

Countering shrinking spaces: Recommendations to support EU civil society

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Executive summary

Civil society is a crucial ally in safeguarding and upholding the European Union's (EU) values. And although the EU, and in particular the European Commission, has supported civil society organisations (CSOs) across Europe, it has not been enough to effectively counter the phenomenon of shrinking civic spaces.

As the COVID-19 crisis is likely to negatively affect civil society across Europe, especially through the growing restrictions on civil liberties and the likely subsequent economic hardship, the urgency for better and more comprehensive support has increased.

While the newly presented recovery instrument and the revised proposal for the next Multiannual Financial Framework (MFF) are important steps to provide the necessary help for European societies and economies to recover, civil society support does not seem to be part of

that equation. This is a dangerous omission, as it gives a free ride to member states that do not wish to safeguard the Union's values. By keeping civil society out of the current crisis initiatives, the EU will be responsible for knowingly accepting democratic backsliding in its member states.

Within the realm of the Treaties, the EU institutions could take a range of measures to improve its civil society support. It could come up with a more comprehensive strategy outlining its approach towards civil society; provide adequate and flexible financial resources to respond to the needs of CSOs; and improve its dialogue processes, to 'CSO-proof' its own legislation but also to benefit from the bridge-building function of civil society, thereby linking the EU's support for civil society to its efforts to improve democratic participation.

1. COVID-19 will bring further hardship to a sector already under pressure

The ongoing public health crisis has affected our societies and economies in several ways, with long-term consequences that are not yet fully known. While EU decision-makers have mainly focused on economic recovery measures, one sector has, for now, been mostly left out from their considerations: civil society. However, the crisis will have a heavy impact on the sector for several reasons:

► First, **civil society will be hit hard by the severe economic recession**. Many organisations are likely to lose important financial support and will struggle to stay afloat. Some might not survive at all. This is likely to weaken civil society overall, as some organisations will in future not be there to fulfil their roles as watchdogs, service providers, or advocates.¹

► In addition, **several emergency measures taken in member states pose important challenges to the work of civil society organisations**.² Physical distancing rules and travel bans restrict fundamental rights such as the freedom of assembly and free movement. Demonstrations, an essential right in any liberal democracy, have been prohibited and limited to the digital sphere. Whereas many emergency measures are justified, time-limited and proportionate to the threat of the pandemic, some countries have imposed measures that put at risk the long-term work of civil society. This is the case for countries that have imposed measures without a sunset clause or pushed through legislation that has no direct link to the health crisis.³

► Moreover, **civil society suffers from the limited functioning of parliaments and courts**. Those institutions are essential for an effective control of the executive in times of crisis and to maintain checks and balances. However, the crisis has shown how difficult it is for those institutions to stay fully operational without physical meetings. The new working methods of parliaments across the EU complicate the parliamentary process, are often less transparent, and potentially reduce advocacy opportunities for CSOs. In addition, many courts had to halt judicial proceedings, which means CSOs can no longer use this channel to oppose government action. Critical institutions at the national or EU level not being fully operational takes away an important democratic tool from civil society actors, as they cannot ensure that the emergency measures stay proportionate and limited in time.⁴

While the restrictions implemented due to COVID-19 are affecting organised civil society in different ways across EU member states, they could potentially foster a larger trend of 'closing civic spaces' that endangers democracy in Europe.

While the restrictions implemented due to COVID-19 are affecting organised civil society in different ways across EU member states, they could potentially foster a larger trend of ‘closing civic spaces’ that endangers democracy in Europe. Certain parts of civil society were already facing a deterioration of their work environment before the crisis, which in future could become the ‘new normal’. This includes, for instance, decision-makers who refuse to engage with civil society; increasing

restrictions of fundamental freedoms, such as the freedom of expression and information; fewer funding opportunities and decreased financing from private and public donors for certain activities and areas; more administrative burdens; the redirection of funding towards certain CSOs and government-sponsored NGOs (GONGOs); as well as increasing smear campaigns.⁵ To counter shrinking democratic and civic spaces, the EU should revamp its support for civil society. This has become even more urgent as the current crisis situation increases the need for EU action.

2. Civil society: An important ally in upholding the Union’s values

The EU, and in particular the European Commission, should recognise civil society’s value as an important ally to safeguard democratic principles, as set out in Article 2 of the Treaty on European Union (TEU) and the EU Charter of Fundamental Rights.⁶ While organised civil society varies in size and structure across Europe, the sector plays a vital role for democracy. CSOs might not be directly elected or hold a democratic mandate, but they contribute to the system of checks and balances, hold those in power to account and provide a space for independent and open political debates, which are prerequisites for a functioning democracy. Civil society also helps to uphold EU values.⁷ More concretely, CSOs:

- ▶ **play an important role in ensuring that fundamental freedoms are applied in practice for all.** Some civil society actors, for instance, ensure that vulnerable or disadvantaged groups have a seat at the table. Therefore, they help the state to better safeguard some central democratic principles, such as the protection of minorities.⁸
- ▶ **help to safeguard essential aspects of democratic decision-making.** The sector informs the public and creates important links between citizens and decision-makers. The civic sector, for instance, fulfils the role of a watchdog for governments and politicians. They uncover corruption or fight for more transparency or accountability of the public authorities.

