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PROTECTING CIVIL SOCIETY

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CIVIL SOCIETY

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Foreword

We live in a world where those who stand up for our rights and values are faced with immense pressure. Both policymakers and donors alike have woken up to the need to protect human rights. But organisations that defend human rights face constant challenges.

Civil society organisations in the EU are forced to battle abusive lawsuits that aim to intimidate and drain their resources. They are targeted by smear campaigns that spread false information, harming their names and reputations. Even more alarmingly, human rights activists are threatened and subjected to physical attacks.

We should never accept attacks like these. They are unacceptable, including against people who help migrant search and rescue at sea and those who represent vulnerable groups.

Threats against civil society greatly affect activists' safety, mental health and resilience while working on human rights. Under sustained pressure, civil society organisations and activists will struggle. We need new solutions to make human rights work sustainable.

Since 2018, FRA has been closely monitoring civic space in Europe. In a remarkably short time, the term ‘civic space’ has become recognised and accepted within the EU. In the past 18 months alone, the European Parliament, the European Commission and the Council of the EU have adopted ambitious proposals on civic space. New EU laws such as the Whistleblower Directive and the anti-SLAPP Directive will help protect activists. The Commission has also considerably stepped-up funding for those that defend the rights and values across the EU. These are steps in the right direction but many more are needed.

Civil society must remain robust and resilient as key promotors of our rights. Protecting civil society is the only way forward.

Michael O’Flaherty

Director

Key findings

Civic space is the environment that enables civil society to play a role in political, economic and social life of our societies. In particular, civic space allows individuals and groups to contribute to policy-making that affects their lives.

OHCHR (n.d.), 'OHCHR and protecting and expanding civic space'.

European institutions and international and regional human rights organisations emphasise the important role of civil society in safeguarding and promoting human rights and democracy. Yet civil society organisations (CSOs) face diverse challenges across the EU that hamper their ability to uphold human rights.

A vibrant and engaged civil society supports the implementation of EU policies in many areas that are key for upholding and protecting fundamental rights. Such policies include the EU Strategy to strengthen the application of the Charter of Fundamental Rights in the EU (the Charter); the European Democracy Action Plan; and relevant action plans on anti-racism, lesbian, gay, bisexual, transgender, intersex and queer and other minority gender identities and sexualities (LGBTIQ+) equality, Roma inclusion, the rights of the child, disability, victims' rights, gender equality and migrant integration.

The European Union Agency for Fundamental Rights (FRA) has pointed to a number of significant hurdles for CSOs and human rights defenders since it issued its report Challenges facing civil society working on human rights in the EU in 2018, and in its subsequent annual updates. CSO and human rights defenders face threats and attacks, excessive legal and administrative restrictions, insufficient resources and access to information, and are often not properly involved in policy and decision-making. At the same time, there is increasing awareness among policy makers in the EU and the Member States about the situation and the need to address it.

This report highlights key developments regarding the civic space in the EU in 2022. The analysis draws on research carried out by Franet in 2022 resulting in country reports on relevant legal and policy developments in all 27 EU Member States and in three accession countries; the responses of over 400 civil society organisations, umbrella organisations and networks to the Agency's annual consultation 2022 on civic space; and focus groups, meetings, interviews and desk research.

Although civic space thus goes well beyond CSOs, this report is based on evidence that FRA collected from and about organised civil society. According to the United Nations (UN) guidance note on the protection and promotion of civic space from 2020, "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 of their societies".

Based on evidence collected by FRA, the nature and depth of challenges that CSOs face vary across Member States. However, across all Member States, CSOs express concerns in FRA's annual consultations and indicate that a number of problems identified have persisted in recent years. For 2021 and 2022 in particular, their responses were overall more negative than in other years because of the impact of measures to tackle the COVID-19 pandemic.

However, FRA also has identified a range of positive developments that have fostered an enabling environment for the promotion of human rights and democracy. In the past five years, understanding of the challenges that CSOs face has been more widely acknowledged. In 2022–2023, all three major EU institutions acknowledged for the first time civic space pressures in the EU in official documents (the European Parliament resolution on civic space in the EU, the European Commission report on the application of the Charter and civic space and the Council conclusions on the role of the civic space in protecting and promoting fundamental rights in the EU). Donors – including the European Commission and the European Economic Area and Norway Grants – increasingly provide funding with a focus on addressing civic space challenges.

Several Member States have set up or improved their structures and processes for ensuring meaningful civil society engagement. CSOs themselves increasingly speak out about attacks against them and cooperate more closely in face of pressures on them and their work.

Promoting an enabling legal environment

A legal environment conducive to ensuring an open civic space requires a strong legislative framework that protects and promotes the rights to freedom of association, peaceful assembly and expression, in conformity with international human rights law and standards - notably Article 11 and 12 of the Charter, Article 10 and 11 of the European Convention on Human Rights (ECHR), and Articles 19, 20 and 21 of the International Covenant on Civil and Political Rights (ICCPR). The UN Declaration on Human Rights Defenders, although not legally binding, contains principles and rights that are based on human rights standards enshrined in other legally binding international instruments.

Developments in the legal environment affecting CSOs vary across EU Member States. A decrease in challenges related to emergency laws is visible from 2020 and 2021 to 2022, corresponding to the gradual lifting of the emergency provisions adopted in response to the COVID-19 pandemic. Other legal challenges remained similar to those encountered in previous years, with CSOs reporting issues related to accessing information (32% of respondents), legislation regarding civil dialogue (23%), and tightening of rules on assemblies and association

(21%). Other issues raised included the disproportionate use of police powers and negative side effects of legislation in the areas of data protection, transparency and lobbying, tax and charitable status, counter-terrorism and anti-money laundering. A particular challenge concerns strategic lawsuits against public participation (SLAPPs). These are unfounded or abusive court procedures against natural or legal persons engaging in public matters whom the claimant wants to silence. CSOs sometimes face SLAPPs when they take positions on issues in their advocacy work, for example when someone claims to have been defamed by their public statements. This may have a chilling effect on their willingness to work on certain issues.

Positive developments include continued efforts in a few countries to improve the legal frameworks for exercising the right to peaceful assembly, to modernise existing rules and ease bureaucratic requirements for CSOs, and to reform registration systems and rules regarding public benefit status.

At the EU level, the European Commission dedicated its annual report in 2022 on the application of the Charter to the topic of civic space; A thriving civic space for upholding fundamental rights in the EU. The European Commission also proposed, a directive and a recommendation against SLAPPs, a directive on cross-border associations and a media freedom act.

Ways forward

As part of their action to strengthen the application of the EU Charter of Fundamental Rights (the Charter) and the rule of law, EU institutions should regularly monitor the civic space in the EU, 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. The monitoring results could be included in the European Commission's annual rule of law reporting and in its reports on the implementation of the Charter.

EU institutions and Member States, when acting within the scope of EU law, should ensure that both EU and national laws uphold 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 continue bringing infringement proceedings where necessary to protect the civic space and ensure that rulings by the Court of Justice of the European Union are fully implemented.

Furthermore, the European Commission should conduct *ex ante* assessments and consistently involve civil society and other relevant stakeholders are in these assessments. The European Commission should ensure civil society are engaged in any consultation during the preparation or review of EU legislation. This ensures that provisions that potentially affect civic space and civic freedoms can be detected early on. It would also help ensure that excessive limitations to civil society space resulting from incorrect transposition of directives are detected so they can be

remedied.

The EU and Member States should also ensure that legislation does not unnecessarily restrict civic space, and that it complies with international human rights standards and principles. For example, Article 10 ECHR and Article 19 ICCPR (freedom of expression) and Article 11 ECHR and Articles 21 and 22 ICCPR (freedom of assembly and association). Human rights CSOs and their members need to be able to exercise their rights fully and without unnecessary or arbitrary restrictions on carrying out their work. CSOs therefore need states to fully implement their positive obligation under international human rights standards, including in particular the freedom of expression, peaceful assembly and association. An enabling environment allows CSOs to fully enjoy their rights, including the right to access public funding and resources, and the right to take part in public affairs.

As discussions on the Commission's anti-SLAPPs proposal are ongoing, Member States should take effective measures against SLAPPs, to fulfil their obligations to uphold the rights to freedom of expression (Article 11 of the Charter) and association (Article 12 of the Charter), among other reasons. Such measures should include reviewing existing legislation to limit the use of SLAPPs. Furthermore, practitioners in the legal field, including both judges and lawyers, should be adequately trained on aspects of freedom of expression to enable them to recognise and appropriately address SLAPPs.

Addressing threats and attacks

Threats and attacks against CSOs and human rights defenders by both public and private players persisted across the EU in 2022, targeting organisations, staff and volunteers.

Threats and attacks take multiple forms. Public authorities use SLAPPS, unnecessary administrative hurdles, smear campaigns, the criminalisation of certain activities and excessive surveillance, CSOs report. About half of respondents to FRA's consultation report receiving verbal threats offline and online, intimidation and harassment, and 5 % report physical attacks. FRA's 2022 findings show that the patterns of threats and attacks persist across the EU, with no significant improvements from previous years.

In several Member States, CSOs and human rights defenders working in specific policy areas report they are increasingly subject to hostile environments, with intimidation, legal proceedings and smear campaigns against their work. This particularly affects migrant rights defenders, LGBTIQ+ rights defenders, women's rights defenders, sexual and reproductive health and rights defenders, environmental rights defenders, anti-racism activists and child rights defenders, as FRA's research for this report indicates. Surveillance was also a prominent topic in 2022. Following alleged abuses in the use of Pegasus and similar surveillance software against a variety of targets, including CSOs, the European Parliament set up a committee of inquiry.

Ways forward

Member States should encourage that crimes committed against CSOs and human rights defenders are reported, and ensure they are properly recorded, investigated and prosecuted.

Building on the existing external EU human rights defenders mechanism, the EU could consider setting up a similar mechanism for inside the EU. Such a mechanism should allow CSOs and human rights defenders to report attacks, register alerts, map trends, build capacity, and provide timely and targeted support to victims. In this context, there is also a need for Member States to establish, bolster and strengthen national level protection mechanisms which would help detect = and act in response to - attacks and reprisals against human rights defenders. According to the Paris Principles, National Human Rights Institutions have a role in protecting and supporting other human rights defenders and CSOs.

Member States should refrain from criminalising or taking legal or non-legal actions that unduly hamper the operation of CSOs, including those providing legal, humanitarian and other assistance to asylum seekers and other migrants, or undertaking search and rescue (SAR) at sea. The European Commission should continue to pay the utmost attention to threats against CSOs and human rights defenders, including in its bilateral discussions during the preparation of its annual rule of law report and the related country-specific recommendations.

The European Commission and Member States should raise awareness among justice authorities and practitioners of the negative impact of SLAPP practices. Considering their existing fundamental rights obligations to promote the freedom of expression and association Member States should take all required measures, including legislative ones, to prevent and effectively address SLAPPs.

Improving access to resources for CSOs under pressure

CSOs' work is essential for strengthening democracy, addressing complex issues, promoting innovation and encouraging local solutions. Their work contributes to building capacity, fostering collaboration and partnerships and ensuring long-term improvements in human rights. This important work needs to be adequately resourced.

Access to resources is therefore an integral part of the right to freedom of association, as defined in Article 22 ICCPR and other human rights instruments. 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.

However, in practice access to resources remains an ongoing concern for CSOs, as regards both the availability of funding relevant to their work and the accessibility of such funding due to

bureaucratic requirements. FRA's consultation shows that the major challenges for national and local organisations in 2022 were connected to difficulties in finding funding relevant to their work (67 %). Other recurrent difficulties concern applying for funding (complicated application procedures, limited administrative capacity to apply) (42 %), using the funding received (lack of core funding, lack of follow up funding, too short funding cycle) (33 %) and accessing funding (publicly available information difficult to find, overly restrictive eligibility criteria, rules on foreign funding) (32 %).

Rules on limitations to foreign funding constitute an additional obstacle to the functioning of CSOs. As the OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association note, "[a]ssociations shall have the freedom to seek, receive and use financial, material and human resources, whether domestic, foreign or international, for the pursuit of their activities." Overall, donors have gradually started to adjust their funding to take into account the needs of CSOs, giving more consideration to advocacy on civic space, and capacity building particularly for security-related issues.

One significant change from previous years is that the European Commission has considerably stepped up its efforts to fund CSOs working on human rights issues, in particular through the Citizens, Equality, Rights and Values (CERV) programme. This programme is the largest to date supporting civil society in the EU, and pilots more flexible funding approaches.

Ways forward

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. They should also make sure that EU and Member State rules for EU-based CSOs' access to funding from domestic or foreign sources respect the principle of proportionality and comply with EU primary law. Financial support offered should cover the full range of civil society activities, beyond service provision, covering advocacy and watchdog functions, capacity building, litigation, cooperation and network building, peer exchange across borders, community engagement, resilience and security.

Beyond project funding, core funding and multiannual funding cycles could strengthen civil society and ensure the sustainability of its human rights work. It is crucial that funding becomes readily available and accessible for grassroots organisations.

The European Commission should continue to ensure that rules regulating CSOs' access to and use of foreign funding comply with Article 63 of the Treaty on the Functioning of the European Union (TFEU) and Articles 7, 8 and 12 of the Charter. It should also make sure that they respect the principle of proportionality and overall comply with EU primary law as interpreted by the Court of Justice of the European Union. Moreover, the EU and its Member States could reinforce efforts to promote the exchange of information and good practices in this area, involving CSOs to enable them to share their experiences.

Strengthening meaningful participation in policymaking

The right to participation in public affairs is recognised in Article 25 of the International Covenant on Civil and Political Rights, among other documents. Civil participation is defined as "the engagement of individuals, NGOs and civil society at large in decision-making processes by public authorities". In addition, all EU Member States have signed up to the Sustainable Development Goal targets, and Sustainable Development Goal (SDG) 16.7 aims to "ensure responsive, inclusive, participatory and representative decision-making at all levels". Moreover, under Article 11 of the Treaty on European Union (TEU), the EU – and its Member States when implementing EU law and policies - are obliged 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".

Many Member States initiated or consolidated participation mechanisms in 2022, both at national and local levels. Notwithstanding, procedures for CSOs to participate effectively in policymaking and decision making remain patchy, and CSOs are often unable to access relevant information or clear standards or guidelines to support their contribution. The quality of the consultation processes varies. Considerable differences emerge between national and EU consultations. Some 58 % of the responding organisations found the quality of EU consultations acceptable, while the percentage was 38 % for national consultations.

Other challenges that CSOs face include the limited interest of policymakers in consulting meaningfully, difficulties in accessing consultations, weaknesses in the consultation process itself, insufficient feedback on follow-up after consultations and the insufficient capacity of organisations to contribute to consultations, including due to a lack of funding for such processes. These challenges are exacerbated for organisations working with those at risk of exclusion.

However, in general the principle of cooperation between CSOs and public authorities in ensuring the implementation of laws and policies related to fundamental rights has been strengthened in recent years. The EU Strategy to strengthen the application of the Charter, and many sectorial EU action plans and strategies, call for the engagement of CSOs in the design, implementation and evaluation of relevant measures. Partly reflecting the positive experiences of cooperation during the COVID-19 pandemic and the response to the Russian war of aggression against Ukraine, Member States have developed additional initiatives promoting the more meaningful cooperation with and participation of CSOs. Nevertheless, cooperation is often ad hoc and incident-specific, as FRA's evidence shows, for instance in the field of hate crime reporting.

Ways forward

To implement Article 11 of the TEU, the EU could consider establishing a dedicated EU policy

framework with common guidelines allowing for open, transparent and regular dialogue between the EU institutions and civil society at EU, national and local levels. It should include funding for appropriate processes, training of officials, and regularly organising consultations and exchanges, including through the representations of the European Commission and the European Parliament in the Member States. It should emphasise access to information and the participation of CSOs representing excluded or underrepresented groups.

There is a need to develop sustainable and structured, institutionalised forms of cooperation, and to establish a culture of trust and transparency; respect CSOs' independence; ensure CSOs' broad representation and inclusive participation; and formalise commitments, including through institutional arrangements, ensuring the sustainability of cooperation.

There is also a need to ensure adequate financial and technical support for CSOs and human rights defenders to take up participation, consultation and dialogue opportunities. Specific measures are necessary to reach out to marginalised and excluded groups.

Finally, Member States are encouraged to involve civil society and other fundamental rights actors in the monitoring of the Charter's implementation. The 2021 Common Provisions Regulation (governing eight large EU funds) introduced compliance with the Charter as an 'enabling condition'. Moreover, the Common Provisions Regulation and the Commission's European Code of Conduct on Partnership call for strong partnerships, including with CSOs.

1. Overall developments in civic space and EU initiatives

1.1 Developments in the EU in 2022

The key role of civil society is reflected in the EU treaties. Article 11 (2) of the TEU and Article 15 (1) of the TFEU consider civil dialogue and civil society participation as tools for good governance. It is also reflected in relevant EU policy documents, such as the EU Strategy to strengthen the application of the Charter, the European Democracy Action Plan and action plans on anti-racism, LGBTIQ+ equality, Roma inclusion, children's rights, disability, victims' rights, women's rights and migrant integration.

Civil society's expertise, services, advocacy and watchdog role are key to the implementation of fundamental rights in the EU. Therefore, FRA reports on civic space developments across the EU have been published annually since 2018. [1]

Various challenges and pressures hamper the important work of CSOs and human rights defenders across the EU in the areas of human rights, democracy and the rule of law. These are referred to as 'civic space challenges'.

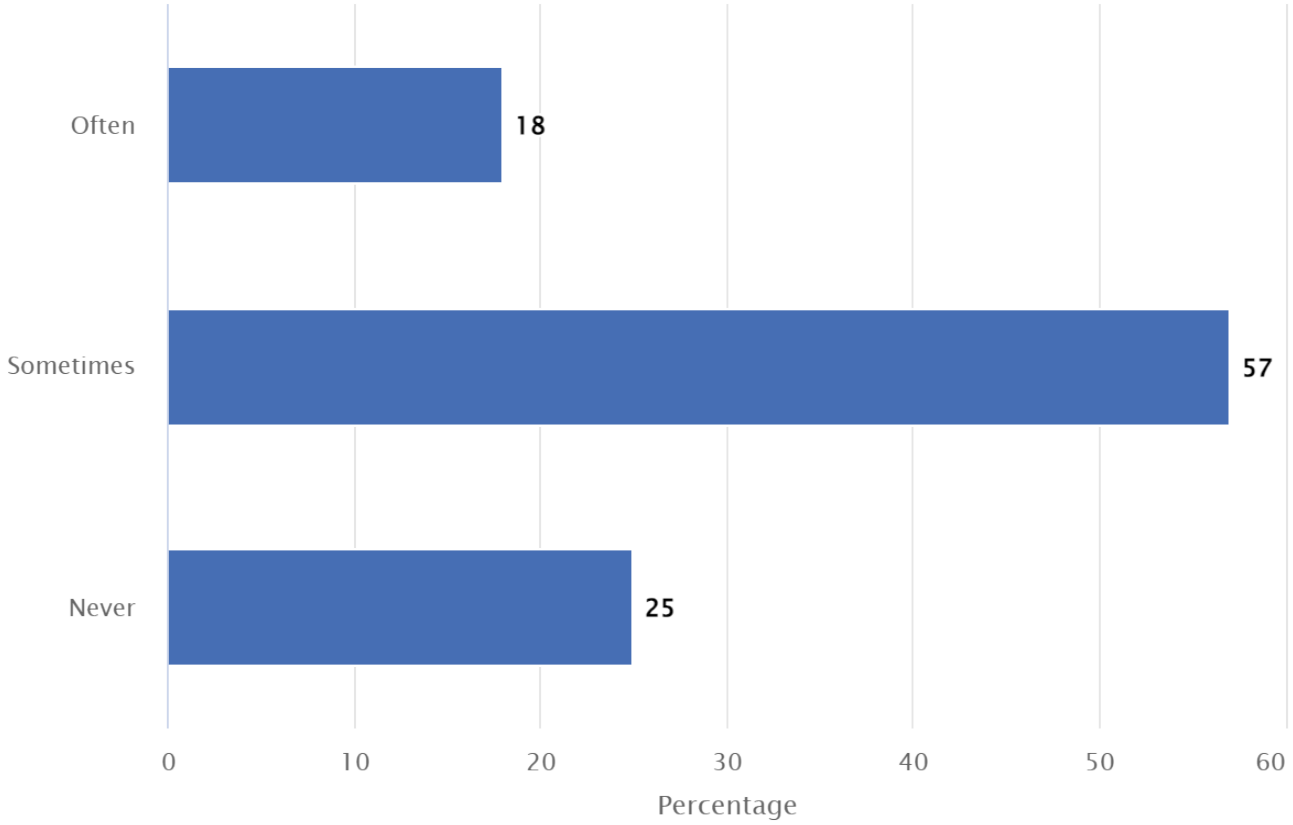
Reports by international organisations and a range of CSOs have pointed to persisting serious challenges for civil society in the EU. FRA's annual reports on civic space have also highlighted the serious challenges civil society faces. [2] FRA's research and the findings from its annual consultations with civil society point to patterns of challenges for CSOs regarding:

- the legal frameworks governing their work and their participation in democracy and the rule of law;
- access to resources;
- participation in policymaking and decision making;
- operating in a safe environment.

The graphs in this report summarise the responses from representatives of close to 400 CSOs working in the area of human rights at EU, national and local levels in the EU. Their responses cover their experiences in civic space in 2022.

A range of CSOs point to persisting serious challenges for civil society in the EU, limiting their role and contribution to the functioning of democracy and the rule of law (see Figure 1). Compared to the situation in 2018, the conditions for working on human rights has gotten worse (see Figure 2).

