

## ***Participatory democracy under threat: Growing restrictions on the freedoms of NGOs in the EU***

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### **Key findings:**

- NGOs are vital to the proper functioning of democracy, the rule of law and fundamental rights, and their freedom to operate is protected by European and international standards that are legally binding on the EU and its member states;
- NGOs are facing growing restrictions on their work in the form of smear campaigns, harassment, funding cuts, administrative burdens and the closure of channels for consultation with decision-makers across the member states;
- In many cases, these restrictions are intentionally aimed at stifling independent NGOs because they defend minority groups, hold governments to account and allow all sections of society to participate in decision-making. Attempts to stifle NGOs should be seen as part of measures taken by many governments to strengthen the authority of the executive (by limiting access to independent and effective courts), increase government influence over public opinion (by interfering with media freedom) and build public support by vilifying certain groups such as asylum seekers and ethnic minorities;
- The EU could support NGOs inside the EU by replicating some of the policies and practices it has already in place to support NGOs outside the EU, namely: creating a new independently administered fund for NGOs promoting the EU's fundamental values at national level, similar to the European Endowment for Democracy; allowing such funds to cover NGOs' operational costs, litigation, watchdog and public education activities; providing communications training for NGOs to help them create grassroots public support for the EU's fundamental values; designating an EU body to record reports of restrictions and harassment against NGOs; nominating a high-level EU official to undertake diplomatic interventions with national authorities in support of NGOs; developing a regulatory framework in EU law to preserve the freedoms of NGOs.

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This paper is designed to inform EU decision-makers about the increasing restrictions facing independent non-governmental organisations (NGOs) in the EU. NGOs are vital to the proper functioning of healthy, rights-respecting democracies operating under the rule of law. Yet the practices, laws and policies of national authorities and sometimes the EU itself are hampering the ability of these organisations to operate – often this is indeed the express aim of national governments. This paper will begin by explaining the role that NGOs play in facilitating democratic participation, upholding the rule of law and respect for fundamental rights. It will then outline the principal obstacles facing NGOs before putting forward recommendations directed at the EU institutions that would allow the EU to preserve the freedoms that NGOs require to perform their tasks and facilitate their development.

This paper uses the term NGO to refer to an organisation that is independent of government, does not exist to make a profit and works to promote the public interest.<sup>1</sup> The paper is primarily concerned with NGOs that engage in advocacy to influence the exercise of public power to promote the public well-being and the fundamental values of the EU as set out in Articles 2 and 3 of the Treaty on European Union.<sup>2</sup> Readers may have encountered other terms that are sometimes used interchangeably with ‘NGO’, such as ‘not-for-profit’ or ‘civil society’ organisation.<sup>3</sup>

## ***1. Why are NGOs vital to democracy, the rule of law and fundamental rights?***

NGOs are vital to the proper functioning of democracy, to upholding the rule of law and to the implementation of fundamental rights. They perform a role of comparable importance to that of the free press and the independent judiciary and form an integral part of the infrastructure required to ensure that public power is exercised in the public interest.

First, NGOs help to inform the population about matters of public interest. This can include explaining the content of debates about law and policy, the actions of public officials, businesses or other organisations and individuals who exercise economic or political power and influence in society. This educational role is similar to that played by the media, though NGOs tend to offer more detailed analysis as they have expertise on the particular issues they cover. In this way, NGOs help the public reach well-informed decisions about how they are governed.

Second, NGOs offer the public channels through which they can speak to their political representatives between elections. This is known as ‘participatory democracy’, and is recognised by Article 11 of the Treaty on European Union as an important complement to ‘representative democracy’.<sup>4</sup> Although each person may communicate with their elected representatives individually, NGOs offer methods that allow many people to speak to many decision-makers at once and in a coordinated manner, for example by organising petitions and assemblies.

Third, when governments or public figures break the law, NGOs can hold them to account by in-

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forming the public and by bringing cases to court. These activities help to promote democracy, because they ensure governments obey laws that have been created according to the democratic process. NGOs also help to uphold the rule of law by triggering the oversight of the courts. Often such cases are brought by victims with the support of NGOs. This ensures that governments act within the limits of the commitments they have made in national, constitutional, European and international law. And through these activities NGOs also protect a range of public interests, such as the proper use of taxpayer money, the protection of the environment and public health and individual rights and freedoms.

Recognising the integral role that NGOs play in European democracies, all EU governments have created legally binding obligations to protect them, contained in various European and international agreements. The Charter of Fundamental Rights, European Convention on Human Rights and various UN human rights treaties protect the rights upon which NGOs rely to exist and perform their tasks, such as the right to freedom of association and assembly and freedom of expression and information. Various pieces of EU secondary legislation also protect certain aspects of the work of NGOs. For example, the right to free movement of capital allows NGOs to receive cross-border donations.<sup>5</sup>

The essential contribution made by NGOs to the realisation of the EU's fundamental values has been recognised by the Council and the European Commission.<sup>6</sup> The EU supports NGOs (with funding, training and diplomatic interventions) promoting democracy, fundamental rights and the rule of law in countries that are in the process of joining the EU to help them progress towards fulfilling the accession criteria.<sup>7</sup> The EU also supports these activities as part of its foreign policy goal to promote its fundamental values all over the world.<sup>8</sup> EU governments have also formally acknowledged the essential role that NGOs play through instruments adopted by the member states through the Council of Europe<sup>9</sup> and the UN.<sup>10</sup>

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## **II. Who do NGOs speak for?**

Some NGOs speak for a particular constituency, such as older people, children, persons with disabilities or ethnic minorities.<sup>11</sup> Their purpose is to represent the views and concerns of a particular group to ensure that decision-makers take these into account when creating laws and policies. These kinds of NGOs often represent groups that are not already well represented among elected representatives. In this way, these NGOs ensure that the views and concerns of all groups in society are integrated into democratic debate and that a government takes into account the interests of society as a whole.

