DRAFT REPORT

on the shrinking space for civil society in Europe
(2021/2103(INI))

Committee on Civil Liberties, Justice and Home Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

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The European Parliament,

– having regard to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU),

– having regard to the Charter of Fundamental Rights of the European Union (hereinafter ‘the Charter’),

– having regard to the European Convention on Human Rights (ECHR),


– having regard to the report of the EU Agency for Fundamental Rights (FRA) of 17 January 2018 entitled ‘Challenges facing civil society organisations working on human rights in the EU’, its bulletins published in 2020 on the fundamental rights implications of the COVID-19 pandemic in the EU, and its other reports, data and tools, in particular the European Union Fundamental Rights Information System (EFRIS),

– having regard to the FRA report of 22 September 2021 entitled ‘Protecting civic space in the EU’,

– having regard to the joint Guidelines of the Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the Venice Commission of 1 January 2015 on Freedom of Association,

– having regard to the OSCE/ODIHR and Venice Commission Guidelines of 8 July 2019 on Freedom of Peaceful Assembly,

– having regard to the United Nations guidance note of 23 September 2020 on the protection and promotion of civic space,

– having regard to the UN Declaration of 9 December 1998 on the Right and

¹ OJ L 156, 5.5.2021, p. 1.
Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,

– having regard to the general comment No. 34 of the UN Human Rights Committee of 12 September 2011 on Article 19: freedoms of opinion and expression,

– having regard to the general comment No. 37 of the UN Human Rights Committee of 17 September 2020 on Article 21: the right to peaceful assembly,

– having regard to Recommendation CM/Rec(2007)14 of the Council Of Europe Committee of Ministers to Member States of 10 October 2007 on the legal status of non-governmental organisations in Europe,

– having regard to the opinion of the European Economic and Social Committee (EESC) of 20 March 2019 entitled ‘Resilient democracy through a strong and diverse civil society’,

– having regard to the EESC opinion of 19 October 2017 entitled ‘Financing of civil society organisations by the EU’,

– having regard to the 2020 Annual Report by the partner organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists,

– having regard to the Commission communication of 2 December 2020 on a strategy to strengthen the application of the Charter of Fundamental Rights in the EU (COM(2020)0711),

– having regard to the Commission communication of 3 December 2020 on the European democracy action plan (COM(2020)0790),

– having regard to its resolution of 3 October 2017 on addressing shrinking civil society space in developing countries²,

– having regard to its resolution of 19 April 2018 on the need to establish a European Values Instrument to support civil society organisations which promote fundamental values within the European Union at local and national level³,

– having regard to its resolution of 14 November 2018 on the need for a comprehensive EU mechanism for the protection of democracy, the rule of law and fundamental rights⁴,

– having regard to its resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights⁵,

– having regard to its resolution of 13 November 2020 on the impact of COVID-19

³ OJ C 390, 18.11.2019, p. 117.
⁴ OJ C 363, 28.10.2020, p. 45.
measures on democracy, the rule of law and fundamental rights⁶,

– having regard to its resolution of 25 November 2020 on strengthening media freedom: the protection of journalists in Europe, hate speech, disinformation and the role of platforms⁷,

– having regard to its resolution of 26 November 2020 on the situation of Fundamental Rights in the European Union – Annual Report for the years 2018-2019⁸,

– having regard to its resolution of 24 June 2021 on the Commission’s 2020 Rule of Law Report⁹,

– having regard to its report of xxxx on a statute for European cross-border associations and non-profit organisations,

– having regard to its report of xxxx 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,

– having regard to Rule 54 of its Rules of Procedure,

– having regard to the opinion of the Committee on Legal Affairs,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0000/2021),

A. whereas the Union is founded on the values enshrined in Article 2 TEU and these values are common to the Member States; whereas Articles 11(2) TEU and 15(1) TFEU stress the importance of civil dialogue for the realisation of the Union’s objectives;