Figure 1 – How often CSOs faced barriers in conducting their human rights activities in 2022 (%)

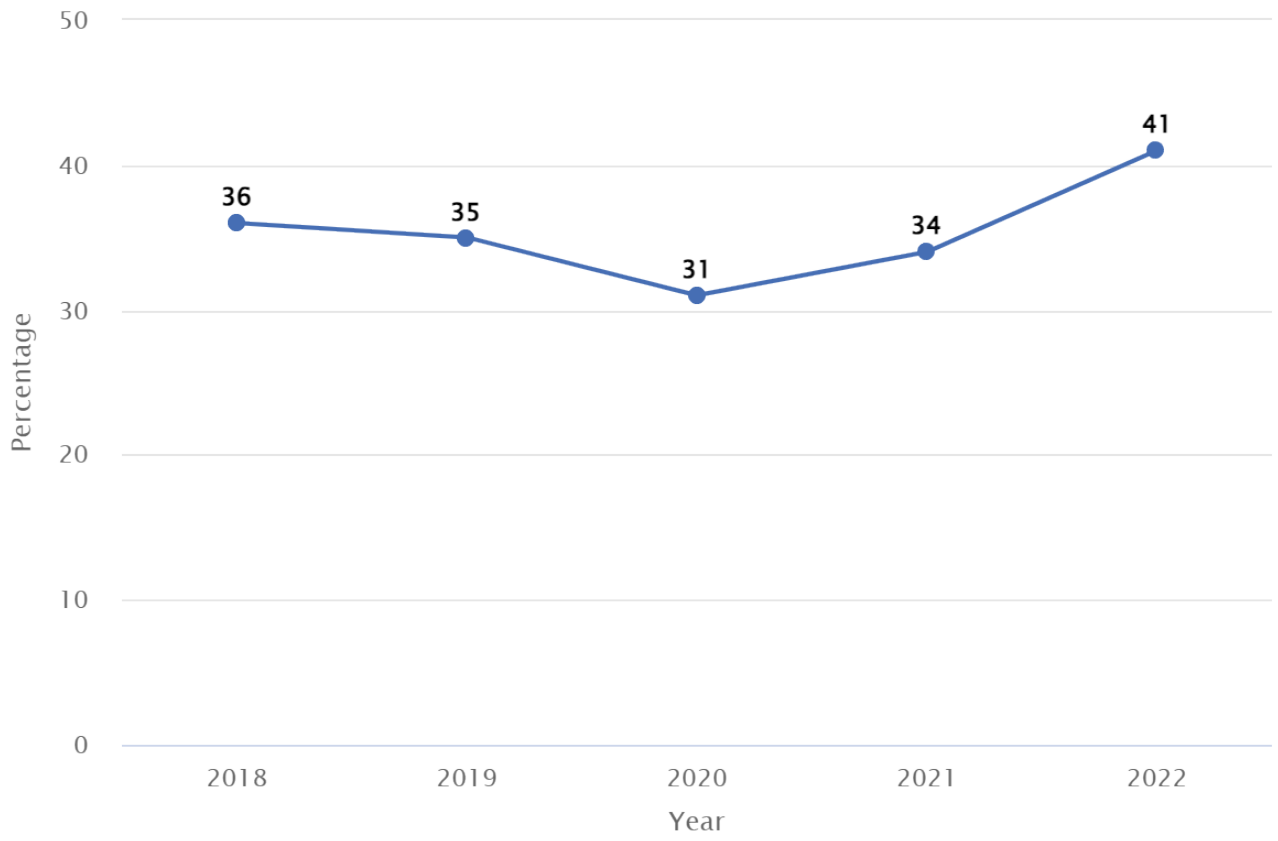


A bar chart showing that 18% of organisations often faced barriers in 2022. 57% of organisations sometimes faced barriers and 25% never faced barriers.

Notes: Question: "In the last 12 months, did you face any barriers in conducting your activities for human rights and the rule of law?" N *= 359.*

Source: FRA's civic space consultation 2022

Figure 2 – General conditions for CSOs working on human rights – respondents indicating 'bad' or 'very bad' (%)

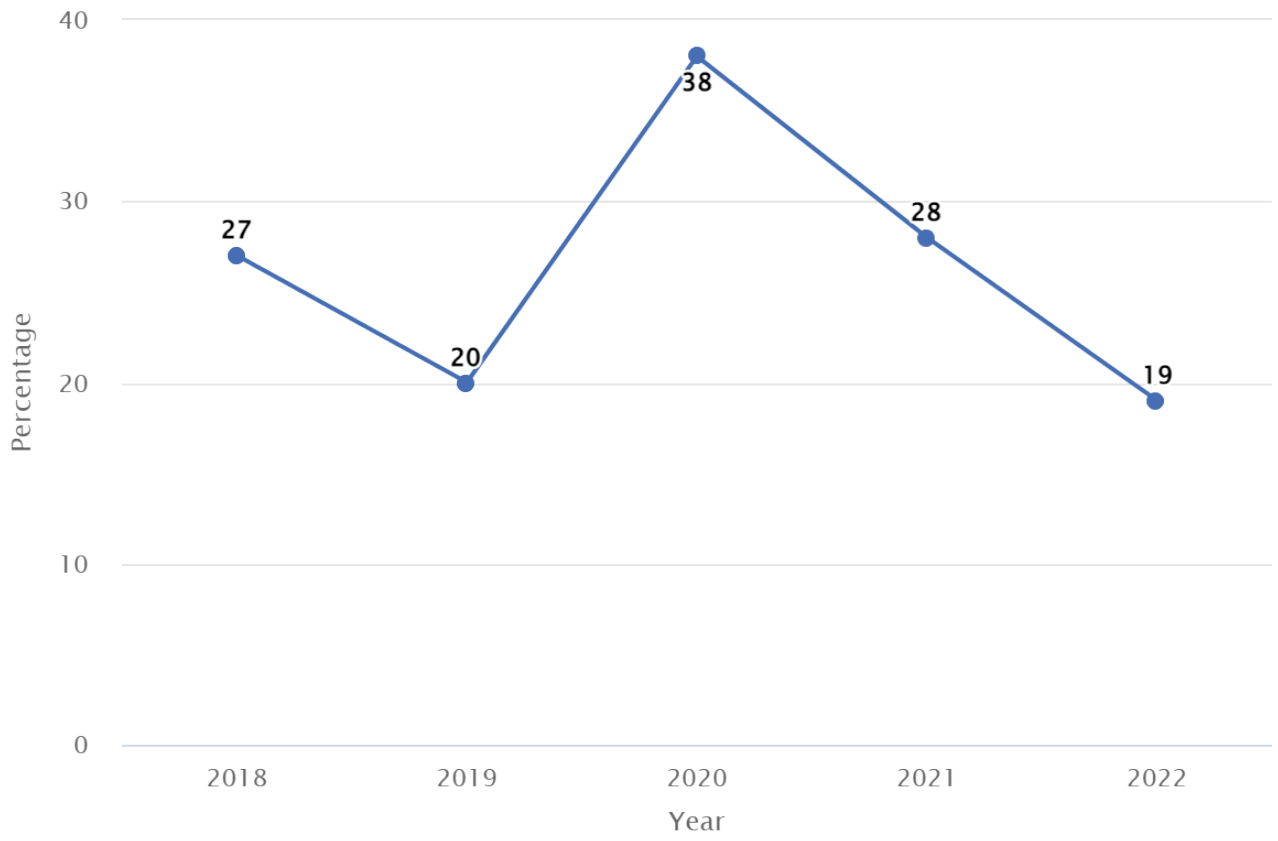


A line chart showing that between 2018 and 2022 organisations who indicated that general conditions were 'bad' or 'very bad' has increased from approximately 35% in 2018 to approximately 40% in 2022. In 2020 the figure dropped to approximately 30%.

Notes: Question: "How would you describe in general the conditions for CSOs working on human rights issues in your country today? (very good/good/neither good nor bad/bad/very bad)" The figure shows the percentage of those responding 'bad' or 'very bad'. 2018, N *= 136; 2019,* N *= 145; 2020,* N *= 297; 2021,* N *= 286; 2022,* N *= 318.*

Source: FRA's civic space consultations, 2018–2022

Figure 3 – CSOs perceiving a change in their own situation in 2022 – respondents indicating 'deteriorated' or 'greatly deteriorated' (%)



A line chart showing that between 2018 and 2022 organisations who perceived that their own situation had 'deteriorated' or 'greatly deteriorated' reached a peak of approximately 37% in 2020 and then dropped down to 20% in 2022 which was the same level as 2019.

Notes: Question: "Thinking about your own organisation, how has its situation changed in the past 12 months? (greatly improved/improved/remained the same/deteriorated/greatly deteriorated)" 2018, N *= 133; 2019,* N *= 202; 2020,* N *= 393; 2021,* N *= 387; 2022,* N *= 407. For 2018, the question referred to the past three years.*

Source: FRA's civic space consultations, 2018-2022

A higher number of organisations perceived their situation as having improved from the previous year in 2022 than in previous consultations, and a lower number witnessed a deterioration (18 % compared with 28 % in 2021) (Figure 3). To a large extent this can be related to the ending of COVID measures, notably emergency measures which greatly affected CSOs. [3]

In terms of policy measures by authorities, FRA's research reveals both positive and negative developments in 2022 across the EU. Positive steps in several Member States include policy measures creating an environment more conducive to the development of civil society , the strengthening of cooperation between public authorities and CSOs including through setting up cooperation bodies, and the improvement of frameworks for participation. For example, some Member States have created infrastructures aimed at providing space for dialogue, channelled targeted support to civil society, or undertaken specific commitments to create an enabling environment in national action plans for an open government. CSOs have also been active in their efforts to improve the policy framework in which they operate, including through coalition

building. [4]

1.2 EU initiatives on civic space

In 2022–2023, all three major EU institutions e acknowledged civic space pressures in the EU in official documents for the first time:

- the European Parliament resolution on civic space in the EU (March 2022);
- the European Commission report on the application of the Charter and civic space (December 2022);
- the Council Conclusions on the role of the civic space in protecting and promoting fundamental rights in the EU (March 2023).

1.2.1 Legislative and policy initiatives

2022 was an important year for civic space-related legislative and policy developments. The European Commission dedicated its annual report on the application of the Charter to the topic 'A thriving civic space for upholding fundamental rights in the EU'. It reviewed the situation of civil society organisations and other human rights defenders, concluding that they need more support and that their operating environment needs improvements. [5]

The Commission announced in the report that it would launch targeted dialogue with stakeholders through a series of thematic seminars on safeguarding civic space. The seminars focused on how the EU can further develop its role to protect, support and empower CSOs and rights defenders to address the challenges and opportunities identified in the report. The outcome of the seminars will be discussed at a high-level conference in November 2023. [6]

Proposals for EU legislation of direct relevance to CSOs were also put forward in 2022.

In February 2022, the European Parliament called for "a dedicated, comprehensive strategy to strengthen civil society in the Union, including by introducing measures to facilitate the operations of non-profit organisations at all levels". [7]

In particular, the Parliament called for a legislative initiative to create a statute for European cross-border associations and non-profit organisations. [8] The resolution calls on the Commission to recognise and promote the public benefit activities of non-profit organisations by harmonising the conditions for granting public benefit status within the EU. In response to the European Parliament's call on 5 September 2023, the Commission adopted, a proposal for a directive on European cross-border associations. [9] The proposal supplements the existing national legal forms of associations with a new legal form, European cross-border associations (ECBA). It seeks to make it easier for non-profits to be active in more than one Member State. After registration in one Member State, the proposal allows automatic recognition of ECBAs across the EU. It also

provides for harmonised rules on the transfer of registered office [10] .

In addition, in April 2022 the European Commission proposed a directive on SLAPPs. These will most probably be adopted at the end of 2023 (for details, see Section 2.2).

Surveillance was also a prominent topic in 2022. Following alleged abuses in the use of Pegasus and similar surveillance software against a variety of targets, including CSOs, the European Parliament set up a committee of inquiry to investigate them. [11] The committee published a report on its findings in May 2023. [12]

Moreover, in September 2022, the European Commission proposed a European media freedom act, consisting of a proposed regulation and a recommendation for editorial independence and ownership transparency in the media sector. [13] The proposed legislation included safeguards against political interference in editorial decisions and against surveillance. It focuses on the independence and stable funding of public service media, and on the transparency of media ownership and of the allocation of state advertising. The draft envisages the formation of a European board of media services. The board will, organise a "structured dialogue between providers of very large online platforms, representatives of media service providers and representatives of civil society" to foster access to diverse independent media on very large online platforms and discuss experiences and best practices. [14] CSOs benefit from and require diverse and free media to make their voice heard.

The Digital Services Act, which entered into force in 2022, establishes various mechanisms allowing for CSO engagement. [15] Options include launching complaints and engaging in the identification of societal risks and their evolution in the context of drawing up codes of conduct and crisis protocols. [16]

Finally, 2022 also saw the preparations of the European Commission's Defence of Democracy Package. The plan was announced in the President of the Commission's State of the Union speech. While the initiative is aimed at promoting transparency and fighting foreign interference, concerns were raised by some stakeholders about possible negative implications for fundamental rights and ultimately the work of CSOs. [17] The Commission announced in June 2023 that it would further consult and gather additional information as part of a full impact assessment. According to the European Commission, this will involve carefully looking at enhanced transparency, democratic accountability, freedom of expression and freedom of association.

1.2.2 Supporting civil society and countering threats

In its December 2022 report on civic space in the EU, the European Commission underlined that CSOs and rights defenders continue to report a range of challenges and restrictions that limit their ability to carry out their activities. [18] The European Commission found during its consultation for the report that 61 % of responding CSOs had faced obstacles that limit their 'safe space'. [19] As a follow-up to its report, the Commission convened three expert seminars. One of them focused on

protection. [20]

Leading civil society umbrella organisations organised a major gathering in December 2022. It brought together over 100 representatives of civil society, EU and international institutions, and donors to discuss how to enable, protect and expand Europe's civic space. Those gathered developed recommendations for the European Commission. [21] At the gathering, the organisations called for "an EU mechanism to protect civil society and human rights defenders that should be built on the example of the existing external EU human rights defenders' mechanism protectdefenders.eu, the mechanism developed by DG IntPA [the Directorate-General for International Partnerships] to support civil society in the External Action, as well as the Council of Europe Platform for safety of journalist[s] and the UN Special Procedures". [22]

The CERV programme, introduced in 2021, continued to provide funding for civil society actors in the EU in 2022. [23] The programme also gives umbrella CSOs the opportunity to receive core funding and to regrant it to their member organisations. While CSOs praise these developments overall, they continue to criticise the administrative burden and lack of flexibility associated with this programme. [24]

1.2.3 Enabling participation

Article 11 of the 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 European Commission considers the participation of civil society as key to ensuring good-quality legislation and the development of sustainable policies that reflect people's needs. [25]

Several EU strategies and action plans in the field of fundamental rights envisage the setting up of various forms of civil society forums/platforms, working groups, etc., to facilitate dialogue and structured cooperation between authorities and civil society and the implementation of the strategies and plans. Such strategies and action plans often call for the adoption of national action plans, which can also benefit from civil society participation.

For instance, under the EU Roma Strategic Framework for Equality, Inclusion and Participation for 2020–2030, the European Commission set out to facilitate the participation of Roma non-governmental organisations (NGOs) as full members of national monitoring committees for all programmes addressing needs of Roma communities. It has thereby capacitated and engaged at least 90 NGOs in EU-coordinated Roma civil society monitoring, encouraging the participation of Roma in political life at local, regional and EU levels. [26]

Similarly, the Action Plan on Integration and Inclusion 2021–2027 concerning migrant integration refers to the European Commission's launch of an expert group on the view of migrants. The group is composed of migrants and organisations representing their interests, to be consulted on

the design and implementation of future EU policies in the field of migration, asylum and integration.

1.3 International organisations' initiatives

Building on the Universal Declaration of Human Rights and related treaties, the UN Declaration on Human Rights Defenders of 1998 explicitly lists the rights and responsibilities of human rights defenders. [27]

In line with the overall UN General Assembly mandate to promote and protect human rights, [28] the UN High Commissioner for Human Rights seeks to expand civic space and to strengthen the protection of human rights defenders around the globe. His office monitors and advocates around numerous cases of defenders under threat.

It also acts as the custodian of Sustainable Development Goal indicator 16.10.1 on verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists and associated media personnel, trade unionists and human rights advocates.

UN human rights treaty bodies have raised issues concerning civic space and the need for an enabling environment for the activities of CSOs and human rights defenders. The work of most, if not all, UN Human Rights Council appointed Special Procedures mandate holders touches on issues related to human rights defenders and civic space. [29] Online and offline civic space was among the thematic spotlights of the UDHR75 campaign that began in 2023. [30]

The mandate of the UN Special Rapporteur on human rights defenders to promote the Declaration on Human Rights Defenders' effective implementation was established in 2000. [31] In 2022, the Special Rapporteur published a report on defenders of the rights of refugees, migrants and asylum seekers, [32] and made numerous statements in recognition of issues specific to human rights defenders. [33] The work of most, if not all, of the UN Human Rights Council-appointed special procedures mandate holders [34] touches on issues related to human rights defenders and civic space.

Moreover, following the establishment of the mandate of the Special Rapporteur on Environmental Defenders under the Aarhus Convention in October 2021, the Meeting of the Parties to the Aarhus Convention elected Michel Forst as the first special rapporteur in this area in June 2022. [35] The special rapporteur's primary role is to provide a rapid response to protect environmental defenders from persecution, penalisation and harassment.

Legal corner – New Special Rapporteur on Environmental Defenders under the Aarhus Convention

Article 3 (8) of the Aarhus Convention provides that "Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention

shall not be penalized, persecuted or harassed in any way for their involvement."

The mandate of the Special Rapporteur on Environmental Defenders is to take measures to protect any person who is either:

(a) Experiencing persecution, penalization or harassment, or

(b) At imminent threat of persecution, penalization or harassment in any way, for seeking to exercise their rights under the Aarhus Convention.

The mandate of the Special Rapporteur covers penalization, persecution or harassment by any state body or institution and by private natural or legal persons. The Special Rapporteur also takes a proactive role in raising awareness of environmental defenders' rights under the Aarhus Convention.

Source: United Nations Economic Commission for Europe (UNECE) (n.d.), 'Mandate and functions of the Special Rapporteur'.

Similarly, the Council of Europe Commissioner for Human Rights continued to support human rights defenders and civil society and to promote an enabling environment in accordance with her mandate. This included meeting them regularly, intervening in cases where they had faced risks to their personal safety, liberty and integrity, participating in the proceedings before the European Court of Human Rights, and co-operating with other international mandates and stakeholders throughout 2022. [36]

The Council of Europe's Parliamentary Assembly also continued to work on civic space issues. It adopted a report and a recommendation on the impact of COVID-19 restrictions on civic space. [37] The assembly also produced a report and a resolution on transnational repression, which was subsequently adopted in 2023. [38]

In 2022, the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (ODIHR) published a resilience tool for national human rights institutions. Its findings are also relevant for human rights defenders more broadly. [39] ODIHR also offered a range of training programmes for civil society on human rights monitoring and related security issues.

In December 2022, the Organisation for Economic Co-operation and Development (OECD) published a landmark report entitled The protection and promotion of civic space: Strengthening alignment with international standards and guidance, which covers the EU. [40] The OECD will also publish a practical guide for policymakers on the protection and promotion of civic space in 2024. In addition, the OECD is conducting country assessments on civic space, which are qualitative reviews of the laws, policies, institutions and practices that support civic space in OECD member and partner countries. [41] In 2022–2023, two EU countries were covered: Portugal [42] and Romania. [43]

Promising practice – Intergovernmental organisations' Contact Group on human rights defenders

The informal Contact Group on human rights defenders was set up in spring 2019 at the initiative of FRA and ODIHR to establish the ongoing, practical exchange of information among staff in intergovernmental organisations and EU institutions. Staff responsible for cooperation with civil society and for supporting human rights defenders from almost 20 such bodies meet at least three times a year online to discuss their ongoing and upcoming activities.

This improves the coordination of their activities and their cooperation with other organisations and fosters synergies with a view to better supporting human rights defenders in Europe.

Source: FRA, 2023.

1.4 Developments in three EU candidate countries

FRA has granted three EU candidate countries – Albania, North Macedonia and Serbia – observer status. Hence, it covers these three countries in its work. Franet research on civic space also covers these, and FRA's 2022 civic space consultation collected responses from 30 CSOs across these countries. Developments in civic space in Albania, North Macedonia and Serbia show similar patterns to those in the EU.

The main difficulties that CSOs encountered in 2022 in these three countries concerned access to information, legislation on civil dialogue and consultations, transparency and lobbying laws, and anti-money laundering measures. [44] Fewer CSOs said their organisation's conditions had worsened compared with the previous year in 2022. Still, around 20 % of respondents saw their situation as having deteriorated, whereas roughly 6 % believed it had greatly deteriorated. [45] In comparison, 16 % in EU Member States said their situation had deteriorated, and around 2 % said it had greatly deteriorated. [46]

One quarter of responding CSOs experienced difficulties in terms of enjoying their right to freedom of peaceful assembly. [47] In Albania and Serbia, CSOs referred to obstacles to exercising this right. In these countries, human rights organisations carried out activities aimed at monitoring the compliance of police procedures with national and international standards on peaceful assembly. In Serbia, in September 2022, public authorities attempted to ban the peaceful LGBTIQ+ EuroPride march and restrict protests for environmental rights.

North Macedonian and Serbian CSOs complained of a lack of an enabling environment. Problems

arose particularly in their cooperation with public authorities. CSOs reported that SLAPPs are used to silence civil society.

In Serbia, environmental defenders and activists denouncing bad health practices during the first wave of the COVID-19 pandemic faced lawsuits. In North Macedonia, a working group composed of state institutions' representatives and CSOs drafted a legislative proposal aimed at providing a process for legal gender recognition. It was withdrawn after reaching the parliament, following fake news and transphobic propaganda. [48] These events are reflected in the overall trend evident from FRA's civic space consultation, where almost half of respondents reported that their organisation was a victim of negative media reports and/or campaigns in 2022. Moreover, almost half of respondents experienced online and/or offline threats or harassment due to their work. [49]

A recurring negative pattern in all three countries, particularly Albania and Serbia, concerns environmental defenders, who reportedly often face lawsuits and harassment. However, promising practices indicate that CSOs are willing to proactively and collectively protect civic space and to promote citizens' participation in decision-making processes. This was, in some cases, achieved through civil society-led umbrella initiatives. For instance, in North Macedonia the Skopje-based European Policy Institute and the Deliberative Democracy Lab at Stanford University organised a third deliberative poll on the topic of elections and electoral reforms, which involved about 150 citizens. A deliberative poll takes a random, representative sample of citizens and engages them in deliberation on current issues or proposed policy changes through small group discussions and conversations with experts to obtain a more informed and reflective public opinion.

