



# **environmental partnership association**

## **RECOMMENDATIONS**

### **for a Comprehensive European Policy and Strategy on Civil Society**

#### **Introduction**

A strong and diverse independent civil society is acknowledged by all major international institutions as an indispensable component of any healthy democracy. Civil society organizations (CSOs) play a vital role in the promotion and application of universal and European values on the local, national and supra-national levels, and are often the first and last frontier upholding and promoting respect for human rights, dignity, freedom, tolerance and solidarity. They also perform vital functions in maintaining social inclusion, a constructive dialogue and healthy environment, and in our times of multiple crises, affecting both the climate that sustains us and the integrity of our societies these are more important than ever. In these respects, CSOs, community and citizen groups as well as social movements may be or already are important allies of the European institutions at times of escalating tensions with minorities, xenophobia, increasing levels of corruption, nepotism and weak democratic institutions in some Member States.

In order to fulfill its democratic roles and functions, as well as in order to secure safe space for citizens to exercise their freedoms, civil society needs an enabling environment to flourish. However, today contrary trends, the shrinking of civil space may be observed in more and more European countries, too, manifesting in vilification and smear campaigns, harassment and various legal restrictions hindering civic action. As Member States are largely free and have independent competence to design their own policies and strategies concerning civil society, EU institutions have very few effective instruments to counter the negative trends in spite of their concerns.

At the same time, recent research shows that CSOs' hope lies with the European Union both as a supportive political actor and an important funder of their activities<sup>1</sup>. Admittedly, EU institutions have made efforts to counter trends to curb civic freedoms and to support those who uphold it both in the continent and beyond. However, as the ongoing negative trends show these have not yet been sufficient, and did not represent a systematic approach, rather a piecemeal, case-by-case reaction to developments.

Therefore we, as undersigning civil society organizations believe that the EU, and in particular the European Commission, should develop its own comprehensive policy strategy and implement corresponding policies to broaden civil space in our continent. A first step in this direction could be a Commission Green (or White) Paper outlining possible directions and tools for broader public consultations. In this, the Commission could summarise its position towards civil society and its functions, discuss to what end and how it will engage with civil society, which instruments

<sup>1</sup>Civil Society in Central and Eastern Europe: Monitoring 2019 - Eva More-Hollerweger, Flavia-Elvira Bogorin, Julia Litofcenko, Michael Meyer (eds.), ERSTE Foundation, Vienna

and tools are available or will be developed to counter shrinking space, including key milestones as well as how it will encourage Member States to implement similar measures on the national level. We are well aware that the development and approval of such a strategy or policy is a long-term undertaking, which requires agreement by many stakeholders as well smaller or larger changes to existing rules, but are ready to contribute to this process with the best of our knowledge. In this respect, methods developed and work done regarding civil society in external relations (e.g. COM(2012) 492) may provide a good starting point. In our view the potential elements of such a **Green Paper** may be:

### **General measures**

1) Based on existing international law (e.g. the European Covenant of Human Rights, the EU Charter of Fundamental Rights) and more detailed guidance (e.g. the OSCE/ODIHR Guidelines on the Freedom of Association) the Commission should develop and adopt a set of **common (minimum) standards** or principles to defend and promote civil space in the Union and its Member States. This should discuss the practical modes and implementation means that guarantee:

- (1) the right to entry (freedom of association);
- (2) the right to operate free from unwarranted state interference;
- (3) the right to free expression;
- (4) the right to cooperation and communication;
- (5) the right to/ freedom of peaceful assembly;
- (6) the right to seek and secure resources;
- (7) state duty to protect.<sup>2</sup>

In these standards, the Commission should define how these values are to be implemented in practice – what Member States should do and refrain from doing. Instances of non-adherence should be sanctioned using the existing legal framework. Also, the impact of any new Union policies and legislation on European values and fundamental rights should be assessed on an ongoing basis.

2) The implementation of these rights and the minimum standards on the Union and Member State level should be **regularly monitored** e.g. by introducing a European Semester on Democracy or alternatively the state of civil society (and its space) as a separate component in the rule of law review cycle, accompanied by a dialogue between the Council, Commission, European Parliament and national governments, as well as affected stakeholders to review the implementation of the above standards for the protection of democracy.