B. whereas civil society organisations (CSOs) are non-profit making organisations independent of public institutions and commercial interests, whose activities contribute to the realisation of EU values and fundamental rights; whereas human rights defenders, activists and informal groups are also key actors in civil society;

C. whereas civic space refers to the legal and political framework in which people and groups can meaningfully participate in the political, economic, social and cultural life of their societies, exercising the right to express views, assemble, associate and engage in dialogue with one another and with authorities;

D. whereas freedom of thought and freedom of expression are the cornerstone of every free and democratic society;

E. whereas freedom of association is one of the essential bases of a democratic and pluralist society, as it allows citizens to act collectively in fields of mutual interest and

⁶ OJ C 415, 13.10.2021, p. 36.
to contribute to the proper functioning of public life;

F. whereas the right to peaceful assembly is a cornerstone of democracy; whereas restrictions to and policing of peaceful assemblies must respect legality, necessity, proportionality and non-discrimination;

G. whereas freedom of expression has been restricted in some Member States; whereas strategic lawsuits against public participation (SLAPPs) have also been used to target civil society organisations (CSOs) and human rights defenders; whereas these exert a severe chilling effect on freedom of expression;

H. whereas freedom of association is being eroded in some Member States;

I. whereas in some Member States, restrictions have been imposed with the deliberate aim of limiting civic space and are accompanied by legal, administrative and fiscal harassment, criminalisation and negative rhetoric aimed at stigmatising and delegitimising CSOs and draining their capacity to carry out their legitimate work; whereas hate speech, harassment and attacks also emanate from non-state actors; whereas CSOs working on women’s rights, including sexual and reproductive health and rights, environmental issues and the protection of minorities and LGBTI rights, as well as those providing assistance to asylum seekers and those involved in search and rescue operations, are particularly exposed;

J. whereas certain Member States have placed restrictions on CSOs’ ability to engage in political activities; whereas in others, accusations that CSOs are political have become tools to stigmatise and delegitimise them; whereas CSOs report discriminatory and restrictive funding practices in certain Member States;

K. whereas policies and practices instilling a chilling effect on civic space have been adopted in certain Member States with the aim of achieving self-censorship and deterring civic actors from exercising their rights;

L. whereas the right to peaceful assembly has been restricted due to necessary social distancing rules in a majority of Member States; whereas in some Member States, the powers of law enforcement authorities are increasing, generating concerns over their necessity and proportionality;

M. whereas the emergence of government-organised non-governmental organisations (GONGOs) designed to support the political legitimacy of those in power constitutes one of the gravest forms of attack against CSOs, jeopardising their existence by undermining active citizenship;

N. whereas while CSOs increasingly perform economic activities and contribute to the social economy, no legislative steps have been taken to unlock their operations at EU level;

O. whereas foreign funding has been the target of legal and political attacks in some Member States;

1. Asserts the crucial role played by CSOs in the realisation of EU values and fundamental
rights, and the implementation of EU policies and strategies; stresses their key
contribution to informed public debate, articulating aspirations present in society, giving
a voice to vulnerable and marginalised people, providing expertise in policy-making,
promoting active citizenship and acting as schools of democracy;

2. Emphasises that for civil society organisations to thrive, civic space must be an enabling
and safe environment free from undue interference, intimidation, harassment and
chilling effects;

3. Warns about the degradation of civic space throughout the EU with policies hampering
CSOs’ operations, their access to sustainable funding and their ability to participate in
decision-making; condemns any form of harassment, smearing, stigmatisation,
criminalisation and scapegoating of CSOs;

4. Agrees with the Commission that when civil society’s space to operate shrinks, it is a
sign that the rule of law is at risk; urges the Commission, therefore, to step up and
structure its monitoring of the situation of civic space in the Member States by creating
a ‘European civic space index’ based on existing frameworks for measuring civic space,
and by dedicating to civic space a fully-fledged chapter including country
recommendations in its annual rule of law report;