In other cases, cooperation between CSOs and public authorities led to significant results. In Albania, the non-profit sector, the state and financial authorities jointly developed a methodology aimed at assessing the risk of terrorist financing in the non-profit sector. Finally, a training initiative in North Macedonia aimed to raise awareness of corruption, build capacity to tackle it and enhance transparency. It brought together the CSO Center for Civil Communication and employees in local government and local public enterprises. [50]

Another relevant development concerns the Albanian NHRI that gained additional competences to serve as a focal point for monitoring challenges facing human rights defenders in 2022. [51]

2. Legal environment

A legal environment conducive to an open civic space requires a strong legislative framework that protects and promotes individuals' and organisations' rights to freedom of association, peaceful assembly and expression in conformity with international human rights law and standards. [52] The UN Declaration on Human Rights Defenders, although not legally binding, contains principles and rights that are based on human rights standards enshrined in other legally binding international instruments.

Most of these rights apply not only to the people working for CSOs but also to the CSOs themselves. They are also enshrined in the Charter, which is binding on Member States when they are acting within the scope of EU law (as provided in Article 51 (1)). [53] This may be the case when national laws or practices are implementing EU law, compromise the full implementation of EU law [54] or encroach on fundamental freedoms in the EU. [55] In such cases, the compatibility of national laws and practices with fundamental rights as enshrined in the Charter needs to be checked.

This chapter outlines regulatory hurdles that CSOs have encountered across the EU. Human rights CSOs and their members benefit from many human rights as enshrined for instance in the Charter, the European Convention on Human Rights and the International Covenant on Civil and Political Rights. This includes the following rights:

- freedom of association (Article 12 EU Charter, Article 11 ECHR, 22 ICCPR);
- freedom of peaceful assembly (Article 12 EU Charter, Article 21 ICCPR, Article 11 ECHR);
- an effective remedy (Article 47 EU Charter, Article 13 ECHR, Article 2 (3) (a) ICCPR);
- a fair trial (Article 47 EU Charter, Article 6 ECHR and Article 14 ICCPR);
- property (Article 17 EU Charter, Article 1, First Protocol ECHR);
- respect for private life and correspondence (Article 7 EU Charter, Article 8 ECHR, Article 17 ICCPR);
- be protected from discrimination (Article 21 EU Charter, Article 14 ECHR, Article 1, 12th Protocol ECHR, Article 26 ICCPR).

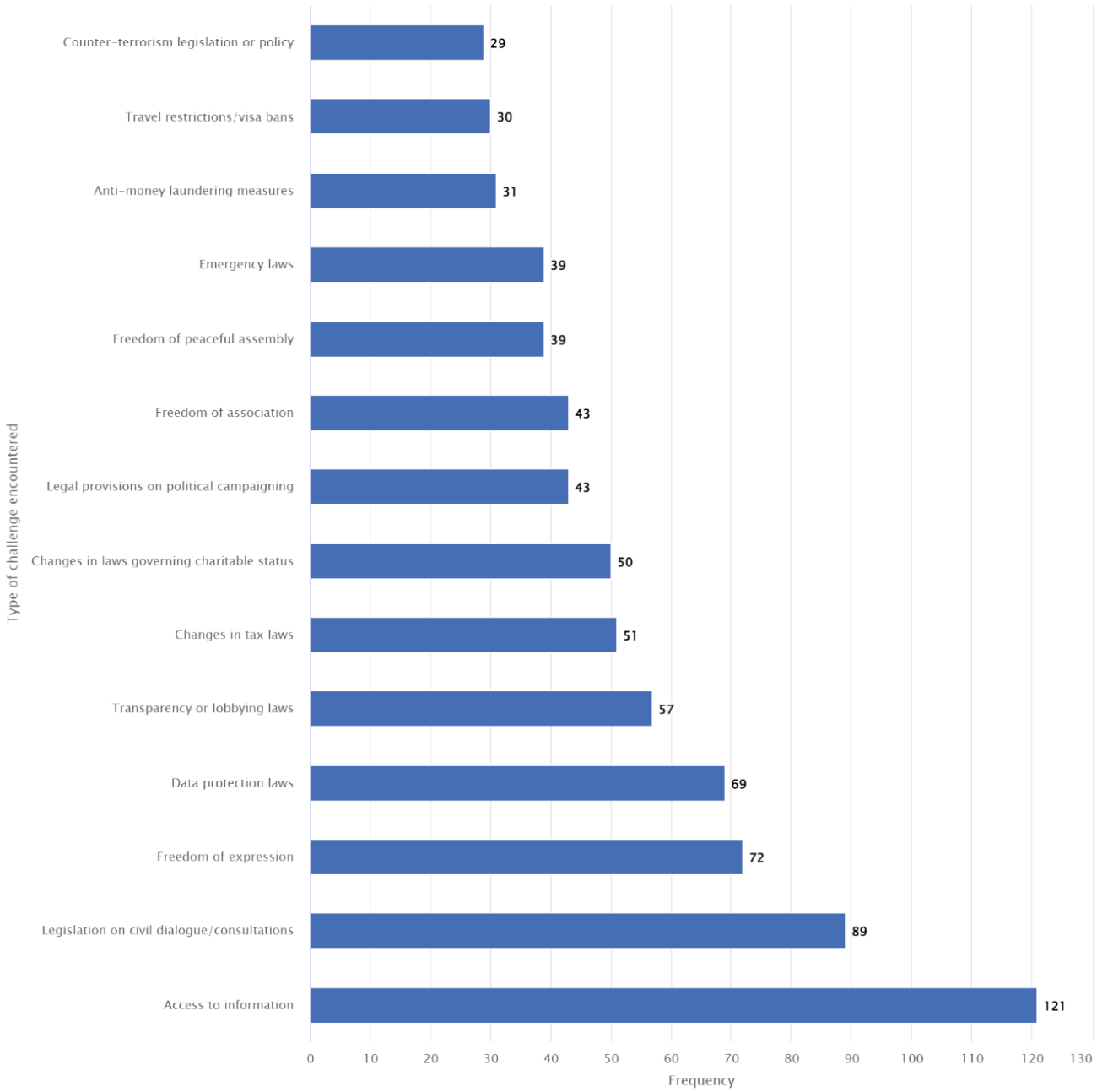
2.1 Developments in EU Member States

In 2022, the legal situation remained, overall, relatively unchanged from 2021, as both FRA's consultation findings and Franet research indicate. However, a decrease in challenges related to emergency laws compared with the 2020 and 2021 consultations is visible. [56] This corresponds to the gradual lifting of emergency regulations adopted in response to the COVID-19 pandemic. The same applies to challenges linked to travel restrictions and visa bans, which posed less of a

challenge in 2022.

Figure 4 shows the challenges in the legal environment that respondents to FRA's 2022 civic space consultation face. Several areas are especially problematic: access to information, legislation on civil dialogue, the regulatory environment for political campaigning, and the lack of ability to fully exercise freedom of expression. Moreover, pressure on the right to freedom of peaceful assembly and freedom of association continues in several countries. [57]

Figure 4 – Challenges that CSOs encountered in the legal environment in the EU in 2022



The bar chart shows the different types and frequency of challenges encountered. The challenge that occurred most often was 'Access to information' which was encountered 121 times. The second most frequent challenge encountered was 'Legislation on civil dialogue/consultations' which occurred 89 times. Oter challenges encountered over 60 times were 'Freedom of expression', which occurred 72 times and 'Data protection laws' which was

encountered 69 times.

Notes: Question: "In the past 12 months, has your organisation encountered difficulties in conducting its work due to legal challenges in any of the following areas? You can tick all boxes that are relevant." N *= 381.*

Source: FRA's consultation on civic space, 2022

2.1.1 Freedom of association

Overly strict legal requirements for the formation and registration of associations were seen to affect freedom of association. Organisations also faced challenges when establishing their activities and conducting their work. [58] These include measures regarding data protection, transparency, anti-money laundering and tax. [59]

In Bulgaria and the Netherlands, CSOs criticised draft laws that imposed administrative obligations on CSOs funded from abroad as overly restrictive. [60] Compliance requirements and other obstacles continued to be a challenge for NGOs in various Member States.

In Cyprus, CSOs alleged that national laws [61] disproportionately implementing the EU Anti-Money Laundering Directive [62] led to the suspension and closure of accounts and the blocking of funds. [63] In Hungary, CSOs reported that they were being asked to submit large amounts of data as part of an audit planned for in a new law [64] on the transparency of CSOs. [65] The State Audit Office assists CSOs by providing voluntary tests for CSOs to evaluate their accounting systems. Civil society centres in every county and in the capital provide free advice to help CSOs operate properly. [66]

In Romania, CSOs criticised a new law restricting the right of CSOs to challenge building permits and comment on urban planning documents by shortening various deadlines for receiving input. [67] CSOs also expressed their concern that a new law on cybersecurity, requiring security incidents to be reported within 48 hours and the storage of large amounts of data for a long time, and imposing high fines, could also apply to watchdog NGOs and journalists due to its broad scope. [68]

In France, CSOs protested against the requirement to sign 'republican commitment contracts' to obtain state approval, receive a public subsidy or host a young person performing civic service. [69] They argued that this violates their right to freedom of association due to a lack of clarity in the contracts, their overly broad scope and the lack of clear remedies for breaches. [70]

In some Member States, measures were taken to facilitate CSOs' enjoyment of their right to freedom of association. In Finland, the legislature passed an amendment to the Associations Act. It allows associations to hold exclusively virtual meetings, including also general meetings of members of an association , of its executive committees. This enables decisions to be made without the physical presence of (prospective) members. [71]

In Latvia, a new accounting law allows volunteers to perform accounting functions in associations and foundations, and smaller organisations to have simplified accounting processes. [72]

2.1.2 Freedom of expression

Hampered access to information, the criminalisation of expression, the removal of online content, online and offline verbal harassment, censorship and defamation challenge freedom of expression. Access to information was the most common challenge in the legal environment for CSOs in 2022, FRA's civic space consultation shows (see Figure 4). National provisions grant access to public documents. However, these provisions include broad exceptions, potentially impeding the proper exercise of this right.

In Malta, the Institute of Maltese Journalists criticised the lack of action on the recommendations of the public inquiry into the assassination of the journalist Caruana Galizia and proposed anti-SLAPP legislation. [73] The Council of Europe Commissioner for Human Rights also expressed concern, [74] and the Prime Minister agreed to freeze the bills based on the recommendations and scheduled a new public consultation for February 2023. [75] NGOs and the Commissioner for Human Rights also noted difficulties in implementing freedom of information legislation. [76] The Maltese Government published a number of bills which aim to further strengthen the journalistic profession. These bills were sent to the Committee of Experts on Media for their feedback and were subsequently, tabled in the House of Representatives. Although the public consultation on these bills had already take place, the Institute of Maltese Journalists requested more time for the consultation and to share their views with the government. The government abided by this request and entrusted the Committee of Experts on Media to broaden its public consultation. Currently, there is an ongoing evaluation of the Committee's final report after which the legislative process continues. [77]

In Sweden, legislative and constitutional amendments on the criminalisation of foreign espionage, which include bans on disclosing secret information, may hamper investigative journalism. [78]

In Greece, grave concerns were expressed regarding the use of spyware to monitor the activities of journalists and politicians and alleged SLAPPs against journalists trying to cover stories about spyware (for information on SLAPPs, see Section 2.2). [79] On 27 July 2022, a Task Force was created. It is formed my members of various relevant stakeholders, convenes once a month to discuss various topic and come up with initiatives to protect and empower journalists [80] .

Improvements are also noted. The Freedom of Information Act in Slovakia was amended to comply with the EU Open Data Directive, [81] expanding the range of entities covered to include more public bodies and insurance companies and specifying some terms in more detail. [82]

The transposition of the Whistleblower Directive progressed with the proposal and/or adoption of laws in a number of Member States. CSOs in Germany agreed on their own policy to deal with whistleblowers in the civil society sector, seeking to lead by example. [83]

2.1.3 Freedom of peaceful assembly

In relation to freedom of peaceful assembly, climate activist-related issues became the centre of attention, superseding COVID-19-related incidents. However, there were still a few cases of the latter. The Estonian Supreme Court justified COVID-19 restrictions on freedom of assembly and other fundamental rights [84] on the ground of protecting life and health. [85] In Cyprus, a demonstration against the full ban on all street protests to limit the spread of COVID-19 resulted in riot charges being brought against 11 participants, who also alleged that the police used excessive force. [86]

Amid growing public concern about global warming, courts continued to deal with various forms of climate protests using tactics that violated laws, including, in particular, traffic laws. For example, in May 2022, 110 climate activists were detained in Denmark for occupying bridges in Copenhagen near the parliament and government buildings. They were released after being interrogated. [87] In Germany, courts punished climate activists for setting up roadblocks and blockades at airports using a variety of criminal laws, amid calls for harsher punishment for their actions. [88]

Climate CSOs called for the discussion of climate change rather than the punishment of civil disobedience. [89] Climate activists were fined in Portugal for disobedience because they refused to end their occupation of high schools and higher education facilities. [90] The Director of the Public Security Police noted that the demonstrations were dealt with in a proportionate and peaceful manner, and the interior ministry noted the importance of young people fighting for their causes. [91]

In a trade union case that could also affect climate protests in Belgium, the Court of Cassation ruled that protestors' criminal liability for participating in a roadblock on a highway was not excluded based on their right to freedom of expression or freedom of peaceful assembly. [92] Previously, the law had stated that only the organisers of illegal roadblocks would be punished, but the court ruled that participating in such roadblocks was also a criminal offence. [93]

More general problems related to excessive restrictions on peaceful assembly persisted in some Member States. In Greece, an action plan was adopted in 2021 that emphasises the proportionate use of police powers. Nevertheless, there are some reports in the media and among CSOs of the police using excessive force, and allegations of arbitrary arrest. [94]

In the Netherlands, a report by the national section of Amnesty International called for changes in both laws on and attitudes towards public protests, criticising local authorities' excessive bans or curbs on peaceful assemblies, and many rapid arrests by police at demonstrations. [95] In Spain, CSOs criticised excessive restrictions on freedom of peaceful assembly contained in the Citizen's Security Law. [96] However, they remained in force [97] in spite of the government's promises to repeal them. [98]

2.2 Spotlight: Strategic lawsuits against public participation

The issue of SLAPPs has gained more prominence since the European Commission proposed a directive and adopted a recommendation on SLAPPs in April 2022. [99] Coined in 1996, [100] the term "generally refers to a civil lawsuit filed by a corporation against non-government individuals or organizations (NGOs) on a substantive issue of some political interest or social significance" aiming to "shut down critical speech by intimidating critics into silence and draining their resources". [101] There have been many calls for action on SLAPPs in recent years, including from the Council of Europe, the European Parliament and civil society. [102]

The proposed EU directive on SLAPPs states that human rights defenders "play an important role in European democracies, especially in upholding fundamental rights, democratic values, social inclusion, environmental protection and the rule of law". The proposal points out that they should be able to participate actively in public life and make their voices heard on policy matters and in decision-making processes "without fear of intimidation". [103]

For reasons related to EU competence, the legislative proposal covers only cross-border civil cases. Purely national cases are dealt with through an accompanying, non-binding recommendation for the Member States. [104] Negotiations at EU level will clarify the exact scope of the legislation, including the definition of abusive court proceedings, the definition of a cross-border case, and the procedures for early dismissal (the proposal allows courts and tribunals to dismiss cases that are manifestly unfounded) and the protection of SLAPPs victims (including through the provision of legal aid).

Evidence indicates the persisting need for action to curb SLAPPs, especially because, as the proposal notes, none of the Member States currently have any such protection in place. A 2022 Coalition Against SLAPPs in Europe report identifies 570 SLAPPs cases filed in over 30 European jurisdictions from 2010 to 2021. [105] This is despite State obligations to facilitate the freedom of expression and association under the Charter (Articles 11 & 12), the ECHR (Articles 10 & 11) and ICCPR (Articles 19 & 22). [106]

Additional cases included the lawsuits in Poland that local government entities filed against an LGBTIQ+ activist for calling out 'LGBT-free zones', which the courts dismissed. In Austria, the municipality of Vienna has threatened to claim back costs from environmental activists who blocked the construction of a tunnel. Construction of the tunnel was abandoned after protests from various individuals and organisations. [107] In Croatia, a hotel company filed a lawsuit against activists who had spoken out against the construction of a luxury hotel, citing damage to the company's image. [108] This triggered activists' plans to raise money internationally to defend other activists against SLAPPs. [109]

In Slovenia, the Ministry of the Interior ordered protesters and activists to cover the costs of policing unsanctioned events. [110] The ministry under the new government revoked this decision. The parliament recently adopted the Act regulating issues related to specific minor offences during CVOID-19, addressing minor offence proceedings that lacked a lawful or constitutional basis. It provides for suspension of ongoing minor offence proceedings, reimbursement of fines and costs of proceedings paid, and an automatic deletion of data from minor offence records. [111]

A number of criminal cases were also opened, by either bringing charges or summoning individuals to police stations. Although the cases were not technically SLAPPs, they were allegedly aimed at stifling human rights activity. They included a criminal law (and trademark) case against an environmental activist in Italy, who faced a lawsuit from the regional government for using the term 'Pestizidtirol' (Pesticide Tyrol) instead of 'Südtirol' (South Tyrol). In another, the police summoned a Bulgarian journalist to reveal her sources about the affairs of a political party. [112]

Cases can also be brought to both civil and criminal courts, for example as happened to a Croatian activist group that had spoken out against the planned construction of a golf resort near Dubrovnik. [113] The combination of criminal and civil cases brought against them resulted in legal costs, the loss of time to conduct their activities and a more negative perception of the group in society.

Promising practice – Countering SLAPPs at national level

The Irish Department of Justice conducted a review of civil liability for defamation in light of the potential for SLAPPs, informed, amongst others, by a public consultation and symposium also involving CSOs themselves. It recommended an anti-SLAPP mechanism and the removal of the ban on legal aid for defamation cases, and the use of a public interest defence, the removal of juries and the reduction of legal costs and delays in such cases. Further proposals include "measures to encourage prompt correction and apology" and making it easier to "disclose the identity of an anonymous poster of defamatory material".*

The Media Development Center in Bulgaria announced its plan to offer training to legal professionals on SLAPPs in Bulgaria starting in January 2023. EU-funded projects organise training on this topic in 11 Member States.**

Sources:

** Ireland, Department of Justice (2022),* Report on the review of the defamation act 2009*, Dublin, Department of Justice.*

*** Bulgaria, Media Development Center (Център за развитие на медиите) (2023), 'Strategic lawsuits against public participation – Workshop on SLAPP or lawsuits aimed at limiting public participation in Bulgaria' (*'Стратегически съдебни дела срещу участието на обществеността – работен семинар за SLAPP или съдебни дела, насочени към ограничаване на общественото участие в България*'), press release, 12 January 2023;*

PATFox (n.d.), 'Pioneering anti-SLAPP training for freedom of expression'

3. Threats and attacks

CSOs, human rights defenders and other activists continued to face threats and attacks in the EU from both private and public players in 2022. [114] Both EU CSOs and human rights defenders in exile in EU Member States are affected., Human rights defenders in exile can also be affected by acts of transnational repression.

International human rights law guarantees people the rights to life [115] , liberty and security [116] ; to participate in public affairs [117] ; and to be free from any undue interference in their enjoyment of the freedoms of expression [118] , assembly [119] and association [120] . In the EU, similar entitlements are reflected in the Charter. The Victim's Rights Directive requires Member States to pay particular attention to "victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics", which may be the case for CSO activists. [121]

The Council of the European Union recently asked Member States to; '[p]rotect CSOs and human rights defenders from, inter alia, threats, attacks, persecution of critical voices and smear campaigns targeting organisations, staff and volunteers by active means, such as by taking targeted actions to address these issues, by establishing monitoring mechanisms to prevent such threats, by ensuring the prompt identification, reporting, investigation and follow-up on such incidents, and by putting in place dedicated support services for civil society actors'. [122] This followed the European Commission's 2022 annual report on the application of the Charter and is in line with the Council of Europe's Recommendation CM/Rec(2018)11 of the Committee of Ministers to Member States. [123]

3.1 Developments in EU Member States

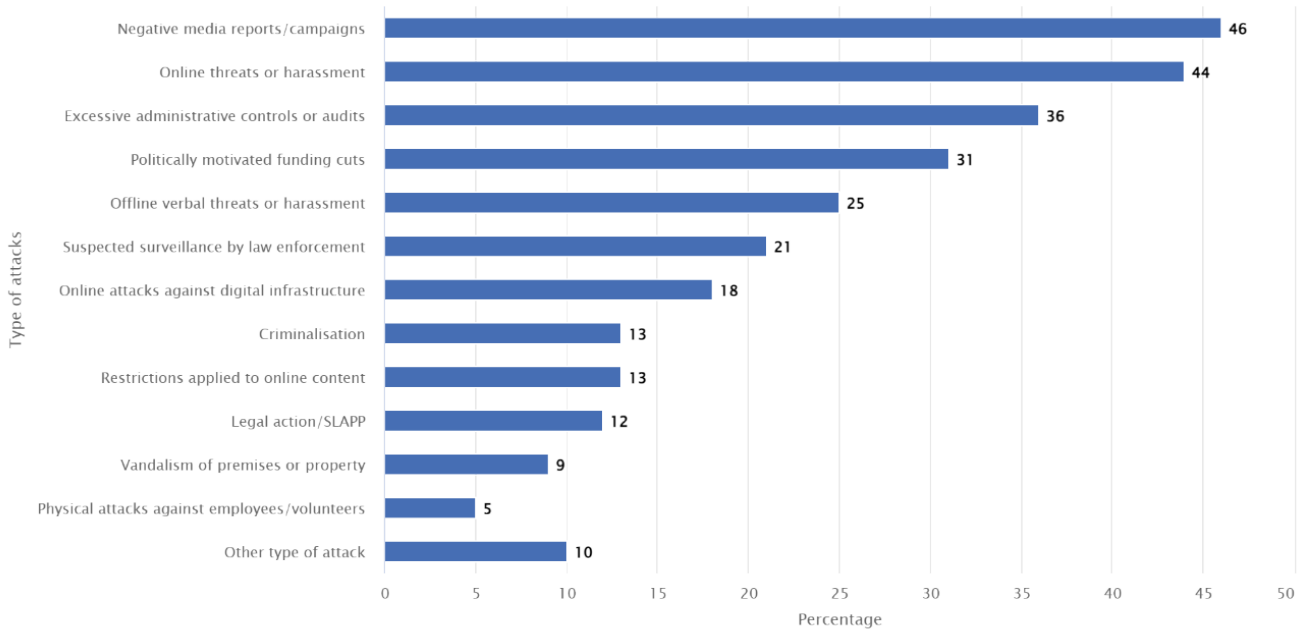
CSOs and human rights defenders continue to experience threats and attacks across all EU Member States. Overall, the vast majority of respondents from EU Member States indicated in FRA's consultation that they had faced some form of threat and attack in 2022.

