

PROTECTING CIVIC SPACE IN THE EU

Civil society organisations face diverse challenges across the European Union. FRA's report on *Protecting civic space in the EU* presents the agency's findings on these challenges. It was issued in September of 2021. This summary presents the Key findings and FRA opinions outlined in the report.

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Key findings and FRA opinions

International and regional human rights organisations – including the United Nations’ Human Rights Council, different entities of the Council of Europe, as well as the Organization for Security and Co-operation in Europe (OSCE)/ Office for Democratic Institutions and Human Rights (ODIHR) – emphasise the important role of civil society in safeguarding and promoting human rights and democracy.

In the European Union, civil society plays an important role in bringing to life the values shared between the EU and its Member States specified in Article 2 of the Treaty on European Union (TEU). They make a substantial contribution to the implementation of EU policies in the area of human rights. The key role of civil society is also reflected in the EU Treaties. Relevant EU policy documents, including strategies and action plans, similarly underline its importance.

Article 11 (2) of the TEU and Article 15 (1) of the Treaty on the Functioning of the European Union (TFEU) consider civil dialogue and civil society participation as tools for good governance. This is also the case in relevant EU policy documents, such as the EU Strategy to strengthen the application of the EU Charter of Fundamental Rights (‘EU Charter’), the European Democracy Action Plan, and sectorial action plans on anti-racism, LGBTQI+ equality, Roma inclusion, children’s rights, disability, victims’ rights, women’s rights or migrant integration.

Yet civil society organisations face diverse challenges across the EU. This report presents findings by the EU Agency for Fundamental Rights (FRA) on a range of such challenges. The findings are based on research conducted by the agency’s research network, Franet, in 2020; two separate online consultations undertaken with civil society organisations in 2020; and on desk research.

FRA has consistently pointed to a number of significant hurdles for CSOs since it issued its 2018 report on *Challenges facing civil society working on human rights in the EU*. It has also identified positive developments that foster an enabling environment for such organisations.

Norms and practices affecting the operation of civil society are commonly referred to as ‘civil society space’. According to the **UN Guidance Note on Protection and Promotion of Civic Space**, “civic space is the environment that enables people and groups – or ‘civic space actors’ – to participate meaningfully in the political, economic, social and cultural life in their societies”. It further notes that “ [a] vibrant civic space requires an open, secure and safe environment that is free from all acts of intimidation, harassment and reprisals, whether online or offline. Any restrictions on such a space must comply with international human rights law”.

This space includes the relevant regulatory framework, access to resources, participation in policy and decision-making, and a safe environment. These norms and practices can have positive or negative implications for the

implementation of EU legislation and policies, including as regards the application of the EU Charter of Fundamental Rights.

FRA's report on *Protecting civic space in the EU* outlines relevant legal and policy developments that have an impact on activities of CSOs working on human rights across the EU. It also presents relevant promising practices. In addition, the opinions presented below outline ways to foster a more positive working environment for civil society.

Overall, the research underscores that the situation varies considerably across Member States. It also shows that the situation in 2020 was generally more difficult than in previous years, often due to the Covid-19 pandemic. Despite this reality, the research also points to some positive developments.

Fostering an enabling environment and supporting civil society development

In 2020, around one third (33 %) of civil society organisations (CSOs) from across the EU that responded to FRA's consultation on civic space said that the conditions for CSOs working on human rights in their country were 'good' or 'very good'. Another third (31 %), however, said that the conditions were 'bad' or 'very bad'. Furthermore, more than half of responding national or local organisations (57 %) said that, in 2020, the situation 'deteriorated' or 'greatly deteriorated' compared with previous years.

Positive steps taken in several EU Member States include policy measures for a more conducive environment for civil society development and for strengthening cooperation between public authorities and CSOs. These include the creation of infrastructure aimed at providing space for dialogue and channelling targeted support towards civil society, and specific commitments to open government, including under the **Open Government Partnership's** national action plans.