Other NGOs speak for the public interest in general. They do this by promoting the implementation of standards that governments have negotiated and adopted through international agreements. For example, all EU governments are legally bound by the European Convention on Human Rights as well as several human rights treaties created through the United Nations, like the Convention on the Elimination of Discrimination against Women,<sup>12</sup> the Convention on the Rights of the Child<sup>13</sup> or the Convention on the Rights of Persons with Disabilities.<sup>14</sup> In many countries these standards are also protected in national constitutions. Similarly, the EU's own Charter of Fundamental Rights lists these same obligations, and EU law also contains many rules that NGOs promote in the public interest, such as the prohibition on discrimination, the protection of the environment and the protection of public funds from corruption.<sup>15</sup> All EU governments are part of the Council of Europe and the Organisation for Security and Cooperation in Europe. Both of these international organisations have created legally binding treaties and non-legally binding guidelines that are agreed between governments or created by experts appointed by governments to advise national authorities on how to implement their legal obligations. In this way, NGOs help to implement standards to uphold democracy, fundamental rights and the rule of law that all EU governments have created to promote the public well-being.

Whether NGOs speak for a specific constituency or for the public interest more generally, they are important to decision-makers because they help to create good-quality decisions. Because they have expertise in the issues on which they specialise, they can give decision-makers the information they need to create rules that are properly designed to deal with the issue. In a similar way, it is common practice for governments to consult with relevant commercial sectors when taking decisions about how to regulate activities of concern to them.<sup>16</sup>

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### **III. Why are NGOs finding it increasingly difficult to do their jobs?**

Broadly speaking, the difficulties facing NGOs can be divided into four categories. These restrictions and limitations on the ability of NGOs to perform their tasks are often referred to as the ‘shrinking/closing space for civil society’. The examples given are illustrative of emerging trends in the EU. This section does not claim to be exhaustive: there is currently no publicly available overview of restrictions facing NGOs with comparative data that covers all EU countries.<sup>17</sup> Where possible, reference to published materials has been included, but in some cases information has been contributed directly by Liberties members and other organisations working in the country in question.

Limitations being placed on NGOs should be seen in a context of growing support for right-wing populist political parties, which helps to explain the intention behind some of the trends discussed below. Where these parties have come to power, restrictions on NGOs are part of a package of retrogressive measures that also target media freedom and the independence of the judiciary.<sup>18</sup> Such measures are designed to silence groups and institutions that could obstruct retrogressive government measures such as independent journalists and courts guarding constitutional freedoms.<sup>19</sup> Even where such populist parties have not come into office, mainstream centrist political parties have often adopted elements of their xenophobic, homophobic, anti-migrant or sexist rhetoric and policies in an effort to retain or attract voters whom they fear are shifting support to right- and left-wing populist parties.<sup>20</sup> In these countries, NGOs are often targeted because they protect these vulnerable groups. Available evidence suggests that those NGOs experiencing difficulties are disproportionately organisations working to promote the EU’s fundamental values of democracy, fundamental rights (especially the rights of particular groups, such as women, LGBTI persons, certain ethnic minorities and asylum seekers) and the rule of law. Governments enacting policies to restrict NGOs are doing so in order to gain public support, which suggests that a worrying proportion of the general public is either opposed to or ignorant of the importance of the EU’s fundamental values. In testament to the shift in public opinion, it appears that in some countries, ‘uncivil society’, such as far-right nationalist organisations, as well as organisations promoting restrictive interpretations of Christian doctrine that discriminates against women and LGBTI persons, have become more vocal and better supported.<sup>21</sup>

#### *A. Smear campaigns, administrative harassment and physical attacks*

Increasingly, NGOs are the subject of smear campaigns attacking their reputation from political figures and in media outlets close to political parties. Common reputational attacks on NGOs include the following allegations: that NGOs are interfering in political matters, which they have no right to do because they are unelected; that NGOs are unpatriotic and act against the national interest because they act in the interests of donors based in other EU countries; that NGOs are engaged in fraudulent, criminal or terrorist activities. Examples of sustained rhetorical attacks of this kind can be found in several EU countries, including Bulgaria,<sup>22</sup> Croatia,<sup>23</sup> Hungary,<sup>24</sup> Italy,<sup>25</sup> Poland,<sup>26</sup> and Romania.<sup>27</sup>

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Smear campaigns tend to constitute a prelude to legal reforms geared towards hampering the work of NGOs. Governments use such campaigns to turn public opinion against NGOs in preparation for proposing interferences with their activities. Examples of this pattern can be seen in Hungary,<sup>28</sup> Poland<sup>29</sup> and Romania.<sup>30</sup>

Such reputational attacks aim to undermine the credibility and legitimacy of NGOs, which destroys the public trust on which NGOs depend.<sup>31</sup> As noted, NGOs allow the public to participate in the democratic process by informing them of developments in law and policy, representing their views to governments and holding governments accountable to their legal obligations. For NGOs to play these roles, they require public trust, just as the media requires public trust in order to play its role of informing the public about political affairs. Otherwise, the public is unlikely to believe the information NGOs provide or coordinate their activities of civic participation through these NGOs, or provide donations on which NGOs survive. For example, recent polling in Italy suggests that public opinion has become highly suspicious towards NGOs working on migration as a result of smear campaigns, and some organisations have reported a drop in donations from the public.<sup>32</sup>

