

# 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

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# 1. Civic space developments in 2022

## 1.1 Amendments to the rules of tax and financial incentives for civil-society organisations

Area	Financing Framework
Topic	Tax Regime
Impact	Major

In Italy, the Law-Decree No. 73 of 21 June 2022 on “Urgent measures on tax simplifications” was approved.<sup>1</sup> The Law-Decree – which was converted with amendments into Law No. 122 of 4 August 2022<sup>2</sup> – introduced several measures simplifying the tax regime applied to civil society organisations. More specifically, the reform provided clarifications related to the application of criteria to establish when an activity is carried out in a commercial or non-commercial manner. This is a tax definition of crucial importance for civil society organisations since it also affects the choices related to the legal status to be assumed and the subsequent applicable tax regime. As a general rule, an activity of general interest is non-commercial if it is carried out in substantial economic break-even, taking into account the comparison between the consideration received and the costs incurred. Additionally, one must also consider the possibility of achieving a profit margin that, within certain limits, would in any case remain non-taxable. Moreover, the reform clarified that the range of costs to be considered in order to qualify an activity as non-commercial is very wide. More precisely, it aims to include, in addition to direct costs, all those attributable to general interest activities and among these indirect and general costs, including financial and tax costs. As far as real estate property is concerned, it is clarified that civil society organisations

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<sup>1</sup> [Decreto-legge 21 giugno 2022, n. 73](#), “Misure urgenti in materia di semplificazioni fiscali e di rilascio del nulla osta al lavoro, Tesoreria dello Stato e ulteriori disposizioni finanziarie e sociali”.

<sup>2</sup> [Legge 4 agosto 2022, n. 122](#), “Conversione in legge, con modificazioni, del decreto-legge 21 giugno 2022, n. 73, recante misure urgenti in materia di semplificazioni fiscali e di rilascio del nulla osta al lavoro, Tesoreria dello Stato e ulteriori disposizioni finanziarie e sociali”.

and volunteering organisations can obtain income exemption for renting used for carrying out their general interest activities.

## 1.2 Ministerial guidelines on fundraising

Area	Financing Framework
Topic	Funding Landscape
Impact	Major

In Italy, on 9 June 2022 the Ministry of Labour and Social Policies adopted a set of official guidelines on fundraising.<sup>3</sup> The purpose of the guidelines is to create a guidance tool for civil society organisations - regardless of their legal form and scope of intervention - when carrying out fundraising activities, and to strengthen trust in the organisations' relationship with citizens. Financial resources gathered through fundraising activities must be exclusively destined to public interest activities. The guidelines also include specific obligations on financial reporting and accountability, in line with the principles of truth, transparency and fairness. The organisation must therefore provide donors with clear, direct and comprehensible information on the use of its donation, the project for which it is intended and/or the organisation's main activities. The main fundraising methods are listed in the guidelines. These include direct mail, telemarketing, face to face, direct response television, public events, merchandising, funds from private companies, testamentary legacy, online donations. This development can be considered as positive as it contributes to an increased transparency of civil society organisations: donors are therefore protected against abusive behaviours that compromise credibility of fundraising activities.

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<sup>3</sup> Ministero del Lavoro e delle Politiche Sociali, [Decreto 9 giugno 2022](#), "Adozione delle linee guida sulla raccolta fondi degli enti del Terzo settore".

## 1.3 Criminalisation of human rights defenders for providing assistance to migrants and asylum seekers

Area	Safe Space & Protection
Topic	Criminalisation of humanitarian or human rights work
Impact	Minor

On 19 May 2022, a communication was written by the UN Special Rapporteur on Human Rights Defenders and other UN experts to the Government of Italy in relation to a case of criminalisation of three human rights defenders of Eritrean origin.<sup>4</sup> The case involves three Eritrean men living in Italy, where they obtained asylum status. In 2016, they were arrested on suspicion of being members of an international people smuggling organisation. They were charged with criminal conspiracy to facilitate illegal immigration under article 416 of the Italian Criminal Code<sup>5</sup> and article 12 of the Italian Immigration Act<sup>6</sup>. The accusations against these men stemmed from acts of assistance towards other Eritreans, which they had performed between May 2014 and October 2015. These acts included giving advice on how to use public transport, helping the migrants and asylum seekers buy tickets for buses or trains, buying them clothes, food, phones and sim cards, as well as hosting recently arrived migrants and asylum seekers and helping them find places to stay. The Italian prosecutors requested sentences that ranged from 12 to 14 years for each of the three men and fines of up to € 300,000, along with their preventive detention on the basis of the seriousness of the charges. Subsequent to their arrest, the men were placed in preventive detention in Rome, where they were held since March 2016 until 22 December 2017. The three human rights defenders were convicted by both the Criminal Court of Rome and by the Court

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<sup>4</sup> Information available at the [website](#) of the UN Special Rapporteur on Human Rights Defenders.