The EU Fundamental Rights Agency should be mandated (and provided budget) to issue regular reports specifically on civil space (as it did in January 2018) covering the above areas. Such monitoring should not only examine the legal and policy framework in each Member State, but also assess the results and impact of practical implementation, relying on independent sources and the information supplied by the affected stakeholders themselves.

A high-level position could be created or an existing one, e.g. the Ombudsman mandated to raise the flag in case of breaches or moves to restrict civil society in any Member State. CSOs and activists should be able to easily and directly approach and engage with this body or institution, therefore resources should be allocated to actively promote its existence, services and contacts.

<sup>2</sup>Defend Civil Society Report, 2nd edition, June 2012, World Movement for Democracy/ICNL

3) Admitting the progress achieved so far in terms of openness and transparency (including the European Citizens Initiative), civil society organisation still find it hard to access the institutions, and there is a documented bias towards business and public authorities. Therefore, a system of open, inclusive, regular and structured **dialogue between EU institutions** (the Commission as a whole, individual DGs, the President and the Committees of the Parliament, the Council Presidency) and **organised European civil society** should be developed alongside the provisions of Art. 11 of TEU to ensure that policies and legislations are designed and implemented with their participation and contribution in the interest of the whole EU and its people.

The modalities of such a dialogue (whom, when, where and how to access) should be publicly available, with contact points indicated. The Representation in the Member States could play a role in bringing these consultation closer to the ‘ground’ i.e. to CSOs working on the local and national levels.

4) An important precondition of active citizenship and civic engagement is the existence and implementation of meaningful **citizen education** (including also media literacy), at all levels, both formal and informal, intra- and extracurricular in all Member States. Civic education is a key tool in efforts to counter antidemocratic trends, promote European values and citizenship and to overcome current divides. Vice versa, CSOs can efficiently contribute to good citizen education and awareness raising through their programs and projects – therefore their access to and cooperation with educational institutes should be encouraged and facilitated. As current practice is very divergent across the Union, a separate set of minimum standards or recommendations should be developed, based on the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education (CM/Rec(2017)7).

The Erasmus+ program could be used as an instrument to incentivize the implementation of this, through including citizen education among both its core priorities and horizontal concerns. Similar to the above, a monitoring mechanism should also be put in place to assess the implementation and impact of citizen education across the Member States.

### **Specific measures**

- *Legal instruments enabling the international work, transboundary movement and relocation of civil society organizations within the EU*

In the single European market and in times of globalization, civil society organizations also increasingly work on the cross-border, regional or international levels. Yet, their key organizational forms – associations and foundations – are still governed solely by oftentimes divergent national law. At the same time in some Member States, the pure existence of some CSOs may be under threat as a result of harassments or legal restrictions.

In order to facilitate transboundary civil society activity and the expansion of the work beyond borders, and in worst-case scenarios relocation, the EU should create a European legal form for foundations and associations, or implement measures to enable the legal recognition of civil society organizations in Member States other than their own.

Such efforts would not be without history and precedent: a proposal for a European Foundation Statute (originally initiated by the philanthropic sector) was tabled by the Commission in 2012

(COM(2012) 35 final - 2012/0022 (APP)), supported by the European Economic and Social Council in its Opinion INT/645-EESC-2012-1211, and also by the Parliament in its vote on 2 July 2013. After disagreements in the Council the proposal was eventually removed from the Commission's work plan in 2015. However, during subsequent years, the trend of shrinking civil space has only spread and worsened, thus, revisiting this proposal is timely and acute, including the exploration of adequate legal avenues (possibly a directive?) and amendments.

An alternative option is the better use of the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (Council of Europe ETS 124, 1986). To date, 9 Member States (including the UK) signed and ratified this treaty – other should be actively encouraged to follow suit, and the Commission may consider integrating the conventions' provisions into European legislation, too.

- *Media independence for increased visibility*

In times of fake news and disinformation, distorted reporting contributes to the vilification and stigmatisation of CSOs defending democratic values, exacerbated by the lack of access of the very same organisations to media outlets. Without the help of a balanced and unbiased media (print, electronic and online) environment, CSOs also have difficulties in conveying their message to broader audiences, outside of the 'opinion bubbles'.

