularly monitored, also by CSOs from within the EU).[49] This lack of proper data collection hampers protection of the fundamental rights of civil society and may reduce the likelihood that incidents come to the public's attention. It also limits the degree to which the combined effect of these attacks can be understood or placed in context, and the ability of governments and CSOs to identify trends and patterns of abuses and violations. Civil society actors have noted that there may be significant underreporting by civil society itself.[50]

5.5. Surveillance

In the wake of terrorist attacks, laws on surveillance have been strengthened. This has been a subject of great concern for civil society, which needs the privacy of its communications to be protected to carry out its work effectively.[51]

As pointed out by the UN Special Rapporteur on the promotion and protection of fundamental rights and fundamental freedoms while countering terrorism, "[t]he rights to freedom of association and assembly are also threatened by the use of surveillance. These freedoms often require private meetings and communications to allow people to organize in the face of Governments or other powerful actors. Expanded surveillance powers have sometimes led to a 'function creep', when police or intelligence agencies have labelled other groups as terrorists in order to allow the use of surveillance powers which were given only for the fight against terrorism."[52] FRA has conducted extensive research on Member States' (use of) surveillance powers and how to reconcile the various competing priorities in this area.[53]

There is a fear on the part of CSOs within the EU of being under state surveillance.[54] For example, in July 2015, Amnesty International reported that the UK's Investigatory Powers Tribunal (IPT) notified Amnesty International that UK government agencies had spied on the organisation by intercepting, accessing and storing its communications.[55]

Endnotes

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ANNEX: Methodology

The information contained in this report was collected through secondary research and FRA's own data gathering and qualitative research.

1) Data was collected from FRA's contractors, the data collection and research network FRANET, in 28 EU Member States, between January and February 2017. The 28 FRANET reports will be available online.[1]

Questions asked to FRANET:

1) Please describe briefly in the table below up to three most significant changes (if any) between 2011-2016, in the legal framework or in the way that existing laws have been implemented, that had a positive or negative impact on the ability of non-governmental organisations to promote fundamental rights.

Please consider any changes in law, administrative rules and practices in respect to

A. freedom of expression;

B. freedom of assembly;

C. freedom of association (including: issues of access to funding, accounting and auditing rules, rules on the establishment and dissolution of associations or other requirements that civil society organisations must satisfy in order to perform their tasks);

D. addressing the financing of organised crime or terrorism; taxation; charitable status;

E. transparency in the legislative process, in particular concerning lobbying (regarding the duties imposed on civil society organisations proportionate to the aim of the legislation and to the capacity of organisations);

F. defamation.

2) Please summarise any trends or developments in government funding for NGOs working on fundamental rights within your Member State (please give references/links in footnotes).

a) Has the overall amount of government funding remained the same, increased or decreased between 2011-2016 for work of such organisations carried out within your Member State? Briefly describe in text any trend.

b) Has there been a change in the distribution of government funding across different types of activities (such as: service provision, advocacy, litigation, campaigning, public education) between 2011 and 2016?

c) Are you aware of restrictions (or other changes) on NGO funding from other sources?

3) Please list and summarise up to three most significant developments (if any) between 2011-2016 that have enabled or restricted NGO consultation or participation in policy and decision making. This includes the preparation, creation, impact assessment, implementation, or evaluation of laws and/or policies; have any relevant rules/guidelines been adopted, amended, or abolished?

4) Please present any further information of which you are aware, that is relevant to the standing and operational space of non-governmental organisations in your country, including the ability of organisations to do advocacy work.

2) Additional desk research was conducted in the period July 2016–October 2017.

3) FRA also took into account relevant work by the Council of Europe's Commissioner for Human Rights, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Special Rapporteur on the situation of human rights defenders, European Economic and Social Committee (EESC) and the Open Government Partnership (OGP).

4) Over 40 experts from civil society,[2] foundations and funders,[3] National Human Rights Institutes and Equality Bodies, international organisations and public administrations were consulted either through a two-day expert meeting[4] or through (face to face or telephone) interviews.