The EU, and in particular the European Commission, should recognise civil society’s value as an important ally to safeguard democratic principles.

Given that civil society contributes to safeguarding democracy and fundamental freedoms, the EU should

provide support for civil society and ensure that their activities are not restricted.⁹ Even if the Union’s legal basis in this area remains relatively weak and member states play an important role in dealing with CSOs in their domestic context, the EU has a number of instruments and tools at its disposal to ensure a better support framework for civil society actors across the Union. These should be used to their full extent, and if necessary, widened.

Strengthened EU support for civil society could help the Union to directly communicate and connect with citizens and boost the Union’s efforts to find new ways of decision-making that are more inclusive and responsive.

The EU also needs to ensure the coherence of its domestic and external policy agendas. At the moment, the infrastructure to safeguard fundamental freedoms is particularly focused on third countries. Several instruments and measures are available to support civil society actors against authoritarian forces outside of the EU. However, recent developments within the Union increasingly require the same kind of structures and policies for domestic purposes. As several European governments are actively promoting an authoritarian agenda, restricting civil liberties, and criminalising the work of CSOs, all EU institutions, and in particular the European Commission, should take the threats to civil society within Europe much more seriously.¹⁰

Civil society could, finally, be a bridge-builder between citizens and decision-makers at EU level, especially as the Union has been often perceived as being far removed from the life of European citizens

and lacking democratic legitimacy. However, there has been a trend towards increasing civic participation in decision-making, including at the EU level through the European Citizens' Consultations (ECCs)¹¹ and the planned Conference on the Future of Europe.

Strengthened EU support for civil society could help the Union to directly communicate and connect with citizens and boost the Union's efforts to find new ways of decision-making that are more inclusive and responsive.

3. EU civil society support has gained urgency in the crisis context

While there have been some supportive measures in the past, the EU does not consider civil society support a priority in its policy agenda. This is reflected in its rather scattered, case-by-case approach towards the sector. The Union should address the systemic breaches of democratic values in a more consistent and comprehensive manner, while taking into account national specificities and the diverse needs of CSOs.

The following suggestions serve as a basis for a more long-term support of CSOs. They are divided into two main categories. First of all, some general advice on the approach to take when supporting civil society at EU level and what common mistakes the Union should avoid. Secondly, more concrete recommendations to improve the relations with and support for civil society at EU level. While some points relate specifically to the COVID-19 crisis, this Discussion Paper looks more generally at how to further improve the EU's link to civil society beyond the current pandemic.

3.1 GENERAL ADVICE ON HOW TO SUPPORT CIVIL SOCIETY AT EU LEVEL

General advice on how to support civil society

- 1) Use all available channels for an ambitious agenda
- 2) Don't reinvent the wheel, but don't shy away from out-of-the-box thinking either
- 3) Verify CSOs' independence and democratic principles
- 4) Avoid one-size-fits-all solutions
- 5) Avoid compartmentalisation of NGOs
- 6) Be reactive and flexible

RECOMMENDATION 1: Use all available channels for an ambitious agenda

In the current political context, member states have diverging positions on the direction of the future of the EU and on core issues such as democracy. This also means that changing the EU Treaties to step up civil society and democracy support will require a long and difficult process with an uncertain outcome. Alternatively, civil society can be supported through reforms and innovations introduced via the ordinary

legislative procedure (OLP) or through other soft law approaches. While the OLP also represents a relatively high hurdle as it requires a compromise at the highest political level, it should nevertheless be considered as an avenue, for instance to provide a legal framework for civil society organisations at the EU level. Finally, several other more targeted measures could be taken to improve civil society support. The Union's civil society agenda should be ambitious and all available channels to improve support should be used. There is still a bigger chance to achieve positive change if the agenda is ambitious instead of minimal.

RECOMMENDATION 2: Don't reinvent the wheel, but don't shy away from out-of-the-box thinking either

Most of the recommendations mentioned below focus on improving mechanisms and processes that are already in place, or on finding ways to transfer knowledge and skills from one policy area and/or institution to the other. There have been plenty of useful recommendations published by various stakeholders over the past years which remain valid and should be implemented as soon as possible. However, as civil society will face a new environment in the post-pandemic world, this also calls for out-of-the-box thinking to provide flexible support where needed.

