

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT



**Shrinking space for
civil society:
the EU response**

DROI



STUDY

Shrinking space for civil society: the EU response

ABSTRACT

The EU has developed an impressive range of policy tools for pushing back against restrictions on civil society across the world. It has gradually improved the way it deploys these instruments and has helped protect many activists at risk. Notwithstanding this, the EU needs to sharpen its 'shrinking space' strategy. This study suggests a range of precise policy changes it should contemplate to this end. It advocates a number of strategic guidelines that could help make the EU's responses more proactive; better able to tackle the broad structural elements of the shrinking space; fully balanced between political and development approaches; and geared towards building more inclusive alliances against new restrictions on civil society.

This paper was requested by the European Parliament's Subcommittee on Human Rights.

English-language manuscript was completed on 12 April 2017.

Printed in Belgium.

Authors: Richard YOUNGS (Senior Fellow at Carnegie Europe, Belgium and Professor at the University of Warwick, United Kingdom) and Ana ECHAGÜE (independent consultant)

Official Responsible: Marika LERCH

Editorial Assistant: Simona IACOBLEV, Daniela ADORNA DIAZ

Coordinator: Trans European Policy Studies Association (TEPSA), Belgium

Feedback of all kind is welcome. Please write to: marika.lerch@europarl.europa.eu.

To obtain copies, please send a request to: poldep-expo@europarl.europa.eu.

This paper will be published on the European Parliament's online database, '[Think tank](#)'.

The content of this document is the sole responsibility of the author and any opinions expressed therein do not necessarily represent the official position of the European Parliament. It is addressed to the Members and staff of the EP for their parliamentary work. Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

ISBN: 978-92-846-0901-7 (pdf)

ISBN: 978-92-846-0902-4 (paper)

doi:10.2861/69493 (pdf)

doi:10.2861/366385 (paper)

Catalogue number: QA-04-17-410-EN-N (pdf)

Catalogue number: QA-04-17-410-EN-C (paper)

Table of Contents

List of abbreviations	4
List of boxes	4
Executive summary	5
1 Introduction	8
2 The scale of restrictions on civil society	9
3 EU mechanisms against the shrinking space challenge	12
3.1 Specific funding mechanisms	14
3.2 General mechanisms with shrinking space link	15
3.3 Foreign policy tools	18
3.4 European Endowment for Democracy	19
3.5 Member state mechanisms	20
4 Assessing policy responses	21
5 Ways forward	30
5.1 Strategic guidelines	30
5.2 Changes to specific EU instruments	36
Bibliography	39

List of abbreviations

ASEAN	Association of Southeast Asian Nations
CSF	Civil Society Fund
CSO	Civil Society Organisation
DCI	Development Cooperation Instrument
EEAS	European External Action Service
EED	European Endowment for Democracy
EIDHR	European Instrument for Democracy and Human Rights
EP	European Parliament
EU	European Union
HRD	Human Rights Defender
KAS	Konrad-Adenauer-Stiftung
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institution
SDG	Sustainable Development Goal
Sida	Swedish International Development Cooperation Agency
UK	United Kingdom
UN	United Nations
US(A)	United States (of America)

List of boxes

BOX 1. ETHIOPIA: FUNDING ARRANGEMENTS AND DIPLOMATIC PRESSURE	23
BOX 2. TURKEY: A NEW FUNDING FACILITY	26
BOX 3. EGYPT: COMPETING DIPLOMATIC OBJECTIVES	28
BOX 4. BANGLADESH: A DEVELOPMENT-ORIENTED APPROACH	29

Executive summary

The European Union (EU) has begun to design a multi-faceted response to the shrinking space for civil society. This response is beginning to have an impact. The EU is now one of the international actors most strongly committed to protecting human rights defenders (HRDs) from regimes' increasingly draconian attempts to quash civil society. Yet there are ways in which the EU's policies could be sharpened and broadened, so as to help the EU to address the more structural dimensions of the shrinking space problem.

The problem

The shrinking space phenomenon is getting worse. The global clampdown on civil society has deepened and accelerated in recent years. Over a hundred governments have introduced restrictive laws limiting the operations of civil society organisations (CSOs). Many regimes also deploy a range of other – formal and informal – tactics to disadvantage CSOs. Restrictions on civil society are intensifying in non-democratic but also democratic countries. The number of human rights defenders killed by governments is at a record high across the world.

The closing space is part of a general authoritarian pushback against democracy, but it is not only that. Neither is it simply a crusade against human rights defenders. While the closing space has become a global trend, it exhibits different characteristics across different countries. In some cases the onslaught is mainly against foreign funding; in other cases this is a secondary by-product. The phenomenon counts many deep-seated structural drivers, in part linked to the world's authoritarian turn, in part the reflection of an emboldened anti-liberal social agenda. In the latest phase of the phenomenon, regimes are increasingly brazen in their moves against civil society, and feel less need to act covertly or to contrive defensive justifications.