Of the 168 respondents who provided information about perpetrators of these attacks, around half (48 %) identified a state/public actor as the main perpetrator of attacks against their organisation, whereas nearly half (46 %) suspected or knew that the perpetrators were non-state/private actors. Moreover, regarding the 193 responding CSOs who provided information about specific themes, the majority believe that the attacks were linked to the activities and issues the organisations worked on (87 %). 175 respondents answered questions about whether the attacks were related to their specific funding sources, with 30 % agreeing. [124]

Such threats and attacks include actions both against organisations and their infrastructure and against their staff or volunteers. They include online and offline intimidation and harassment, negative public statements and smear campaigns, verbal threats, and legal and physical attacks. [125]

In several Member States, CSOs reported a climate of hostility towards them and human rights defenders: nearly half of CSOs responding to FRA's 2022 civic space consultation report that media outlets or state actors initiated smear campaigns (see Figure 5). [126]

Figure 5 – CSOs' experiences of threats and attacks in the EU in 2022 (%)



The bar chart shows the different types of threats and attacks experienced and their frequency. The type of threat or attack that occurred most often was 'Negative media reports/campaigns' which was experienced by 46% of organisations. The second most frequent threat or attach experienced was 'Online threats or harassment' which was experienced by 44% of organisations. Other threats or attacks which were experienced by over 30% of organisation were 'Excessive administrative controls or audits' which was experienced by 36% of organisations and 'Politically motivated funding cuts' which was experienced by 31% of organisations.

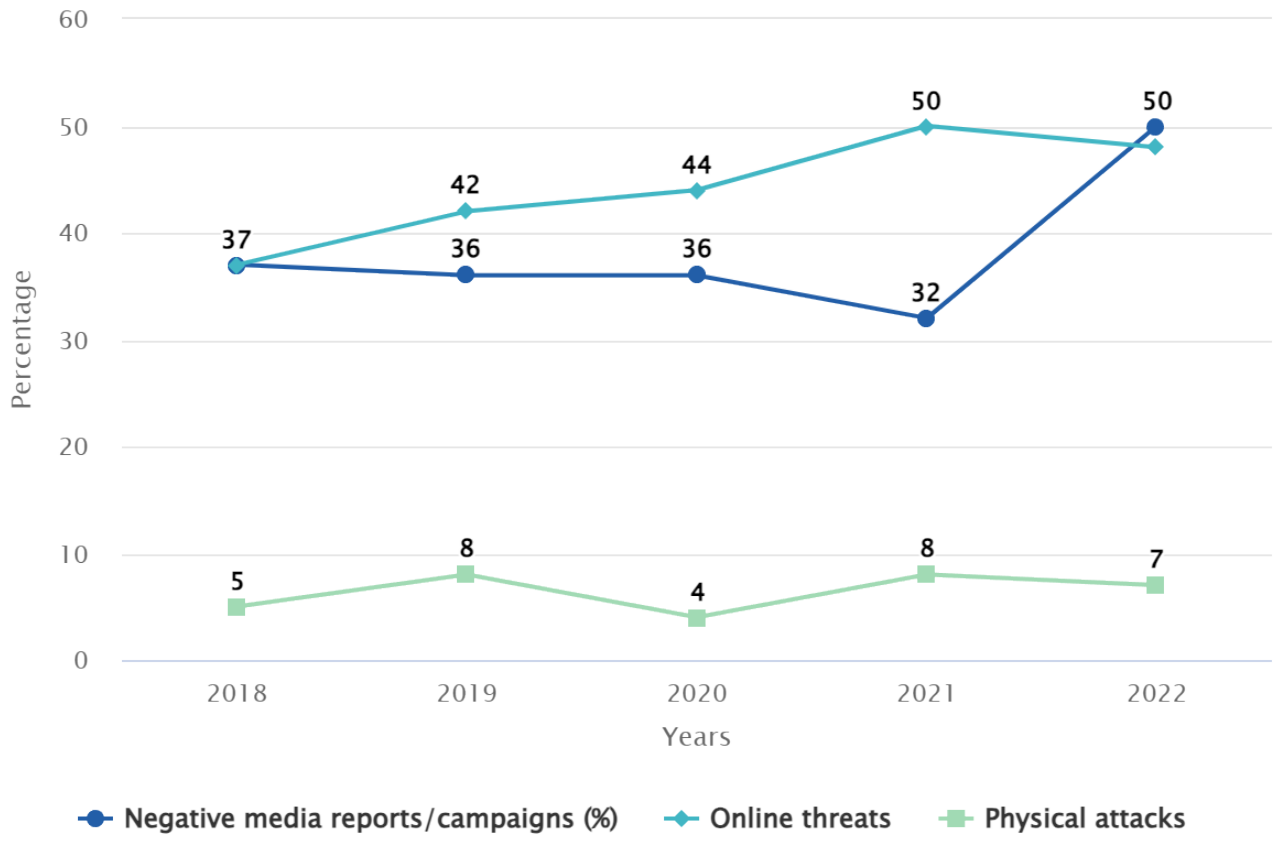
Notes: Question: "In the last 12 months, has your organisation, or any of your employees/volunteers, experienced any of the following [types of attacks]?" N *= 301.*

Source: FRA's civic space consultation 2022

These findings are consistent with the findings of international organisations and CSOs who follow the situation of CSOs and human rights defenders. [127] In some Member States, governments, politicians and high-level officials highlight the vital role of human rights defenders and other civil society actors in promoting rights and ensuring accountability.

Figure 6 shows developments over time in the percentage of CSOs facing negative media reports/campaigns, online verbal threats and physical attacks.

Figure 6 – Developments in CSOs experiencing threats or attacks in the EU (%)



A line chart showing the evolution between 2018 and 2022 of the percentage of organisations which experienced different types of threats or attacks. The percentage of organisations which experienced online threats increased from just below 30% to just below 50% over the period. The percentage of organisations which experienced negative media reports or campaigns remained stable between 2018 and 2020 at just below 40%, then dropped to just above 30% in 2021 then increased sharply in 2022 to 50%. The percentage of organisations which experienced physical attacks remained stable over the period at 5%.

Notes: Question: "In the past 12 months, has your organisation, or any of your employees/volunteers, experienced any of the following?" The figure includes those responding 'often' or 'sometimes' to the question about negative media reports/campaigns, online verbal threats, and physical attacks.

Source: FRA's civic space consultations, 2018–2022

The results of FRA's 2022 consultation are consistent with findings from previous years. Negative media reports and campaigns were, again, the forms of threat and attacks that responding CSOs experienced most (46 %) in 2022 (see Figure 5). Similarly, the consultation shows that online verbal threats and harassment continue to affect almost half of responding organisations. In addition, more than a third of the responding CSOs claim to have been targets of excessive administrative controls or audits.

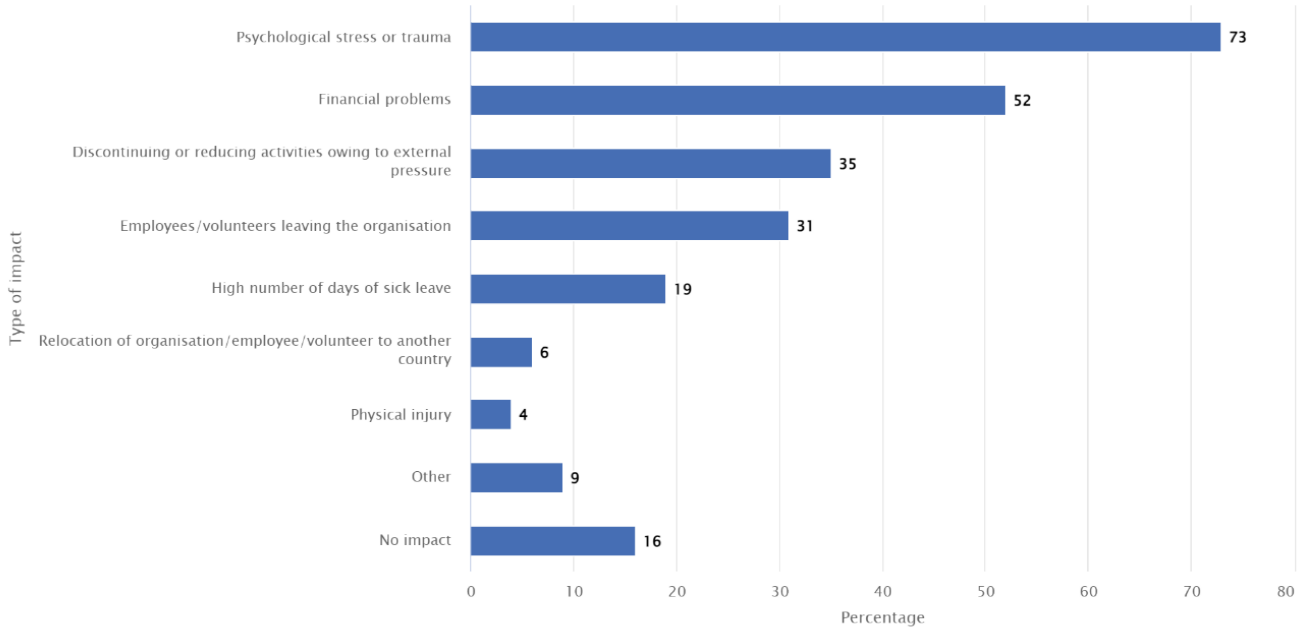
Reports of suspected surveillance by law enforcement increased greatly, to 21 % of respondents from 7 % in 2021. [128] At the same time, the criminalisation of and legal actions against civil society activities continue, notably SAR at sea and providing humanitarian assistance to those in need while on the move (see Section 3.2). Legal and administrative harassment, in particular

through abusive prosecutions and SLAPPs, are also noted (see Section 2.2).

Threats and attacks particularly affect organisations and human rights defenders working with minority groups, those working with migrants and refugees, those working to combat racism, and those working to promote women's rights, sexual and reproductive health and rights and LGBTIQ+ rights. The lack of a safe environment for CSOs to fulfil their functions can have an impact on the implementation of the related EU strategies.

Among the consequences of such attacks for employees and volunteers are psychological stress and trauma and financial problems. The attacks can also result in the interruption or reduction of organisations' activities as a result of external pressure, or employees leaving the organisation (Figure 7). In some cases (6 %), an organisation or an individual human rights defender even had to be relocated to another country, and 4 % had suffered physical injuries. [129]

Figure 7 – Impact of attacks on civil society in the EU in 2022 (%)



The bar chart shows the different types of impact that attacks on organisations have. 73% of organisations suffered 'Psychological stress or trauma' as a result of attacks, 52% or organisations experienced financial problems as a result and 35% reported discontinuing or reducing activities. 31% or organisations reported employees or volunteers leaving the organisation and 19% said they experienced a high number of days of sick leave. 6% or organisations relocated to another country and 4% reported physical injuries.

Notes: Question: "What was the impact of these attacks in the last 12 months on your organisation and its employees/volunteers?" N *= 217.*

Source: FRA's civic space consultation 2022

Yet only one in five organisations reported these incidents to a competent body or the media. The main reasons respondents give for not reporting incidents is that they did not regard the incident as serious enough (52 %), they felt that nothing would come out of reporting (34 %), they lack trust in the authorities or the police (17 %) or they find it too much trouble to report an incident (17 %).

A specific development concerns attacks against human rights defenders in exile in the EU.

Evidence shows that defenders from non-EU countries in exile in EU Member States face transnational repression from the governments of their home countries in the form or threats and attacks. [130] The NGO Freedom House has documented such attacks occurring in 19 EU Member States since 2014. Transnational repression can include acts such as assassination or assassination attempts, detention, unlawful deportation, rendition, assault, unexplained disappearance, credible threat and intimidation. [131]

FRA activity – Report: Human rights defenders at risk – EU entry, residence and support

FRA researched how human rights defenders can enter and stay in the EU if they are at risk, and what type of support they would need in 2022. The report was developed at the request of the European Parliament and was published in July 2023.

FRA suggests ways forward, such as raising awareness of who human rights defenders are and why they need protection, introducing or broadening relocation programmes, more flexibly applying existing visa rules, providing better support for defenders in exile in the EU and reviewing current legal tools enabling human rights defenders to enter and stay in the EU.

Source: FRA (2023), 'Protecting human rights defenders at risk: EU entry, stay and support', 11 July 2023

3.2 Spotlight: Challenges for migrant rights defenders involved in search and rescue at sea

Human rights defenders supporting migrants, refugees and asylum seekers are facing an increasing number of challenges and risks in their work. These range from verbal threats and physical attacks to smear campaigns and increasing pressure from authorities. [132]

The UN Special Rapporteur on human rights defenders, in her report of July 2022, draws attention to the situation of defenders supporting migrants, refugees and asylum seekers and the particular administrative, legal, practical and societal barriers they face, including in the EU. [133]

CSOs report facing smear campaigns that portray activists as “people smugglers” or “foreign agents”, according to evidence that FRA collected. [134] For example, the UN Special Rapporteur on human rights defenders raised concerns about reports of human rights defenders supporting migrants, refugees and asylum seekers in Greece receiving hostile comments. [135]

Pressures from authorities include criminal and administrative proceedings brought against

defenders. [136] SLAPPs have targeted migrant rights defenders in at least 12 EU Member States While the overwhelming majority of cases end with the acquittal of the activists, such lawsuits have the potential to keep the activists occupied, hindering their human rights work, and have a chilling effect. [137]

The situation of civil society players involved in SAR at sea illustrates these challenges. CSOs deploy their own SAR vessels and reconnaissance aircrafts, seeking to reduce fatalities in light of the significant numbers of people trying to enter the EU irregularly either to seek asylum or to migrate. Between January and July 2023, NGOs brought 3,777 people to Italian ports, according to the Italian Ministry of the Interior. Although this makes up only 4.24 % of all sea arrivals, NGOs made a significant contribution to reducing fatalities. [138]

In Greece, Law 4825/2021 [139] regulates the operation of NGOs within the field of competence of the Hellenic Coast Guard. It restricts independent action by NGOs and imposes conditions on their activities. The Commissioner for Human Rights of the Council of Europe expressed concern about this provision highlighting that it "*may further jeopardise NGOs' human rights activities in relation to persons arriving by sea, and severely undermine the necessary scrutiny of the compliance of the operations of the Greek Coast Guard with human rights standards*". [140]

FRA activity: Six steps to prevent future tragedies at sea

The Mediterranean Sea has become the deadliest migration route in the world, with the International Organization for Migration recording more than 28,100 deaths and disappearances between 2014 and September 2023. Following the tragic shipwreck off the Greek coast on the night of 13–14 June 2023, FRA's July 2023 report identified six key areas of action to tackle the mounting death toll at sea:

- improved SAR at sea;
- clear disembarkation rules and improved solidary between EU Member States to cater for the needs of new arrivals;
- better protection for shipwreck survivors;
- prompt, effective and independent investigations of shipwrecks;
- independent border monitoring;
- more accessible legal pathways into the EU.

In addition, since 2018, FRA has published regular updates on the number of SAR vessels and reconnaissance aircrafts that CSOs deploy in the region of the Mediterranean Sea, and on ongoing investigations and other legal proceedings against them.

Sources: FRA (2023), 'Preventing and responding to deaths at sea: What the European Union can do', 6 July 2023; FRA (October 2023) 'June 2023 Update – Search and Rescue (SAR) operations in the Mediterranean and fundamental rights',

CSOs engaged in SAR operations have been experiencing increasing pressure. [141] As their presence is sometimes perceived as encouraging irregular arrivals, they encounter hostile attitudes and face legal proceedings and other measures aiming at blocking their activities. "Their work saves lives and protects human dignity, yet it is being repressed, undermined and obstructed by states", the UN Special Rapporteur on human rights defenders notes. [142]

Since 2017, Germany, Italy, Malta, the Netherlands, and Spain have initiated 63 administrative or criminal proceedings relating to civil society bodies' SAR operations. Most are proceedings against vessels. One third are criminal proceedings against staff or crew. [143]

These measures need to be examined in light of the broader legal framework relating to search and rescue and maritime safety. International maritime law imposes a clear obligation on vessels to assist all people in distress at sea. Both government and private vessels have a duty to assist people and crafts in distress at sea. Multiple instruments of the international law of the sea regulate this duty. [144]

Acts hindering humanitarian SAR activities which are not necessary to address risk to safety, health or the environment may violate states' obligation to protect the right to life. In addition, deaths resulting from such acts may constitute an arbitrary deprivation of life, for which the state is responsible. [145]

Some of the rescue vessels that CSOs deploy are blocked at ports due to legal proceedings, such as vessel seizures, and cannot carry out SAR operations. The Court of Justice of the European Union recently clarified that the port state may inspect SAR ships of humanitarian organisations and may seize such vessels in the event of a clear risk to safety, health or the environment. [146] However, grey areas still remain in law as regards the permissibility of certain restrictive administrative measures that state authorities impose.

Following a discussion in late 2022, the Italian government introduced Decree-Law No. 1/2023 on urgent provisions for the management of migratory flows. The decree-law, converted into Law 15/2023, obliges ships to proceed to a designated port, often far away from the rescue area, immediately after each rescue operation – reducing thus the possibility of rescuing other groups of people in distress over the course of several days. [147] In addition to criticism voiced by the European Parliament and UN bodies, [148] NGOs raised concerns that the decree-law "contradicts international law", [149] slows down SAR actions, and increases the number of deaths and disappearances at sea. Those NGOs that refused to head to the designated ports or decided to rescue more groups of people in distress at sea, faced sanctions.

While the coordination of SAR activities is, in principle, the responsibility of national authorities,

SAR for persons in distress at sea launched and carried out in accordance with Regulation (EU) No. 656/2014 and with international law, taking place in situations which may arise during border surveillance operations at sea is also a core element of European integrated border management. [150]

The EU has therefore acknowledged the need for a more structured common framework for cooperation in the field of SAR and has developed a series of policy instruments concerning civil society rescue organisations. As part of the package of instruments, presented under the Pact on Migration and Asylum, Recommendation (EU) 2020/1365 addresses EU Member States with a view to reinforcing information sharing, coordination and cooperation between states and other relevant stakeholders in the field of SAR operations carried out by private vessels operated for this specific purpose. Furthermore, the recommendation aims to ensure that the fundamental rights of rescued people are guaranteed in conformity with the Charter and the principle of non-*refoulment*. [151]

In 2021, the European Commission established a SAR Contact Group, to facilitate dialogue between Member States and other relevant stakeholders on the implementation of the legal framework for and the evolving practice of SAR. [152] To FRA's knowledge, two years on, there has not yet been a structured interaction between this contact group and the CSOs deploying SAR vessels and reconnaissance aircrafts.

4. Access to resources

To engage in human rights work, CSOs need financial, human and material resources and access to national and international (public and private) funding; the ability to travel and communicate without undue interference; and the right to benefit from the protection of the state.

The Organization for Security and Co-operation in Europe's ODIHR 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 the use of funding provide associations with the means to operate and pursue their missions and are therefore inherent elements of the right to freedom of association. [153]

In addition, the Council of the European Union recently acknowledged "that civil society actors at all levels need appropriate and sufficient human, material and financial resources to carry out their missions effectively and that the freedom to seek, receive and use such resources is an integral part of the right to freedom of association". [154]

As regards financial resources, typically CSOs rely on funding and income from a variety of sources. These include the public sector, international organisations, individual donors, foundations and philanthropic organisations, corporations, membership fees and income-generating activities.

