

# Challenges facing civil society organisations working on human rights in the EU

## Summary



*The Charter of Fundamental Rights of the European Union sets out rights to freedom of assembly and of association (Article 12), and freedom of expression and information (Article 11). These are of particular importance in how they pertain to civil society organisations in the EU.*

Civil society organisations in the European Union (EU) play a crucial role in promoting fundamental rights, and so contribute to the functioning of democracies. They give voice to people on issues that matter to them, assist rights holders, monitor governments' and parliaments' activities, provide advice to policymakers, and hold authorities accountable for their actions. Various forms of civil society engagement exist throughout the EU, owing to different historical developments. The type and size of civil society organisations (CSOs) also vary considerably, ranging from large well-resourced international entities to small, volunteer-based grassroots organisations.

The EU Agency for Fundamental Rights (FRA) cooperates and regularly consults with a wide range of

such organisations. They increasingly report that it has become harder for them to support the protection, promotion and fulfilment of human rights within the Union – due to both legal and practical restrictions.

While challenges exist in all EU Member States, their exact nature and extent vary across countries. They include: disadvantageous changes in legislation or inadequate implementation of laws; hurdles to accessing financial resources and ensuring their sustainability; difficulties in accessing decision-makers and feeding into law and policymaking; and attacks on and harassment of human rights defenders, including negative discourse aimed at delegitimising and stigmatising CSOs.

FRA's full report on this issue looks at the different types and patterns of challenges faced by civil society organisations across the EU, and highlights promising practices that can counteract these worrying patterns. This summary outlines the report's main findings and FRA's opinions on the issues these raise.

## Key findings and FRA opinions

FRA's opinions are based on the findings presented in the agency's full report on *Challenges facing civil society organisations working on human rights in the EU*. The opinions are far from exhaustive. They focus on areas where EU Member States may easily find themselves acting within the scope of EU law, and where legal or policy action is most urgently required. Additional actions at Member State and international levels – including beyond EU competence – could further help CSOs protect, promote and fulfil human rights in the EU.

### Enabling regulatory environment

To do their work, civil society actors involved in promoting fundamental rights need to be able to exercise their rights fully and without unnecessary or arbitrary restrictions. This necessitates that states fully implement their positive obligations to promote human rights and create an enabling environment for CSOs. Article 51 (1) of the EU Charter of Fundamental Rights Charter obliges the Union and Member States to respect all Charter rights and “observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of

the Union as conferred on it in the Treaties”. The rights to freedom of assembly and of association (Article 12 of the Charter), and freedom of expression and information (Article 11 of the Charter) are of particular importance in this context. They apply to EU Member States when they are acting within the scope of EU law.

Member States have a variety of legitimate interests in adopting legislation and administrative rules that might affect civil society organisations, including in the area of tax law, or with respect to transparency, electoral and lobbying laws. However, even if not meant to negatively affect CSOs, such measures can have an undue impact on them and hence have a chilling effect.

Effects of single legislative or administrative acts can be difficult to assess in isolation. Given the interdependencies in a legal-political system, the whole is often greater than the sum of its parts: although individual legislative measures in a given area may not necessarily violate fundamental rights, a series of measures taken in different areas may, when taken together, increase the regulatory burden on civil society actors to such an extent that it may undermine their ability to operate. This is relevant where Member States are transposing and implementing EU legislation – for instance, in the

## Notes on terminology

### Civil society organisations

For purposes of FRA's report, civil society organisations are defined – as per the agency's founding regulation (Regulation (EC) No. 168/2007) – as “non-governmental organisations and [...] institutions of civil society, active in the field of fundamental rights”, and in accordance with the Council of Europe Committee of Ministers' Recommendation 14 (2007) as “voluntary self-governing bodies or organisations established to pursue the essentially non-profit-making objectives of their founders or members”.

The report covers CSOs that work, as specified in the UN Declaration on Human Rights Defenders, to “promote and [...] strive for the protection and realization of human rights and fundamental freedoms” at the national and/or international level.