In some countries, administrative procedures have been abused as a tool to harass NGOs. There are several examples of administrative harassment in Bulgaria by authorities or politicians in retaliation for criticism from NGOs<sup>33</sup> or as part of broader reputational attacks on NGOs working on politically unpopular issues.<sup>34</sup> NGOs in Hungary have reported abusive freedom of information requests from government-friendly media outlets designed to consume staff time and resources,<sup>35</sup> and both NGOs (such as the Hungarian Civil Liberties Union) and foundations in Hungary responsible for administering funds were the subject of baseless investigations by the state audit body in 2014.<sup>36</sup> In Spain, national authorities barred the NGO Rights International Spain (RIS) from organising or offering training courses as part of the recognised programme of professional development for lawyers and the judiciary. RIS had been involved in delivering such courses in the past and the ban appeared to be in retaliation for complaints made by the organisation to the UN and European Commission over the erosion of the independence of the judiciary.<sup>37</sup> NGOs in Hungary and Poland also report that they have reason to believe they are the subject of electronic surveillance by national authorities, which makes communications more burdensome as well as taking a psychological toll on staff.<sup>38</sup>

Compared to other parts of the world, to date NGOs in the EU experience relatively low levels of physical violence. However, there is evidence of attacks on property (for example, in Poland and Italy)<sup>39</sup> and on individual activists (in Bulgaria, Hungary and Romania)<sup>40</sup> as well as death threats and insults (for example in Bulgaria, Romania and Spain).<sup>41</sup> There is no evidence to suggest that these attacks are state-sponsored. However, attacks on the reputation of NGOs and hate speech directed at the groups whom NGOs protect, such as LGBTI persons and ethnic minorities, serve to create a permissive climate for such attacks.<sup>42</sup> When law enforcement agencies do not properly investigate incidents of hate speech and damage to property, this undermines the deterrent effect of the law and

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also suggests that the authorities will tolerate such behaviour.

### *B. Funding cuts*

Many NGOs are highly dependent on funds that originate with or are administered by governmental bodies. There is evidence that public funding for NGOs has fallen in recent years. This appears to be partly due to general cuts in public spending in response to the financial crisis.<sup>43</sup> However, in some countries public spending cuts have been ideologically driven.

A previous government in Croatia cut public funding to NGOs in reaction to criticism from an NGO coalition concerning policies on LGBTI rights and sex education.<sup>44</sup> Ministries in the Polish government have halted funding for organisations protecting women victims of domestic abuse and effectively suspended the flow of funding for NGOs working on migrants' rights because these conflict with the ruling party's opposition to gender equality and immigration.<sup>45</sup> In Belgium, a government minister recently proposed stripping an NGO of public funding after the organisation criticised the minister's failure to react to hate speech from members of his political party.<sup>46</sup> Members of the Romanian government have also recently announced their intentions to change the country's Tax Code so as to remove the possibility for members of the public to dedicate up to 2% of their income tax in donations to NGOs.<sup>47</sup>

Poland is now in the process of following the example of Hungary in changing the way that public funds for NGOs are administered so as to bring the system under direct political control. In Poland, the government recently proposed a draft law establishing a 'national centre for civil society development', which would take over responsibility for administering EU cohesion funds and national funds for NGOs. The body's president, who will enjoy broad discretion over how funds are distributed, would be appointed by a member of the government. The government also intends this body to take over responsibility for administering EEA/Norway Grants, which is currently administered by an independent foundation.<sup>48</sup> Since a large proportion of funding for NGOs comes from national and EU sources, this reform would effectively give the government significant control over the activities and survival of NGOs.<sup>49</sup> A similar reform took place in Hungary with the establishment of the 'national cooperation fund'. This body was created to finance the general operational activities of civil society organisations and effectively brought funding under the control of the Hungarian government.<sup>50</sup> Like the Polish government's current efforts, the Hungarian government also made a similar (though unsuccessful) attempt to bring the distribution of EEA/Norway grants under the administration of this body. Hungary's national cooperation fund has steered public support away from NGOs working on groups and values that the government opposes, such as gender equality and LGBTI rights, and towards pro-government and church organisations.<sup>51</sup> Similarly in Spain, there is evidence to suggest a fall in government funding for much of the NGO sector, but an increase in funding in favour of organisations advancing discriminatory interpretations of Christian doctrine.<sup>52</sup>

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Restrictions on the ability of NGOs to receive funding from private sources in other member states can be found in Hungary and Ireland and have recently been proposed in Bulgaria.<sup>53</sup> There is also evidence that some international donors, both governments<sup>54</sup> and private foundations,<sup>55</sup> have reduced the amount of funding available for rights, democracy and rule of law promotion in EU countries in central and eastern Europe. This is not a tactic intended to hamper the work of NGOs. Rather it seems in part to be based on an overly optimistic assessment that because these countries have become democracies and joined the EU, assistance to NGOs promoting rights, democracy and the rule of law is no longer necessary.