5) FRA has also actively engaged in the wider debate on enabling civil society space, including though attendance of a number of relevant conferences and meetings,[5] and public statements, interviews and speeches by its Director.[6]

6) The report underwent an internal and external review process, which involved an internal board and FRA's Scientific Committee,[7] and was finalised by the end of October 2017.

Endnotes

1 28 FRANET reports will be available from January 2018 on FRA's website. See FRANET's webpage for more information on the network.

2 In alphabetical order: Accept Romania, Amnesty International, Business and Human Rights Resource Centre, CIVICUS, Citizens Network Watchdog Poland, Civil Liberties Union for Europe, Civil Society Europe, Council of Bars and Law Societies of Europe (CCBE), Council of Europe's Conference of INGOs, Czech Consortium of Migrants Assisting Organisations, Don Bosco International, European Center for Not-Profit Law (ECNL), European Disability Forum (EDF), European Network on Independent Living (ENIL), European Training and Research Center for Human Rights and Democracy, Forum of European Muslim Youth and Student Organisations (FEMYSO), Frontline Defenders, Human Rights and Democracy Network (HRDN), Human Rights House Zagreb, Human Rights Monitoring Institute Lithuania, Human Rights Watch, International Civil Society Centre (ICSC), International Federation for Human Rights (FIDH), International Lesbian and Gay Association (ILGA) Europe, International Service for Human Rights (ISHR), Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Social Platform, Transparency International, World Organisation Against Torture (OMCT).

3 In alphabetical order: Ariadne network, Civil Society Development Foundation Romania, European Foundation Centre (EFC), Global Dialogue - Funders' Initiative for Civil Society (FICS), EEA and Norway Grants, Ökotárs - Hungarian Environmental Partnership Foundation, Open Society Foundations, Open Society Initiative Brussels, the Spanish Association of Foundations, Stefan Batory Foundation.

4 'Supporting an enabling and protective space for civil society organisations in EU Member States' on 2–3 May 2017 in Vienna, Austria, bringing together over 35 experts from NGOs, foundations and funders, Equinet, the Open Government Partnership, and public institutions including the European Commission, the Council of Europe, OHCHR, and FRA.

5 In particular (listed up to end of September 2017): Ariadne's Annual Meeting and Policy Briefing, Tallinn, 20–22 April 2016; Informal expert meeting (FRA, HRDN, ECNL at al.), Brussels,13 December 2016; Meeting between FRA and HRDN working group on shrinking civic space, 17 February 2017, Brussels; 4 years, 448 projects – Closing conference of the NGO Programme of EEA and Norway Grants in Hungary, organised by EEA and Norway Grants, Budapest, 6–7 April 2017; Reclaiming human rights in Europe: how to enhance the democratic space?, conference organised by the Croatian Ombudswoman's office, Zagreb, 11–12 May 2017; Meeting of the expert Council on NGO law, organised by the Council of Europe, Strasbourg, 1–2 June 2017; Together for a strong civil society in Europe, conference organised by EEA and Norway Grants, Oslo, 6–7 June 2017; Civil Society Days 2017, organised by the European Economic and Social Committee (EESC), Brussels, 26–27 June 2017); EESC public hearing on 'Financing civil society organisations by the European Union', Brussels, 6 September 2017; Grantmakers East Forum, organised by the European Foundation Centre (Vienna, 26–28 September 2017).

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7 Information about the Scientific Committee is available on the FRA website.

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FRA
EUROPEAN UNION AGENCY
FOR FUNDAMENTAL RIGHTS

TK-02-17-839-EN-N

HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

Civil society organisations in the European Union play a crucial role in promoting fundamental rights, but it has become harder for them to do so – due to both legal and practical restrictions. While challenges exist in all EU Member States, their exact nature and extent vary. Data and research on this issue – including comparative research – are generally lacking. This report therefore looks at the different types and patterns of challenges faced by civil society organisations working on human rights in the EU. It also highlights promising practices that can counteract these worrying patterns.

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Publications Office

ISBN: 978-92-9491-774-4