For more information, see Council Regulation (EC) No. 168/2007 of 15 February 2007 establishing a European

Union Agency for Fundamental Rights (the Founding Regulation), OJ 2007 L 53, Art. 10; Council of Europe, Committee of Ministers (2008), Recommendation CM/Rec(2007)14, para. 1 (1); Commission of the European Communities (2000), “The Commission and non-governmental organisations: building a stronger partnership”, Commission discussion paper, COM(2000) 11 final, para. 1.2; and United Nations (UN) General Assembly (GA), Declaration on Human Rights Defenders, A/RES/53/144, 8 March 1999, Art. 1.

### Civil society space

Civil society space is “the place civil society actors occupy within society; the environment and framework in which civil society operates; and the relationships among civil society actors, the State, private sector and the general public.”

For more information, see Office of the United Nations High Commissioner for Human Rights (OHCHR), *A Practical Guide for Civil Society: Civil Society Space and the United Nations Human Rights System*.



area of border controls, counter-terrorism or money laundering.

Civil society organisations identified the following challenges regarding the regulatory environment:

- Recognition or registration of CSOs can be problematic. Examples include one Member State failing to recognise unregistered CSOs, and another requiring double registration of CSOs. In another Member State, registration documents had to be amended after a new law was introduced – a time- and resource-intensive process.
- Transparency laws that require entities involved in political campaigns to register as third-party campaigners (either in general or during election periods) as well as lobbying laws can serve a legitimate purpose. However, they also risk restricting CSOs' ability to inform the public on matters of general interest or carry out advocacy, if drafted or applied in a disproportionate manner.
- Member States sometimes impose entry restrictions on non-EU nationals seeking to engage in human rights work in a Member State, without providing a sufficient explanation as to why this is done. One Member State also imposed a ban – later lifted – on a national of another Member State seeking to engage in human rights work.
- National rules sometimes go beyond the restrictions of the freedom of peaceful assembly that can legitimately be imposed under international instruments. Measures taken to address terrorism have had a particularly negative impact on the freedom of peaceful assembly.
- States also sometimes impose, in law or in practice, general bans on assemblies at certain times or places – for example, by excluding some locations from the right to assemble, which limits the free expression of (potential) assembly participants.
- States do not always treat individuals seeking to assemble equally, and favour certain types of assemblies – for example, recurring assemblies – over others. They also do not always adequately police assemblies – for example, by providing insufficient police resources to protect participants.
- A number of EU Member States have maintained criminal laws banning defamation or insult of state officials, the state itself, and (foreign) heads of state. Although such provisions may serve the legitimate interest of protecting the right to reputation, they should not disproportionately

restrict the freedom of expression. Such restrictions can, if potential sanctions are excessive or laws are applied overly strictly, have a chilling effect on freedom of expression. This is particularly true for civil society actors working on human rights issues, who will frequently need to criticise the state or state officials, and who may feel less empowered to do so if they know they potentially face criminal sanctions for speaking out.

#### FRA opinion 1

*Member States and the EU should pay increased attention when drafting and implementing legislation in areas which potentially (directly or indirectly) affect civil society space, including freedom of expression, assembly and association, to ensure that their legislation does not place disproportionate requirements on civil society organisations and does not have a discriminatory impact on them, thereby diminishing civil society space. In so doing, they should fully respect applicable EU and relevant international treaty law.*

#### FRA opinion 2

*The EU and Member States should ensure that lobbying regulations and transparency laws and their application comply with applicable EU and international law and do not disproportionately restrict or hinder human rights advocacy – including during election periods, such as for European Parliament elections.*

## Finance and funding

Access to resources is an integral part of the right to freedom of association, as defined in Article 22 of the International Covenant on Civil and Political Rights and other human rights instruments, including the EU Charter of Fundamental Rights (Article 12).

Article 13 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders) enshrines the right to “solicit, receive and utilise resources” to promote and protect human rights. 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.

There seems to be wide agreement that legal frameworks and policies related to resources have a significant impact on the freedom of association and on the ability of CSOs to work effectively. Nonetheless, CSOs face a number of legal and practical obstacles to accessing funding, in spite of promising practices at both EU and Member State level.