5. Welcomes the Commission’s acknowledgement of the importance of civil society in a
number of EU policies and strategies; stresses, however, that the fragmented nature of
this approach results in little effective improvement of the situation of CSOs on the
ground;

6. Urges the Commission, therefore, to adopt a comprehensive civil society strategy that
integrates all existing tools, fills monitoring, support and protection gaps, and gives
genuine political recognition to the crucial role played by CSOs in the realisation of EU
values and policies;

An enabling regulatory and political environment free from chilling effects, threats and
attacks

7. Stresses that the ability of CSOs to act depends on the existence of an enabling legal and
political environment, in particular on the exercise of freedom of association, peaceful
assembly and expression; urges Member States to guarantee the exercise of these rights
in conformity with international standards;

8. Considers that the contribution of CSOs to the single market and the social economy, as
well as their role in the realisation of EU values and policies, is a strong argument for
removing the barriers to their operations at EU level; calls on the Commission,
therefore, to propose legislation to approximate Member State laws in this regard;

9. Calls on the Commission to include a systematic civic space check in its impact
assessments in order to prevent planned legislation from having negative effects on
civic space;

10. Calls on the Member States to limit peaceful assemblies only if strictly necessary and in
a proportionate way; condemns any unnecessary use of force against protesters, as well
as their criminalisation and surveillance; calls on the Commission to issue guidelines for the protection of freedom of peaceful assembly;

11. Warns against the detrimental impact of policies and rhetoric instilling a chilling effect on civic space; urges the Commission to make the analysis of chilling effects a key aspect of its annual rule of law report, to build on case C-78/18\(^\text{10}\) to challenge measures having a chilling effect on the exercise of Charter rights when similar approaches are possible and to apply for interim measures to avoid irreparable damage while judicial review is ongoing;

12. Condemns any threats and attacks perpetrated on CSOs by state actors; equally condemns all instances of attacks and threats perpetrated by non-state actors, including, but not limited to SLAPPs;

13. Urges Member States to unequivocally condemn such acts, adopt preventive measures and systematically investigate any related allegations;

14. Calls for the setting up of an EU alert mechanism allowing CSOs and human rights defenders to register attacks and seek support;

**Sustainable and non-discriminatory access to resources**

15. Urges the Commission to propose a comprehensive set of measures and recommendations to ensure long-term financing for CSOs; stresses the importance of securing complementary sources of funding; emphasises that public funding should cover all types of civil society activities;

16. Is gravely concerned by the emergence of GONGOs and related discriminatory and often opaque public funding practices; warns against their detrimental effect on the perceived legitimacy of CSOs and hence on citizens’ willingness to engage in active citizenship;

17. Welcomes the adoption with an increased budget of the Citizens, Equality, Rights and Values Programme; calls on the Commission to actively consult CSOs in the definition of work programmes and funding mechanisms so as to ensure transparency, flexibility and user-friendliness; welcomes re-granting mechanisms in the Union Values strand;

18. Urges the Commission to ensure that EU funds are only awarded to organisations that are strictly independent from any government and fully adhere to EU values;

19. Condemns attempts by certain Member States to impose limitations on foreign funding and the related political narratives they have promulgated and measures they have taken with the aim of stigmatising CSOs;

20. Calls for an EU-level definition of the concept of public benefit, as that would boost cross-border donations insofar as it would enable mutual recognition of public benefit status and equal treatment in terms of the related advantages;

Civil dialogue and participation in policy-making

21. Stresses the importance of civil dialogue in informed policy-making and emphasises that the privileged position of CSOs in contact with citizens, and their expertise, confers on them a key role in civil dialogue;

22. Regrets that civil dialogue often remains an ad hoc process; calls on the Member States to develop coherent policy frameworks that ensure structured, predictable and long-term processes, inclusive participation and systematic review; calls on the Commission to provide recommendations based on the analysis of existing practices;

23. Welcomes the attribution to a Commission Vice-President of the responsibility to maintain an open, transparent and regular dialogue with civil society; stresses that civil dialogue should be further operationalised;

24. Calls on the Commission to leverage the definition of national programmes implementing EU funds and the implementation by Member States of EU strategies and action plans to require Member States to put in place effective civil dialogue mechanisms;

25. Instructs its President to forward this resolution to the Council and the Commission.
EXPLANATORY STATEMENT

This report addresses the long-overdue political recognition at EU level of the fundamental role played by civil society in the functioning of pluralist and democratic societies and the increasing challenges, as well as attacks, faced by civil society organisations and the wider civil society including human rights defenders throughout the European Union.