RECOMMENDATION 3: Verify independence and democratic principles

The following recommendations are directed at supporting independent and democratic CSOs. This means that the EU should neither support those organisations that are government organised (GONGOS), nor those that do not adhere to EU values as set out in Article 2 TEU. Differentiating between which CSOs are independent and democratic and which ones are not is of course a difficult task that would require extensive monitoring. While there is no golden rule on how to decide which CSOs should or should not be supported, the EU must be careful to ensure that its money is spent on organisations that clearly support the EU's fundamental values and principles.¹²

RECOMMENDATION 4: Avoid one-size-fits all solutions

EU funding should be adapted depending on the needs of civil society in the different member states. Civil society across the EU is extremely diverse, as are the legal frameworks in which civil society operate at national level. The sector's role and structure also depend on the history of each European member state ('newer' and 'older' democracies), the state structures (such as federal or centralised) and how independent the sector is from the government.

RECOMMENDATION 5: Avoid compartmentalisation

The diversity of civil society across Europe can make it harder for the sector to be cohesive and united in their representation at EU level. This, in turn, might lead to silos between different policy areas. The Union should be aware of this issue and address it by supporting coordination and information sharing between CSOs. In addition, the different EU institutions themselves could also better coordinate between departments and policy fields to ensure that no CSO is left out of the consultation process unintentionally.

RECOMMENDATION 6: Be reactive and flexible

The space in which civil society operates is rapidly changing. The civic sector is often exposed to new regulatory, legal and political environments. In addition, they are severely affected by de-democratisation processes. To respond to the changing needs of civil society, EU institutions should be flexible and reactive in their support. For instance, when a national government puts through new legislation that restricts funding from certain sources, the EU should ensure that emergency funds are available to enable the organisation to keep up their activities. When CSOs face smear campaigns, the EU should also ensure that they have the necessary capacities to respond quickly.

3.2 CONCRETE RECOMMENDATIONS

Recommendations for EU civil society support

- 1) Establish a comprehensive EU strategy for civil society
- 2) Establish an annual monitoring and review mechanism
- 3) Differentiate between civil society advocacy and corporate lobbying at EU level
- 4) Improve the EU's structured dialogue with civil society
- 5) Strengthen the civil society ecosystem in the EU
- 6) Increase and improve EU funding programmes, especially in times of crisis
- 7) Invest in capacity- and coalition-building
- 8) Build on existing EU infrastructure and ensure a knowledge transfer
- 9) Relaunch a legislative procedure to establish a European Statute for Associations
- 10) Raise awareness through public campaigns and strategic communication measures

RECOMMENDATION 1: Establish a comprehensive EU strategy for civil society

The European Commission should establish a comprehensive strategy for its support for civil society.¹³ The objective of this strategy should be to articulate the Union's position and approach towards civil society; include civil society in a transversal manner across all policy areas; and provide a clear roadmap for its support.

The strategy should differentiate between short, medium and long-term priorities and adapt its support depending on the nature, size and structure of civil society in the different member states.¹⁴ Ideally, such a strategy would also provide guidelines for consultations at EU level, and thus improve the framework for dialogue between civil society and EU institutions. Such guidelines could ensure that a structured dialogue is held in a more consistent manner across time; that consultations take place for each legislative or regulatory initiative that is likely to affect civil society; and that civil society is also included in the Commission's impact assessment where necessary.

The European Commission should establish a comprehensive strategy for its support for civil society.

The EU could also use this strategy in the context of developing a broader 'democratic *acquis*', which would entail the body of acts, regulations and court decisions in the field of democracy, fundamental freedoms and the rule of law. For now, there are only very few pieces of secondary law that implement standards on those issues. Creating such a democratic *acquis* would enable the Union to widen its scope of action in this field. It would also be a potential response to the 'Copenhagen dilemma', or the absence of post-compliance criteria for countries that have joined the EU.

RECOMMENDATION 2: Establish an annual monitoring and review mechanism

The Commission should establish an annual civil society monitoring and review mechanism.¹⁵ This report could include a review of the implementation of civic freedoms in all EU member states, monitoring the regulatory environment, funding programmes, but also more generally the environment in which civil society operates in the different member states. The report should also include recommendations for each member state. The Commission could, for instance, point out shortcomings or improvements in the regulatory environment or funding structures, which policies are

harmful and which ones are beneficial to a thriving civil society, which improvements have been or should be made to ensure the independence of civil society, and to assess the implementation of EU regulations and its effects on civil society.

The review could either be part of the European Semester or be established as a separate component of the Commission's Rule of Law Report.¹⁶ Alternatively, the Fundamental Right Agency's mandate could be widened to establish an annual report on the state of civil society in the EU, as it was in 2018.¹⁷ This monitoring and review mechanism would need to be based on reliable and comparable data. This would require member states to cooperate with the Commission or the Fundamental Rights Agency to provide the necessary information on their civil society sector in a timely and transparent manner. The Commission should also include data from independent sources.

The monitoring should help to recognise more general trends across the Union and develop tailored recommendations for each EU member state.

As legal and financial frameworks vary greatly among member states, the Commission would need to ensure that this mechanism does not take a one-size-fits-all approach. No ideal standards for civil society should be fixed. However, the monitoring should help to recognise more general trends across the Union and develop tailored recommendations for each EU member state.