Comprehensive data on the amount of public and private funding for human rights CSOs working within the EU are not available in most Member States. This is in part because funding comes from various sources, including different central government ministries, budget lines, levels of local and regional government, EU funds and EEA and Norway Grants, as well as private donations. Even from the data available, it is not possible to identify amounts of public funds specifically reserved for the promotion and protection of fundamental rights in a given EU Member State. Comprehensive data on private donations are also not available.

While the economic crisis has affected public budgets in general, with economic growth gaining pace in the EU, Member States and the EU may want to review their respective approaches to allocating public funds for civil society organisations, with a view to strengthening the promotion and protection of fundamental rights.

CSOs in the EU, the European Parliament, as well as the European Economic and Social Committee (EESC), have recently called for a European Endowment Fund for Democracy. Notably, the EESC has called on the Commission “to propose a European fund for democracy, human rights and values within the EU, to be equipped with an ambitious budget, directly open to CSOs across Europe and managed independently, similarly to the European Endowment Fund for Democracy” which exists for civil society operating outside the EU.

In this context, FRA welcomes the European Commission’s suggestion – made in its proposed revision of the EU Financial Regulation – to take into account as eligible expenses the hours incurred by volunteers and to facilitate the inclusion of contributions in kind as co-financing.

FRA’s research revealed a number of challenges in accessing funding. These include:

- overall amount of available funding, with shrinking budgets in some, though not all, EU Member States;
- funding cuts for some CSOs or certain activities, with a move away from advocacy, litigation and awareness-raising activities and towards the provision of health care or social services;
- obstacles to obtaining funding, including burdensome, complex and not always transparent procedures for accessing it;
- cumbersome reporting procedures that can be disproportionate to the funding amount received;
- funding often comes in the form of (short-term) project funding; more long-term funding, as well as infrastructure funding, is often not available;
- co-financing often constitutes a challenge, as do delays in payments of grants, leading among others to cash flow problems;
- some European Commission grants pose geographical restrictions that prevent CSOs from attending meetings at the United Nations in Geneva, which hinders effective human rights advocacy at UN level, such as the contribution of CSOs to key human rights treaty processes when the EU and EU Member States are under review;
- unfavourable tax regimes in some Member States, both for CSOs themselves (charitable/public benefit/public utility status) as well as for physical and legal persons who donate to CSOs;
- negative media and smear campaigns against CSOs that receive foreign funding, including, in some cases, the demand for them to brand themselves as foreign-funded organisations on all their materials;
- organisations representing persons with disabilities at EU level and in the Member States have limited financial resources and are not always able to independently monitor state actions regarding the rights of persons with disabilities.



## FRA opinion 3

*EU institutions and Member States are encouraged to ensure that funding is made available for CSOs working on the protection and promotion of the EU's foundational values of fundamental rights, democracy and the rule of law; including for small grassroots organisations. Such funding should cover, as appropriate, the variety of activities of CSOs such as service provision, watchdog activities, advocacy, litigation, campaigning, human rights and civic education and awareness raising.*

*As part of the free movement of capital, CSOs should be free to solicit, receive and utilise funding not only from public bodies in their own state but also from institutional or individual donors, and public authorities and foundations in other states or from international organisations, bodies or agencies.*

## FRA opinion 4

*Member States and EU institutions should make sure that organisations that represent persons with disabilities are provided with funding, including for personal assistance, reasonable adjustments and support, to enable them to fulfil their role under the Convention on the Rights of Persons with Disabilities (CRPD).*

## FRA opinion 5

*The European Commission should further improve the availability of information regarding existing funding schemes by ensuring easy one-stop-shop overviews of funding made available to CSOs that work in the field of fundamental rights; by promoting its one-stop-shop portal on funding possibilities; and by expanding its database on projects funded in different areas to highlight particularly successful and impactful projects.*

*The European Commission should consider adopting guidance for Member States clarifying the applicability of the four 'fundamental freedoms' under the EU common market regime to CSOs, including foundations and philanthropic organisations.*

## FRA opinion 6

*The European Commission and Member States should consider favouring multi-annual and core funding over short-term project-based funding, which would allow for a more sustainable basis for the work of CSOs as well as long-term planning. For the sake of more effective application procedures, two-step procedures could be used more frequently, where initial applications are short, and only preselected projects from the first round are required to deliver a full application file.*