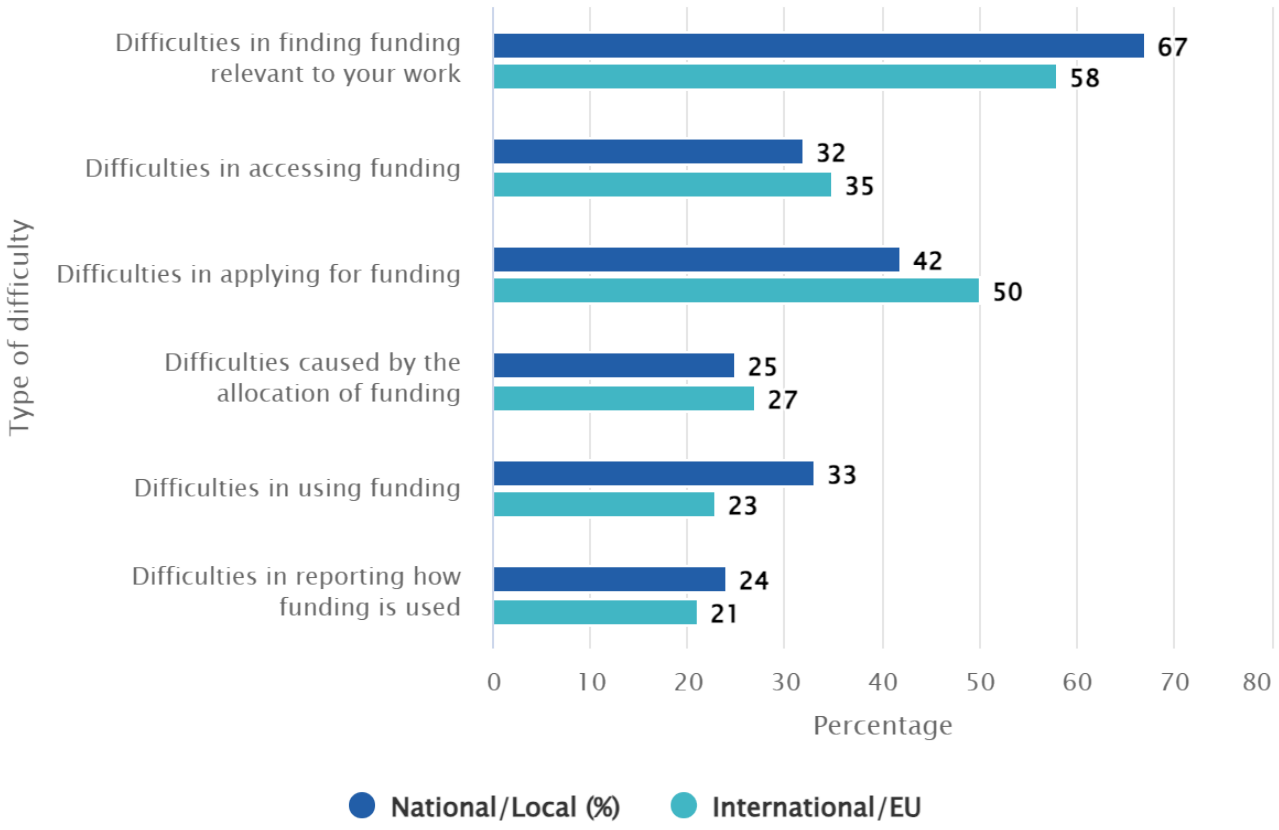
Finding and accessing resources remains an ongoing concern for CSOs. [155] In FRA's 2022 civic space consultation, 58 % of responding organisations often or sometimes experienced obstacles to accessing resources/funding. [156]

4.1 Developments in EU Member States

FRA's 2022 consultation shows that the major challenges for national and local organisations in 2022 were connected to difficulties in finding funding relevant to their work (67 %) (Figure 8). Other recurrent difficulties concern applying for funding (complicated application procedures, limited administrative capacity to apply) (42 %), using the funding received (lack of core funding, lack of follow up funding, too short funding cycle) (33 %) and accessing funding (publicly available information difficult to find, overly restrictive eligibility criteria, rules on foreign funding) (32 %).

The results reveal some differences between EU-level and national-level organisations. National organisations encountered challenges in finding funding relevant to their work, and using funding, more frequently than international/EU organisations, while organisations at international/EU level seemed to have more difficulties applying for funding than national and local organisations.

Figure 8 – Difficulties CSOs face with regard to funding (%)



A bar chart shows the different types of difficulties faced by organisations working at the national/local level compared to those working at international/EU level. The results are described in the text in the two paragraphs preceding the figure.

Notes: Question: "In the last 12 months, did you experience any of the following difficulties when trying to find and access funding?" National, N *= 152; EU,* N *= 52.*

Source: FRA's civic space consultation 2022

CSOs also report discriminatory or restrictive funding practices in a number of Member States. These affect, in particular, CSOs working on gender equality and LGBTIQ+ issues, and those working with migrant communities and religious minorities. Generally, more funding seems to be available for CSOs providing social services than for those conducting advocacy and watchdog activities, building their own capacity as organisations and carrying out activities such as strategic litigation. There is very little funding for security and resilience of CSOs themselves.

As regards the funding landscape, there were few changes in 2022. One notable development was related to funding to support those who were displaced as a result of Russia's war of aggression against Ukraine. A few Member States also provided energy subsidies to businesses and non-profit organisations.

After a broad participation process with CSOs, the German government introduced a bill to promote democracy and diversity, to advance political education and to prevent extremism by

supporting the efforts of civil society. The German Bundestag is currently debating the bill. Whether the goal of providing long-term sustainable funding can be achieved depends primarily on the funding guidelines related to the law.

In Luxembourg, the state budget for 2023, approved in December 2022, provides for new funding specifically dedicated to human rights organisations. This specific funding was created following the publication of an open letter, in August 2022, calling for public support for human rights organisations in Luxembourg. The Czech Ministry of the Interior excluded NGOs from the list of applicants eligible for funding for providers of legal aid for migrants in 2022. That decision could affect the quality of services provided to migrants. [157]

There were, again, some developments related to tax regimes and charitable status. For instance, in Germany, charitable organisations are allowed to pursue non-partisan and charitable purposes under the legal framework. Amendments to the Fiscal Code Implementation Decree in January 2022 reiterates that 'political purposes' do not count as charitable activities. According to CSOs, the stated goal of the German government's coalition agreement to modernise charity law or remove the uncertainty around political activity arising out of the Federal Fiscal Court's jurisprudence was not fulfilled by these amendments. According to the German government, the amendments implement the Federal Fiscal Court's jurisprudence and according to the financial authorities there are no known problems in practice. The coalition agreement includes provisions for charitable organisations to have a tax-exempt status. The schedule and the contents of the implementation are not yet certain.

In Ireland, under the provisions of the Charities Act 2009, the advancement or promotion of human rights is not considered to be a charitable purpose. The General Scheme of the Charities (Amendment) Bill 2022, published on 29 April 2022, proposes to change this. If enacted, it will allow human rights organisations to apply for charitable status using 'the advancement of human rights' as their charitable purpose, rather than relying on an existing charitable purpose. While this has been welcomed, CSOs remain concerned about the continued limitations ono the political advocacy work of charities. In Italy, Decree-Law No. 73 of 21 June 2022 on urgent measures on tax simplifications was approved. The decree-law introduced several measures simplifying the tax regime applied to CSOs. [158]

There have also been some developments in the areas of foreign funding, anti-money laundering and terrorist financing. The Swedish government announced its intention to initiate an inquiry into the possibilities of introducing a ban on the use of foreign fundingby religious communities and other CSOs connected to extremism, including Islamic extremism. It also investigated how the criteria for state grants could be strengthened to ensure that CSOs receiving support from the state adhere to democratic values. [159]

At the same time, FRA's research identified a range of positive developments. Several countries improved their general funding frameworks, while others explored a more favourable taxation framework for CSOs.

A number of funding programmes were launched in 2022, notably in support of CSOs conducting

activities to support displaced people from Ukraine. [160] For instance, in Estonia, an amendment to the Income Tax Act came into effect. The amendment allows legal persons to make tax-free donations for Ukraine through seven named associations. Furthermore, donations made through certain NGOs are exempt from income tax. [161]

4.2 Spotlight: Supporting civil society organisations under pressure through funding

The increasing pressures on CSOs have prompted donors to try to provide dedicated support to CSOs and human rights defenders.

Project funding remains one of the main ways in which donors try to support civil society. However, evidence suggests that CSOs continue to face challenges regarding both limitations in the type of activities that are being fund and CSOs' ability to access to this funding (see Figure 8). These problems are exacerbated in cases where civic space is already under pressure. [162]

As regards the type of activities CSOs fund, they are often focused on human rights-related services and to a lesser extent on advocacy and watchdog activities aimed at improving human rights. Few donors have made funding available specifically for addressing civic space pressures, including through civic space advocacy and litigation, supporting the safety and resilience of CSOs and their members, and dedicated capacity building. [163]

In addition, CSOs face challenges in accessing the funding available. [164] For example, there are difficulties in finding relevant information; overly restrictive eligibility criteria; complicated application and reporting procedures; rules on foreign funding, which need to take into account relevant Court of Justice of the European Union case law; [165] and a lack of transparency and discrimination in funding allocation. [166] Often, small CSOs have to compete for funding against with large organisations with more resources, who may have more capacity for conducting fundraising activities. CSOs also report that project funding is often inflexible and does not allow them to react to the changing human rights environment fast enough. They suggest that core organisational and infrastructure funding would allow them to better navigate the complex environment and address newly emerging issues. [167]

There has so far been little strategic coordination and cooperation among donors supporting human rights CSOs and human rights defenders under pressure across the EU. Private philanthropies coordinate to some extent through the networks the Philanthropy Europe Association (Philea) and European Funders for Social Change and Human Rights (Ariadne) and through the international Funders Initiative for Civil Society, (FICS) which is specifically focused on defending and expanding civic space. [168] Initiatives such as Civitates (see Promising practice box on Civitates) are joint efforts by private donors to address democratic decline and civic space issues in the EU. [169] However, none of them include any of the major public donors in the EU – such as the European Commission, the European Economic Area and Norway Grants, and the United States Agency for International Development – or Member State public funding.

The absence of regular coordination among and between major public and private donors may lead to overlaps and gaps in terms of themes, types of activities, and geographical areas that funding covers. [170]

In this context, a few donors have developed specific approaches to providing support to CSOs and human rights defenders under pressure, with the overall aim of enabling them to continue doing their human rights work. The support includes dedicated funding for civic space projects, such as advocacy and strategic litigation around an enabling environment; security and resilience-related capacity building in the area of civic space; funding for cooperation among organisations; support for improving the resilience of organisations and people; specific grants for addressing security concerns; and innovative ways of providing core funding.

Promising practice – European Commission funding for civic space projects and support for NGO networks

The European Commission's CERV programme was launched in 2021 and will provide €1.56 billion in funding over seven years.

In 2021, CERV launched its first call to support local, regional and/or national CSOs through cascading grants. The first call for proposals to protect and promote EU values, particularly targeted at grassroots, small, remote and rural organisations. These organisations tend to have more limited capacity and funding sources than others. A second Union Values call is expected to be published in autumn 2023.

CERV launched its first dedicated funding call for promoting rights and values by empowering civic space in spring 2023, with a similar call expected to follow in spring 2024. Projects "should promote rights and values by empowering civil society actors to work together at the local, regional and national levels" and "help [in] creating a channel of communication with the EU level to report on the state of the civic space in their countries and voice their concerns".

CERV also provides institutional funding for umbrella networks of NGOs.

Source: European Commission (n.d.), 'Promoting rights and values by empowering the civic space'

If capacity building is funded, the types of activities supported are often of a specific, technical nature (how to write a funding proposal, how to communicate, how to conduct advocacy with policymakers, legal training, etc.). Funding for other types of capacity building that are equally crucial to counter civic space pressures is harder to find. [171] CSOs under threat could notably benefit from support in developing their capacity to protect themselves against threats and attacks offline and online, in countering smear campaigns, defending themselves against SLAPPs,

and in crisis communication, crisis management and organisational development. [172]

Promising practice – Training for CSOs on tackling smear campaigns

The Civil Liberties Union for Europe (Liberties) offers dedicated training and capacity-building activities to CSOs to enable them to defend themselves against smear campaigns. The training is based on Liberties' guide to messaging for progressive CSOs facing smear campaigns. The Oak Foundation funded the creation of the guide Liberties offers training to CSOs free of charge with the support of the Oak Foundation and the European Commission's CERV program.

Source: Butler, I. (2021), How to talk about civic space: A guide for progressive civil society facing smear campaigns*, Berlin, Civil Liberties Union for Europe*

Promising practice – Security grants

In 2022, Open Society – Europe and Central Asia (OSECA) started to provide targeted funding aimed at increasing the resilience of CSOs, helping activists to continue their work in a safer environment. The funding is provided in the form of a special 'security top up' that is added to grants provided to partner organisations. In 2022, OSECA supported 27 groups in central and eastern Europe, Italy and Greece with such top ups, with amounts ranging from USD 10,000 to USD 50,000 (a total of USD 350,000 per year). The grants allowed them to formulate strategies for carrying out work needed to increase their organisational preparedness and to enable them to respond effectively to challenges related to security or the well-being of their staff. OSECA takes a holistic approach to protection, considering physical and digital aspects of security with well-being, financial sustainability, protection from legal attacks or smear campaigns and working conditions.

Source: OSECA

Supporting the individual and collective resilience of CSOs – including through network building, facilitating cooperation and conducting peer learning activities – increases their capacity to deliver.

Promising practice – Civitates: Funding for cooperation

Civitates is a philanthropic initiative promoting democracy and civic space in the EU. It pools funds from multiple private philanthropic donors. Since becoming operational in 2018, it has supported 50 organisations in 18 countries with a total amount of € 10 million

One of Civitates' focus areas is "civic power". To achieve this, the initiative supports cross-sectoral coalitions that operate at national level. Its work includes reactive and proactive elements aimed at building organisations' resilience and their capacity to stand up against the deterioration of democratic values and civic space.

In addition to providing funding, Civitates, through its Funding Plus approach, offers opportunities for beneficiaries to learn, reflect and connect. It does so notably through organising grantee gatherings and learning initiatives.

Source: Civitates (n.d.), 'Civitates'

When trying to strengthen civil society under pressure, it is also important to consider the need for appropriate support infrastructure – that is, funding for organisations (or projects) that focus on delivering targeted capacity building, providing counselling services, ensuring CSO-focused organisational development, enabling cooperation and coordination, and performing risk assessments (e.g. as regards security threats, legal issues, cyber challenges, human resource needs).

Promising practice – Capacity building coupled with network building

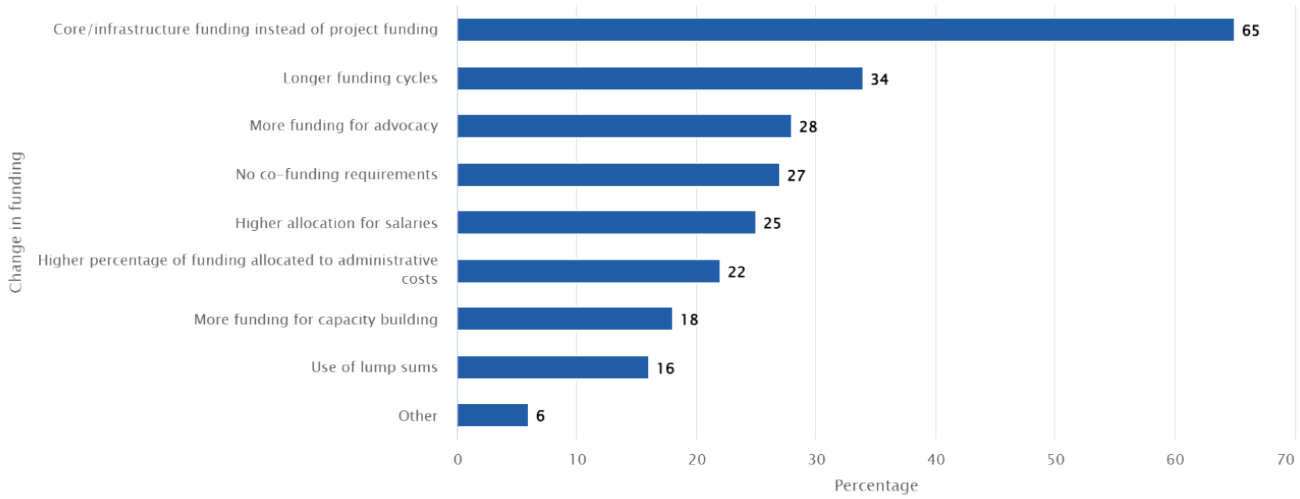
The Recharging Advocacy for Rights in Europe (RARE) programme seeks to build the capacity of human rights defenders from across Europe to react jointly and more effectively to threats to human rights and the rule of law. At the same time, it aims to build strong relationships and alliances among participants, to enable them to support and empower and support each other when they are in need. The programme's 2022-2024 cycle is funded by a range of public and private donors: Stiftung Mercator, Open Society Foundations, National Endowment for Democracy, USAID, the Foreign Ministries of Germany and the Netherlands, ERSTE Stiftung, Heinrich-Böll Stiftung, Friedrich-Ebert-Stiftung, Dutch Postcode Lottery, Oak Foundation, Oxfam Intermon, Civitates) and The programme is co-organised by partners from academia and civil society – the Hertie School, the Hungarian

Helsinki Committee, the Netherlands Helsinki Committee, the Helsinki Foundation for Human Rights in Poland and Oxfam Novib.

Source: Hertie School (n.d.), 'What is RARE?'

Donors face the issue of not only which type of activities to fund but also how to provide funds in the most efficient and effective way. When asked about their views on necessary changes to funding mechanisms, respondents to FRA's consultation mostly point to the need for more core/infrastructure funding instead of project funding (65 %) (Figure 9). Respondents also say that they would benefit from longer funding cycles (34 %), more funding for advocacy (28 %), no co-funding requirements (27 %) and a higher allocation for salaries (25 %). In addition, respondents indicate the need for more funding for capacity building (18 %) and the use of lump sums (16 %).

Figure 9 – CSOs' perception of necessary changes in funding in 2022 (%)



A bar chart shows the percentage of organisations would be important. The text describing the results is in the preceding paragraph.

Notes: Question: "What changes in funding would be the most important for your organisation?" N *= 297.*

Source: FRA's civic space consultation 2022

The issue of how to fund CSOs goes beyond mere technical questions on the implementation of funding. Donors are seeking to find ways to apply impact-based indicator frameworks, to mainstream non-discrimination into funding and to support new forms of activism such as social movements and online activism. [173] They are also considering how grantees can be asked to declare or advertise funding sources in a way that does not put grantees at risk. For example, 30 % of respondents in FRA's 2022 civic space consultation who experienced threats and attacks say that these were related to specific sources of funding for their organisation. [174]

Some private donors have developed a specific approach to funding known as 'trust-based funding'. Key features include (1) the multi-year funding period in which the grantee deploys the funding where it best sees fit, (2) the reduction of paperwork through simplified approaches to applications and reporting, (3) donor transparency and open communication, (4) donors truly knowing their grantees and building a relationship, (5) feedback loops and continuous learning cycles and (6) responsive, adaptive, non-monetary support to bolster leadership, capacity and organisational health. [175]

Finally, donors can support CSOs under pressure in a range of ways beyond funding, for example by: [176]

- conducting political advocacy with governments, defending the added value of CSOs;
- raising public awareness of the role and importance of civil society's work and its contribution to human rights and democracy;
- informing themselves and others about challenges and pressures on civic space;
- developing civil society, conducting outreach across regions, building the capacity of organisations and coaching grantees;
- consulting meaningfully with CSOs before, during and after the funding period to ensure that the funding is best targeted;
- including civil society representatives in their conversations with states/ministries.

Promising practice - Civil society involvement in the European Youth Foundation of the Council of Europe

The European Youth Foundation (EYF) is a fund established in 1972 by the Council of Europe to provide financial and educational support for youth activities. It specifically targets youth organisations including national and international youth NGOs and networks from 50 countries that are signatories of the European Cultural Convention, including the 46 Council of Europe member states.

The EYF is an example of how public funding mechanisms can include civil society organisations at all its stages for better and relevant outcomes. Unique to the EYF is the Programming Committee on Youth (CPJ), the decision-making body on EYF grant allocations. The CPJ establishes and monitors the budget and programmes of the two European Youth Centres in Strasbourg and Budapest. The CPJ consists of eight government representatives and eight non-governmental youth organisations' representatives. The European Youth Forum is involved as an observer, represented through the Council of Europe's youth sector co-management system in the spirit of participatory democracy.

Source: Council of Europe (2023), European Youth Foundation.

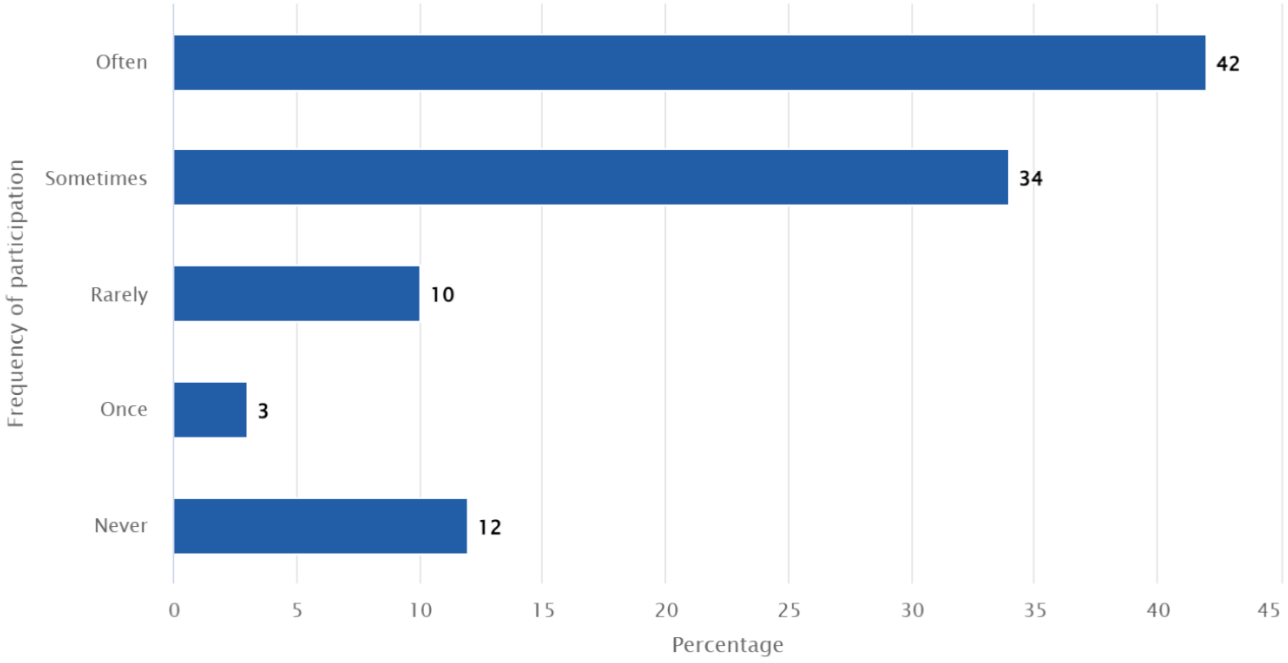
5. Participation

The right to participation in public affairs is recognised in Article 25 of the International Covenant on Civil and Political Rights. [177] Civil participation is defined as "the engagement of individuals, NGOs and civil society at large in decision-making processes by public authorities". [178] There are also EU-specific entitlements to participation, such as the right to access public documents (Article 42), the right to good administration (Article 41), the right to participate in local and European elections (Articles 39 and 40) and the right to submit a petition to the European Parliament (Article 44). In addition, all EU Member States have signed up to achieve the Sustainable Development Goal targets relevant to human rights defenders. For example, Sustainable Development Goal target 16.7 aims to "ensure responsive, inclusive, participatory and representative decision-making at all levels".