RECOMMENDATION 3: Differentiate between civil society advocacy and corporate lobbying at EU level

Both EU and national institutions should refrain from equating CSO advocacy to corporate lobbying, as the two have very different objectives and agendas. To avoid that CSOs are put on the same footing as business interest representation in Brussels, the EU should:

- ▶ ensure that **future lobbying regulations and transparency laws do not disproportionately hinder civil society advocacy at EU level** by putting additional burdens, such as reporting duties, on organisations that do not have the same resources as corporate interest groups.¹⁸
- ▶ **carefully assess CSOs.** Due to the high numbers of CSOs across Europe, it will be impossible for the EU to list and have detailed information on each CSO that might want to engage in advocacy activities in

Brussels or participate in a consultation process. However, EU institutions should always check the objectives, funding structure and overall seriousness of the organisation before engaging with it and ensure the consultation process is balanced.

- ▶ European institutions could push for **EU-wide ethical guidelines for the sector**, which would increase transparency and enable the Union to better differentiate between CSOs that adhere to certain standards of independence and EU values and those that do not.

RECOMMENDATION 4: Improve the EU's structured dialogue with civil society

According to Article 11 TEU, the EU should establish a regular, meaningful, inclusive and transparent structured consultation process with civil society, based on clear guidelines and principles.¹⁹ However, we encounter a situation whereby some organisations are not consulted in relevant policy debates. The reasons for this lack of inclusion are manifold and several steps could be taken to improve the dialogue between civil society and EU institutions:

- ▶ For **civil society actors**, their absence in consultation processes could be due to a lack of relevant information, inappropriate timing, limited financial or human resources, or a shortage of expertise or advocacy skills. This is why the EU should develop capacity-building measures to enable CSOs to participate in dialogue processes, and provide better access to EU decision-making and institutions. The minimal representation is also due to a lack of coordination among civil society actors. This is why sector-wide coordination efforts should also be supported.

The EU should establish a regular, meaningful, inclusive and transparent structured consultation process with civil society, based on clear guidelines and principles.

- ▶ For **decision-makers**, the lack of involvement of CSOs is often due to a lack of time, knowledge or understanding of why a consultation with those actors would be beneficial. A successful structured dialogue would thus also require capacity-building efforts within the EU institutions. This is why EU civil servants should have access to training on participatory processes. The Council of Europe's 'Guidelines for meaningful civil participation in

political decision-making, as well as the OECD's work on participatory processes, could be used as guidance. In addition, decision-makers often lack an overview of CSO advocacy activities at EU level. For this to improve, the EU would need to better monitor its dialogue processes with CSOs.

- ▶ A fair, open and inclusive consultation process is especially important to **avoid that the EU puts (unintended) disproportionate requirements and burdens on civil society in EU regulations and directives**. This is especially true in certain policy areas, such as counter-terrorism. For instance, civil society organisations in Romania and Spain have reported that particular EU provisions on anti-money laundering have an adverse effect on the sector because the requirements for reporting their funding correctly are disproportionate to the CSOs' size and structure.²⁰
- ▶ **In particular, no additional burdens should be put on civil society in policy areas that are currently being developed**. For instance, the Commission's initiative on artificial intelligence (AI) should ensure that the establishment of a digital infrastructure and regulatory framework on AI does not require disproportionate adaptation efforts of civil society organisations, which have less financial, legal and human resources to deal with a new regulatory environment. The Commission also needs to be careful to reserve a fair share of the consultation for CSOs and to prevent certain interest groups, such as tech companies, from dominating the process.²¹
- ▶ **Civil society could also be automatically included in impact assessments in policy fields** that clearly affect civil society. While this could seemingly add another step in an already long legislative process, it would ensure that no unintended consequences emerge at a later stage in the process. It does not make much sense for the EU to support CSOs through funding programmes, and at the same time create new burdens through EU regulations and directives in other policy fields. A Union that has enshrined democratic values in its Treaties should avoid having CSOs, which are a direct link to citizens, suffer from its policies.
- ▶ **Especially in crisis situations, such as COVID-19, EU institutions should ensure that civil society is consulted in a more consistent manner on response initiatives**. In addition, existing consultation procedures should continue to take place despite the limited possibilities for physical meetings. As some CSOs will struggle to keep up their work, the EU should ensure that appropriate support structures are in place to enable civil society to continue to play its role as an important stakeholder in a fair and balanced legislative process.