*Audit and reporting requirements placed on CSOs and other associations should be proportionate to public funding made available and to the size and structure of the receiving organisation. In the context of co-funding, the requirements should be proportionate and take better account of the scope of projects and the type of organisations applying.*

## Right to participation

Article 11 of the Treaty of the European Union (TEU) specifies that EU institutions "shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action" and "shall maintain an open, transparent and regular dialogue with representative associations and civil society". The right to participation in public affairs is also recognised in Article 25 of the International Covenant on Civil and Political Rights and was recently reaffirmed in the Council of Europe Guidelines for civil participation in political decision-making, as adopted in September 2017 by the Council of Europe's Committee of Ministers. One of its components is civil participation, which the guidelines define as "the engagement of individuals, NGOs and civil society at large in decision-making processes by public authorities".

The CRPD obliges states to closely consult with and involve persons with disabilities and their representative organisations in all decisions that are relevant to them. The EU and 27 of the 28 EU Member States have ratified this convention. In practice, there is often a lack of measures to ensure full accessibility to websites, and to offer information in adequately accessible formats. The resulting lack of information can impede full involvement by persons with disabilities and organisations that represent them.

The UNECE Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, which links environmental rights with human rights, grants the public rights and imposes obligations on parties and public authorities regarding access to information, public participation and access to justice. The EU has been a party to the convention since 2005.

Seeking input into law and policy proposals by stakeholders, including from civil society, is one of the tools for democratic, evidence-based policymaking. It adds democratic legitimacy and CSO expertise and a “reality check” to a process or legal/policy proposal, and helps increase ownership among constituencies. Although national consultation and participation procedures are a matter for the national authorities, reducing civil society’s vital role in decision-making processes may increase the risk that Member State measures transposing or implementing EU law violate the EU Charter of Fundamental Rights.

There seems to be wide agreement on the need to involve civil society organisations in policymaking, from local to EU levels. However, in the practical implementation of this concept, the various possible levels of CSO involvement and the diverse methods available for involving them are often not fully made use of. In addition, there is often a lack of clear criteria that need to be fulfilled to be recognised as a legitimate actor.

Some form of access to the decision-making process exists across all EU Member States, as well as at the level of EU institutions. Although there are a number of promising practices – particularly at the local level – access to (and real impact on) the decision-making process is generally inconsistent and not very transparent.

Member States have put in place some form of consultation procedures, but these are not always as meaningful and effective as they could be. Notably, interviews with CSOs, public servants and experts indicate that even when the political will for at least consultation exists, public administrations seem to lack awareness of, and skills in, the various methods available to more meaningfully and effectively involve stakeholders in law- and policymaking. Both CSOs and public servants report that there is often a lack of trust between public administrations and civil society organisations.

CSOs and experts have specified a number of obstacles that hamper full and effective participation

and access to the decision-making process. These include:

- limited access to information about policy or legal initiatives;
- lack of minimum standards or clear rules on the implementation of the right to participation, or lack of knowledge about these and hence inconsistent implementation;
- lack of political will or understanding that consultation is not a ‘box ticking exercise’ but, if done well, contributes to better policymaking;
- lack of awareness by public services of, and skills in, the various methods to involve stakeholders in law- and policymaking in a meaningful and effective way;
- specific challenges regarding, and barriers to, involving persons with disabilities – including the lack of necessary measures to ensure full application of web-accessibility standards, and the need to offer official information, as applicable, in various accessible formats;
- tight timelines for participation/consultation processes (including for administrations themselves) as well as tight budgets and human resource allocations in public services;
- lack of clarity regarding who is consulted before decisions are made, with CSOs also reporting that often there is no systematic consultation of all key players;
- cutting of relevant funds can indirectly affect CSOs’ ability to participate in decision-making in a meaningful way;
- lack of trust between public services and civil society organisations.