It should also be noted that the nature of EU funding available for NGOs working in the area of fundamental rights inside the EU, especially at national level, has negative consequences for their capacity to perform their tasks.<sup>56</sup> While this is not a conscious effort to hamper the work of NGOs, the practices described below either hamper or fail to maximise the ability of NGOs to promote the EU's fundamental values inside the member states. This stands in stark contrast to the support that the EU gives to NGOs in accession countries helping societies progress towards EU membership as well as support for NGOs promoting the EU's fundamental values around the world.<sup>57</sup>

First, the EU tends to offer NGOs funding only for particular projects rather than to cover core operational costs. This means that NGOs are unable to create and execute the kinds of long-term strategies that are required to properly inform public debate and political thinking. Short-term funding creates job insecurity, which makes it difficult to attract and retain high-quality staff. Short-term funding also means that a large amount of staff time is dedicated to obtaining funding rather than carrying out activities to promote and protect the EU's fundamental values. Furthermore, the administrative burdens imposed on recipients of grants to ensure compliance with project implementation requirements are reportedly just as cumbersome regardless of whether the recipient is a large or a small organisation (that is, regardless of administrative capacity). Where the EU does contribute to NGO operational costs, it does so for NGOs working at EU level, rather than at national level, thus excluding the vast majority of NGOs.<sup>58</sup>

Second, the funding programmes run by the European Commission covering the field of fundamental rights exclude many of the activities that are core to the work of NGOs most at risk of funding cuts, smear campaigns and harassment. These EU funds tend to be directed towards the provision of certain services (such as support for victims of crime), training for certain professions such as lawyers, judges or journalists or public authorities, research and exchanges of good practice, and often require cross-border collaboration between NGOs in several member states.<sup>59</sup> Unfortunately, EU funding in the field of fundamental rights does not tend to cover nationally focused watchdog activities for NGOs monitoring government adherence to the EU's fundamental values.<sup>60</sup> Nor is funding available to cover litigation costs, which is one of the main tools through which NGOs ensure government accountability.<sup>61</sup> In this sense, the EU tends to treat NGOs operating at national level more like sub-



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contractors assisting in the implementation of EU law rather than an essential pillar of democracy on a par with a free and plural media and an independent judiciary.

Third, EU funding in the area of fundamental rights does not take into account the broader environment in which restrictions on NGOs are being created. As noted in the introduction to this section, there is a growing portion of the general public ready to consent or acquiesce to measures by their own governments that erode democracy, the rule of law and fundamental rights. This means that to prevent further backsliding among EU governments, as well as further attacks on NGOs, it is essential to build public support for the EU's fundamental values. However, EU funding programmes in the area of fundamental rights only offer limited support for public education and awareness raising activities. One issue is that awareness-raising and public education seem to form a relatively minor part of the overall activities that are funded. Another issue is that when awareness-raising and public education activities are supported, these are mostly geared towards informing the target audience about the rights that EU law gives them, rather than trying to improve the general public's broader understanding of and support for fundamental rights, democracy and the rule of law as values that they should want to uphold.<sup>62</sup>

### *C. Over-regulation*

NGOs in some countries report being placed under increasing administrative burdens. For example, in Croatia, NGOs report that governments have used seemingly innocuous bureaucratic requirements to reduce their capacity to perform their function, as more resources now have to be dedicated to dealing with paperwork.<sup>63</sup> NGOs in Germany and Spain also report increased bureaucratic pressures.<sup>64</sup> Proposals for reforms were recently put forward in Romania, which would significantly increase the reporting obligations of NGOs and subject them to closure for failing to comply.<sup>65</sup> In Slovakia, the sanctions for failing to meet newly imposed administrative burdens were so severe that a number of NGOs were forced into bankruptcy.<sup>66</sup> In Italy, the government has created an obligatory code of conduct for NGOs carrying out rescue operations in the Mediterranean, certain provisions of which seriously interfere with their ability to carry out their humanitarian work.<sup>67</sup>

There is evidence that the increase in these bureaucratic burdens (such as internal monitoring requirements, submission to audits and extra reporting obligations) is directly due to the way that international standards designed to prevent financing for terrorist activities have been interpreted and applied by governments – for example in Croatia, Poland, Slovakia<sup>68</sup> and Spain.<sup>69</sup> These rules form part of EU law by virtue of the Directive on anti-money laundering and terrorist financing.<sup>70</sup> These same rules have also made it more difficult for NGOs to receive funds from international donors because banks may block or delay funds or refuse their services altogether. This is because the rules have prompted banks to develop the misconception that NGOs are risky clients.<sup>71</sup> While some governments may have imposed these undue burdens on NGOs unwittingly, in some cases these rules have been abused

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by governments to attack critical NGOs. The case of Hungary's Law on the Transparency of Organisations Supported from Abroad is the most obvious example inside the EU of rules to counter terrorist financing being abused to hamper the activities of independent NGOs.<sup>72</sup>

Some countries have also imposed undue limitations on the freedom of assembly. While limitations on public protest are not necessarily directed overtly at NGOs, public protests are a key tool used by NGOs and civic movements more broadly to make the views of the public known to political leaders. Such limitations can be found in Spain's 'gag' law, which severely restricts public protest,<sup>73</sup> France's misuse of emergency powers to ban demonstrations concerning environmental protection and employment rights,<sup>74</sup> Poland's law on recurring assemblies, which gives preference to demonstrations organised by state and religious institutions,<sup>75</sup> as well as a legislative initiative under consideration in Romania that could punish protestors with up to three years' imprisonment where demonstrations are considered to impede state business.<sup>76</sup>