RECOMMENDATION 5: Strengthen the EU's civil society ecosystem

If civil society is supposed to engage in advocacy activities and ensure its representation in EU legislative processes, the sector requires a sustainable space for exchange and dialogue that enables coalition-building and coordination. As the activities of CSOs should not be compared to corporate lobbying activities, the EU should facilitate and support a structured and fair representation of organised civil society in Brussels by strengthening already existing platforms and networks, and incentivising the establishment of new ones. The creation of European (on- and offline) platforms for discussion and exchange would not only ensure fair representation in the EU, but also encourage a strengthened dialogue between CSOs to discuss policies and organise as a sector. This could also encourage non-formal cooperation formats in different EU member states.²²

In more concrete terms, the following steps could lead to a strengthened civil society ecosystem in the EU:

- ▶ Firstly, the EU should **strengthen Group III of the European Economic and Social Committee (EESC)**, which is dedicated to civil society. As the EESC is embedded in the EU's institutional design, its channels allow for a direct link between civil society representatives and other European institutions. However, there are no clear criteria on how national governments should appoint representatives to this institution, which means that there is no guarantee civil society representatives will be independent from their respective governments. The EU should, therefore, issue guidelines and independence criteria that guarantee that the delegations are appointed in a transparent way and according to a set of criteria. This would also increase the legitimacy of the body itself.²³
- ▶ Secondly, the EU could **improve the links between its own institutions, agencies and offices relevant to CSOs**, such as the Commission, the EESC, the Committee of the Regions, the Fundamental Rights Agency and the European Anti-Fraud Office. For now, some EU institutions and bodies work with very limited mandates and have little time or reason to cooperate more with each other. By establishing regular exchanges, they could better coordinate their policy proposals, which in return could help to ensure that different projects and programmes dedicated to civil society build on and profit from each other.
- ▶ Finally, the EU could **strengthen the links between the EU Fundamental Rights Agency, the Council of Europe's Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (ODIHR)** to coordinate and connect their work on civil society (e.g. research areas, studies and projects) and provide sustainable channels of exchange, for instance through regular exchange platforms and more collaborative learning practices between the institutions.

RECOMMENDATION 6: Increase and improve EU funding programmes, especially in times of crisis

The severe economic fallout of the COVID-19 crisis is likely to negatively affect CSOs throughout Europe. Now more than ever, civil society will require broad and readily available funding support from the EU. As member states will struggle to recover from economic recession, the EU should consider its civil society support as a tool for long-term democratic support in all member states. Civil society is operating in a more restrictive political environment in certain countries, for instance due to government policies that limit CSOs' ability to act in certain fields, such as migrant or women's rights, or due to shifting funding away from certain activities, such as advocacy and watchdog functions. Therefore, in certain countries, civil society would need sustainable and long-term support not directly linked to national or regional governments.

The most important source of EU funding for civil society is through the Multiannual Financial Framework (MFF). Ursula von der Leyen presented the Commission's revised MFF proposal on 27 May, jointly with the NextGenerationEU recovery instrument. While the Commission's original proposal presented in 2018 foresaw €641 million for 'Rights and Values', the revised proposal plans €761 million (2020 prices) for the Justice, Rights and Values programme, which is a 20% cut as there is no separate 'Justice' strand included in the new MFF proposal.²⁴

This is still far too little when considering the threats democracy faces in the EU. The European Parliament proposed in January 2019 to triple the fund for the Rights and Values programme from the original proposal in 2018 up to €1.832 billion.²⁵ The planned amount in the latest MFF proposal also does not match what the EU spends on democracy promotion outside the EU. The European Instrument for Democracy and Human Rights alone has a budget of €1.3 billion.

As member states will struggle to recover from economic recession, the EU should consider its civil society support as a tool for long-term democratic support in all member states.

In addition, for the moment, there are no EU funds available to directly support NGOs for the promotion and protection of European values. Even if several funding programmes do cover that particular subject, none of them are specifically focused on civil society support, and the criteria to receive funding are very narrow. For instance, funding requires organisations

to focus on particular topics such as remembrance, the rights of vulnerable groups or hate crime and discrimination. In addition, it often requires CSOs to work transnationally, which means that any activities focusing on democracy promotion at national level do not meet the EU funding requirements.²⁶

The Justice, Rights and Values Programme, although an important tool, should not be the only funding mechanism for civil society. Rather, depending on the policy areas in which civil society operates, funding should be made available transversally, through funding programmes dedicated to other policy fields, such as migration, cohesion, or climate action. Unfortunately, the exact breakdown of what is spent on civil society in the EU budget is not transparent enough to understand how much money goes to civil society through those programmes. There has been, for instance, no mention of allocating funds to civil society through the NextGenerationEU recovery instrument, despite the fact that the civic sector will suffer greatly from the economic downturn.

There has been, for instance, no mention of allocating funds to civil society through the NextGenerationEU recovery instrument, despite the fact that the civic sector will suffer greatly from the economic downturn.