#### FRA opinion 7

*EU institutions and Member States should uphold their obligations under Article 4 (3) of the CRPD to consult closely with and involve persons with disabilities and their representative organisations in all decisions that are relevant to them. Participation of persons with disabilities in public and political life should be encouraged in line with Article 29 (b) of the CRPD. More generally, EU institutions and Member States should maintain an open, transparent and regular dialogue with CSOs active in the area of human rights to guarantee that EU*

*legislation and EU policies as well as national legislation and policies implementing the latter are in line with the EU Charter of Fundamental Rights.*

*Where relevant rules in support of CSOs' active participation in human rights are already in place, authorities should ensure that these are implemented in practice. This involves making available adequate human and financial resources to allow for proper participation processes, and providing public servants with training on, and sufficient time for, engaging such organisations. Tools and methods used by public authorities for implementing participation could be diversified and improved. Full use should be made of the newly adopted Council of Europe 'Guidelines for meaningful civil participation in political decision-making'.*

## Ensuring a safe space for civil society

CSOs and activists in the EU face physical and verbal attacks, harassment and intimidation by non-state actors. These incidents take place both online and offline. Some state officials even engage in verbal attacks and create negative narratives that stigmatise CSOs or discredit their work, harming both the support base for CSOs in society and activists' morale and motivation. It is vital for public officials to refrain from attacks, including verbal attacks, and unfounded attempts to discredit organisations that promote human rights and non-discrimination. Neither public authorities nor civil society organisations are properly recording – at the EU or national level – data on attacks and threats against CSOs.

### FRA opinion 8

*Member States should refrain from the stigmatisation of human rights CSOs and their members. Moreover, they should actively condemn any crimes – including hate crimes – committed against CSOs and their members and fully implement their positive obligations under international law and applicable EU law to protect CSOs and their members. Data on hate crimes against human rights CSOs should be collected and published.*

## Space for exchange and dialogue

Various actors from civil society and beyond raised with FRA the lack of reliable and comparable data on attacks against CSOs across the EU. They also noted a lack of information on available funding schemes and expenditure for human rights focused CSOs, the regulatory environment and channels for civil society organisations' participation in policy-making. The need for exchanging promising practices across the EU was expressed by many interlocutors. More specifically, it was felt that the following activities should be carried out at the EU level:

- (a) collecting data on attacks against human rights CSOs;
- (b) observing developments of relevance to civil society across the EU, including those affecting the availability of financial resources;
- (c) advising on the administration of EU funds dedicated to civil society;
- (d) supporting resource building for CSOs; and
- (e) allowing for “an open, transparent and regular dialogue with representative associations and civil society” and strengthening the European Commission's capacity to carry out “broad, consultations with parties concerned” as required by Article 11 of the TEU.

### FRA opinion 9

*The EU should consider supporting the establishment of an appropriate space for exchange and dialogue to promote the support of civil society actors engaged in the protection and promotion of fundamental rights in the EU. This would also allow for an enhanced regular dialogue between civil society organisations and the EU institutions.*



Civil society organisations in the European Union play a crucial role in promoting fundamental rights, but it has become harder for them to do so – due to both legal and practical restrictions. While challenges exist in all EU Member States, their exact nature and extent vary. Data and research on this issue – including comparative research – are generally lacking.

FRA's report therefore looks at the different types and patterns of challenges faced by civil society organisations working on human rights in the EU. It also highlights promising practices that can counteract these worrying patterns.

## Further information:

For the full FRA report – *Challenges facing civil society organisations working on human rights in the EU* – see <http://fra.europa.eu/en/publication/2018/challenges-facing-civil-society-orgs-human-rights-eu>

Other relevant FRA publications include:

- FRA (2017), *Fundamental Rights Report 2017*, Luxembourg, Publications Office, <http://fra.europa.eu/en/publication/2017/fundamental-rights-report-2017>
- FRA (2014), *Criminalisation of migrants in an irregular situation and of persons engaging with them*, Luxembourg, Publications Office, <http://fra.europa.eu/en/publication/2014/criminalisation-migrants-irregular-situation-and-persons-engaging-them>
- FRA (2012), *Bringing rights to life: the fundamental rights landscape of the European Union*, Luxembourg, Publications Office, <http://fra.europa.eu/en/publication/2012/bringing-rights-life-fundamental-rights-landscape-european-union>

FRA works closely with civil society organisations active in the field of human rights, particularly through the Fundamental Rights Platform. For more information on this cooperation network, see: <http://fra.europa.eu/en/cooperation/civil-society>



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