The EU response

In the last three or four years the EU has reiterated a commitment to address the shrinking space. Many different EU actors and strategies have expressed this commitment. The shrinking space problem is on its way to being mainstreamed at the heart of EU foreign policy.

The EU has responded to the shrinking space through a range of more specific policy mechanisms and instruments.

The EU has funded a particularly notable range of initiatives from the European Instrument for Democracy and Human Rights (EIDHR). The EIDHR's Emergency Fund for HRDs at risk channels funds to human rights defenders quickly when these are facing a moment of acute danger. The EIDHR funds a Human Rights Defenders Protection Mechanism, now known as ProtectDefenders.eu. Under this mechanism, a consortium of 12 international Non-Governmental Organisations (NGOs) channels and coordinates timely emergency support to HRDs at high risk. The EIDHR Crisis Facility is used to respond more generally to human rights emergencies in countries where the EU cannot launch calls for proposals.

Other instruments are more broadly about generic civil society support, but have also been increasingly directed specifically at the shrinking space problem. These instruments include the EU's new Civil Society Roadmaps, now being implemented in 105 countries; a new generation of Human Rights and Democracy Country Strategy Papers; the European Neighbourhood Instrument; and the thematic programme under the Development Cooperation Instrument (DCI) for Civil Society Organisations and Local Authorities (CSO-LA).

EU delegations' capacity has been enhanced through Human Rights Focal Points and Human Rights Defenders Liaison Officers that are charged with helping to protect vulnerable groups and individuals. The EU's Human Rights Special Representative has increasingly addressed the shrinking space challenge in his bilateral meetings and in international organisations. The shrinking space issue is now a central issue within

the EU's dedicated human rights dialogues. The European Parliament has also addressed shrinking space questions through a number of its procedures and policy tools.

The European Endowment for Democracy has played an increasingly important and innovative role in limiting the shrinking space problem. A number of member states have also introduced important commitments to push back against civil society restrictions in their bilateral diplomacy and aid programmes.

Effectiveness

The most effective part of these EU responses has been the protection offered to human rights defenders. The EU has in general made an impact through being slightly more flexible in some of its aid modalities, enabling funds to get to endangered activists.

It is proving harder for the EU – or indeed any other international actor – to get a grip on the deeper, structural aspects of the problem. The EU has admirably stepped up its efforts to build general civil society resilience in many countries. But in most places these initiatives have not been backed strongly enough to bring about tangible or immediate improvements in CSOs' precarious situation. Many EU policy instruments fail to specify how their generic commitment to CSO support translates into concrete measures and benchmarks to protect them from the narrowing civic space.

In some elements of its aid funding, the EU has shifted to supporting uncontroversial, development CSOs as it has become harder to engage with more political organisations. In some cases this has helped keep some link to civil society open; in many cases, however, critics say it has inadvertently helped regimes isolate out-spoken civil society opponents under the guise of partnering with the EU on development policy.

In its high-level diplomacy the EU can still be strikingly cautious in confronting regimes engaged in brutal civil society crackdowns. The general direction of EU security policy often undercuts efforts to hold the shrinking space problem at bay.

Ways forward

The EU needs to map out a clearer strategic approach to the shrinking space, as it is now clear that merely ad hoc and defensive responses will not be adequate.

The EU needs to make sure that for each admirable effort to protect frontline defenders, it supports a concrete engagement on the structural roots of the shrinking space. The short-term and long-term aspects of the challenge must be tackled more resolutely and together.

The EU needs to strike a careful balance between political responses and a development-oriented approach. Neither is sufficient on its own. Neither the political approach nor the development approach should be pursued to the exclusion of the other. The EU has been right to avoid an overly political approach that subjugates all other areas of policy to a head-on confrontation with regimes over highly political CSOs. However, the EU should be careful not to tilt too far towards apolitical approaches to development that minimise the significance of the shrinking space for civil society.

While a focus on the enabling environment is essential, the EU needs to make sure this is pursued in a way that is not so generic and abstract, and is more connected to immediate diplomatic policy in specific countries. Formal improvements in the legal environment for CSOs often fail to protect civic activists in practice. The EU needs a foreign policy capable of attacking the political specificities of the shrinking space problem in individual states. Freedom of association must be backed up by a more expansive focus on the right to participate. For this the EU needs to leverage oblique forms of political pressure.

The EU needs to support much stronger and wider coalitions, both within countries and internationally. The EU needs to push CSOs to pay more attention to building links downwards through their own societies

and with business actors; if they were less isolated domestically they would be better protected from regimes. If the EU can stop regimes playing divide and rule between different elements of civil society, this could also make a major contribution to mitigating the shrinking space problem. Internationally, the EU needs to invest more effort in building more effective partnerships with other organisations working to address the shrinking space problem.

The EU needs to devote more resources and effort to identify and support new kinds of civil society actors, as the standard or classical form of human rights NGO is especially vulnerable to restrictive measures. The EU needs a systematic and dedicated programme to help galvanise the new forms of civil society activity that are taking shape across the world. It should also explore non-financial forms of support to civil society.