In some EU Member States, CSOs are particularly active in trying to improve the policy framework in which they operate, including through coalition building. National Human Rights Institutions (NHRIs), as human rights defenders, are committed to supporting civil society space. They are also committed to promoting, protecting and supporting all other human rights defenders, as reflected in the **European Network of National Human Rights Institutions' Regional Action Plan** on Human Rights Defenders, which is based on the **Marrakesh Declaration**.

The Council of Europe's **Recommendation CM/Rec(2018)11 of the Committee of Ministers to member states on the need to strengthen the protection and promotion of civil society space in Europe** reaffirms that protecting and promoting civil society space requires Member States to ensure "a conducive political and public environment" for human rights defenders, including CSOs. Such an environment allows CSOs and other human rights defenders to carry out their work freely.

Promoting a vivid and strong civil society is also part of the EU's global human rights policy. The Council of the European Union, in 2021, renewed its support for human rights defenders and CSOs and committed to strengthening its support to create an enabling environment for civil society. The **EU guidelines on human rights defenders** provide practical suggestions for enhancing EU action in supporting human rights defenders.

The European Commission has also supported the development of a '**CSO Meter**' to assess the civil society environment in Eastern Partnership countries under its European Neighbourhood Instrument. In addition, the Directorate-General for Neighbourhood and Enlargement Negotiations' *Guidelines for EU support to civil society in enlargement countries*, which were developed in consultation with civil society, aim to promote a conducive environment for civil society, partnership and dialogue between civil society and public institutions, and CSO resilience and capacity.

Promoting a conducive regulatory environment

A conducive regulatory environment requires a strong legislative framework protecting and promoting the rights to freedom of association, peaceful assembly and expression in conformity with international human rights law and standards. This was recently again underlined in the **UN guidance note on the protection and promotion of civic space**, which was published in September 2020.

These rights are also enshrined in the EU Charter of Fundamental Rights, which is binding on the Member States when they implement EU law, but also when national law or practices, although adopted autonomously, have a connection with EU law and thus fall within its scope.

The **UN Declaration on Human Rights Defenders**, although not a legally binding instrument, contains principles and rights that are based on human rights standards enshrined in other legally binding international instruments.

Organisations responding to FRA's civic space consultation 2020 reported challenges in exercising their fundamental rights: about one third (29 %) to freedom of peaceful assembly, one quarter (25 %) to freedom of expression, and almost one in five (18 %) to freedom of association. The difficulties they reported mostly related to Covid-19-related measures, such as emergency laws, travel restrictions and visa bans, and limitations to the freedoms of assembly and association.



FRA OPINION 1

As part of their action to strengthen the application of the EU Charter of Fundamental Rights and the rule of law, EU institutions should regularly monitor civil society space, closely involving civil society actors and other human rights defenders. The methodology of the European Commission's 'CSO Meter' applied in Eastern Partnership countries could be adapted for this purpose. Such a mechanism should be developed in close consultation with civil society and identify ways for EU institutions to respond rapidly when there is evidence of civic space restrictions. The monitoring results could be included in the European Commission's annual reports on the EU Charter of Fundamental Rights and as part of rule of law reporting, together with recommendations and strategic guidance for improving the situation.

The EU and its Member States are encouraged to make use of the Council of Europe's Recommendation CM/Rec(2018)¹¹ of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe and the United Nations (UN) guidance note on the protection and promotion of civic space, which indicate steps and processes to protect and promote civic space. While applicable to the EU's external policies, the EU's guidelines on human rights defenders could also serve as inspiration.

In line with the Council of Europe's Recommendation CM/Rec(2021)¹ of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions, Member States should ensure that their NHRIs have sufficient resources to engage regularly with human rights civil society actors and monitor challenges affecting them.