#### *D. Growing reluctance to consult NGOs*

Some NGOs report that it has become more difficult to access decision-makers and that consultation has become more of a formality than a genuine effort by government to involve NGOs in law and policy-making. In Bulgaria and Romania, the willingness of ministries to consult NGOs depends largely on the whim of the minister in charge of a given department.<sup>77</sup> The current Hungarian and Polish governments have become reluctant to consult NGOs over legislative reforms, which have frequently been rushed through the legislature to avoid public debate.<sup>78</sup> Similarly, NGOs in Spain also report that the government has used a variety of techniques to minimise the opportunities for NGOs to participate in consultation, or flatly refused to consult at all.<sup>79</sup> The UK government also adopted legislation in 2014 that has been criticised for effectively preventing NGOs from engaging in public debate during election campaigns – a time when the public is most in need of information and analysis concerning law and policy so that they can exercise an informed choice when voting.<sup>80</sup> In Ireland, legislation passed in 2001 has recently been interpreted extremely broadly in such a way as to prevent NGOs engaging in advocacy activities from receiving donations from national and international donors.<sup>81</sup>

#### **IV. Recommendations**

The EU could take a number of measures that could help to support NGOs inside the EU working to promote and protect fundamental rights, democracy and the rule of law. Liberties calls on the EU institutions to take the following steps:

- create a fund for NGOs working inside the EU to promote and protect the EU's fundamental values. The fund should offer grants that can cover operational costs as well as litigation and watchdog activities. The fund should be administered independently of national authorities and independently of the EU itself, similarly to the European Endowment for Democracy.<sup>82</sup>
- engage in capacity building measures for NGOs with a focus on improving the ability of NGOs to build broader support among the general public for rights, democracy and rule of law. Supporting NGOs to build a broader constituency will help them increase sustainable financial support among the general public and remove the incentive for populist parties and politicians to attack NGOs as a means of gaining political support.
- establish a point of contact in the Commission or an observatory to whom NGOs can report restrictions on their work or harassment. This person or entity should report directly to the First Vice-President of the Commission.
- designate a high-ranking political figure in the Commission responsible for making statements of support and diplomatic interventions in reaction to restrictions on or harassment of NGOs.
- develop a regulatory framework designed to protect the freedoms required by NGOs to perform their functions.

NGOs are vital because they help to uphold substantive legal standards that support democracy, fundamental rights and the rule of law. But, like the courts and the media, they are also of critical importance because they facilitate the process of democratic participation and government accountability. The trend of increased restrictions on NGOs that promote the EU's fundamental values is a global phenomenon, with Russia and China among the best-known offenders.<sup>83</sup> Even if its response could be improved, the EU has developed various tools to support NGOs outside its member states.<sup>84</sup> For the EU's fundamental values to survive inside its borders, NGOs need to have sufficient freedom and support to do their job. EU support to NGOs at home would allow the Union both to preserve its fundamental values and to set a standard it can promote around the world.

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## Endnotes

- 1 The reader may find it useful to be aware of the existence of ‘GONGOs’, which are organisations designed to appear as independent NGOs, but which in practice are under the control or influence of the government or figures close to the government. Their purpose is to defend governments from criticism, either from independent NGOs, or from those concerned at government efforts to repress independent NGOs.
- 2 Advocacy refers to activities designed to influence decision-makers to adopt courses of action that respect or advance the public well-being as set out in European and international agreements binding all EU governments and listed in Articles 2 and 3 of the Treaty on European Union. Advocacy can be distinguished from lobbying, which refers to activities to influence decision-makers to adopt courses of action that are determined by private, in particular, commercial, interests.
- 3 For detailed discussion of the definition, function and contribution of NGOs and civil society, see: Butler, I., ‘Unravelling sovereignty: Human rights actors and the structure of international law’, Intersentia, 2007, chapter 5.
- 4 See further: Marxzen, C., ‘Participatory democracy in Europe: Article 11 TEU and the legitimacy of the European Union’, in Fabbrini, F. et al. (eds.), ‘What form of government for the European Union and the Eurozone?’, Hart, 2015, p. 151.
- 5 Most recently, see remarks of First Vice-President Timmermans, in [European Commission Press release, ‘Infringements – Hungary: Commission launches infringement procedure for law on foreign-funded NGOs adopted on 13 June’](#), 13 July 2017. See also: [European Commission, ‘Infringements - Hungary: Commission launches infringement procedure for law on foreign-funded NGOs’](#), 13 July 2017. However, EU rules also have the potential to restrict the activities of NGOs, especially if they are not interpreted consistently with the Charter of Fundamental Rights. For example, recent restrictions on NGOs in Hungary were justified with reference to rules designed to combat money laundering and terrorist financing, which form part of EU law. See: [Civil Liberties Union for Europe et al., ‘Analysis of Hungarian parliament bill T/14967 in light of EU rules on anti-money laundering and terrorist financing’](#), 25 April 2017.
- 6 [European Commission, ‘European governance: A white paper’, COM\(2001\) 428, 25 July 2001, pp. 13-14](#). However, the EU’s recognition of NGOs promoting rights, democracy and the rule of law has been clearest and most vocal in the context of the EU’s external relations: [Council Conclusions on EU engagement with civil society in external relations, 10279/17, 19 June 2017](#); [Council Conclusions on the roots of democracy and sustainable development: Europe’s engagement with civil society in external relations, 14535/12, 15 October 2012](#); [Commission Communication, ‘The roots of democracy and sustainable development: Europe’s engagement with civil society in external relations’](#), COM(2012) 492, 12 September 2012.
- 7 Regulation 213/2014 establishing an Instrument of Pre-accession Assistance (IPA II) (OJ L 77, 14.3.2014, p. 11).
- 8 Regulation 235/2014 establishing a financing instrument for democracy and human rights worldwide (OJ L 77, 15.3.2014, p. 85).
- 9 [Recommendation CM/Rec\(2007\)14 of the Committee of Ministers of the Council of Europe on the legal status of non-governmental organisations in Europe](#), 10 October 2007.
- 10 [UN Human Rights Council Resolution 32/31 on Civil society space, UN Doc. A/HRC/32/L.29, 27 June 2016](#); [UN Human Rights Council Resolution 27/31 on Civil society space, UN Doc. A/HRC/RES/27/31, 3 October 2014](#)
- 11 The reader may be familiar with certain ‘umbrella’ organisations working at EU level to bring the expertise and concerns of their national member organisations representing particular constituencies, such as the [European Network Against Racism](#) and the [European Disability Forum](#). For an overview of how NGOs contribute to law and policy-making at EU level, see: Butler, I., ‘Non-governmental organization participation in the EU law-making process: The example of social non-governmental organisations at the Commission, Parliament and Council’, 14