In more concrete terms, there are several recommendations on how the EU could improve its funding programmes to better support CSOs:

- ▶ First, it would be helpful if the **EU would shift towards multiannual and core funding rather than short-term project-based funding**, which often creates more bureaucratic hurdles and difficulties in the implementation of projects. It would be particularly important to improve the accessibility of funding and reduce the administrative burdens to a minimum. The audit and reporting requirements should be proportionate to the size and structure of the organisation as well as depend on the size and nature of the public funding allocated.²⁷
- ▶ In addition, the EU must **widen the scope of its funding programmes to better support independent non-profit media, non-formal citizen education and (digital) media literacy projects**. The funding of training programmes, such as legal training or guidance for CSOs on European law, would also be helpful. By putting into place grant-making instruments and regranting-mechanisms, the EU could ensure that the money also reaches more local, grassroots initiatives.²⁸

- ▶ Finally, EU funding programmes should **promote diversity and proportionality in the scope of CSOs it decides to fund**, reaching from service providers, watchdog activities, advocacy, litigation, campaigning, human rights and awareness raising. The Commission could use the information gathered in its monitoring and review mechanism to categorise the CSOs and ensure a balance in the distribution of the funding.

RECOMMENDATION 7: Invest in capacity- and coalition-building

While funding for sustainable, long-term activities conducted by CSOs is an important building block, it should not be the only measure available. Civil society faces growing challenges which require considerable adaptation efforts. They need to navigate fast-changing global environments and deal with emergency measures in times of crisis; they have to adapt their funding structures to economic downturns and altering political and regulatory contexts; and they need to be able to adjust to changing funding strategies and orientations from philanthropic organisations.

To respond to those challenges, civil society requires adequate skills and competences in terms of capacity- and coalition-building. The EU could provide regular training programmes and encourage CSOs to swap information related to relevant policy areas. In addition, the EU could foster a stronger international exchange between civil society actors, so they can transnationalise their work, better understand the challenges in other member states and exchange knowledge and expertise.

The EU could provide regular training programmes and encourage CSOs to swap information related to relevant policy areas. In addition, the EU could foster a stronger international exchange between civil society actors.

In more concrete terms, the EU should:

- ▶ **fund free training programmes for CSOs.** These could, for instance, help them improve their ability to cope with the (negative) effects and the implementation of certain initiatives that are likely to have an impact on the sector, especially related to the Union’s data protection legislation or terrorist financing legislation;
- ▶ further **encourage peer learning and exchange of good practices** in several areas, such as funding, communications to counter populist narratives, good

governance and code of conducts, or digitalisation of organisations and the use of civic tech;

- ▶ **support coalition-building between those parts of civil society that are adversely affected by ‘shrinking civic spaces’ and those organisations that work in areas that are not directly impacted by those challenges**, such as civic actors in the social and care sectors. Raising awareness about the dangers of illiberal authoritarianism among organisations operating solely in national frameworks and including them in exchange formats with other civil society actors would be particularly helpful to enhance coordination and the exchange of knowledge within the sector;
- ▶ ensure that the Union’s own staff, as well as institutions in the member states are **more aware of the role of civil society, and consider them an ally in safeguarding democratic principles**. The EU should use its training programmes to deliver this message in order to improve relations between public authorities and civil society;
- ▶ include civil society **in existing EU trainings for public administration in the EU member states, as well as for its own staff**, either by including a module in the curriculum of those trainings, or by including an exchange session with civil society organisations.

RECOMMENDATION 8: Build on existing EU infrastructure and ensure a knowledge transfer

The instruments available to support civil society and protect fundamental rights in EU domestic policies are meagre compared to the infrastructure developed in the Union’s foreign policy toolbox. This is why the EU should build on the good practices available in the Union’s foreign and development policy portfolio. These concrete steps could be taken:

- ▶ First, the Commission should **explore which EU instruments in the field of foreign and development policy could potentially be transferred to be part of a domestic ‘EU democracy toolbox’**. Especially programmes such as the European Instrument for Democracy and Human Rights (EIDHR) and its Human Rights Protect Defenders Mechanism could potentially be used as models for similar programmes in a domestic democracy agenda.²⁹

The EU should build on the good practices available in the Union’s foreign and development policy portfolio.

- ▶ Secondly, a **more sustainable exchange should take place** between EU actors that work on foreign policy and development aid and those who are responsible for domestic democracy promotion and civil society support.
- ▶ Thirdly, the **European Ombudsman’s mandate could be extended to include a new role as an EU coordinator on rule of law and civic space**. This would enable civil society actors to have a direct contact point to report on rule of law violations and smear campaigns within EU member states. This would also allow for a more direct link to the Brussels policy community and EU institutions. In turn, the European Ombudsman’s coordinating role would also be an important source of timely information for other EU institutions. Alternatively, the Union could also establish ‘focal points for CSOs’ within the EU institutions or a ‘rapid response mechanism’ to detect civic space and rule of law violations in the member states.³⁰

RECOMMENDATION 9: Relaunch a legislative procedure to establish a European Statute for Associations

While there is a European statute for companies (Societas Europea or ‘SE’), which allows a company to operate in different EU countries as a single legal entity, no similar statute exists for associations and social businesses. However, such a statute would harmonise diverse national frameworks and simplify philanthropic work across borders. Michel Barnier, in his former position as Commissioner in charge of the internal market and services, launched such an initiative in 2011.³¹ The initiative never saw the light of the day and was taken out of the Commission’s Work Programme in 2015, as no compromise could be found in the Council.³² Since then, some EU member states have established legislation that caps funding coming from external sources, which further restricts the work of independent CSOs and hinders the transnationalisation of civil society in Europe.

