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NOTE

From:	Presidency
To:	Delegations
Subject:	Civil Society in the internal and external dimension of EU policies - Exchange of views between FREMP and COHOM Delegates

1. Introduction

An empowered and resilient civil society, in all its diversity, is a crucial component of any democracy.

Civil society brings forward citizens' concerns, represents and supports democracy, human rights, the rule of law, social justice and pluralism. It contributes to effective and inclusive policies and engages in initiatives to further social inclusion, participatory democracy and governance, both in the EU and in third countries.

Civil society encompasses a wide and heterogeneous range of groups and aims, including not only Civil Society Organisations (CSOs), but also NGOs¹, human rights and community groups, diasporas, churches, religious associations and communities, bringing forward the interests of the disabled, social movements and trade unions, indigenous peoples and foundations, and representing vulnerable, discriminated and marginalised people.

2. The role of the civil society in the EU policies

Article 11 of the Treaty on European Union stresses the need for the EU to have an open, transparent and regular (structured) dialogue with civil society, e.g. when preparing proposals for EU laws (see also Art. 154 of the Treaty on the Functioning of the European Union, hereafter TFEU). Article 15 TFEU recognizes civil society's role in good governance of the EU.

The Council has recently stated that "civil society organisations play an important role in promoting and implementing fundamental rights on the ground and serving as a watchdog, as well as in raising awareness of fundamental rights among rights holders and in supporting their efforts to exercise and defend their rights. To fulfil their tasks, civil society organisations must be enabled to carry out their work"². In addition, the Council has invited Member States to "promote EU citizenship and the values and rights attached to it, involving as far as possible civil society"³.

¹ "CSOs can be defined to include all non-market and non-state organizations outside of the family [...]. They are voluntary organizations with governance and direction coming from citizens or constituency members, without significant government-controlled participation or representation. [...]CSOs are defined as organised civil society and can come in many forms, some informal and some as formal entities such as non-governmental organisations (NGOs).NGOs should be therefore understood as a subset of CSOs."
(<http://www.cn.undp.org/content/dam/china/docs/Publications/UNDP-CH03%20Annexes.pdf>)

² Doc. 12913/17

³ Doc. 9080/17

The Commission in its 2016 report on the application of the EU Charter for Fundamental Rights has stated that "external independent oversight (including under the European Convention on Human Rights) is essential in democratic societies. The key role of civil society organisations in renewing engagement for democracy, rule of law and fundamental rights should be cherished and preserved"⁴.

There are many examples of policy fields where CSOs are regularly consulted and integrated in the decision making process. This is for example the case in the work of the EU High Level Group on combating racism, xenophobia and other forms of intolerance, the EU Forum on the Rights of the Child, the EU Forum on Migration and Integration, the Roma Platform and many others. For several years already, there is a tradition of regular contacts and dialogue between the Presidency FREMP Chair and the Human and Democracy Network (HRDN). A similar dialogue exists between HRDN and the European Commission, led by First Vice President Timmermans.

Through EU funding, including European Structural and Investment Funds, the Justice and Rights, Equality and Citizenship Programmes, the European for Citizens and the Erasmus plus Programmes, the European Commission promotes capacity building of civil society and national human rights bodies and supports concrete human rights initiatives in human rights sectorial areas, such as racism, discrimination, access to justice, rights of the child, elderly, disability, women's rights, etc.

In addition, EU funds provide operating grants to support key EU level umbrella civil society organisations and their national members.⁵

⁴ Doc. 9511/17

⁵ Including the European Network Against Racism, ILGA-Europe, the European Network of Grassroots Roma Organisation, as well as EU networks of human rights bodies, such as the European Network of Equality Bodies (Equinet), the European Network of Ombudspersons for Children (ENOC) and the EU Network of National Human Rights Institutions (ENNHRI(s))

Among others, the Fundamental Rights Agency (FRA), in the context of its cooperation with civil society, has initiated work on a better understanding of the challenges and positive experiences of civil society organisations in the EU. Following a seminar it organised on this issue in Vienna on 2 and 3 May 2017, FRA announced a report (that was presented on 6 December 2017 in the NGO Forum) identifying key areas of concerns for civil society mainly related to the regulatory and financial environment of civil society organisations in the 28 EU Member States, their capacity and their participation in the decision-making process.

In its annual Opinion on FRA Programming 2018 – 2022 (adopted on 25 August 2017), the European Commission invited FRA to complement these results, with further research and surveys, including a mapping of existing national legislation impacting civil society organisations.