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[European Law Journal \(2008\) 558.](#)

- 12 1979, 1249 UNTS 13.
- 13 1989, 1577 UNTS 3.
- 14 2006, 2515 UNTS 3.
- 15 e.g., Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22).
- 16 Greenwood, J., 'Interest representation in the European Union', 3<sup>rd</sup> ed., Palgrave, 2011, Chapter 4.
- 17 The EU Fundamental Rights Agency is expected to publish a piece of research including comparative evidence from all member states in the first quarter of 2018. There is also survey-based data which provides evidence of problems across Europe as a whole (including EEA and Associated countries): [Civil Society Europe, 'Civic Space in Europe Survey', October 2016.](#)
- 18 Werner-Müller, J., 'What is populism?', Pennsylvania University Press, 2016, chapter 2.
- 19 Mudde, C., 'Populist radical right parties in Europe', Cambridge University Press, 2007, chapter 6.
- 20 [Gaston, S., et al., 'Mapping and responding to the rising culture and politics of fear in the European Union: Nothing to fear but fear itself?', Demos, 2017, pp. 16, 23, 27, 28, 43; Goodwin, M., 'Right response: Understanding and countering populist extremism in Europe', Chatham House, 2011, p. 5.](#)
- 21 Such as Bulgaria, the Czech Republic, Lithuania, Poland, Romania and Spain. Interviews with author and: [Freedom House, 'Nations in transit 2017', Bulgaria country profile; Freedom House, 'Nations in transit 2017', Czech Republic country profile; website of the Free Society Institute; Freedom House, 'Nations in transit 2017', Poland country profile; El Mundo, 'La Policía Municipal de Madrid inmoviliza el autobús contra los transexuales de HazteOír', 28 February 2017.](#)
- 22 [Bulgarian Helsinki Committee, 'Written comments concerning Bulgaria for consideration by the UN Committee on the Elimination of Racial Discrimination at its 92nd session', March 2017; BalkanInsight, 'Bulgaria Helsinki chief links assault to nationalism', 28 October 2016; USAID, 'The 2015 CSO sustainability index for central and eastern Europe and Eurasia', 2016, p. 72.](#)
- 23 Human Rights House Network, 'Human rights brief: Freedom of the association and human rights defenders', 25 April 2016.
- 24 [Hungarian Helsinki Committee et al., 'Timeline of governmental attacks against Hungarian civil society organisations', 7 April 2017.](#)
- 25 [Il Giornale, 'Cosi Soros finanzia una rete di Onlus che diffondono dati pro migranti', 9 July 2017; Floris F. & Bagnoli, L., 'Accusations against NGOs at sea: what is false or misleading in that smear campaign', 19 May 2017; Heller, C. & Pezzani, L., 'Blaming the rescuers: Criminalising solidarity, re-enforcing deterrence' 2017.](#)
- 26 [Freedom House, 'Nations in transit 2017', Poland country profile; Warso, Z., et al., 'Information on the recent challenges faced by human rights defenders and civil society in Poland', November, 2016, pp. 6-9.](#)
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- 30 [APADOR-CH, 'Is Romania starting to persecute its NGOs as well?', 8 June 2017.](#)
- 31 For a comparison of how NGOs see public opinion towards them in Germany, Spain, Poland and Hungary, see: [EU-Russia Civil Society Forum, '2016 report on the state of civil society in the EU and Russia', 2017, pp. 11-12.](#)

