

Protecting civil society space: strengthening freedom of association, assembly and expression and the right to defend rights in the EU ¹

ABSTRACT

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, covers the challenges facing the civil society space. Watchdog NGOs and other human rights defenders have been under pressure during the humanitarian and rule of law 'crises'. Several EU Member States have passed laws that fall short of international, regional and EU freedom of association standards. Some governments have used the COVID-19 pandemic to further restrict the civic space. The study explores how the EU could protect civil society from unjust state interference by strengthening freedom of association, assembly and expression, as well as the right to defend human rights. The study elaborates on four policy options: introducing a European association statute; establishing internal guidelines to respect and protect human rights defenders; developing a civil society stability index; and creating a network of focal contact points for civil society at EU institutions. It recommends strengthening the independence of critical civil society actors and increasing funding for activities such as strategic litigation to uphold EU laws and values.

These civil society actors are essential to upholding the rule of law, fundamental rights and democratic accountability – the Union's founding values – as enshrined in Article 2 of the Treaty on European Union (TEU). The EU, therefore, must **protect civic space from unjust interference by EU Member States** and even by the Union's institutions and agencies.

The EU institutional evidence shows that developments over the past five years have worsened **conditions for civil society actors, and especially, for critical ones across the EU**.² The study links this trend with various 'crises', that have been declared in the areas of rule of law, asylum and, most recently, public health (COVID-19). The policymakers are limiting democratic accountability, restricting civil society space and infringing on fundamental rights. Thus, watchdog NGOs and other human rights defenders have experienced various forms

¹ Full study in English: [http://www.europarl.europa.eu/RegData/etudes/STUD/2020/659660/IPOL_STU\(2020\)659660_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2020/659660/IPOL_STU(2020)659660_EN.pdf)

² European Union Agency for Fundamental Rights (FRA), 'Challenges facing civil society organisations working on human rights in the EU', January 2018, Luxembourg, Publication Office of the European Union, 2017.



of policing, ranging from suspicion and harassment to disciplining and criminalisation.³ The first annual rule of law report acknowledged these challenges in the EU Member States.⁴

So-called NGO transparency laws were introduced in Hungary and Romania in 2017, and recently, in Greece. They intended to put a muzzle on watchdog NGOs. In Hungary **'the Lex NGO'** has created an unfavourable legislative environment and depicted watchdog NGOs receiving funding from abroad as 'foreign agents'.⁵ The Court of Justice of the European Union (CJEU) stated that 'Hungary has introduced **discriminatory, unjustified and unnecessary restrictions**' in breach of the EU law.⁶ The Court upheld the principle of state non-interference with civil society activities under the EU Charter of Fundamental Rights (EUCFR).

At the beginning of 2020, Greek authorities introduced additional obligations for Greek and foreign NGOs working in the area of asylum, migration and integration to register in newly created databases under the Greek Ministry of Migration and Asylum.⁷ The 'Special Secretary of Coordination of the Involved Institutions' gained wide discretionary powers to assess whether to register the applicants. Council of Europe NGO law experts found that such requirements were **'onerous, complex, time-consuming and costly for NGOs'**.⁸

Despite international standard requiring state non-interference with civil society funding,⁹ in Poland in 2017, a Center for the Development of Civil Society was set up under the authority of the prime minister. This institution was tasked to distribute public funds to NGOs. Thus, various government-organised NGOs (GONGs) and pro-government NGOs continue to be generously funded, while critical and watchdog NGOs are left to 'starve'.¹⁰

New emergency laws announced during **the COVID-19 pandemic have exacerbated ongoing trends**. Many LGBT+ associations, Roma, environmental activists, and anti-racist demonstrators have been under pressure to halt their activities because of public health-related restrictions. Placed in a particularly difficult situation were NGOs and volunteers assisting refugees and other migrants. For instance, in France, volunteers helping those stuck in the Calais jungle were sanctioned for violating social distancing rules.¹¹

While civil society actors play a crucial role in upholding EU values in times of 'crises', the EU has not yet devised the framework to protect them. The study puts forward the following recommendations:

1. EU governments need to be monitored on how they respect freedoms, underlying the civic space.

The European Commission needs to follow up on earlier European Parliament calls to set up a comprehensive EU mechanism on democracy, the rule of law and fundamental rights. This mechanism should monitor how international, regional and EU standards in the area of freedoms of expression, assembly and association, and the right to defend human rights, are respected.

³ Carrera, S., V. Mitsilegas, J. Allsopp and L. Vosyliūtė, *Policing Humanitarianism: EU Policies Against Human Smuggling and Their Impact on Civil Society*, Hart Publishing, London, January 2019.

⁴ European Commission, '2020 Rule of Law Report: The rule of law situation in the European Union', COM(2020) 580 final, Brussels, 30 September 2020.

⁵ Pardavi, M., M. Szuleka and G. Gheorghe, 'New decade, old challenges: Civic space in Hungary, Poland and Romania', Report of Hungarian Helsinki Committee, Helsinki Foundation for Human Rights and APADOR-CH, March 2020.

⁶ CJEU, Case C-78/18, *European Commission v Hungary (Transparency of associations)*, judgment of 18 June 2020, ECLI:EU:C:2020:476, para.1.

⁷ Greek Law No. 4662/2020 of 7 February 2020; Greek Joint Ministerial Decision 3063/2020 of 14 April 2020; Greek Law 4686/2020 of 12 May 2020.

⁸ Ferstman, C., 'Opinion on the compatibility of recent and planned amendments to the Greek legislation on NGO registration with European standards', the CoE Expert Council on NGO Law CONF/EXP(2020)4, 2 July 2020.

⁹ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report of Maina Kiai to 39th session of the UN Human Rights Council, A/HRC/23/39, 24 April 2013.

¹⁰ Focus group convoked for the purpose of this study on 25 May 2020 via Zoom.

¹¹ *Utopia56*, 'L'état d'urgence sanitaire: autorise-t-il les violences envers les exilés et les intimidations envers les bénévoles?', 28 April 2020.

2. The EU should have more legal and policy tools to deal with governments that retaliate against watchdog NGOs and other human rights defenders.

Article 15 of the Treaty on the Functioning of the European Union (TFEU) recognises civil society's role in the EU's good governance; this role should include safeguards against reprisals and retaliation, like those afforded to whistleblowers.

3. Strengthen the independence of civil society actors.

The European Commission should introduce clear rule of law conditionality and compliance with fundamental rights for any EU funding schemes. Furthermore, funding for the European Rights and Values programme should be increased significantly. Funding critical activities, such as strategic litigation, would enhance civil society's ability to defend civic space and uphold the EUCFR and other EU laws.

4. EU co-legislators should create a conducive environment for watchdog NGOs and other human rights defenders at the EU level.

The EU co-legislators should remedy the vague definitions of crime that are routinely (mis)used to target human rights defenders, as in the case of the Facilitation Directive.

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External Authors: Lina VOSYLIŪTĖ, Research Fellow at CEPS, Ngo Chun LUK, Researcher at CEPS.
Research Administrator responsible: Ina SOKOLSKA Editorial assistant: Fabienne VAN DER ELST
Contact: poldep-citizens@europarl.europa.eu

This document is available on the internet at: www.europarl.europa.eu/supporting-analyses

PE 659.660
IP/C/LIBE/2020-49

Print	ISBN 978-92-846-7566-1		doi:10.2861/28657		QA-06-20-175-EN-C
PDF	ISBN 978-92-846-7564-7		doi:10.2861/404284		QA-06-20-175-FR-C