Ensuring that civil society has sufficient space to operate in support and protection of fundamental rights in the EU remains therefore a common endeavour for the EU institutions and Member States.

3. EU engagement with civil society in external relations

A genuinely independent, diverse, pluralistic and vibrant civil society is pivotal to a country's development and stability, to ensuring democratic consolidation, social justice, respect for human rights and to building inclusive societies, so that no one is left behind⁶.

During the last few years, a positive trend has been recorded in the development of new associations, with a proliferation of civil society organizations, notably due to the emergence of social networks and movements and the use of new Information and Communication Technologies. On the other hand, civil society is also facing new challenges that can threaten its vital role in providing for and ensuring resilient democracies.

⁶ Report on addressing shrinking civil society space in developing countries (2016/2324(INI))

The EU is seeking to formulate coherent, effective responses to these problems through a series of actions and commitments. For example: defending an enabling environment through political and policy dialogue with partner countries, encouraging regional cooperation, and promoting dialogue and best practices in protecting and engaging with civil society; opposing through public and private messaging to unjustified restrictions to civil society's space and attempts to hinder the work of civil society; improving the EU analysis and report on threats to civil society space, through the inclusion of civic space as a component of human rights and democracy country strategies; promoting stronger partnership with third countries' Civil Society; and enhancing its protection mechanisms for Human Rights Defenders through EIDHR funding and with the comprehensive mechanism "ProtectDefenders.eu"⁷.

The European Institutions have reaffirmed commitments to address the main challenges that civil society is currently facing through a number of policy actions and documents, such as the 2015-2019 EU Human Rights and Democracy Action Plan⁸; the June 2017 Joint Communication on A Strategic Approach to resilience in the EU's external Action⁹; the EU Global Strategy on Foreign and Security Policy adopted in 2016¹⁰.

In 2017, the European Commission published a staff working document on the EU's Engagement with Civil Society in External Relations¹¹; and consequently the Council adopted conclusions reaffirming the EU's strong commitment to an empowered and resilient civil society and requesting further work on enabling environment for civil society.¹²

⁷ The EU and its Member States are key supporters of civil society and human rights defenders in third countries, both in terms of diplomatic action, funding and also providing visibility and legitimacy through engagement including based on the relevant EU guidelines.

⁸ Including an objective to address threats to civil society space and outlining a number of actions to identify, report on and counter threats to civil society space (Doc.10897/15)

⁹ It underlines the link between inclusive and participatory societies, with sustainable development and the prevention of violent conflict. It argues for particular attention to be given to the involvement of communities and civil society stakeholders. (JOIN(2017) 21 final)

¹⁰ https://eeas.europa.eu/sites/eeas/files/eugs_review_web_0.pdf

¹¹ SWD(2017)136 final.

¹² Doc. 10279/17.

The EU holds systematic consultations with civil society and human rights defenders in Brussels and in the country before human rights dialogues, and carries out debriefings afterwards.

Civil society representatives regularly engage with the Council Working Party on Human Rights (COHOM) and are systematically debriefed on its conclusions.

The EU also organises regular events gathering civil society organizations, local authorities and other development and human rights actors along with European institutions and Member States, like the EU Partnership Forum, the EU NGO Human Rights Forum, the European Development Days and the European Forum on Development.

4. Resume

Different priorities, interests and policy regimes, inter-institutional fragmentation and repartition of competences and responsibilities between the EU and Member States can lead to disparity and incoherence between policy areas and regimes concerning civil society that are otherwise naturally interlinked.

The EU puts strong efforts and great resources into the development and implementation of effective policies on civil society organisations in external as well as internal spheres. Despite these efforts, it appears that EU internal and external actions are not always fully consistent.

More attention should therefore be paid to the question, whether coherence and consistency between the internal and external aspects of the EU's civil society policies should be increased.

5. Discussion

On the occasion of the FREMP-COHOM meeting on 13 December 2017, the Estonian Presidency wishes to hold a debate on civil society, to reflect and identify existing challenges and to develop ideas on how to ensure and enhance coherence and possible synergies between the internal and external aspects of civil society policies. The Presidency suggests to structure the debate on the basis of the following questions:

- a) Do you consider that challenges for civil society within the EU and outside the EU require the same, coherent responses or would the different institutional and legal frameworks cater for different solutions?
- b) Can you identify concrete situations where the issue of internal-external coherence constitutes a challenge and has a negative impact on the civil society? How could this be overcome?
- c) Do you have any best practices to share or proposals to put forward on how to improve the role of the civil society and/or make better use of it?
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