Other challenges included those regarding the legal environment, for example relating to legislation on civil dialogue and consultations (25 %), transparency or lobby laws (20 %), data protection laws (18 %), changes in laws governing charitable status (14 %), anti-money laundering measures (12 %), changes in tax laws (11 %), counter-terrorism legislation or policy (11 %), and legal provisions on political campaigning (10 %).

Measures affecting the freedom of peaceful assembly, such as strict bans on assemblies, surveillance of assemblies and assembly organisers and participants, sanctions and the use of force in policing protests, related mostly, but not only, to Covid-19 measures. Almost half of respondents to FRA's Covid-19 consultation considered Covid-19-related restrictions to be disproportionate. Moreover, the evidence that FRA's research network, Franet, has collected shows that, in some countries, newly introduced restrictive laws on assemblies have no direct connection to the Covid-19 pandemic and do not involve much of a, or any, consultation process.

FRA OPINION 2

As part of their action to strengthen the application of the EU Charter of Fundamental Rights and the rule of law, EU institutions and Member States – when acting within the scope of EU law – should ensure that EU and national laws strengthen the rights to freedom of expression, peaceful assembly, and association. Furthermore, they should ensure that the transposition and application of EU rules do not result in disproportionate restrictions on civil society activities.

The European Commission should ensure consultation with civil society during the preparation or review of legislation potentially affecting civic space and civic freedoms. The European Commission could consider providing targeted guidance on the application of its rules, to prevent any unintended restrictions, building on existing good practices.

Member States should ensure that laws that could restrict civil society space to operate comply with EU law and international human rights standards and principles, such as the UN Declaration on Human Rights Defenders. They should consult transparently a wide range of CSOs when drafting and implementing legislation that may potentially affect them.

EU institutions could explore the added value of harmonising the basic rules for the functioning of CSOs in the EU internal market.

As regards freedom of expression, civil society actors in a number of Member States found that provisions criminalising speech, including those seen as necessary for counter-terrorism, may have a chilling effect on the exercise of freedom of expression. In some Member States, efforts to tackle hate speech, particularly online, have raised concerns about a potentially disproportionate impact on free speech.

The evidence that FRA has collected also shows that some governments have been making efforts to facilitate the right to freedom of association. These have included easing the bureaucratic burden, improving data protection frameworks, and simplifying and modernising registration systems.

However, in a number of Member States, both Franet reports and civil society sources identify persisting serious challenges, such as laws or administrative burdens concerning the dissolution and deregistration of CSOs or unfavourable rules on their status. Stricter rules on the establishment and functioning of CSOs proposed in a number of Member States to protect national security or democratic values have drawn criticism as regards their legality and proportionality. Moreover, unintended collateral effects of rules to counter money laundering and terrorist financing appear to continue to affect the operation of CSOs.

Accessing and using funding

Finding and accessing resources and funding remains an ongoing concern for CSOs, which the Covid-19 pandemic aggravated in 2020. In total, 60 % of respondents to FRA's 2020 civic space consultation report experiencing difficulties in finding funding, despite some efforts in improving financing frameworks in several Member States. If funding is available, CSOs face hurdles to accessing it.

The challenges reported in the civic space consultation range from competition with other CSOs for limited funds (49 %), to limited administrative capacity to apply for funding (35 %), a lack of transparency and fairness in funding allocation (30 %), and restrictive eligibility criteria (29 %). CSOs also report a number of pandemic-related issues, such as the diversion of public funds to other priorities, a decrease in private donations and the inability to organise fundraising events, and a decline in in-kind contributions such as volunteering.

Civil society actors report, in a number of Member States, discriminatory or restrictive funding practices affecting, in particular, CSOs working on gender equality and lesbian, gay, bisexual, transgender and intersex (LGBTI) rights, as well as those working with migrant communities and religious minorities; these practices may affect the implementation of the EU strategies adopted in these areas.

Advocacy organisations generally seem to be affected more than CSOs providing services. Furthermore, CSOs in at least eight Member States are concerned about laws that introduce new restrictions on foreign donations and stricter rules on reporting for CSOs benefiting from foreign funding; for one country, these have led to a ruling by the European Court of Justice.