<sup>5</sup> [Art. 416 Codice Penale](#).

<sup>6</sup> [Decreto Legislativo 25 luglio 1998, n. 286](#), “T esto unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero”.

of Appeals of Rome in 2021<sup>7</sup>. This decision was appealed by the defence to the Court of Cassation which discharged the three defendants in May 2022<sup>8</sup>. The Rapporteur's concerns regarded both the criminalisation of acts of solidarity and assistance, and the extended period of pre-trial detention.

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<sup>7</sup> ADIF (2022), "[Una condanna in appello malgrado l'errore di persona: esiste ancora il diritto di asilo?](#)", 7 May 2022.

<sup>8</sup> Il Manifesto (2022), "[«Non è favoreggiamento», eritrei assolti in Cassazione](#)", 21 May 2022.

## 2. Promising practice in 2022

### 2.1 Freedom of media professionals

In 2022, the third edition of the Journalists-in-Residence programme was organised in Milan, in the framework of the project Media Freedom Rapid Response (MFRR).<sup>9</sup> The programme, intended to last from May 2022 to October 2023, is open to journalists and media professionals who are experiencing some risk/threat/intimidation to their person as a direct result of their journalistic work. The programme is managed by Q Code in coordination with Osservatorio Balcani e Caucaso Transeuropa (OBC) (Trento, Italy) and the European Centre for Press and Media Freedom (Leipzig, Germany), with the financial support of the European Union. Journalists based in EU Member States, in Candidate Countries or in Ukraine can submit an application to participate in the programme. The programme provides the possibility for a three-to-six-month residency in Milan and the development of a tailored support programme in a safe and discreet place to continue investigating and publishing, to rest and to recover. Beneficiaries can benefit from a rent-free, furnished apartment in Milan, health insurance and psychological counselling (optional); a monthly stipend of € 1,000, travel expenses to and from Milan (arrival and departure), visa costs, participation in journalism-related trainings, networking opportunities, the opportunity to work (*pro bono*) with QCode and OBC Transeuropa teams on self-selected subjects.

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<sup>9</sup> Information on the programme is available at the [website](#) of Q Code, one of the project's partner organisations.

## 3. Visa for human rights defenders

### 3.1. Entry and stay for human rights defenders (HRDs) at risk

Dedicated visa scheme for HRDs at risk available in your country	No
Other type of visa or alternative legal entitlement or derogation clause applied to HRDs	No

There is not a specific visa scheme in place for HRDs in Italy: the procedure to obtain a visa applies equally to all third-country citizens, regardless of the reason for their stay in Italy. Applicants are requested to show a valid passport, to prove financial means of subsistence and to provide proof the reason for their stay in Italy<sup>10</sup>. As reported by the ICORN network<sup>11</sup> – providing shelter to artists and writers at risk in their countries of origin – it is usually difficult for potential applicants to obtain visas due to the impossibility of fulfil the administrative requirements and to the reluctance of hosting countries to release the Visa. Differently, the Journalists-in-Residence programme – the promising practice described in section 2 – only accepts candidates of any nationality regularly residing in EU Member States or candidates: in this case, a Visa is not needed but candidates must hold a valid passport<sup>12</sup>. HRDs obviously have the right to lodge an asylum application in Italy at the same conditions as any other third-country citizen, as well as to apply for the special protection residence permit – introduced in 2018 to replace the humanitarian protection residence permit – directly lodging the application at the police headquarters. This type of permit is released for a period of two years to third-country citizens who are not eligible for international protection but who nonetheless are at risk of persecution on grounds of race, sex, sexual orientation, gender

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<sup>10</sup> The [website](#) of the Italian Ministry of Foreign Affairs provides updated information on the visa procedure.

<sup>11</sup> Dyvik, E., “[Providing residencies for persecuted writers and artists in Europe – Immigration issues](#)”, ICORN.

<sup>12</sup> Information on eligibility criteria available at the [website](#) of the organisation QCode.



identity, language, citizenship, religion, political opinions, personal or social conditions, in case of return to their country of origin<sup>13</sup>.

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<sup>13</sup> The Immigration Policies [website](#) of the Italian Government provides information on the special protection residence permit, including requirements, validity and associated rights.