The implications of the COVID-19 pandemic on fundamental rights and civic space

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Foreword

By Séamus Boland

President of the Diversity Europe Group (October 2020 – April 2023), European Economic and Social Committee

It is with great pleasure that I commend to you the study *The implications of the COVID-19 pandemic on fundamental rights and civic space*, which was commissioned by the European Economic and Social Committee (EESC), at the request of the Diversity Europe Group.

COVID-19 has been and is still affecting the life, safety, welfare and dignity of all people living in the EU. While addressing the health situation and strengthening the resilience of European health systems remains a priority, we should not forget that the pandemic has led to extensive limitations to fundamental rights and the rule of law. In some cases, these have been open-ended and escaped parliamentary scrutiny, consequently only confirming the current democratic backsliding and authoritarian shift.

It was our Group's wish to examine this situation through the lens of civil society organisations (CSOs). Along with all sectors of society, CSOs faced disruptions in their activities and missions. However, shifting our attention to CSOs is also crucial because of their role in our societies. Being independent from the state and the market, and by allowing citizens to act collectively to further areas of common concern, they are a key pillar of public life. In the context of the pandemic, I cannot stress enough how CSOs have supported local communities by giving emergency assistance and providing essential health and care services. However, they have also promoted human rights, acted as "watchdogs", monitored governments’ responses to the pandemic and held decision-makers to account. Fostering a safe and vibrant civil society space is therefore no less than a precondition for maintaining social cohesion, the rule of law and a healthy democracy.

However, like two sides of the same coin, CSOs are also directly impacted by blows to fundamental rights and the rule of law. While our study reveals that the public image of civil society organisations has improved due to their rapid response during the first waves of the pandemic, an overwhelming majority of CSOs surveyed report a deterioration in their operating environment. They also highlight the reduced access to and sustainability of funding, reduced access to decision-makers, as well as outright threats and attacks.

In the current context, marked by a shrinking or a "shifting" civic space, as highlighted by this report, it is not sufficient to merely recognise their contribution. This study therefore takes a forward-looking approach. The authors examine not only the implications of the pandemic, but also identify a number of policy solutions which have been put forward to strengthen the protection of fundamental rights and to help foster an environment in which civil society organisations can be heard and continue to fulfil their missions. They examine how CSO representatives position themselves vis-à-vis these solutions and formulate a number of recommendations to European institutions. I wish you a good read!

Séamus Boland
March 2022
Abstract

This report was compiled for the European Economic and Social Committee at the request of the Diversity Europe Group by a consortium of four partners - European Civic Forum, Civil Society Europe, European Center for Not-for-Profit Law and the Institute of Public Affairs. It examines how the COVID-19 pandemic has affected the work of civil society organisations (CSOs) across Europe. It also focuses on how solutions implemented in individual EU Member States have impacted CSOs' ability to exercise their fundamental rights and freedoms.

The report is based on in-depth analysis of existing studies and reports, a survey, 29 expert interviews and three focus groups. It showcases a number of ways in which the pandemic has affected the functioning of civil society organisations in the EU. The observations emerging from the different stages of the research were characterised by a high degree of consistency, validating the picture depicted.

Finally, the study investigates possible policies at EU and national level to address the challenges identified and includes recommendations on how to implement them.
Executive Summary

This report was compiled for the Diversity Europe Group of the European Economic and Social Committee by a consortium of four partners - European Civic Forum, Civil Society Europe, European Center for Not-for-Profit Law and the Institute of Public Affairs. It is examining how the COVID-19 pandemic has affected the work of civil society organisations (CSOs) across Europe. It also focuses on how solutions implemented in individual EU Member States have impacted CSOs’ ability to exercise their fundamental rights and freedoms. In order to gather the information that formed the basis of this study, a research was conducted consisting of two main phases. Both parts were dominated by qualitative research methods, complemented by a more quantitative element (online survey).

The analysis of available studies and reports, as well as a survey conducted for this report showcases a number of ways in which the pandemic has affected the functioning of civil society organisations in the EU. The observations emerging from the different stages of the research were characterised by a high degree of consistency, validating the picture depicted.

On the positive side, civil society organisations have proved to be extremely flexible during the pandemic. Many of them were the first to be able to reorganise their activities to respond to local communities’ needs. Organisations have usually done this much faster than public administration or the private sector. Moreover, the pandemic has changed the way many civil society organisations operate, such as moving their activities online. This led to an acceleration of the digitalisation of the sector. All of these have allowed many CSOs to reach out to new audiences, or to carry out their work more effectively on a wider scale. It also became easier to build coalitions of organisations, to exchange experiences, and develop common positions on the measures taken by the authorities. Moreover, all this has increased the visibility of civil society organisations in society and understanding of the role they play on a daily basis. This is a very important asset on which organisations can build their position in the future.

The pandemic also has serious negative consequences on the functioning of civil society organisations. It is important to note that while the negative impact of the pandemic on their own capacities was indicated by already a significant number of organisations included in the online questionnaire, an even larger proportion saw a negative impact of the pandemic on the entire CSO sector in their country (78% as compared to 82%). Many entities, especially smaller ones and those operating outside big cities, suspended their activities. The same happened to organisations bringing together specific social groups with a higher proportion of digitally excluded people - for example, older people or people with disabilities. A significant proportion of such organisations have not returned to activity to date. Many people active in organisations have had to deal with additional challenges to their mental health, fatigue from working remotely and growing uncertainty about the future, exacerbated by long-term social isolation. Work-life balance was often difficult to maintain, while work was carried out at irregular hours.