Some positive developments have also been identified. A number of EU Member States have improved their general financing frameworks, whereas others have explored a more favourable taxation framework for CSOs. Several Member States have set up targeted support schemes for CSOs to counter the effects of the Covid-19 pandemic. CSOs have welcomed the new **EU Citizens, Equality, Rights and Values programme**, which has a significantly increased budget for the 2021–2027 period compared with previous financing. The **Norway Grants' Active Citizens Fund**, administered through independent fund operators, provides essential support to CSOs in 13 EU Member States.





FRA OPINION 3

The European Commission should consider the funding needs of civil society when reviewing national programmes on the disbursement of EU funds under shared management, including the European Structural and Investment Funds (ESIF) and the NextGenerationEU recovery plan. It should monitor how funds are disbursed to CSOs and offer Member States guidance on and training in involving CSOs more effectively.

Member States should draw on the expertise of civil society when monitoring the enabling conditions related to fundamental rights under the Common Provisions Regulation for the shared management of EU funds, including the horizontal enabling conditions related to the EU Charter of Fundamental Rights and the Convention on the Rights of Persons with Disabilities, as well as – where applicable – the thematic enabling conditions related to gender equality, Roma inclusion, etc.

The European Commission should continue observing national rules regulating access to and use of foreign funding by CSOs in the light of relevant EU provisions and the recent Court of Justice of the European Union judgment, including the free movement of capital within the EU, and offer Member States, with the involvement of CSOs, a space for exchanging information and good practices in this area.

EU institutions and Member States should ensure that the legal and policy environment is conducive to the possibility of CSOs having access to diverse pools of resources and that they face no undue obstacles when accessing funding from domestic or foreign sources, including through the use of technologies. Financial support offered should cover the full range of civil society activities, including advocacy, community engagement and civil society development. Beyond project funding, infrastructure core funding and multiannual funding cycles would strengthen the civil society sector and ensure the sustainability of civil society's human rights work.

The Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights and Venice Commission guidelines on freedom of association note that “the ability to seek, secure and use resources is essential to the existence and operation of any association”. Access to and use of funding provide associations with the means to operate and pursue their missions and are therefore an inherent element of the right to freedom of association.

Improving civil society participation

According to FRA research, as well as civil society reports, despite efforts in some Member States to improve consultation with civil society, channels for CSOs' access to and participation in decision-making remain patchy overall and are often not properly supported by access to relevant information or clear standards or guidelines.

FRA's civic space consultations have consistently shown that CSOs are concerned about their access to and participation in decision-making processes. FRA's 2020 civic space consultation shows that these concerns refer, in particular, to a lack of adequate information about participation and consultation processes (46 %), a lack of trust between civil society and public authorities (35 %), a lack of feedback on what happened with the input provided, and different obstacles, including discriminatory ones, to accessing and participating in decision-making processes (24 %).

Most Member States' widespread use of fast-track and emergency legislative procedures during the pandemic exacerbated existing issues. CSOs also claim that minorities and vulnerable groups are often not adequately represented in consultations.

FRA's research has identified some efforts to improve consultation processes, such as opening up previously closed processes to consultations, and some progress on the creation of an infrastructure for facilitating CSOs' cooperation with national authorities and their participation in the development of policies and strategies. EU action can serve as a catalyst in this regard, as many EU strategies require the adoption of national action plans. For this, the involvement of CSOs is considered good practice.

The participation of civil society in policy and decision-making processes is an indicator of democracy and contributes to the quality and effectiveness of laws and policies. Article 11 of the Treaty on European Union (TEU) defines civil dialogue as an essential component

of participatory democracy and requires EU institutions to “give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action” and to “maintain an open, transparent and regular dialogue with representative associations and civil society”. The Conference on the Future of Europe and the European Democracy Action Plan potentially provide ways to enhance participation in the EU.