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- 32 [La Repubblica](#), ‘Emergency, Msf, Telethon: ecco i conti della “Soccorso spa”’, 3 July 2017.
- 33 After the Bulgarian Helsinki Committee contacted the public prosecutor with clear evidence of hate speech by a political figure, the politician in question called for the organisation in question to be audited, resulting in a one-month inspection (which revealed no wrongdoing) that placed a serious drain on resources (interview with author). Similarly, in 2015 the prosecutor’s office of Bulgaria also investigated several activists associated with watchdog NGOs that participated in anti-government protests in 2013 ([USAID](#), ‘[The 2015 CSO sustainability index for central and eastern Europe and Eurasia](#)’, 2016, p. 66).
- 34 In 2011, Bulgarian NGOs promoting desegregation of Roma were the target of government and media smear campaigns as well as investigations alleging corruption and criminal activities, which proved unfounded. It appears that the aim of this harassment was to preserve and regain political support from voters who were shifting their support to extreme right parties. See: [European Roma Rights Centre](#), ‘[Roma Rights 2015: Nothing about us without us? Roma participation in policy making and knowledge production](#)’, 7 December 2015; [Sudetic, C.](#), ‘[Roma in political life: Bulgaria – Political manipulation and the damage done](#)’, 10 September 2013.
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- 37 [Público](#), ‘[Lesmes veta a los expertos de la ONG de derechos civiles RIS en los cursos de formación de los jueces](#)’, 21 December 2015.
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- 39 [Warso, Z., et al.](#), ‘[Information on the recent challenges faced by human rights defenders and civil society in Poland](#)’, November 2016, p. 10. Concerning Italy, although the acts targeted the International Organisation for Migration (IOM) (which is technically an inter-governmental organisation), the attackers were protesting the work of NGOs that is coordinated by the IOM. See: [ANSA](#), ‘[Assalto Forza Nuova a sede Oim a Roma](#)’, 4 May 2017.
- 40 [Freedom House](#), ‘[Nations in transit 2017](#)’, Hungary country profile; [European Union Agency for Fundamental Rights](#), ‘[FRA condemns shocking attack on human rights defender](#)’, 28 October 2016; [USAID](#), ‘[The 2015 CSO sustainability index for central and eastern Europe and Eurasia](#)’, 2016, p. 192.
- 41 Interviews with author and [El Español](#), ‘[Racistas subastan a un líder de SOS Racismo por reivindicar la “España no tan blanca”](#)’, 13 June 2016.
- 42 [Novinite.com](#), ‘[Amnesty accuses Bulgaria of inciting violence after attack on Helsinki Committee Chair](#)’, 28 October 2016.
- 43 [Civil Society Europe & Civicus](#), ‘[Civic space in Europe survey](#)’, October 2016, 7, 9; [USAID](#), ‘[The 2015 CSO sustainability index for central and eastern Europe and Eurasia](#)’, 2016; [EESC](#), ‘[The impact of the crisis on civil society organisations in the EU](#)’, EESC/COMM/12/2012, 7 January 2014; [European Women’s Lobby](#), ‘[The price of austerity: The impact on women’s rights and gender equality in Europe](#)’, October 2012, 14.
- 44 [Freedom House](#), ‘[Nations in transit 2017](#)’, Croatia country profile; [European Civic Forum](#), ‘[GONG: Croatian government’s triple attack on autonomous media, civil society and culture](#)’, 2 May 2016.
- 45 Interview with author and: [Warso, Z., et al.](#), ‘[Information on the recent challenges faced by human rights defenders and civil society in Poland](#)’, November 2016, p. 10.
- 46 [De Morgen](#), ‘[Theo Francken en Kif Kif op ramkoers na gefotoshopt beeld uit onthoofdingsvideo](#)’, 26 May 2017.
- 47 Interview with author. Several countries (including [Hungary](#) and [Poland](#)) currently allow taxpayers to earmark a certain proportion of their tax returns (usually up to 1% or 2%) in donations for charities, which is a helpful source of income for some NGOs. For an explanation of how this works in Romania at the moment, see website of the Council on Foundations: <https://www.cof.org/content/romania>.
- 48 [Eriksson, A.](#), ‘[Hungary and Poland risk losing EUR 1 bn in Norway aid row](#)’, [EUObserver](#), 3 May 2017.
- 49 On the proportion of funding from different sources for Polish civil society organisations, see: [EU-Russia Civil](#)