Moreover, the participation of civil society in policymaking and decision-making processes is an indicator of democracy and contributes to the quality and sustainability of laws and policies. [179] Under Article 11 of the TEU, the EU itself is obliged 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".

Structured dialogue and sustained participation in partnerships with CSOs are key to decision-making in law and policy concerning regulations and policies to ensure respect for fundamental rights. CSOs have specific knowledge and experience that is key to understanding and responding to fundamental rights challenges. CSOs are familiar with the specific needs of communities at risk, the challenges they face and the local context in which rights violations occur. Notwithstanding, CSOs often face important challenges in becoming real interlocutors and partners of public authorities, and providing victims with remedies when violations occur. In FRA's latest civic space consultation, three quarters (76 %) of responding CSOs said they participate often or sometimes in public consultations on laws and policies (Figure 10).

Figure 10 – CSOs' participation in public consultations on laws and policies in 2022 (%)



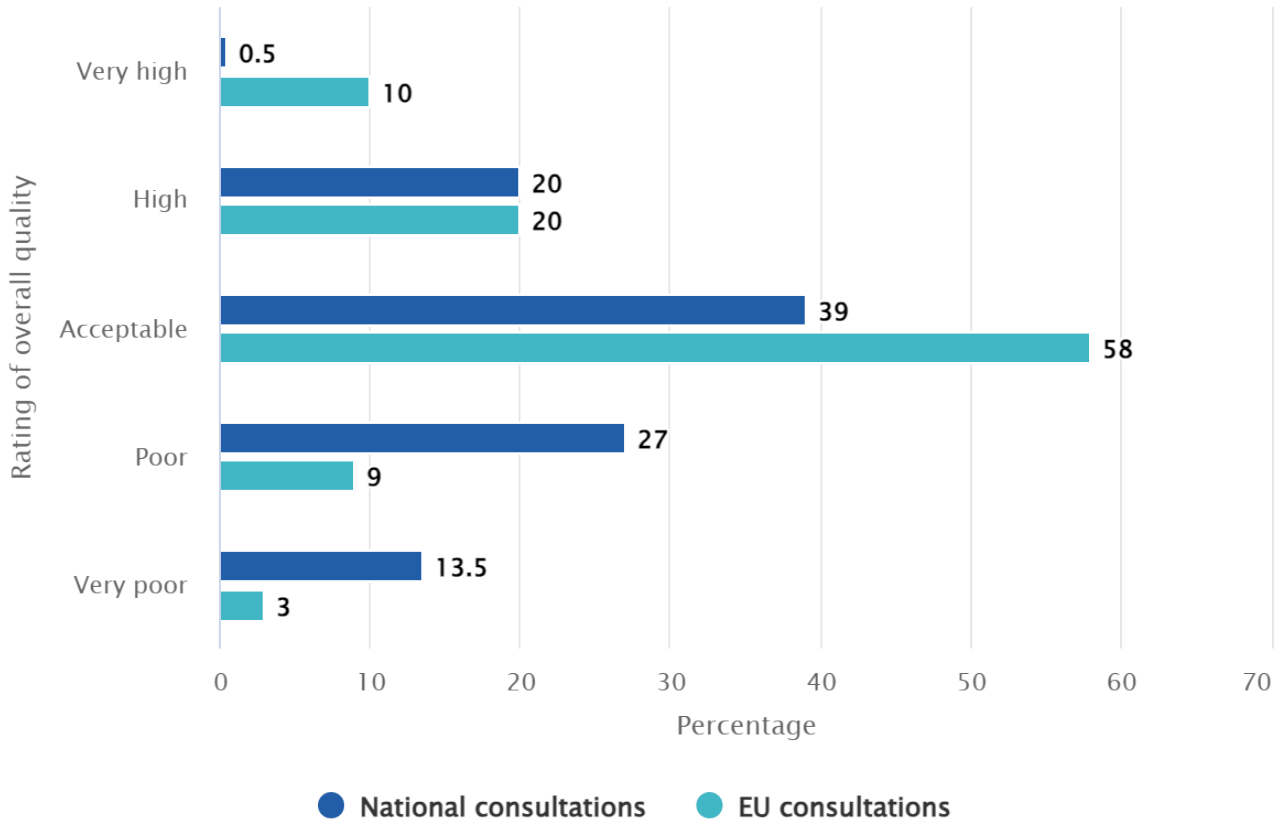
A bar chart shows what percentage of organisations participated in consultations. 42% or organisations participated often, 34% participated sometimes, 10% participated rarely, 3% had only participated once and 12% had never participated in a public consultation.

Notes: Question: "In the past 12 months, did your organisation participate in public consultations for law and policy making – either through online consultations, meetings, focus groups, interviews or other means?" N *= 269.*

Source: FRA's civic space consultation 2022

The quality of consultation processes vary (see Figure 11). Considerable differences emerge between national and EU consultations. Some 58 % of the responding organisations found the quality of EU consultations acceptable, while the percentage was 39 % for national consultations. It is also interesting to note that 10 % of the responding organisations found the quality of EU consultations very high. [180]

Figure 11 – CSOs' perception of the overall quality of consultation/participation processes in 2022 (%)



A bar chart compares the quality ratings of processes for national and EU consultations. 13.5% of organisations rated national consultations as poor compared to 3% of organisations which rated EU consultations as poor. In general, national consultations received lower quality ratings than EU consultations. 10% of EU consultations were rated as very high compared to 0.5% of national consultations.

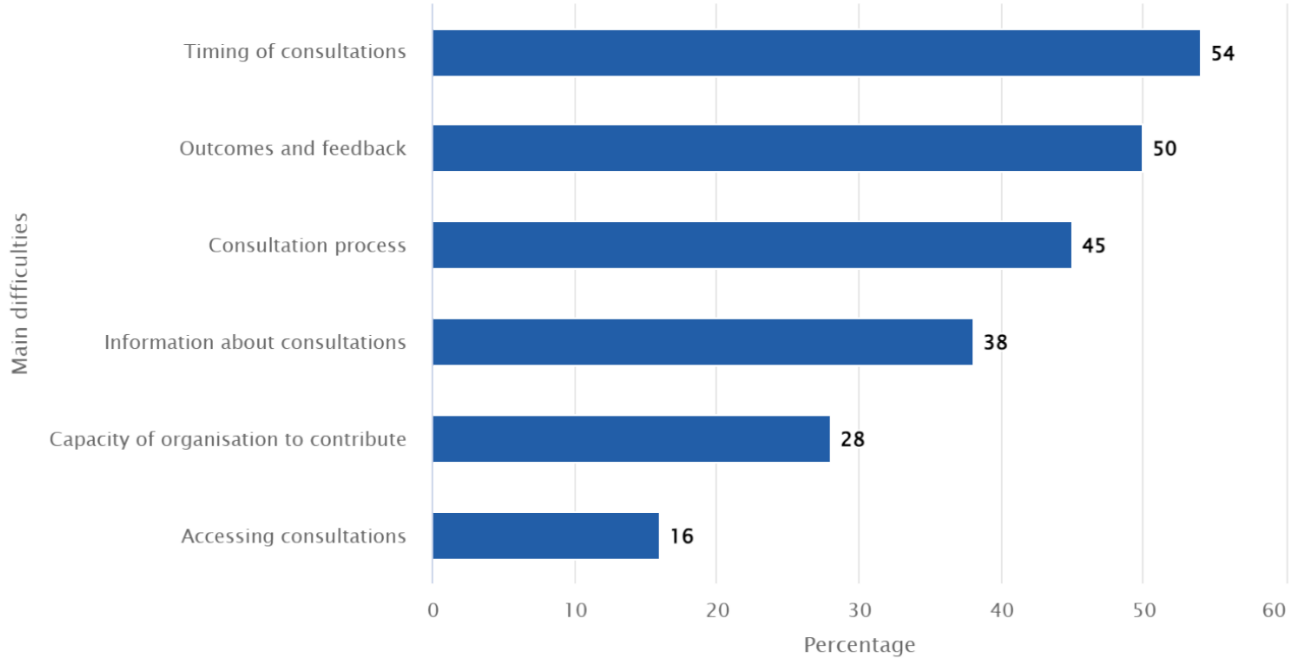
Notes: Question: "How would you rate the overall quality of the consultation/participation processes in which you have participated?" National, N *= 184; EU,* N *= 120.*

Source: FRA's civic space consultation 2022

5.1 Developments in EU Member States

Participation – both in the development of laws and policies and in their implementation – remains patchy across the EU. Key challenges that CSOs face include difficulties caused by the timing of consultations (54 %), a lack of outcomes and feedback (50 %) and weaknesses in the consultation process itself (45 %). Other challenges encountered are accessing information about consultations (38 %) and a lack of capacity of organisations to contribute (time, skills, knowledge) (28 %) (Figure 12). Accessing consultations was perceived as even less challenging (16 %).

Figure 12 – Difficulties CSOs encountered in participating in consultations (%)



A bar chart shows the percentage of organisations which encountered different types of difficulties. Descriptive text can be found in the paragraph preceding the figure.

Source: Question: "What were the main difficulties you encountered in national consultations/participation?" N *= 194.*

Source: FRA's civic space consultation 2022

Notwithstanding these persisting challenges, a number of Member States initiated or consolidated participation mechanisms in 2022, according to data that Franet collected.

In June 2022, the Czech Government Council for Non-Governmental Non-Profit Organisations went beyond merely consulting on law and policies. It adopted a methodology for non-governmental non-profit organisations to take part in in working and advisory bodies and in preparing administrative documents, which a working group specifically set up for this purpose drafted. The methodology contains recommendations on appropriate conditions and resources for the meaningful participation of both the state and NGOs. It applies to ministries' and other central administrative authorities' development of public policies, strategic materials, and legislative and other non-legislative materials. [181]

Another example comes from Slovakia, where the government approved a concept paper on the development of civil society for 2022–2030 in September 2022. The paper included an action plan for the development of civil society. The main areas the paper covers are promoting active citizenship (participation); deepening dialogue (improving cooperation between the public and civil society sectors); boosting the systemic resilience of civil society; and, finally, systematically collecting data about civil society. [182]

Promising practice – Cooperation between states and CSOs to support displaced people from Ukraine

Over a million Ukrainians crossed the border into Romania in 2022. While most of them continued their trip west, well over 100,000 remained in Romania.

To address this, public authorities and CSOs found new ways of working together. Early on in 2022, the Prime Minister of Romania organised two public meetings with central authorities, international organisations and CSOs. In addition, the Emergency Situation Department set up an online cooperation platform that became the backbone for permanent coordination with hundreds of CSOs.

In June 2022, Romania adopted a national action plan coordinating measures to support the integration of beneficiaries of temporary protection from Ukraine. Six thematic working groups worked together to draft the plan, with the significant participation of civil society.

Source: Franet, Human European Consultancy (2022), An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory – Romania, *Vienna, FRA, p. 9*

Other EU Member States have made some progress in establishing increasingly permanent and institutionalised structures of cooperation. In Lithuania, for instance, an increasing number of government institutions identify CSOs as strong and vital partners in addressing difficult situations. That is thanks to intersectoral cooperation that started during the COVID-19 response and continued during the migration crisis on the border with Belarus and as a result of the need to accommodate and provide humanitarian support to refugees from Ukraine. [183]

In other EU Member States, such progress materialised at local level. For instance, Latvia prepared a new local government law establishing mechanisms to ensure civic participation in the work of local governments. The overall aim of these mechanisms was to increase the quality of the work of municipalities and its relevance to their residents. The law provides for the establishment of advisory resident councils in municipalities, to be elected at general meetings of residents. [184] Finally, NHRIs also have an important role in facilitating CSOs' and other human rights defenders' participation in decision making and policy making. [185]

Promising practice – National platform to monitor National Action Plan to Combat Gender-based Violence

Belgian authorities adopted the National Action Plan to Combat Gender-based Violence (NAP) 2021–2025 in November 2021. The NAP establishes a national platform representing civil society to ensure its independent monitoring and give advice during its evaluations. The platform is also expected to respond to the recommendations of the Council of Europe Group of Experts on Action against

Violence against Women and Domestic Violence and of the Committee of the Parties for the NAP. Some 16 civil society associations have been selected as members of the national platform and will benefit from structural funding for the fulfilment of their mandates.

Source: Franet [Fundamental Rights Research Centre (FRC), Vrije Universiteit Brussels (VUB)] (2022), An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory -Belgium

Promising practice – Multi-stakeholder advisory board on civil society policy

The Finnish government appointed a new Advisory Board on Civil Society Policy (KANE) under the auspices of the Ministry of Justice in January 2022 for a four-year term. KANE is tasked with promoting dialogue between civil society and public administration and enhancing the operating conditions of civil society. KANE's membership includes representatives of CSOs, research organisations, businesses, ministries and other authorities. KANE published its strategy for 2022, outlining its goals of (1) safeguarding and strengthening the autonomy and dynamism of CSOs and other civil society players; (2) developing interactions and partnerships between public administration and civil society; and (3) promoting equal participation for all.

Source: Franet [Institute for Human Rights, Åbo Akademi University] (2022), An update on developments regarding civic space in the EU and an overview of the possibilities for human rights - Finland.

5.2 Spotlight: Participation of organisations representing groups at risk of exclusion

When it comes to participation in law making and policymaking, organisations representing groups and people at risk of exclusion experience a range of hurdles, feedback from civil society indicates. [186] In particular, organisations representing and defending the rights of people with a migrant background and with unsecure residence status, people seeking asylum, LGBTIQ+ people, people with disabilities, and ethnic and racial minorities encounter serious obstacles in accessing formal channels of political participation and representation, exacerbated by intersectional

characteristics, particularly gender, age and economic status.

For a start, such organisations share similar challenges to all other CSOs in participation processes (see Section 5.1). These include limited political will of policymakers to consult meaningfully, difficulties in accessing consultations, weaknesses in the consultation process itself, insufficient feedback on follow-up after consultations, and insufficient capacity of organisations to contribute, including due to a lack of funding for such processes.

Such challenges are exacerbated for organisations representing groups and people at risk of exclusion, for four main reasons.

Firstly, some groups advocate for issues such as migrant or refugee rights, LGBTIQ+ rights, sex workers' rights or sexual and reproductive health and rights. Since some parts of the population consider these issues controversial, granting human rights to these groups or individuals facing exclusion can be contentious. In focus group discussions with FRA, organisations concerned reported that they often felt that they were not listened to, that efforts come across as tokenistic and that initiatives do not always feel meaningful. They sometimes felt they were not invited to consultations because they were perceived as "too critical" and that in a few cases officials had even ridiculed or insulted them during consultation meetings. [187] In this regard, there are concerns about the emergence of loyal government-organised NGOs, ('GONGOS') and anti-rights groups, as the European Parliament and others have pointed out. [188] Social media companies may limit public participation as well. [189] For instance, sex-positive organisations found that their accounts were deleted without prior notice. [190]

Secondly, excluded people often experience multiple forms of discrimination. However, such intersectionality is not always on the radar of policymakers. Failure to include organisations representing certain excluded groups not only may result in those groups' inputs being neglected, but also means that intersectional needs could be overlooked. [191]

For example, a lack of an intersectional approach to ensuring that people with disabilities can exercise their rights renders the voices of migrant women and other minorities with disabilities unheard and their specific needs unmet. [192] Similarly, disability organisations are not always consulted on issues concerning older people, youth or children; and LGBTIQ+ organisations are not always consulted for gender equality related programmes or policies. [193] CSOs found that the intersectional disadvantages Roma women face were not sufficiently taken into account in a national Roma inclusion strategy. [194] In addition, some governments are changing their focus from gender mainstreaming to "family mainstreaming", thus sidelining discussions on gender equality and women's rights. [195]

Promising practice – Broad consultation for the Irish Incitement to Violence or Hatred and Hate Offences Bill

In Ireland, the Incitement to Violence or Hatred and Hate Offences Bill was published on 28 October 2022. It criminalises any intentional or reckless

communication or behaviour that is likely to incite violence or hatred against a person with protected characteristics. Civil society action has been crucial to building support for the bill. For instance, the Coalition Against Hate Crime, an alliance of CSOs representing a wide range of minority and marginalised groups – including people with disabilities, LGBTIQ+ people, ethnic minorities and migrants – carried out far-reaching public campaigns; established resources for the education of NGOs, activists and the public; and researched the impact of legislative gaps on combating hate crime .

Source: Franet, [Irish Centre for Human Rights] (2022), An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory - Ireland

Thirdly, difficulties in participation may arise from structural disadvantages within the CSOs themselves. This is particularly true of organisations run by people identifying as part of an excluded group. Such organisations are often run by volunteers with little financial or human resources. In the case of youth organisations, this is further exacerbated by the naturally high turnover in the sector. [196]

Some funding sources are available only for larger established NGOs, meaning that smaller grassroots organisations cannot access them. Such organisations often have no core funding at all. This makes sustained participation difficult, as essentially any contribution to consultations needs to happen in volunteers' private time. There is also usually no budget available to travel to and attend stakeholders' meetings. [197] CSOs have reported that in some instances, organisations representing groups at risk of exclusion were denied funding in a discriminatory way due to the issues they are working on. [198]

Other challenges internal to organisations include a lack of knowledge and skills to cover specific or specialised fields, including a knowledge of languages. Translation/interpretation is often not available.

Another specific challenge is the lack of official documentation or other legal requirements granting safe status to the members of the organisations, for instance in the case of undocumented migrants or sex workers. Their precarious situations create additional difficulties for them in organising and speaking up for themselves, as some may fear that raising their voice could result in losing their job and/or legal status. [199]

Finally, many channels of participation are not accessible for people with disabilities, especially people with intellectual disabilities, people with disabilities living in institutions, and for people without citizenship and/or secure residence status.

Fourthly, participants in FRA's focus groups pointed out that people belonging to excluded groups - such as people with disabilities living in institutions or survivors of institutionalisation, migrants and people without residence status, and children, young or older people - may lack self-

confidence and empowerment. That lack can be based on their previous experiences and/or their position in society. [200]

In this context, CSOs can play an important role in empowering groups at risk of, or experiencing, exclusion. [201] However, often only larger organisations focusing on broader issues are invited to participate. These organisations therefore have to be particularly careful not to become involuntary gatekeepers but to ensure that those that are most excluded have a seat at the table.

Promising practice – Migrant integration councils in Greek municipalities

Greece has set up migrant integration councils in all 332 municipalities. Their members are elected municipal officers and representatives of migrant communities and organisations.

According to Law 3852/2010, which established the councils, they are responsible for helping local authorities to acquire knowledge of problems that the migrant population residing within their municipality encounter in relation to integration. The councils may propose actions such as providing counselling services or holding public events, or other activities promoting social cohesion. They also assist migrants in accessing local services and involve them in local structures and policymaking processes.

Sources: European Commission (2023), 'Governance of migrant integration in Greece'; National Centre for Social Research (n.d.), 'Migrant integration councils'

There are many ways to improve the involvement of excluded groups and the organisations representing them, as existing experience across the EU shows. It is necessary to raise awareness of the need to broaden consultation processes and to ensure that self-representing groups are consistently included both in online consultations and in stakeholder meetings at national and EU levels. Dedicated funding is needed to support organisations' participation in online consultations and in-person consultation meetings. Self-representing groups could feel empowered by being adequately included, for example, by being invited to participate and being listened to, being provided with dedicated capacity-building opportunities, by being provided with easier access to funding, [202] and by being able to participate in the design, implementation and monitoring of EU funding programmes, including funding earmarked for self-representing groups.

Some groups, including people with disabilities, will need special assistance to participate fully in consultation processes, while others will need assistance such as translation or interpretation.

Promising practice – Large-scale consultation with sex

workers in Belgium

The Brussels region adopted a resolution for a regulatory framework for sex work in June 2023. A large-scale consultation with sex workers across Belgium led to an integrated approach to regulation.*

Els Rochette, a Member of Parliament for the Brussels region, said, “The aim of the resolution on sex work is [to ensure] a harmonious and respectful relationship between all parties involved”. The resolution provides for the creation of a platform for consultation allowing municipalities, the region, the police, sex workers’ representatives and neighbourhood committees to “work together on a common approach”.

*Sources: *Information was obtained from the European Sex Workers Alliance; see also Joint United Nations Programme on HIV/AIDS (UNAIDS), UNAIDS global AIDS update 2022, Geneva, UNAIDS, p. 156, and Reuters (2022), ‘How COVID-19 helped sex workers in Belgium make history’,31 May 2022*

> **Meaningful engagement is the respectful, dignified and equitable inclusion of individuals with lived experience in a range of processes and activities within an enabling environment where power is transferred to people; valuing lived experience as a form of expertise and applying it to improve [...] outcomes.**

World Health Organization (2023), WHO framework for meaningful engagement of people living with noncommunicable diseases, and mental health and neurological conditions, Geneva, World Health Organization.

Ways forward

Civil society plays a crucial role in the EU. CSOs and human rights defenders promote and help implement fundamental rights and thus contribute to the functioning of democracy and the rule of law.

However, evidence shows that throughout 2022, CSOs continued to face a range of challenges in their work. Challenges to 'civil society space' included concerns with the relevant regulatory framework, access to resources, participation in policy and decision-making and a safe environment. The nature and depth of challenges that CSOs and human rights defenders face vary across the EU.

Civil society actors need to be able to operate without unnecessary or arbitrary restrictions. Member States and EU institutions should take measures to create a more enabling environment for CSOs. A conducive legal environment for civil society requires laws that protect and promote the rights to freedom of association, peaceful assembly and expression in conformity with EU and international human rights law and standards. Member States should also ensure that crimes committed against CSOs and human rights defenders are publicly condemned, properly recorded, investigated and prosecuted. Public authorities at EU, national and local levels should further develop tools for more meaningful participation in policymaking.

Several international and EU guidelines exist to support an enabling space for (human rights) civil society to operate. All actors involved can take inspiration from these guidelines to enhance the implementation of human rights across the EU.