Ensuring a safe space free from harassment and attacks

International human rights law guarantees people the rights to life, liberty and security of person, to participate in public affairs, and to be free from any undue interference in their enjoyment of the freedoms of expression, assembly and association. All EU Member States have signed up to the Sustainable Development Goals that are relevant to human rights defenders.

However, FRA evidence and evidence from other organisations show that threats and attacks against CSOs and human rights defenders, as well as against journalists, bloggers and whistle-blowers, persist in the EU. These include frequent online and offline threats and harassment (as many as 40 % of respondents to FRA’s civic space consultation 2020 report online attacks and 26 % report offline attacks), as well as vandalism of premises and property (8 %) and physical attacks (4 % of respondents). In addition, there are high rates of underreporting (less than one in three report such attacks), and CSOs express frustration at how the authorities are dealing with incidents.

In several Member States, CSOs complain about a climate of hostility towards them and human rights defenders; more than one third of CSOs report smear campaigns by media outlets or state actors. In contrast, in other Member States, governments, politicians and high-level officials have highlighted the vital role of human rights defenders and other civil society actors in promoting rights and ensuring accountability, including in particular during the Covid-19 pandemic.



FRA OPINION 4

With a view to implementing Article 11 of the TEU, the EU could consider the establishment of an EU policy framework allowing for an open, transparent and regular dialogue between the EU institutions and civil society at EU, national and local levels. Such a framework should include the appropriate means allowing citizens and representative associations to make known and publicly exchange their views in all areas of Union action.

Such means could include funding for appropriate processes, training of officials, and the regular organisation of civil society consultations and exchanges, including through the representations of the European Commission and the European Parliament in the Member States. The framework should facilitate the participation of civil society in consultations all along the policy cycle on EU law and policy. Emphasis should, in this regard, be given to access to information and the participation of CSOs representing vulnerable and underrepresented groups.

Guidance for developing such a framework is provided by the Council of Europe Guidelines for civil participation in political decision-making. When following up on the recent fundamental rights-relevant EU action plans, strategies and other policy frameworks, including on the implementation of the EU Charter of Fundamental Rights and in the areas of anti-racism, LGBTIQ+ equality, Roma inclusion, children’s rights, disability, victims’ rights, gender equality and migrant integration, the Member States should be urged to integrate the results of these consultations, as well as future outcomes of the Conference on the Future of Europe and the European Democracy Action Plan.

FRA OPINION 5

The European Commission should include reference to attacks against human rights defenders in its reporting under the Framework Decision on combating certain forms and expressions of racism and xenophobia, when monitoring and assessing EU rules and tools to protect the rights of victims of crime, and when revising EU provisions on combating hate speech and hate crime.

The European Commission should ensure that its upcoming initiative on SLAPPs offers effective protection to CSOs and human rights defenders against legal harassment. Such protection could include uniform procedural safeguards against abusive lawsuits, provisions precluding libel tourism and forum shopping, and the obligation to provide assistance and support to victims of SLAPPs. The European Commission and Member States should use their respective means to raise awareness among justice authorities and practitioners of the negative impact of SLAPP practices.

Building on the example of the existing external EU human rights defenders mechanism protectdefenders.eu, the EU could consider providing appropriate financial support for the creation and maintenance of a similar monitoring mechanism in the EU, allowing CSOs and human rights defenders to report attacks, register alerts, map trends and provide timely and targeted support to victims.

Member States should ensure that crimes committed against CSOs and human rights defenders are properly recorded, investigated and prosecuted, including under applicable hate crime provisions where relevant. Politicians and policymakers could contribute to developing a positive narrative about civil society and highlight its important role, avoiding statements that could fuel hostility towards CSOs and human rights defenders and have a chilling effect on their human rights work.

Member States should refrain from criminalising or taking similar legal actions that hamper the operation of CSOs in the context of humanitarian assistance for asylum seekers and other migrants and during search and rescue at sea.