- Society Forum, '2016 report on the state of civil society in the EU and Russia', 2017, p. 82.
- 50 EU-Russia Civil Society Forum, '2016 report on the state of civil society in the EU and Russia', 2017, p. 105.
- 51 USAID, 'The 2015 CSO sustainability index for central and eastern Europe and Eurasia', 2016, p. 114.
- 52 See: La Vanguardia, 'Las ayudas privadas a ONG suben un 30 %, mientras caen los fondos públicos', 14 February 2017; EU-Russia Civil Society Forum, '2016 report on the state of civil society in the EU and Russia', 2017, p. 62-65; Público, 'Hazte Oír aumentó sus ingresos en un 69% gracias al PP al declararla de utilidad pública', 2 March 2017
- 53 Expert Council on NGO Law, 'Opinion on the Hungarian draft act on the transparency of organisations supported from abroad', April 2017; Bulgarian Helsinki Committee, 'Bulgarian NGOs resist new bill to restrict outside funding for judges' groups', 20 July 2017. On Ireland see Section III (d).
- 54 USAID, 'The 2015 CSO sustainability index for central and eastern Europe and Eurasia', 2016, p. 67 (Bulgaria), 143 (Lithuania), 228 (Slovakia).
- 55 Interviews with author.
- 56 As noted above, EU law also has the potential to restrict the freedoms of NGOs when applied by national governments inconsistently with the Charter of Fundamental Rights, as in the case of the Hungarian NGO law and Directive 2015/849 on the use of the financial system for the purposes of money laundering or terrorist financing (OJ L 141, 5.6.2015 p. 73).
- 57 Regulation 235/2014 establishing a financing instrument for democracy and human rights worldwide (OJ L 77, 15.3.2014, p. 85); Regulation 213/2014 establishing an Instrument of Pre-accession Assistance (IPA II) (OJ L 77, 14.3.2014, p. 11).
- 58 This is not to say that the EU should not provide operational funds for EU-level NGOs, as these organisations often play a vital role in relaying the expertise and opinions of their national member organisations to decision-makers in international and supranational organisations.
- 59 For further information on the kinds of projects supported by the Justice Programme, see: [Commission implementing decision concerning the adoption of the work programme for 2017 and the financing for the implementation of the Justice Programme, C\(2017\) 1544 final, 13 March 2017](#). For further information on projects supported by the Equality Rights and Citizenship Programme, see: [Annex to the Commission Implementing Decision concerning the adoption of the work programme for 2017 and the financing for the implementation of the Rights, Equality and Citizenship Programme, C\(2017\) 1316 final, 1 March 2017](#).
- 60 Funding for monitoring activities appears to be limited to issues covered by EU secondary legislation. For example, the Rights Equality and Citizenship Programme may fund NGOs to engage in monitoring activities to verify the implementation of the EU's non-discrimination directives, as well as national Roma integration strategies and standards relating to violence against children.
- 61 Even though costs for litigation are available for NGOs working in the field of EU environmental policy. See Article 21 of Regulation 1293/2013 on the establishment of a Programme for the Environment and Climate Action (LIFE) (OJ L 347, 20.12.2013, p. 185).
- 62 While the Rights Equality and Citizenship Programme supports some isolated examples of EU funding directed at public education, for example to help NGOs develop counter-narratives to hate speech, these are uncommon.
- 63 Pavlic, V., 'Government hampering civil society activities', total Croatia news, 9 April 2017. USAID, 'The 2015 CSO sustainability index for central and eastern Europe and Eurasia', 2016, p. 75.
- 64 EU-Russia Civil Society Forum, '2016 report on the state of civil society in the EU and Russia', 2017, pp. 48, 65.
- 65 Benezic, D., 'Taking a cue from Hungary, Romania moves to persecute NGOs', 13 June 2017.
- 66 USAID, 'The 2015 CSO sustainability index for central and eastern Europe and Eurasia', 2016, p. 226.
- 67 See: EUObserver, 'NGOs divided by Italy's new rescue code', 1 August 2017; The Independent, 'Italy's draft code of conduct for refugee rescue ships "threatens thousands of lives", charities warn', 15 July 2017. For example, for

NGOs operating in conflict zones around the world it is vital that they preserve political neutrality. This makes it impossible for these organisations to accept police officers on their vessels, which is something that the proposed code of conduct would allow.

- 68 Hayes, B. & Jones, C., 'Countering terrorism or constraining civil society?', *Statewatch & Human Security Collective*, 2015, pp. 21-22 (on Croatia), p. 41 (on Poland), p. 47 (on Slovakia).
- 69 European Centre for Not-for-profit Law et al., 'Regulation of the non-profit sector: Government don'ts in implementing the FATF's recommendation 8', 2015, 7.
- 70 Directive 2015/849 on the use of the financial system for the purposes of money laundering or terrorist financing of 20 May 2015 (OJ L, 5.6.2015, p. 73).
- 71 Metcalfe-Hough, V. et al., 'UK humanitarian aid in the age of counter-terrorism: perceptions and reality', *Overseas Development Institute*, March 2015.
- 72 Civil Liberties Union for Europe et al., 'Analysis of Hungarian parliament bill T/14967 in light of EU rules on anti-money laundering and terrorist financing', 25 April 2017.
- 73 See joint statement by a number of UN independent experts: 'Two legal reform projects undermine the rights of assembly and expression in Spain', 23 February 2015.
- 74 Amnesty International, 'France: A right not a threat: Disproportionate restrictions on demonstrations under the state of emergency in France', 31 March 2017.
- 75 Polish Helsinki Foundation for Human Rights, 'Freedom of assembly under threat in Poland', 6 January 2017.
- 76 Interview with author.
- 77 Interview with author.
- 78 Interview with author.
- 79 Similarly to Hungary and Poland, this includes fast-tracked legal procedures, abusive use of private members' bills or forms of legislation that do not carry an obligation for consultation, as well as introducing so many bills at the same time that NGOs were not able to respond to everything within the deadlines set. Interview with author and: *RIS & Jueces para la Democracia*, *Letter to First Vice-President Timmermans and Commissioner Vera Jourova*, 2015, pp. 18-19.
- 80 Report of the special rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland, UN Doc. A/HRC/35/28/Add.1, 24 May 2017, paras. 29-34. The UK government was also considering prohibiting NGOs in receipt of government grants from engaging advocacy, but later curtailed these proposals. See the aforementioned report, paras. 35-38.
- 81 Interview with author and: *RTE*, 'Abortion rights campaign returns grant to US-based foundation after SIPO warning', 3 April 2017. The legislation was originally intended to prevent wealthy individuals and pressure groups that were not political parties but were engaged in politics from applying undue political pressure during elections and referendum campaigns. However, the provisions are so vaguely worded that the regulatory body responsible for their application has interpreted the rules in such a way as to prevent NGOs from being able to raise funds to support day-to-day advocacy activities.
- 82 See the website of the European Endowment for Democracy: <https://www.democracyendowment.eu/about-eed/>.
- 83 Carothers, T., 'The closing space challenge: How are funders responding?', *Carnegie Endowment for International Peace*, November 2015.
- 84 European Parliament DG for External Policies, Policy Department, 'Shrinking space for civil society: the EU response', 2017.



The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of 11 national civil liberties NGOs from across the EU.

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