Therefore, in order to contribute to an enabling environment for civil society, the independence and balanced reporting of public service broadcasters, as well as editorial independence from owners for public and private media outlets should be better guaranteed. This may be achieved e.g. through a reform of the Audio-Visual Media Services Directive. Competition rules should also guarantee the plurality of media ownership in a way that protects democratic pluralism.

- *Strengthen the 3<sup>rd</sup> group of the European Economic and Social Committee – introduce independence criteria and test*

A key instrument of direct communication between Commission and representatives of civil society is the European Economic and Social Committee. However, in the absence of detailed criteria, the appointment of national representatives in the 3<sup>rd</sup> group is divergent across member states. Therefore, uniform guidelines should be developed for a transparent and participatory system of delegating members with criteria guaranteeing their independence from governments. The guidelines should also cover a two-way communication between the representatives and their constituencies, providing mechanisms and guarantees of input by and feedback to local and national CSOs.

- *Increase transparency and participation on all levels*

While structured dialogue on the EU level (see above) is very important also in terms of better popular support and 'ownership' of policies, CSO participation and engagement of course starts and is practiced first on the local level. To promote convergence in the levels of involvement across Member States, guidelines enabling meaningful contribution and increased transparency at all levels should be developed, e.g. that national budgets would not be approved without a process of open and inclusive civic participation. The Council of Europe Recommendations (CM/Rec(2018)4) on the participation of citizens in local public life provide a good basis in this respect.

Also, in certain instances existing EU regulation (or its interpretation) e.g. as regards procurement hinder civic participation in local democracy, and in the provision and movement of social

services. Such regulations should be reviewed to facilitate better access and contribution of CSOs in these.

- *Develop guidelines for Member States clarifying how to interpret EU law concerning money laundering and terrorist financing*

While recognising the strong need of coordinated efforts to counter terrorism and money laundering worldwide, many examples also in Member States show that the disproportionate or simply careless application of existing legal standards may harm legitimate civil society organizations working for the public good. In this respect, the Commission should maintain the ongoing dialogue with key expert CSOs taking their recommendations into account (see e.g. <http://fatfplatform.org/>) during future risk assessment processes to guarantee that any measures are targeted, evidence- and risk-based, and engage with Member States to do the same.

- *Increased support to CSOs defending democracy and European values – including non-profit media and citizen education*

Recent developments regarding the new Justice, Rights and Values programme proposed for the next Multiannual Financial Framework are welcome steps in the right direction to address long-term problems and issues of CSO access to EU funding. However, as the “devil lies in the detail”, careful further planning and work needs to be done in order to achieve the programme’s stated goals. First and foremost, support should be available, both in theory and practice, also to smaller, community-based, younger organizations (in line with the joint proposal of the Parliament and the Council on 11 March 2019) – this requires the use of appropriate grant-making instruments and procedures, which are closer to the ground and are able and willing to manage large numbers of small grants, such as re-granting mechanisms. Appropriate assessment and appraisal procedures should be put in place not only to reduce administrative burdens, but also to guarantee that funds are only provided to CSOs that truly promote and protect democracy, the rule of law and fundamental rights within the meaning of the EU Charter of Fundamental Rights and the European Convention on Human Rights.

In line with the above recommendations, increased support to civil society by the Commission could include funding to independent non-profit media, as well as non-formal citizen education and media literacy projects through specific funding programmes or calls for proposals. Similarly, support for legal training or guidance for CSOs on how they could use national and European law to challenge the restrictions they are facing, and for greater mixing and integration measures involving the majority population and marginalised ethnic and social groups, for example, housing projects and joint community projects could also be considered.

**Disclaimer:**

The document relies on earlier work by various civil society networks or umbrellas, among others the European Civic Forum, Civil Society Europe, European Foundation Centre, European Civil Liberties Union, and the Civil Society Development Foundation (RO), with the goal to create a more systematic and comprehensive approach of for an enabling environment for civil society in Europe, at times of shrinking space.