Organisations and human rights defenders particularly affected are those working with minority groups, refugees and other migrants, those working against racism, and those working for women's rights and sexual and reproductive health rights, and LGBTI rights. The lack of a safe environment for CSOs to fulfil their functions has a potential impact on the implementation of the related EU strategies. At the same time, evidence indicates continued criminalisation of and legal actions against civil society activity, notably in search and rescue (SAR) at sea and humanitarian assistance for those in need while on the move.

Legal and administrative harassment, in particular through abusive prosecutions and strategic lawsuits against public participation (SLAPPs), is also noted. The European Commission announced in its European Democracy Action Plan that it has commissioned a comprehensive study on how SLAPPs affect watchdogs, including CSOs and civil society activists across the EU, and will on that basis propose an initiative to counter SLAPPs.



FRA's work on civic space

FRA is mandated to provide the relevant institutions, bodies, offices and agencies of the EU and its Member States (when acting within the scope of EU law) with assistance and expertise relating to fundamental rights, through a range of different tools.

In this context, FRA is tasked with cooperating with a range of stakeholders, including non-governmental organisations and civil society institutions active in the field of fundamental rights,^a through its Fundamental Rights Platform. Through this platform,^b CSOs provide useful input to and feedback on the agency's work, and on the developments of the enabling conditions and space to operate for CSOs and the related EU legal and policy framework in the area of fundamental rights.

Based on research that Franet^c carried out, FRA's 2018 report on **Challenges facing civil society organisations working on human rights in the EU** identified a number of challenges facing civil society – for example, aspects of government regulatory work, availability of funding, possibilities of contributing to law making and policymaking, and harassment and negative discourses undermining the work of civil society.

In 2020, the agency again asked its research network, Franet, to provide information about legal and policy developments related to an enabling space for human rights civil society in all EU Member States, as well as in the accession countries of North Macedonia and Serbia. The information covered the year 2020.

Moreover, since 2018, the agency has annually consulted the civil society actors participating in its Fundamental Rights Platform on their experiences. In total, 398 CSOs working on human rights from all 27 EU Member States, including 50 EU-level umbrella organisations, responded to the online consultation on civic space covering the year 2020.^d These organisations are active at international, EU, national or local level and work in a range of different areas, including advocacy, campaigning and awareness raising, service provision, community engagement, victim support, research and data collection, and litigation.

To collect more specific responses on the impact of Covid-19, FRA conducted an additional online consultation covering March to November 2020.^e In total, 177 CSOs from across the EU responded; 35 of these were umbrella organisations that were active at EU level.

In addition, FRA hosted a number of expert meetings and exchanges with relevant CSOs active in the area of human rights, notably the annual Fundamental Rights Platform online meeting 'Human rights work in challenging times: Ways forward' in February 2021. This meeting, which brought together over 300 CSOs from across the EU, provided additional information as regards the challenges and opportunities civil society actors experience in their work.^f

^a See **Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ 2007 L 53 (Founding Regulation).**

^b For more information about FRA's Fundamental Rights Platform, see the agency's **dedicated webpage**.

^c **Franet** is the agency's multidisciplinary research network. It is composed of contractors in each EU Member State, in the United Kingdom and in countries that have observer status who, on request, provide relevant data to FRA on fundamental rights issues, to facilitate the agency's comparative analyses.

^d See **questionnaire** for 'FRA 2020 consultation on experiences of civil society organisations working on human rights in the EU'.

^e See FRA (2021), '**Covid-impact on civil society work – Results of consultation with FRA's Fundamental Rights Platform**', 24 February 2021.

^f FRA (2021), **Human rights work in challenging times: Ways forward – Report of the meeting of FRA's Fundamental Rights Platform 2021**.



PROMOTING AND PROTECTING YOUR FUNDAMENTAL RIGHTS ACROSS THE EU —

For the full report, see
<https://fra.europa.eu/en/publication/2021/civic-space-challenges>

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