Bibliography

- CoE, Commissioner for Human Rights (2020), Human rights comment: Time to take action against SLAPPs, 27 October 2020.
- European Commission (2020), The European democracy action plan, COM(2020) 790 final, Brussels, 3 December 2020.
- European Commission (2020), Strategy to strengthen the application of the Charter of Fundamental Rights in the EU, COM(2020) 711 final, Brussels, 2 December 2020.
- European Commission (2020), '2020 rule of law report'.
- European Commission (2021), '2021 rule of law report'.
- European Commission (2022), '2022 rule of law report'.
- European Network Against Racism (2022), Racialisation and shrinking space: Defending the human rights of racialised people in Europe.
- hu2014), Criminalisation of migrants in an irregular situation and of persons engaging with them, Luxembourg, Publications Office.
- FRA (2016), Violence, threats and pressures against journalists and other media actors in the European Union, Luxembourg, Publications Office.
- FRA (2018), Challenges facing civil society organisations working on human rights in the EU, Luxembourg, Publications Office.
- FRA (2018),Fundamental rights considerations: NGO ships involved in search and rescue in the Mediterranean and criminal investigations, Luxembourg, Publications Office.
- FRA (2019), Civil society space – Views of organisations, Luxembourg, Publications Office.
- FRA (2019), '2019 update – NGO ships involved in search and rescue in the Mediterranean and criminal investigations'.
- FRA (2020), Civic space – Experiences of organisations in 2019, Luxembourg, Publications Office.
- FRA (2021), COVID-impact on civil society work. Results of consultation with FRA's Fundamental Rights Platform.
- FRA (2022), Human rights cities in the European Union, Luxembourg, Publications Office.
- Front Line Defenders (2021), Sex worker rights defenders at risk.
- Hayes, B. and Joshi, P. (2020), Rethinking civic space in an age of intersectional crises: A briefing for funders.
- OECD (Organisation for Economic Co-operation and Development) (2022), 'Civic space scan of Portugal' (in Portuguese).
- OHCHR (Office of the United Nations High Commissioner for Human Rights) (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, 9 December 1998.

- OSCE (2022), Strengthening the resilience of NHRIs and responding to threats – Guidance tool, Warsaw, OSCE/ODIHR.
- PartnersGlobal (2020), Resiliency+ Framework – A guide for civil society to thrive in uncertain times.
- SOS Children's Villages (2021), Toolkit for children and young people's participation in advocacy, Vienna, SOS Children's Villages.

Annex: Methodology

FRA cooperates with CSOs active in the field of fundamental rights through its Fundamental Rights Platform. Around 800 fundamental rights actors participate in the platform, forming a rich pool of experiences with civic space in the EU.

As in previous civic space reports, the data and information presented in this report come from three sources.

- FRA's research network, Franet, provided research on the enabling environment in all EU Member States, Albania, North Macedonia and Serbia. Franet reported the three most significant developments in 2022 in each country that increased or decreased the space available for civil society to promote human rights. All country research on civic space that Franet delivered is available on FRA's website. The research, like the overall report, covers January to December 2022.
- Online consultations captured the experiences and perceptions of CSOs. Since 2018, FRA has consulted key players in civil society annually on their experiences of civic space through its Fundamental Rights Platform. In total, 411 CSOs working on human rights in the 27 EU Member States, Albania, North Macedonia and Serbia responded to the latest online consultation, which was open from 3 January to 2 February 2023. The vast majority of responding organisations work at national (or sub-national) level (75 %). One quarter of the organisations work at EU/international level (25 %). They work in a range of areas, including advocacy, campaigning and awareness raising, service provision, community engagement, victim support, research and data collection, and litigation. Most respondents (over 90 %) are NGOs; the remainder are social or professional organisations, faith-based organisations or trade unions. Responses came from all EU Member States, with rates ranging from two responding organisations in one small Member State to over 30 per country.
- Desktop research, interviews and stakeholder meetings were another source of information. These include exchanges with intergovernmental organisations, and at conferences, workshops and focus group discussions with civil society representatives.

This report presents results at EU level only. That is, the findings are not broken down by Member State.

Endnotes

[1] See FRA's web page on civic space.

[2] FRA (2021), Protecting civic space in the EU, Luxembourg, Publications Office of the European Union (Publications Office); FRA (2022),Europe's civil society: Still under pressure – Update 2022, Luxembourg, Publications Office.

[3] FRA (2021), COVID-impact on civil society work: Results of consultation with FRA's Fundamental Rights Platform, 24 February 2021.

[4] Franet's country studies on civic space for the 27 Member States.

[5] European Commission (2022), A thriving civic space for upholding fundamental rights in the EU: 2022 annual report on the application of the EU Charter of Fundamental Rights, COM(2022) 716 final, Brussels, 6 December 2022.

[6] European Commission (2023), 'A thriving civic space for upholding fundamental rights in the EU: looking forward - Follow up seminars to the 2022 Report on the Application of the EU Charter of Fundamental Rights', (forthcoming).

[7] European Parliament (2022), Resolution with recommendations to the Commission on a statute for European cross-border associations and non-profit organisations, P9_TA(2022) 0044, Strasbourg, 17 February 2022, para. 33.

[8] European Parliament (2022), Resolution with recommendations to the Commission on a statute for European cross-border associations and non-profit organisations, P9_TA(2022) 0044, Strasbourg, 17 February 2022.

[9] European Commission (2023), Proposal for a Directive of the European Parliament and of the Council on European cross-border associations, COM(2023) 516, 5 September 2023.

[10] European Commission (2023), Commission facilitates the activities of cross-border associations in the EU, Press release, 5 September 2023.

[11] European Parliament (2022), Decision on setting up a committee of inquiry to investigate the use of the Pegasus and equivalent surveillance spyware, and defining the subject of the inquiry, as well as the responsibilities, numerical strength and term of office of the committee, P9_TA(2022) 0071, Strasbourg, 10 March 2022.

[12] European Parliament (2023), Report of the investigation of alleged contraventions and maladministration in the application of Union law in relation to the use of Pegasus and equivalent surveillance spyware, 22 May 2023; European Parliament (2023), European Parliament draft recommendation to the Council and the Commission following the investigation of alleged contraventions and maladministration in the application of Union law in relation to the use of Pegasus and equivalent surveillance spyware, P9_TA(2023) 0244, 22 May 2023. See also FRA (2023), 'Surveillance by intelligence services: Fundamental rights safeguards and remedies in the EU – 2023 update', 24 May 2023.

[13] European Commission (2022), Proposal for a regulation establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU, COM(2022) 457 final, Brussels, 16 September 2022.

[14] European Commission (2022), Proposal for a regulation establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU, COM(2022) 457 final, Brussels, 16 September 2022, Art. 12 (l).

[15] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC, OJ 2022 L 277 (Digital Services Act).

[16] Digital Services Act, Articles 45, 46 (1), 47 (1) and 49 (3).

[17] See, for instance, the joint civil society declaration EU foreign interference law: Is civil society at risk? Why we are against an EU FARA law.

[18] European Commission (2022), A thriving civic space for upholding fundamental rights in the EU – 2022 annual report on the application of the EU Charter of Fundamental Rights, COM(2022) 716 final, Brussels, 6 December 2022, p. 13.

[19] European Commission (2022), 2022 report by the European Commission on the application of the EU Charter of Fundamental Rights: A thriving civic space for upholding fundamental rights in the EU – Consultation of civil society organisations, p. 9.

[20] European Commission (2023), Summary Report, A thriving civic space for upholding fundamental rights in the EU: looking forward - Follow up seminars to the 2022 Report on the Application of the EU Charter of Fundamental Rights (forthcoming)

[21] European Civic Forum (n.d.), 'European Convening on Civic Space'.

[22] European Civic Forum and Civil Society Europe (2023), 'How can we enable, protect and expand Europe's civic space, to strengthen democracy, social and environmental justice? Recommendations for the European Commission'.

[23] European Commission (n.d.), 'Citizens, Equality, Rights and Values Programme'.

[24] European Commission (2023), Summary Report, A thriving civic space for upholding fundamental rights in the EU: looking forward - Follow up seminars to the 2022 Report on the Application of the EU Charter of Fundamental Rights (forthcoming)

[25] European Commission (2013), Guidelines for EU support to civil society in enlargement countries, 2014–2020, 22 October 2018.

[26] European Commission (2020), EU Roma strategic framework for equality, inclusion and participation for 2020–2030, COM(2020) 620 final, Brussels, 7 October 2020.

[27] Office of the United Nations High Commissioner for Human Rights (OHCHR) (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, A/RES/53/144, 9 December 1998.

[28] OHCHR (n.d.), 'High Commissioner'.

[29] See for example, OHCHR (2018), General Comment No. 36 on Article 6: Right to Life, 30 October 2018, paras. 23 and 53; OHCHR (2020), General Comment No. 37 on Article 21: Right of peaceful assembly, 23 July 2020, para. 30;

OHCHR (2022), General recommendation No. 39 on the rights of Indigenous Women and Girls , 31 October 2022, especially paras. 45-46.

[30] OHCHR (2023), Human Rights 75 Initiative: Monthly thematic spotlights.

[31] OHCHR (n.d.), 'Special Rapporteur on human rights defenders'.

[32] OHCHR (2022), Report of the Special Rapporteur on the situation of human rights defenders – Refusing to turn away: Human rights defenders working on the rights of refugees, migrants and asylum-seekers, 18 July 2022.

[33] OHCHR (n.d.), 'Special Rapporteur on human rights defenders'.

[34] OHCHR (n.d.), 'Special procedures of the Human Rights Council'.

[35] United Nations Economic Commission for Europe (UNECE) (n.d.), 'Special Rapporteur on environmental defenders under the Aarhus Convention'.

[36] Council of Europe (n.d.) Commissioner for Human Rights: Human rights defenders.

[37] Council of Europe, Parliamentary Assembly (2022), The impact of the Covid-19 restrictions on civil society space and activities.

[38] Council of Europe, Parliamentary Assembly (2023), Transnational repression as a growing threat to the rule of law and human rights, 23 June 2023.

[39] Organization for Security and Co-operation in Europe (OSCE) (2022), Strengthening the resilience of NHRIs and responding to threats – Guidance tool, Warsaw, OSCE/ODIHR.

[40] OECD (2022), The protection and promotion of civic space: Strengthening alignment with international standards and guidance, Paris, OECD Publishing, Section 5.6.

[41] OECD (2022), 'Civic space scan'.

[42] OECD (forthcoming), Civic space review of Portugal: Towards people-centred, rights-based public services.

[43] OECD (2023), Civic space review of Romania, Paris, OECD Publishing; OECD (2023),Empowering citizens, strengthening democracy: Insights on open government and civic space in Romania.

[44] FRA's 2022 civic space consultation (in Albania, North Macedonia, Serbia).

[45] Ibid.

[46] Ibid.

[47] Ibid.

[48] Ibid.

[49] FRA's 2022 civic space consultation (in Albania, North Macedonia and Serbia).

[50] FRA's 2022 civic space consultation (in Albania, North Macedonia and Serbia).

[51]ENNHRI (2022), State of the Rule of Law in Europe in 2022: Reports from National Human Rights Institutions: Albania.

[52] Council of Europe, Committee of Ministers (2018), 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, 28 November 2018, Annex, paras. I (b) and (c).

[53] See, for instance, Court of Justice of the European Union (CJEU), C-617/10, Åklagaren v. Hans Åkerberg Fransson, 26 February 2013. For an attempt to provide guidance on cases in which national laws and practices affecting civil society space may be considered to be implementing EU law for the purpose of Article 51 (1) of the EU Charter of Fundamental Rights, see European Center for Not-for-Profit Law (ECNL) (2020), Handbook – How to use EU law to protect civic space, The Hague, ECNL.

[54] CJEU, C-61/11 PPU, El Dridi, 28 April 2011, para. 55.

[55] See, for example, CJEU, C-235/17, Commission v. Hungary, 21 May 2019.

[56] FRA's 2022 civic space consultation and Franet's country studies on civic space for the 27 Member States.

[57] Ibid.

[58] Ibid.

[59] FRA's 2022 civic space consultation.

[60] For the Netherlands, see Dutch Section of the International Commission of Jurists (NJCM) (2022), Contribution of the Dutch Section of the International Commission of Jurists (NJCM) and other stakeholders to the fourth universal periodic review of the Kingdom of Netherlands, Leiden, the Netherlands, NJCM; the Netherlands, Minister for Legal Protection (Minister voor Rechtsbescherming) (2020), Bill for Transparency Civil Society Organisations Act (Wetsvoorstel Wet transparantie maatschappelijke organisaties), 20 November 2020, and the amendment following the opening of a public consultation: The Netherlands, Minister for Legal Protection (Minister voor Rechtsbescherming) (2021), Memorandum of amendment: Draft Bill for Transparency Civil Society Organisations Act (Nota van wijziging: Concept Wetsvoorstel transparantie maatschappelijke organisaties). For Bulgaria, see Bulgaria, National Assembly (Народно събрание) (2022), Draft Registration of Foreign Agents Act Bills (Законопроект за регистрация на чуждестранните агенти), 27 October 2022; Bulgaria, National Assembly (Народно събрание) (2022), Opinion of Civic Organisations on the Draft Registration of Foreign Agents Act (Становище на граждански организации относно Законопроект за регистрация на чуждестранните агенти), 22 December 2022.

[61] Cyprus, Directive on the prevention and combating of money laundering (Register of beneficiaries of associations, foundations, federations or associations, charitable foundations and non-governmental organisations with legal personality in another state) (Οδηγία για την Παρεμπόδιση και Καταπολέμηση της Νομιμοποίησης Εσόδων από Παράνομες Δραστηριότητες (Μητρώο Πραγματικών Δικαιούχων Σωματείων, Ιδρυμάτων, Ομοσπονδιών ή Ενώσεων, Αγαθοεργών Ιδρυμάτων και μη κυβερνητικών Οργανισμών με νομική προσωπικότητα σε άλλο κράτος)).

[62] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU)

No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, OJ 2015 L 141.

[63] Franet's consultation with Civil Society Advocates and the NGO Support Centre, 10 January 2022.

[64] Hungary, Act XLIX of 2021 on the transparency of civil organisations capable of influencing public life (2021. évi XLIX. törvény a közélet befolyásolására alkalmas tevékenységet végző civil szervezetek átláthatóságáról).

[65] Information from the Hungarian Helsinki Committee, provided to Franet during a telephone interview, 4 January 2023. See also Hungarian Helsinki Committee: Five Years and Counting: Government Attacks against Civil Society 2018-2023, p. 12.

[66] Information provided to FRA by the Government of Hungary, 2023.

[67] Romanian Senate (Senatul României), Legislative proposal amending the Law No. 50/1991 on authorizing construction works and other normative acts, to amend and supplement Law No. 350/2001 on territorial development and urban planning and to amend and supplement Administrative Litigation Law No. 554/2004 (Propunere legislativă pentru modificarea și completarea Legii nr.50/1991 privind autorizarea executării lucrărilor de construcții, pentru modificarea și completarea Legii nr.350/2001 privind amenajarea teritoriului și urbanismului și pentru modificarea și completarea Legii contenciosului administrativ nr.554/2004), November 2022; Group NGOs for Citizen (2022), 'Parlamentul României manifestă tendințe iliberale – Dreptul ONG-urilor la litigare strategică limitat drastic', 29 November 2022.

[68] Chamber of Deputies (Camera Deputaților), Draft Law on cybersecurity and defence and for the modification and completion of some normative acts (Proiect de Lege privind securitatea şi apărarea cibernetică a României precum şi pentru modificarea şi completarea unor acte normative), December 2022; Association for Technology and Internet (2022), 'Securitatea cibernetica pe masa Guvernului: cetățenii și persoanele juridice, și sub papucul serviciilor, și cu banii luați', 8 December 2022. See also Romania, Association for the Defence of Human Rights in Romania – Helsinki Committee (2022), 'Moș Parlament vine cu amenzi uriașe și pușcărie pentru cine amenință cu vorba securitatea cibernetică a statului', 21 December 2022.

[69] France, Law No. 2021-1109 strengthening the respect of the principles of the Republic (Loi No. 1109-1109confortant le respect des principes de la République), 24 August 2021.

[70] France, Le Movement associatif, 'Republican commitment contract: The disagreement of associations' ('Contrat d'engagement républicain : le désaccord des associations'), press release, 3 January 2022.

[71] Finland, Act amending the Associations Act (Laki yhdistyslain muuttamisesta), 8 July 2022.

[72] Latvia, Saeima, Accounting Law (Grāmatvedības likums), 10 June 2021.

[73] Institute of Maltese Journalists, letter to Prime Minister Robert Abela, 10 October 2022.

[74] Council of Europe Commissioner for Human Rights, letter to Prime Minister Robert Abela, 23 September 2022.

[75] Institute of Maltese Journalists, letter to Prime Minister Robert Abela, 10 October 2022.

[76] International Press Institute (2022), 'Joint statement in support of The Shift News as it faces a freedom of information battle with the Government of Malta', 8 August 2022; Council of Europe, Commissioner for Human Rights (2022), Report following her visit to Malta from 11 to 16 October 2021, 15 February 2022, p. 11; Centre for

Media Pluralism and Freedom (2022), Monitoring media pluralism in the digital era: Application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia and Turkey in the year 2021 – Country report: Malta, Fiesole, Italy, European University Institute, p. 12.

[77] Information provided to FRA by the Government of Malta, 2023.

[78] Sweden, Swedish parliament (Riksdagen) (2022), 'Foreign espionage to be criminalised and introduced as an offence against the freedom of the press and the freedom of expression', 16 November 2022.

[79] See Leontopoulos, N. and Chondrogiannos, T. (2023), 'Interceptions: A year of investigation by Reporters United' ('Υποκλοπές: Ένας χρόνος έρευνας από το Reporters United'), 4 January 2023, in which the timeline of the scandal commonly referred to as 'Predatorgate' can be found (in Greek). International news outlets, including the New York Times (see Markham, L. and Emmanouilidou, L. (2022), 'How free is the press in the birthplace of democracy ?', 28 November 2022) and Politico (Stamouli, N. (2023), 'Greece's spyware scandal expands further', 16 January 2023) have widely reported the scandal; for more information, see Coalition Against SLAPPs in Europe (CASE), 'The European SLAPP Contest 2022', 20 October 2022.

[80] European Commission (2023), '2023 Rule of Law Report: Comunication and country chapters', 5 July 2023.

[81] Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (recast), OJ 2019 L 172.

[82] Slovakia, Act No. 211/2000 on free access to information as amended (Zákon č. 211/2000 Z.z. o slobodnom prístupe k informáciám, 17 May 2020; Slovakia, National Council of the Slovak Republic (Národná rada SR (2022), 'Government Bill amending Act No. 211/2000 Coll. on free access to information and on amending and supplementing certain acts (Freedom of Information Act), as amended' (Vládny návrh zákona, ktorým sa mení a dopĺňa zákon č. 211/2000 Z. z. o slobodnom prístupe k informáciám a o zmene a doplnení niektorých zákonov (zákon o slobode informácií) v znení neskorších predpisov, 21 June 2022; Slovakia, National Council of the Slovak Republic (Národná rada SR) (2022), 'Proposal of the Group of Deputies of the National Council of the Slovak Republic for an Act amending Act No. 211/2000 Coll. on Free Access to Information and on Amendments and Additions to Certain Acts (Act on Freedom of Information), as amended' (Návrh skupiny poslancov Národnej rady Slovenskej republiky na vydanie zákona, ktorým sa mení a dopĺňa zákon č. 211/2000 Z. z. o slobodnom prístupe k informáciám a o zmene a doplnení niektorých zákonov (zákon o slobode informácií) v znení neskorších predpisov), 8 November 2022.

[83] Gesellschaft für Freiheitsrechte (2022), 'A whistle-blowing policy for civil society' ('Eine Whistleblowing Policy für die Zivilgesellschaft'), 30 November 2022.

[84] Estonia, Communicable Diseases Prevention and Control Act (Nakkushaiguste ennetamise ja tõrje seadus), 12 February 2003, Articles 27 (3) and 28 (2), (5), (6) and (8).

[85] Estonia, Supreme Court (Riigikohus), Case 5-22-4, 31 October 2022.

[86] Franet's telephone consultation with the lawyer of the accused people, 10 January 2023; Amnesty International (2021), 'Cyprus: Serious allegations of police abuse must be investigated and blanket ban on assemblies lifted', 24 February 2021.

[87] Denmark, Civicus Monitor (2022), '110 activist arrested during two days of climate demonstrations', 13 June 2022; Denmark, TV2 (2022), 'Many deprivations of liberty at climate demonstrations – well-known author among them' ('Mange frihedsberøvelser ved klimademonstrationer – kendt forfatter er iblandt'), 6 May 2022.

[88]Franet [German Institute for Human Rights] (2022), An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory - Germany ; Greenpeace (2022), 'Statement on the criminalisation of climate protests'; 14 November 2022; Reuters, 'Climate activists glue themselves to airport tarmac in Berlin and Munich', 8 December 2022; The Guardian, 'Climate activists throw mashed potatoes at Monet work in Germany', 23 October 2022.), 14 November 2022; Reuters, 'Climate activists glue themselves to airport tarmac in Berlin and Munich', 8 December 2022; The Guardian, 'Climate activists throw mashed potatoes at Monet work in Germany', 23 October 2022.

[89] Greenpeace (2022), 'Statement on the criminalisation of climate protests' ('Erklärung zur Debatte um die Kriminalisierung von Klimaprotesten'), 14 November 2022.

[90] Observador (2022), 'Young climate activists disappointed with sentence' ('Jovens ativistas pelo clima desiludidos com sentença'), 16 December 2022.

[91] Diário de Notícias (2022), 'PSP director highlights correct behaviour of young climate activists' ('Diretor da PSP destaca comportamento correto dos jovens ativistas pelo clima'), 16 December 2022.

[92] Court of Cassation of Belgium, Judgment No. P.21.1500.F (Arrêt N° P.21.1500.F), 23 March 2022; see also RTBF (2022), ''Blockade of the Cheratte viaduct and Court of Cassation: the appeals of the 17 convicted FGTB activists rejected' (Blocage du viaduc de Cheratte et Cour de cassation : les pourvois des 17 militants de la FGTB condamnés rejetés, 4 April 2022.