While NGOs would benefit from the introduction of a new statute, the political context makes reaching a compromise in the Council even less likely than in 2011, as the governments of countries such as Poland and Hungary are unlikely to vote in favour. However, pushing for such an initiative would still be useful. It would put pressure on national governments to support civil society and draw attention to the issue, especially in the current crisis. This is why a new initiative coming from the European Parliament to establish a European legal form for social businesses, foundations and associations, should be put forward, in full knowledge of the political difficulties.

RECOMMENDATION 10: Raise awareness through public campaigns and strategic communication measures

While this last recommendation might seem less policy-relevant, it is nevertheless crucial. Indeed, all policy

measures for civil society are void if the larger public does not understand why it is so important to support the civic sector. Broad public support for democracy, the rule of law, and fundamental rights is a precondition for civil society receiving the appropriate support from public authorities. To reach this objective, the following steps could be taken:

- ▶ the European Commission and the European Parliament should **invest in public campaigns that promote democracy, human rights and the rule of law** and explain how those values are a precondition for European cooperation, solidarity and peace.
- ▶ EU institution should **be more vocal in explaining the framework for emergency measures in times of crisis**. They ought to clarify that these are in line with international law and rule of law frameworks, and that some of the adopted extraordinary measures, such as the restrictions to the freedom of expression and assembly or travel bans are necessary, proportionate and time-limited.

Indeed, all policy measures for civil society are void if the larger public does not understand why it is so important to support the civic sector.

- ▶ The Commission could also **take a clearer stance when civil society actors are the systematic target of attacks or hate crimes from governments**. Civil society needs an EU contact point to report these kinds of attacks. This mechanism of information gathering and sharing could be used to put international pressure on member states.
- ▶ Above all, the Commission should **ensure that civil society has the capacities to engage in campaigning and communications work** to promote democracy, fundamental rights and the rule of law. The EU could provide communications and campaigning training opportunities, establishing networks of practitioners and peer-learning activities, as well as providing funding for the production of communications and campaigning guides and toolkits.

Conclusion

The phenomenon of ‘shrinking spaces’ for civil society is part of a larger trend undermining European values in the long term. The current pandemic has put European democracies under greater pressure and created new challenges for civil society. This is why it is essential that the EU recognises the central role of civil society in upholding the Union’s values during these critical times and supports the civic sector much more than it has done before.

In doing so, the EU should consider reviewing its overall approach and implement concrete proposals to support the sector. It could, for instance, come up with a more comprehensive strategy outlining its approach towards civil society; provide adequate and flexible financial resources to respond to the needs of CSOs; and improve its dialogue processes, to ‘CSO-proof’ its own legislation but also to benefit from the bridge-building function of civil society, thereby linking the EU’s support for civil society to its efforts to improve democratic participation.

Even though civil society is not a priority in the Union’s agenda, especially in the current crisis situation, the EU should recognise the value of civil society in safeguarding democratic principles and upholding the Union’s values. If it does not, the EU will be able to do little else but stand and watch as democratic backsliding intensifies across member states and, in some cases, will eventually tip over into a downward spiral towards authoritarianism.

