

HOW TO USE EU LAW TO PROTECT CIVIC SPACE: A HANDBOOK FOR CSOs

WHY THIS HANDBOOK?

Civil Society Organisations (CSOs) are instrumental in raising voices and assisting victims. But what happens when CSOs themselves become the actual targets and victims and their fundamental rights to associate, operate, express views, seek and provide information, receive funding and campaign are significantly restricted, especially in times of emergencies? This Handbook provides practical guidance for CSOs to advocate and litigate to protect their rights and push back against closing space in the EU.

WHY SHOULD YOU USE THIS HANDBOOK?

This Handbook is a user-friendly guide for CSOs that want to know:

- what is EU law and how it affects individuals and organisations;
- when and how they can challenge national provisions on the basis of EU law, including the Charter of Fundamental Rights (CFR);
- which legal avenues and resources are available within the EU law framework.

WHY USE EU LAW AND CFR?

- **Effective enforcement** of freedoms and rights at national level;
- **Objective framing** of the national issues in respect of international obligations Member States have signed to;
- **Compliance** of national laws with fundamental freedoms and rights;
- **Expanded catalogue of fundamental rights**;
- **Codification of specific rights deriving from case-law** such as the right to the protection of personal data and EU-specific citizens' rights.

"It is my hope that it shall be widely read, and used, in order to resist the worrying trends, we have seen develop in recent years in Europe."

From the Foreword to Handbook, Olivier de Schutter, UN SR on extreme poverty and human rights

"A vibrant civil society is key to our European democracy, enabling political participation and civic education, strengthening social cohesion, contributing to community-building and to the creation of a common identity. Also during the COVID-19 pandemic, civil society organisations have once more proven their capacity to react to challenging situations and operate as watchdogs for democracy. [...] Civil society organisations and their activities must therefore be encouraged and protected. I thus welcome these reflections on how to use EU law to protect civic space."

Luca Jahier, President of the European Economic and Social Committee

"This handbook closes an important gap, by showcasing how EU law and the Charter can be used in practice to protect civic space. It has the potential to help human rights defenders enforce their rights and their space to operate. I am sure it will find good use."

Michael O' Flaherty, Director, EU Agency for Fundamental Rights



INCLUDING PRACTICAL EXAMPLES

The 31 practical examples we outline throughout the Handbook are based on real experiences as well as potential scenarios. National courts and EU institutions have already scrutinised some of the examples in terms of compliance. Here are two examples used in the Handbook:

The issue

A Member State adopts, during a public health emergency crisis, a law which punishes as a criminal offence, with terms of imprisonment of up to 10 years, anyone who publicizes information that interferes with the “successful protection” of the public. Any information that may alarm or agitate the public is included in this category. Under the new law, the public prosecutor indicts, among others, a CSO which, in providing care for homeless people, gets to know that the medical devices and personal protective equipment provided for by the Health Ministry to counter the health emergency do not follow EU rules on health and safety.

EU law argument:

CSOs targeted by criminal proceedings may argue that the national law run counter the duty of sincere cooperation, given that their disclosure would be protected under the newly adopted EU Directive on the protection of persons who report breaches of EU law (so called Whistleblower Protection Directive). Member States are in fact bound to transpose the Directive and shall refrain from any measures compromising its effectiveness ahead of the transposition deadline. The national law would also appear incompatible with the right to freedom of expression and of information.

EU law provisions potentially infringed:

- **Provisions of the EU Whistleblower Protection Directive read in light of Article 4(3) TEU**
- **Article 11 CFR (Freedom of expression and information)**

The issue

A Member State decides to adopt a legislation by which a special tax of 25% is imposed on funding received from CSOs to finance activities “facilitating immigration”. The justification is that the amount of public spending required for border protection has increased due to the facilitation of immigration by CSOs. The law contains a very broad and vague definition of what is meant by “facilitating immigration”, which includes among others the provision of reception and integration services as well as campaigning activities on these issues.

EU law argument:

Concerned CSOs, which also receive funding from the EU to carry out projects in the area of reception and integration of asylum seekers and migrants, may argue that this provision is contrary to the Member State’s duty of sincere cooperation under Article 4 TEU, as it deprives of its effectiveness EU

Divided into four parts

- I. EU law: basic features and relevance to CSOs’ rights and freedoms
- II. When can EU law be invoked to challenge national laws?
- III. How to enforce your CSOs’ EU rights and freedoms against national measures
- IV. Useful resources

rules on disbursement of EU funds under direct management, established in an EU Common Provisions Regulation on funding in the area of asylum and migration. The national law would also need to be examined in terms of its impact on the fundamental rights and freedoms of CSOs as enshrined in the CFR, as it poses problems as regards respect of the right to freedom of association and of expression.

EU law provisions potentially infringed:

- **Provisions of the EU Common Provisions Regulation read in light of Article 4(3) TEU**
- **Article 11 CFR (Freedom of expression and information)**
- **Article 12 CFR (Freedom of assembly and association)**



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The Handbook draws extensively on guidance of the European Union Agency for Fundamental Rights (“FRA”) on how to ensure compliance with the CFR when drafting national laws. The Handbook also complements the Briefing on [“The Use of EU Law To Protect Civic Space”](#) published by The Open Society Justice Initiative, whose examples and legal arguments have been included in some sections.