As a result of their wide range of activities embedding them into society, including education, advocacy and representation or their function as providers of services and support to citizens, civic actors play a crucial role in promoting, monitoring and protecting fundamental rights and principles of our democratic societies without seeking political power for themselves. Their proximity to people and communities allow them to observe the effects of public policies and political discourse on the life of citizens and to witness discrimination and precarity. When fundamental rights, democratic principles or the rule of law are eroded or under attack, they play a key role in raising awareness, advocating for their protection and mobilizing in their defense.

Civil society hence plays a key role in the realisation of the values underpinning the foundations of the EU as enshrined in Article 2 of the Treaty on European Union (TEU). This role is recognized by the Treaties in Article 11 TEU which commits the EU to an open, transparent and regular dialogue with civil society and Article 15 of the Treaty on the Functioning of the European Union that calls for ensuring the participation of civil society.

Yet, in acting to defend or develop these values, civil society organisations often become the targets of policies and measures trying to limit the space in which they are allowed to operate. Shrinking civic space has multiple levels from the establishment of unintentional administrative obstructions to deliberate attacks against the very existence of civil society and its representatives. Such attacks undermine the rule of law and clash with European values. Therefore the situation of the rule of law cannot be fully analysed without an examination of civic space in Europe and in the Member States.

Evidence of some level of the shrinking of civic space can be found in virtually all Member States of the Union according the European Union Agency for Fundamental Rights (FRA)’s successive publications and a wide range of reports by human rights NGOs and watchdogs, but also international organisations such as the OECD or the Council of Europe.

Especially, FRA’s latest report entitled Protecting Civic Space in the EU, published on 22 September 2021, builds on thorough analysis as well as interviews and surveys carried out with civil society organisations over the last years and provides a comprehensive and up-to-date image of the situation of civic space and its fundamental building blocks: the overall institutional framework, an enabling regulatory environment, access to sustainable resources and funding, participation in law- and policy making and the maintaining of a safe space civil society actors. For each of these areas, FRA presents ample and documented evidence of the main trends, including reference to measures taken in specific Member States.

The present European Parliament report does not aim to duplicate the work of the Fundamental Rights Agency and other organisations monitoring the state of civic space and fundamental rights. Instead, it intends to raise political awareness and to focus on capturing the types of challenges faced by civil society actors – rather than instances of such challenges.
– and to propose policies and measures to address these issues.

**The impact of measures instilling a chilling effect**

Policies and measures designed to instill a chilling effect on civic space are of particular relevance as they lead to self-censorship and deter civil society organisations and citizens, but also certain professions (e.g. judges and journalists) from exercising their civic rights or carrying out their legitimate work.

While their nature can be very diverse, such policies often combine vague provisions leaving large discretion to public authorities with disproportionately high potential sanctions. Their arbitrary application is often used to strengthen further the desired chilling effect. In certain cases, the mere prospect of their application can have a deterrent effect strong enough to instill self-censorship without an actual need to apply them. Beyond merely legislative measures, negative rhetoric, stigmatization, smear campaigns, harassment, intimidation and criminalisation also lead to chilling effects.

Some of the country chapters of the Commission’s Rule of Law report already address the issue of chilling effects but a more systematic approach making chilling effects a key element to be monitored in the Rule of Law report would help further document the impact of such policies on civic space and their characteristics. In turn, further strategic infringement procedures could be initiated such as the one in Case C-78/18 where the concept of the “deterrent effect” played an important role in the Court’s conclusion that the measures at stake were violating freedom of association.