The pandemic has also often been an opportunity for governments of several EU Member States to reduce the transparency of their operations and to hinder citizens’ control over their actions. Moreover, sometimes, under the pretext of counteracting the effects of the pandemic, governments have introduced measures which have restricted fundamental rights - above all, freedom of assembly and freedom of expression. They have also sought to silence critical voices, particularly those from journalists and civil society activists. Several governments have also lowered standards for civil dialogue in law-making.
Civil society organisations, especially foundations and associations, have not even been involved in consultations on key laws aiming to address the impact of the pandemic. Many laws were introduced in parliaments without public consultation. Even when the social partners received these documents to present their opinion, it was done at the last moment and under extremely tight deadlines.

The pandemic also hit many civil society organisations financially. Foundations and associations were most affected, as the solutions proposed by individual governments to mitigate the impact of the pandemic were usually not tailored to their needs. Some trade unions and employers' organisations managed to get through the pandemic period with much less economic impact. However, particularly when it comes to organisations representing workers, their financial situation depends very much on the sector in which they operate. The situation of those working in the sectors most affected by the pandemic, particularly in countries where there was a lack of adequate forms of support guaranteed by the state, was decidedly poor. Such difficult personal experiences for trade union members have not only translated into their psychological well-being, but also their willingness to engage in trade union work.

Conducted research revealed that some forms of support were provided to civil society organisations in their respective countries, but, in general, representatives of various CSOs report that these were insufficient in scale and nature. These solutions were the subject of the final stage of our research work which focused on developing ideas regarding forms of support and policies that are needed to respond to CSOs' challenges at national as well as European level. In this regard, the results of the expert interviews were used to assess specific recommendations for action during the three focus group interviews (FGIs) conducted in the final stage of this study. On this occasion, an attention was also paid to solutions that are being discussed or even have been already adopted in the EU institutions, such as European statute for associations, elaboration of European guidelines and standards on promotion of freedom of assembly and association, as well as securing a flexible and sustainable financial support (including via CERV programme). Moreover, while discussing the expected forms of support for CSOs after a pandemic, consideration was also given to the Recovery and Resilience Facility, as an instrument proposed within the NextGenerationEU framework and responding to the economic and social damage caused by the coronavirus pandemic.

All conducted research has made it possible to observe that the COVID-19 pandemic did not really create so many new problems, but rather highlighted or exaggerated those that already existed before. Therefore, many of the solutions discussed in this report are not new ideas, but rather repeat recommendations that have often already been worked on for some time. However, the pandemic has given these solutions a new meaning and the role played by organisations and the visibility they have achieved in the course of the pandemic in society may help to put them finally into practice.

Basing on such assumptions and reflecting on all the results of the research a set of recommendations was drafted that institutions standing behind this report would like to put forward as the most reiterated by experts interviewed as positive and as European priorities. Thus, based on the findings of the expert interviews and focus group discussions, the literature review, and the consortium's extensive expertise, a short-term and long-term actions have been highlighted that according to the authors of this study European institutions and Member States should implement as the first ones.

Five most important recommendations that were identified in the way described above are organised around the following points:
i. More sustainable, flexible and accessible funding for CSOs
   - in the short-term, in implementing the Citizens, Equality, Rights and Values Programme (CERV), the European Commission should ensure that the selected national/regional intermediary grant operators are sufficiently independent of the Member State authorities;
   - in the long-term, the European Parliament and the European Commission should start discussion on the development of new rules for support to civil society organisations under the new European Multiannual Financial Framework;

ii. Ensuring meaningful participation of civil society in the adoption, implementation and monitoring of National Recovery and Resilience Plans (NRRPs)
   - a short term-priority for the European Institutions is to mitigate gaps identified in the meaningful inclusion of civil society and for Member States is to ensure that CSOs have access as beneficiaries to the funds that are part of the NRRPs;
   - in the long-term, the European Commission should set up coordinated mechanisms and structures to allow CSOs participation in the implementation and monitoring of the Recovery Package and NRRPs, European Semester, EU cohesion policies processes and Member States should develop adequate mechanisms to involve civil society in all processes related to the implementation of EU funds;

iii. Adopting the EU Civil Society Strategy
   - given the complexity of reaching agreement among several stakeholders, the development and approval of such a strategy or policy is a long-term priority;
   - but, elements of the strategy can be implemented in the short-term, such as to monitor, document and analyse challenges faced by civil society and recognise and speak up for civil society as well as better engaging civil society in already existing European mechanisms;

iv. Monitoring and responding to attacks against civic actors
   - setting up a full-fledged civil society index and early warning mechanism might be a long-term priority,
   - however, there are related measures that can be actionable in the short-term - the European Rule of Law framework and its annual Rule of Law report were identified as policy frameworks for this monitoring and reaction to take place;

v. Proceeding towards a structured framework for an open, regular and transparent EU civil dialogue
   - in the short-term, this can be achieved through establishing basic coordination structures (focal points) for civil dialogue within each EU institution;
   - in the longer-term, existing mechanisms and good practices both at EU level across institutions and at national level should be strengthened and harmonised to avoid red tape and duplication;
   - one possible way is to develop an inter-institutional agreement on civil dialogue which could provide the framework to establish coherent practices across the EU institutions.

Authors of this report believe that solutions in all abovementioned areas should be undertaken as a priority by European and national institutions in response to the challenges on the part of civil society organisations that the pandemic has highlighted. Above all, the combined introduction of these solutions
can respond to the challenges faced by civil society organisations in Europe in a meaningful way and help strengthen them in the longer way.