- ¹ European Civic Forum, "[Open Letter to Ms Von der Leyen, Ms Jourova and Mr Reynders: CSOs must be able to act in response to social emergencies](#)" (accessed 5 June 2020); Deutscher Fundraising Verband, "[Offener Brief: Gemeinnütziger Sektor fordert Solidarität](#)" (accessed 5 June 2020).
- ² As defined by the EU: EUR-Lex, "[Glossary of summaries, civil society organisation](#)" (accessed 5 June 2020).
- ³ This is, for instance, the case for the fake news legislation passed through the Hungarian Parliament, but also the restriction of abortion rights in Poland. For a more in-depth analysis of the Hungarian emergency measures, see Györy, Csaba, "[Fighting Fake News or Fighting Inconvenient Truths?](#)", *Verfassungblog*, 11 April 2020.
- ⁴ European Civic Forum, "[Open letter to Ms Von der Leyen, Ms Jourova and Mr Reynders: CSOs must be able to act in response to social emergencies](#)" (accessed 5 June 2020).
- ⁵ Civicus, Monitoring Report (2019), "[People Power under Attack 2019](#)", Johannesburg; European Civic Forum (2019), "[Civic Space Watch 2019](#)", Paris.
- ⁶ EUR-Lex, "[Consolidated version of the Treaty on European Union - Article 2](#)" (accessed 5 June 2020); EUR-Lex, "[Charter of Fundamental Rights of the European Union](#)" (accessed 5 June 2020).
- ⁷ Butler, Israel (2018), "[Using the EU's Budget to Protect Democracy, the Rule of Law and Fundamental Rights](#)", Berlin: The Civil Liberties Union for Europe e.V.
- ⁸ Wainwright, Hilary (2004), "[Civil Society, Democracy and Power](#)", in Marlies Glasius, Mary Kaldor & Helmut Anheier (eds.), *Global Civil Society Yearbook 2004/5*, Sage Publications.
- ⁹ This Discussion Paper focuses on organised civil society as opposed to a broader understanding of civil society as active citizenship. Whereas the EU should support active citizenship programmes, the following recommendations can only be feasible for an organised civic sector.
- ¹⁰ Van Hout, Birgit, "[The EU must fully support civil society at home](#)", *EurActiv*, 9 October 2019.
- ¹¹ European Policy Centre, "[European Citizens' Consultations](#)" (accessed 5 June 2020).
- ¹² Naim, Moises, "[What is a GONGO?](#)", *Foreign Policy*, 13 October 2009.
- ¹³ As already demanded by several actors, such as: Civil Society Europe (2018), "[Statement on Shrinking Civic Space in Europe in advance of the European Parliament Plenary discussion on 6 February 2018](#)", Brussels; Environmental Partnership Association (2020), "[Recommendations for a Comprehensive European Policy and Strategy on Civil Society](#)", Budapest.
- ¹⁴ Brechenmacher, Saskia and Carothers, Thomas (2019), "[Defending civic space: Is the International Community Stuck?](#)", Brussels: Carnegie Endowment for International Peace.
- ¹⁵ European Civic Forum (2018), "[Towards an enabling environment for civil society](#)", Paris.
- ¹⁶ European Commission (2019), [Strengthening the rule of law within the Union A blueprint for action](#), Document 52019DC0343, Brussels.
- ¹⁷ European Union Agency for Fundamental Rights (2017), "[Challenges facing civil society organisations working on human rights in the EU](#)", Luxembourg.
- ¹⁸ European Union Agency for Fundamental Rights (2017), "[Challenges facing civil society organisations working on human rights in the EU](#)", Luxembourg.
- ¹⁹ As demanded by several CSOs, such as: Environmental Partnership Association (2019), "[Recommendations for a Comprehensive European Policy and Strategy on Civil Society](#)", Budapest
- ²⁰ See Civil Liberties Union for Europe (2020), "[A response to the European Commission Consultation on Rule of Law in the EU](#)", Berlin, p.75.
- ²¹ European Commission (2020), [White Paper on Artificial Intelligence - A European approach to excellence and trust](#), COM(2020) 65, Brussels.
- ²² A first pilot project has been the "[European Hub for Civic Engagement](#)", initiated by Das Progressive Zentrum, Citizens for Europe and Alliance4Europe (accessed 5 June 2020).
- ²³ Environmental Partnership Association (2020), "[Recommendations for a Comprehensive European Policy and Strategy on Civil Society](#)", Budapest.
- ²⁴ European Commission (2020), [Communication: The EU budget powering the recovery plan for Europe](#), COM(2020) 442, Brussels.
- ²⁵ European Parliament (2019), "[Promoting rule of law and fundamental rights in the EU](#)", Brussels.
- ²⁶ Butler, Israel (2018), "[Using the EU's Budget to Protect Democracy, the Rule of Law and Fundamental Rights](#)", Civil Liberties Union for Europe.
- ²⁷ European Union Agency for Fundamental Rights (2017) "[Challenges facing civil society organisations working on human rights in the EU](#)", Luxembourg.
- ²⁸ Civil Society Europe (2019), [Multiannual Financial Framework Post 2020: Proposals by Civil Society Organisations](#), Brussels, p. 7.
- ²⁹ Youngs, Richard; Echagüe, Ana (2017), "[Shrinking space for civil society: the EU response](#)", Brussels: European Parliament.
- ³⁰ Recommendations discussed during a workshop on closing civic spaces in the CEE region with the Helsinki Foundation for Human Rights, Hungarian Helsinki Committee and APADOR-CH.
- ³¹ European Commission (2012), [Proposal for a Council Regulation on the Statute for a European Foundation \(FE\)](#), Procedure 2012/0022/APP, COM (2012) 35, Brussels. The initiative was, at the time, supported by the European Economic and Social Committee (Opinion INT/645-EESC-2012-1211) and by the Parliament in its vote on 2 July 2013. The initiative was removed from the European Commission's work plan in 2015 after the European Council failed to find a consensus.
- ³² European Commission (2014), Annex to the [Commission Work Programme 2015](#), COM(2014) 910, Brussels.

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In 2017, the EPC launched the programme **Connecting Europe**, a joint initiative of EPC and Stiftung Mercator. Connecting Europe promotes sustainable exchanges between civil society initiatives and the EU policy community, helps projects and organisations supported by Stiftung Mercator to actively engage in Brussels and aims at enhancing the mutual understanding between European countries.

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