Attacks, hate speech and intimidation are also perpetrated by private actors, including in the form of Strategic Lawsuits Against Public Participation which warrant decisive EU action along the lines called for by the Parliament.

**The emergence of Government-organized Non-governmental organisations**

A less documented phenomenon that this report aims at highlighting is the emergence of government-organized non-governmental-organizations, or GONGOs, designed to support the political legitimacy of the power in place.

By presenting themselves as independent voices, these organisations inflate a sense of public support to the political goals of the power in place. In doing so, they threaten basic building blocks of democracy such as public debate and deliberation and their presence in the public sphere undermines active citizenship, thereby threatening civic space in the long term.

While further study and documenting of the phenomenon would help better grasp the impacts of these practices, it is important to ensure that mechanisms and strategies are devised to ensure that EU funds are not awarded to GONGOs or organisations that do not respect EU values.

**A comprehensive EU Civil society strategy**

The importance of civil society in furthering the Union’s objectives is reflected in a wide variety of EU policies and strategies. These include horizontal policies such as the Strategy for the Implementation of the Charter of Fundamental Rights or the European Democracy
action plan but also in a number of sectoral policies such as in the areas of anti-racism, LGBTQI+ equality, Roma inclusion, children’s rights, disability, victims’ rights, women’s rights and migrant integration.

The Citizens, Equality, Rights and Values programme was adopted with an increased budget compared to the Commission’s initial proposal, notably under a strong push by the Parliament to complement the fundamentally important three strands by a fourth one focusing on Union values.

The European Commission also regularly emphasizes the important role played by civil society organisations in the monitoring of the state of the rule of law, democracy and fundamental rights, notably its contribution to inform the drafting of the Annual Rule of Law report.

Yet, while the Commission highlights its reliance on civil society organisations for the promotion, monitoring and protection of EU values and the realisation of many EU policies, its approach to addressing the challenges faced by civil society organisations remains both fragmented and incomplete.

The present own-initiative report therefore calls for an EU Civil Society Strategy that will genuinely and unequivocally recognise the EU’s commitment to protect, nurture and support civil society and civic space. It should integrate all existing tools and complement them with new ones to fill existing monitoring, prevention, support and protection gaps.

To be comprehensive, such a strategy should encompass the political recognition of civil society as a key partner for EU institutions, enhanced and structured monitoring of the situation of civic space in the Member States, dispositions to develop and protect the regulatory environment in which they operate including prevention and support when they are targeted by attacks, a framework to secure their financial sustainability and measures to ensure genuine participation in policy-making processes.

In particular, in terms of monitoring, despite worrying trends and evidence of attacks on civil society organisations, the Commission’s annual rule of law report still only dedicates a few paragraphs to civic space in its chapter on “institutional issues linked to checks and balances” while recognising that when civil society’s space to operate shrinks, it is a sign that the rule of law is at risk. A fully-fledged chapter dedicated to civic space, including country-specific recommendations would not only recognize the key role of civil society organisation, it would also help build political momentum thereby strengthening the EU’s voice in the protection of civil society.

Country-specific recommendations in all chapters of the Rule of Law report would help improve the effectiveness of the report as they would allow not only to take stock of violations but to set out concrete measures for the protection of key institutions and actors protecting the rule of law, democracy and fundamental rights.

A key step in this would be the creation of a European Civic Space Index that would structure and systematize the monitoring of civic space in the Member States and enable the observation of its evolution over time. As evidenced in FRA’s report, methodologies and frameworks to measure the situation of civic space have already been developed and these should be built upon. The index would then feed into the elaboration of the annual Rule of Law report.
law Report.

Crucial measures and policies to protect civil society organisations’ political and legal environment, to prevent and protect them from threats and attacks, to secure sustainable funding and to ensure access to policy-making are listed and connected in the three related parts of the report.