[93] Liga Voor Mensenchten (2022), 'Het Belgische stakingsrecht onder vuur', 24 October 2022.

[94] Franet [Centre for European Constitutional Law in cooperation with Hellenic League for Human Rights and Antigone-Information and Documentation Centre on racism, ecology, peace and non-violence] (2022), An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory - Greece ; Amnesty International (2022), 'Protect the protest! Why we must save our right to protest', 19 July 2022.

[95] Amnesty International Netherlands (2022), Right to demonstrate under pressure – Rules and practice in Netherlands must improve (Demonstratierecht onder druk. Regels en praktijk moeten beter).

[96] Spain, Organic Law 4/2015 on the protection of public safety (Ley Orgánica 4/2015 de protección de la seguridad ciudadana), 30 March 2015.

[97] Civicus (2022), 'Citizens' Security Law under reform: Rule of Law in Spain at stake', press release, 11 February 2022; Amnistía Internacional (2022), The Right to protest in Spain: Seven years, seven gags that restrict and weaken the right to peacefully protest in Spain (Derecho a la protesta en España – «Siete años, siete mordazas que restringen y debilitan el derecho a la protesta pacífica en España», Madrid, Amnistía Internacional; Amnistía Internacional (2022), ', press release, 3 November 2022.

[98] Araque Conde, P. (2022), 'Así va la reforma de la "ley mordaza", uno de los principales deberes pendientes del Gobierno para 2023', 31 December 2022; Frías, C. (2022), 'La reforma de la "ley mordaza" avanza: difundir imágenes de policías no será delito y se despenaliza el "top manta"', 22 December 2022; Galvalizi, D. (2023), 'La reforma de la ley Mordaza, la promesa más difícil de cumplir', 1 January 2023; López-Fonseca, O. (2022), 'La reforma de la "ley mordaza" reinicia el trámite parlamentario con significativas discrepancias entre el PSOE y sus socios', 16 December 2022.

[99] European Commission (2022), Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation'), COM(2022) 177 final, Brussels, 27 April 2022; and Commission Recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation')Recommendation (C(2022) 2428 final)

[100] Pring, G. W. and Canan, P. (1996), SLAPPs: Getting sued for speaking out, Philadelphia, PA, Temple University Press.

[101] UN, Special Rapporteur on the rights to freedom of peaceful assembly and of association, 'SLAPPs and FoAA rights'.

[102] Council of Europe Commissioner for Human Rights (2020), 'Time to take action against SLAPPs', 27 October 2020; European Parliament (2021), Resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society, P9_TA(2021)0451, Brussels, 11 November 2021; Ravo, L., Borg-Barthet, J. and Kramer, X. (2020), Protecting public watchdogs across the EU: A proposal for an EU anti-SLAPP law.

[103] Commission Recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation').

[104] Ibid.

[105] CASE (2022), Shutting out criticism: How SLAPPS threaten European democracy, Daphne Caruana Galizia Foundation, Greenpeace International and Amsterdam Law Clinics. See also CASE (2023), 'How SLAPPs increasingly threaten democracy in Europe – New CASE report', 23 August 2023.

[106] UUN, Special Rapporteur on the rights to freedom of peaceful assembly and of association, 'SLAPPs and FoAA rights', pp. 3-5.

[107] Bolanowski, R. (2022), 'Bart Staszewski wins in court against the municipality of Niebylec. They demanded an apology in the pages of the New York Times and the Guardian' (Bart Staszewski wygrywa w sądzie z gminą Niebylec. Żądali przeprosin na łamach "New York Timesa" i "Guardiana"), 5 May 2022; Ambroziak, A. (2022), Atlas of Hate activists win against Ordo Luris and homophobic local government ('Aktywiści Atlasu Nienawiści wygrywają z Ordo Iuris i homofobicznym samorządem'), 21 December 2022; Austria, Federal Ministry of Climate Protection, Environment, Energy, Mobility, Innovation and Technology (2021), Evaluation of the construction program Future in implementation of government program - Conclusions, GZ. 2021-0.747.473 (Evaluierung des Bauprogramms der Zukunft in Umsetzung des Regierungsprogramms – Schlussfolgerungen, GZ. 2021-0.747.473), Vienna, Federal Ministry of Climate Protection, Environment, Energy, Mobility, Innovation and Technology; ORF Wien (2021), City withdraws threat of legal action against minors - wien.ORF.at (Stadt zieht Klagsdrohung an Minderjährige zurück), 23 December 2021; Amnesty International Austria, 'The climate protection and human rights movement as well as scientists condemn the city of Vienna's threats to sue as human rights violations' (Klimaschutz- und Menschenrechtsbewegung sowie Wissenschaftlerin verurteilen Klagsdrohungen der Stadt Wien als Menschenrechtsverletzung), 15 December 2021; Kleine Zeitung (2022), 'SLAPP lawsuits: freedom of expression is threatened'(SLAPP-Klagen: Die Meinungsfreiheit ist bedroht), 18 February 2022; MeinBezirk.at (2022), 'City of Vienna refrains from taking legal action against Lobau activists'(Stadt Wien verzichtet auf Klagen gegen Lobau-Aktivisten)', 15 February 2022.

[108] Croatia, Glas Istre (2022), 'The investor sued three citizens from the Lungomare Initiative. They are now asking the people of Pula to donate money for court costs' ('Investitor tužio troje građana iz Inicijative za Lungomare. Oni sada traže od Puležana da im doniraju novac za sudske troškove'), 23 November 2022; Croatia, Novi list (2022), 'Sued members of the referendum initiative for Lungomare collected HRK 25,000' ('Tuženi članovi referendumske inicijative za Lungomare skupili 25 tisuća kuna'), 26 November 2022; Croatia, Lupiga (2022), 'Activists are filled with lawsuits: "This is like a fight between David and Goliath"' ('Aktivisti zasuti tužbama: "Ovo je kao borba Davida protiv Golijata"'), 24 November 2022.

[109] Croatia, Glas Istre (2022), 'The investor sued three citizens from the Lungomare Initiative. They are now asking the people of Pula to donate money for court costs' ('Investitor tužio troje građana iz Inicijative za Lungomare. Oni sada traže od Puležana da im doniraju novac za sudske troškove'), 27 November 2022.

[110] Amnesty International (2022), 'Slovenia: Withdraw claims for protesters to cover costs associated with policing assemblies', press release, 16 March 2022.

[111]) Slovenia, Ministry of Justice (2023), 'Act regulating issues relating to specific minor offences during covid-19 adopted by the National Assembly' ('Zakon o ureditvi vprašanj v zvezi z določenimi prekrški v času covid-19 sprejet v Državnem zboru'), 20 September 2023.

[112] CASE (2022) 'Pesticide SLAPP in Südtirol/Alto Adige ends in victory for freedom of expression', 6 May 2022; Bulgaria, Association of European Journalists (Асоциация на европейските журналисти – България) (2022), 'The government's unacceptable pressure on journalists to reveal the sources of journalistic investigation continues' ('Продължава недопустимият натиск на властта за разкриване на източниците на журналистическо разследване'), press release, 16 September 2022.

[113] Croatia, Human Rights House Zagreb (Kuća ljudskih prava Zagreb), Human rights defenders in Croatia – Challenges and obstacles (Branitelji ljudskih prava – izazovi i prepreke), Zagreb, Human Rights House Zagreb.

[114] See Franet's country studies on civic space for the 27 Member States, the Civic Space Watch website and the Civicus Monitor.

[115] Article 6 ICCPR; Article 2 ECHR.

[116]Article 9 ICCPR, Article 5 ECHR.

[117] Article 25 ICCPR.

[118] Article 19 ICCPR, Article 10 ECHR.

[119] Article 21 ICCPR, Article 11, ECHR.

[120] Article 22 ICCPR, Article 11, ECHR.

[121]Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, Art. 22

[122] Council of the European Union (2023), Council Conclusions on the application of the EU Charter of Fundamental Rights; The role of the civic space in protecting and promoting fundamental rights in the EU, 14 March 2023, para. 14.

[123] Council of Europe, Committee of Ministers (2018), 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, 28 November 2018.

[124] FRA's 2022 civic space consultation.

[125] FRA's 2021, 2020, 2019 and 2018 civic space consultations.

[126] FRA's 2022 civic space consultation.

[127] For example, European Commission (2022), A thriving civic space for upholding fundamental rights in the EU 2022 Annual Report on the Application of the EU Charter of Fundamental Rights, COM/2022/716 final; OECD (2022), The protection and promotion of civic space: Strengthening alignment with international standards and guidance .

[128] FRA's 2021 and 2022 civic space consultations.

[129] Ibid.

[130] Council of Europe, Parliamentary Assembly (2023), Transnational repression as a growing threat to the rule of law and human rights, 23 June 2023; Freedom House (2022), Defending democracy in exile: Policy responses to transnational repression, Washington, DC, Freedom House; and Gorokhovskaia, Y., Schenkkan, N. and Vaughan, G. (2023), Still not safe: Transnational repression in 2022, Washington, DC, Freedom House.

[131] Freedom House's database on transnational repression (not publicly available). For an overview of issues, see Gorokhovskaia, Y., Schenkkan, N. and Vaughan, G. (2023), Still not safe: Transnational repression in 2022, Washington, DC, Freedom House.

[132] See, in this context, Council of Europe (2022), Pushed beyond the limits: Four areas for urgent action to end human rights violations at Europe's borders, April 2022, pp. 36–37.

[133] OHCHR (2022), Report of the Special Rapporteur on the situation of human rights defenders – Refusing to turn away: Human rights defenders working on the rights of refugees, migrants and asylum-seekers, 18 July 2022.

[134] FRA (2022), Europe's civil society – Still under pressure: 2022 update, Luxembourg, Publications Office; FRA's 2022 civic space consultation; Franet's country studies on civic space for the 27 Member States.

[135] United Nations, Special Rapporteur on human rights defenders (2022), Statement on preliminary observations and recommendations following official visit to Greece, 22 June 2022.

[136] See, for example, Platform for International Cooperation on Undocumented Migrants (PICUM) (2023), More than 100 people criminalised for acting in solidarity with migrants in the EU in 2022.

[137] See, for example, CASE (2023)– Coalition Against SLAPPs in Europe, SLAPPS: a threat to democracy continues to grow; Franet's country studies on civic space for the 27 Member States; PICUM (2023), More than 100 people criminalised for acting in solidarity with migrants in the EU in 2022.A World of Neighbours webinar, 15 March 2023.

[138] Italy, Ministry of the Interior (2023), Dossier of the Ministry of the Interior, 15 August 2023 – The activity of the Ministry of the Interior (Dossier Viminale 15 agosto 2023 L'attività del Ministero dell'Interno), 15 August, p. 30. Data cover January – July 2023.

[139] Greece, Government Gazette (2021), 'Law 4825/2021: Reform of deportation and return procedures of third country nationals, attracting investors and digital nomads, issues of residence permits and procedures for granting international protection, provisions within the competence of the Ministry of Migration and Asylum and the Ministry of Citizen Protection and other emergency provisions' (Αναμόρφωση διαδικασιών απελάσεων και επιστροφών πολιτών τρίτων χωρών, προσέλκυση επενδυτών και ψηφιακών νομάδων, ζητήματα αδειών διαμονής και διαδικασιών χορήγησης διεθνούς προστασίας, διατάξεις αρμοδιότητας Υπουργείου Μετανάστευσης), Government Gazette A 157/4-9-2021, Article 40.

[140] Council of Europe, Commissioner for Human Rights (2021), Greece's Parliament should align the deportations and return bill with human rights standards, 3 September 2021.

[141] European Commission (2023), '2023 Rule of law report – Communication and country chapters', 5 July 2023; FRA (2023), Asylum and migration: Progress achieved and remaining challenges, Luxembourg, Publications Office, pp. 9–11; CEPS (2023), 'Policing search and rescue NGOs in the Mediterranean – Does justice end at sea?', 24 February 2023.

[142] Lawlor, M. (2023), 'EU's values should dictate an ethos of hospitality', 20 June 2023.

[143] FRA (October 2023), June 2023 update – Search and rescue (SAR) operations in the Mediterranean and fundamental rights.

[144] For an overview of the legal framework regulating the duty to provide assistance to people in distress at sea, see FRA (2013), Fundamental rights at Europe's southern sea borders, Luxembourg, Publications Office, Chapter 2; FRA (October 2023), June 2023 update – Search and rescue (SAR) operations in the Mediterranean and fundamental rights.

[145] UN (2018), Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions: Saving lives is not a crime, 7 August 2018, paras 13–18.

[146] CJEU, Joined Cases C-14/21 and C-15/21, Sea Watch, 1 August 2022.

[147] Transformed into law in early 2023: Italy, Law No. 15/2023, 24 February 2023.

[148] European Parliament (2023), Letter by Chair of the Committee on Civil Liberties, Justice and Home Affairs, López Aguilar, to Commissioner Johansson, published on Twitter, 9 February 2023; OHCHR (2023), 'Italy: Criminalisation of human rights defenders engaged in sea-rescue missions must end, says UN expert', press release, 9 February 2023.

[149] Sea-Watch (2023), 'Statement: New Italian government decree will cause more deaths in the Mediterranean Sea', 5 January 2023.

[150] Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No. 1052/2013 and (EU) 2016/1624, OJ 2019 L 295, Art. 3 (1) (b). See also European Commission (2023), Communication establishing the multiannual strategic policy for European integrated border management – Annex I, COM(2023) 146 final, Strasbourg, 14 March 2023, Component 2, pp. 5–6.

[151] Commission Recommendation (EU) 2020/1365 of 23 September 2020 on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search, and

rescue activities, OJ 2020 L 317.

[152] European Commission (2021), 'Informal Commission expert group "European Contact Group on Search and Rescue"', 11 March 2021.

[153] OSCE (2015), Joint guidelines on freedom of association, Warsaw, OSCE/ODIHR.

[154] Council of the European Union (2023), Council Conclusions on the application of the EU Charter of Fundamental Rights; The role of the civic space in protecting and promoting fundamental rights in the EU, 24 February 2023.

[155] FRA's 2018, 2021, 2022 civic space reports.

[156] FRA's 2022 civic space consultation.

[157] Franet [Institute of Sociology of the Czech Academy of Sciences] (2022), An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory - Czechia; Franet [Estonia Human Rights Centre] (2022), An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory - Estonia; Franet [University of Luxembourg] (2022), An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory - Luxembourg. .

[158] Franet [Greman Institute for Human Rights] (2022), An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory - Germany; Franet [Irish Centre for Human Rights, University of Galway] (2022), An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory - Ireland; Franet [Fondazione "Giacomo Brodolini"] (2022), An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory - Italy.

[159]Franet [Raoul Wallenberg Institute of Human Rights and Humanitarian Law] (2022), An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory - Sweden; Regeringkansliet (2019), Democratic conditions for contributions to civil society (Demokrativillkor för bidrag till civilsamhället).

[160] See Franet's reports.

[161] Franet [Estonia Human Rights Centre] (2022), An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory - Estonia.

[162] FRA's 2022 civic space consultation.

[163] See, for example, European Commission (2023), Summary Report, A thriving civic space for upholding fundamental rights in the EU: looking forward - Follow up seminars to the 2022 Report on the Application of the EU Charter of Fundamental Rights (forthcoming).

[164] See Chapter 4.1.

[165] CJEU, C-78/18, Commission v. Hungary, 18 June 2020.

[166] FRA'S 2022 civic space consultation.

[167] European Commission (2023), Summary Report, A thriving civic space for upholding fundamental rights in the EU: looking forward - Follow up seminars to the 2022 Report on the Application of the EU Charter of Fundamental Rights (forthcoming); European Civic Forum and Civil Society Europe (2023), 'How can we enable, protect and expand Europe's civic space, to strengthen democracy, social and environmental justice? Recommendations for the European Commission'; and European Youth Forum (2017), 'Policy paper on the Erasmus+ successor programme', Council of Members/Extraordinary General Assembly, Cascais, Portugal, COMEM 0119-17-FINAL, 23-25 November 2017.

[168] See the Philea, Ariadne and Funders Initiative for Civil Society websites.

[169] See the Civitates website.

[170] European Commission (2023), Summary Report, A thriving civic space for upholding fundamental rights in the EU: looking forward - Follow up seminars to the 2022 Report on the Application of the EU Charter of Fundamental Rights (forthcoming).

[171] European Commission (2023), Summary Report, A thriving civic space for upholding fundamental rights in the EU: looking forward - Follow up seminars to the 2022 Report on the Application of the EU Charter of Fundamental Rights (forthcoming).

[172] See, for example, Stefan Batory Foundation, Open Society Foundations and International Renaissance Foundation (2023), Learning for the future – Protection and security for civil society activists at risk in Europe (unpublished).

[173] Interviews with representatives of donors and grantees (Ariadne, Mott Foundation, Civitates, European Center for Not-for-Profit Law); European Commission (2023), Summary Report, A thriving civic space for upholding fundamental rights in the EU: looking forward - Follow up seminars to the 2022 Report on the Application of the EU Charter of Fundamental Rights (forthcoming); European Civic Forum and Civil Society Europe (2023), 'How can we enable, protect and expand Europe's civic space, to strengthen democracy, social and environmental justice? Recommendations for the European Commission'.

[174] Ibid.

[175] Trust-Based Philanthropy Project (n.d.), 'A trust-based approach'; and National Philanthropic Trust (2022), 'Trust-based philanthropy: A primer for donors', 16 March 2022.

[176] European Commission (2023), Summary Report, A thriving civic space for upholding fundamental rights in the EU: looking forward - Follow up seminars to the 2022 Report on the Application of the EU Charter of Fundamental Rights (forthcoming).

[177] See the full text of the International Covenant on Civil and Political Rights on the OHCHR website.

[178] Council of Europe, Committee of Ministers (2017), Guidelines for civil participation in political decision making, 27 September 2017, p. 39.

[179] FRA (2021), Protecting civic space in the EU, Luxembourg, Publications Office, p. 10.

[180] FRA's 2022 civic space consultation.

[181] Franet [Institute of Sociology of the Czech Academy of Sciences] (2022), An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory - Czechia

[182] Franet [Centre for the Research of Ethnicity and Culture] (2022), An update on developments regarding civic space in the EU an an overview of the possibilities for human rights defenders to enter EU territory - Slovakia

[183] Franet [Lithuania Centre for Social Sciences] (2022), An update regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory.

[184] Franet [Latvia Centre for Human Rights] (2022), An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory: Latvia.

[185] The European Network of National Human Rights Institutions (2023), State of the rule of law in Europe - 2023, August 2023.

[186] FRA's focus group discussion with representatives of CSOs on 7 July 2023; focus group discussions with representatives of youth organisations on 11 and 22 May 2023; focus group discussions with anti-racism CSOs on 26 February and 9 March 2021; European Disability Forum (2022), Human rights report on political participation of persons with disabilities, Brussels, European Disability Forum; FRA (2014), The right to political participation for persons with disabilities: human rights indicators.

[187] FRA's focus group discussion with representatives of CSOs on 7 July 2023; focus group discussions with representatives of youth organisations on 11 and 22 May 2023; focus group discussions with anti-racism CSOs on 26 February and 9 March 2021.

[188] European Parliament (2022), Report on the shrinking space for civil society in Europe, P9 TA(2022)0056, 22 February 2022, para. 41.

[189] See OHCHR (2021), 'Moderating online content: Fighting harm or silencing dissent?', 23 July 2021.

[190] FRA's focus group discussion with representatives of CSOs on 7 July 2023; 'Instagram is removing sex-positive accounts without warning', 9 June 2023.

[191] See, for instance, European Confederation of NGOs working on sustainable development and international cooperation (CONCORD) (2022), 'Building partnerships through meaningful consultation: 7 practices for civil society participation in EU decision-making', 8 November 2022, p. 3; World Health Organisation (n.d.), 'Participatory approaches to enhance health practices, policies and services'; World Health Organisation (2023), WHO framework for meaningful engagement of people living with noncommunicable diseases, and mental health and neurological conditions, Geneva, World Health Organization.

[192] See, for instance, European Parliament Think Tank (2021), 'The traumas endured by refugee women and their consequences for integration and participation in the EU host country', Brussels, 19 April 2021.

[193] FRA's focus group discussion with representatives of CSOs on 7 July 2023.

[194] Roma Civil Monitor (2022), Civil society monitoring report on the quality of the national strategic framework for Roma equality, inclusion, and participation in Hungary, Luxembourg, Publications Office.

[195] FRA's focus group discussion with representatives of CSOs on 7 July 2023; see also Wired (2023).

[196] See European Youth Forum (2022), Safeguarding Civic Space for Young People in Europe.

[197] European Commission (2023), Summary Report, A thriving civic space for upholding fundamental rights in the EU: looking forward - Follow up seminars to the 2022 Report on the Application of the EU Charter of Fundamental Rights (forthcoming); FRA's focus group discussion with representatives of CSOs on 7 July 2023.

[198] Focus group discussions on 26 February 2021, 9 March 2021 and 7 July 2023.

[199] See, for instance, UN (2023), 'Participation of vibrant civil society, marginalized communities crucial for achieving global goals, speakers tell high-level political forum', 14 July 2023.

[200] FRA's focus group discussion with representatives of CSOs on 7 July 2023; focus group discussions with representatives of youth organisations on 11 and 22 May 2023; focus group discussions with anti-racism CSOs on 26 February and 9 March 2021. See also Kamruzzaman, P. (2020), 'Exploring the nexus between participation and empowerment', Journal of Development Policy and Practice, Vol. 5, No. 1, pp. 32–53; and Green, D. (2013), The role of the state in empowering poor and excluded groups and individuals.

[201] See, for instance, Aditus (2022), 'Training kit for empowering refugee-led community organisations'.

[202] See also PICUM (2023), Protecting the rights of undocumented migrants: PICUM priorities ahead of the 2024 EU elections, Brussels, PICUM, p. 5.

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FRA – EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS
Schwarzenbergplatz 11 – 1040 Vienna – Austria
T +43 158030-0 – F +43 158030-699

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