This study concludes by suggesting how these broad guidelines can be addressed through very specific changes and additions to EU policy instruments.

1 Introduction

Over the last decade a serious problem has appeared on the international agenda: an increasing number of regimes have moved to restrict the operations of civil society organisations (CSOs). The trend has now spread to around one hundred countries. The restrictions against civil society take multiple forms and have become increasingly repressive and effective.

The European Union (EU) has begun to design a multi-faceted response to this so-called ‘shrinking space’ problem. A range of EU policy instruments and funding mechanisms are now aimed at defending CSOs and individual activists from government repression. This study outlines the development of these mechanisms, assesses their effectiveness, and proposes ways in which the EU should modify its response to the shrinking space challenge.

There are many generic EU commitments to support civil society that are clearly germane to the overall context in which CSOs operate. However, the focus here is on mechanisms and policy commitments that are specifically oriented towards the shrinking space – that is, this study does not deal with general support for civil society, but rather focuses on EU efforts to deal with the current wave of restrictions and attacks against civil society representatives.

This study’s core argument is that the EU has put in place an abundance of extremely useful dialogues, quiet diplomacy, statements, demarches, trial monitoring and emergency support for activists, but that its approach needs to be upgraded if it is to make any *structural impact* on the shrinking space problem.

Definitions. This study assumes a relatively standard and broad definition of civil society, as the sphere of non-coercive association between the individual level and the state level. This definition embraces formally organised Non-Governmental Organisations (NGOs), more loosely structured social movements and individual activists. This study considers civil society that is both political and non-political; it does not examine business actors or trades unions. The definition includes civil society that plays both the liberal function of holding governments in check and the republican notion of building collective identities via transmission belt connections between society and a state¹. This study adopts these definitional parameters because they correspond with the breadth in types of civil society organisations to which the shrinking space problem is relevant.

Assessment criteria. This study does not assume that the EU on its own can solve the shrinking space problem. Most of its focus is on the defensive function of protecting civil society activists from the legal and physical assaults being visited upon them by governments. It also recognises that often the EU may dissuade regimes from adopting new civil society restrictions in a quiet way that is not fully or publicly recognised; while it is methodologically difficult to assess these cases of the non-passing of laws, their existence is not to be overlooked. However, this study does assume that it is reasonable to hold the EU to higher criteria of assessment than a purely emergency protection role – and in this sense it is in line with the aims of the EU’s Action Plan on Human Rights and Democracy, which talks about the need to support a wider range of democratic actors in order to help more structural political reform. The EU has sufficient power and weight through the range of its foreign policy instruments for one to expect that it could begin to deal – even if in modest fashion – with the deeper, causal drivers of the shrinking space problem. It is vital not to have unrealistic expectations of the EU, but it is also fair to ask whether European foreign policy is addressing the challenge as comprehensively as possible.

Methodology. This study is based on qualitative, inquiry-based and interpretative research methods, semi-structured interviews and participative group meetings. It draws on extensive literature reviews covering the shrinking space, EU foreign and development policy, and civil society trends and funding more

¹ For these definitions see M. Edwards (ed.), *The Oxford Handbook of Civil Society*, Oxford University Press, New York, 2011; D. Held, *Models of Democracy*, 2nd edition, Polity Press, Cambridge UK, 2006.

generally. This study used both primary and secondary sources, including a large number of official EU reports, independent NGO evaluations and reports, as well as think-tank and academic material. This study also relies on material gleaned from a large number of interviews with policy-makers and civil society representatives. It additionally benefits from the authors' involvement in a number of civil society projects during recent years through which participative methods have been used to explore the shrinking space phenomenon. This study seeks in particular to convey civil society actors' views of how the EU could sharpen its approach to the shrinking space. Many suggestions come out of private conversations with policy-makers, conducted on the condition of anonymity.

2 The scale of restrictions on civil society

The shrinking space phenomenon has been gradually intensifying for just over a decade. The trend of governments closing down the space for civil society actors began around 2004-2005. In this sense, it is not a new challenge, and the international community has had time to put in place response mechanisms. However, initially the trend did not elicit a great deal of attention. It appeared that it might be limited to relatively few states in which authoritarianism was strongly resurgent.

Chronology of recent developments. It took some years before observers started alluding to civil society restrictions as a trend of profound structural significance and one that was increasingly evident in countries across the world, from highly repressive autocracies through to established democracies. Today even several EU member states are witnessing restrictions to civil society. Figures show that the global clampdown on civil society has deepened and accelerated in very recent times. It may not be an entirely new problem, but it is one that has assumed an unprecedented depth and seriousness, and that is likely to continue for the foreseeable future.

The International Centre for Not-for-Profit Law records that 120 restrictive laws were adopted in 60 countries between 2012 and 2015. One third of the restrictions were on international funding, half applied to the general legal framework for CSO operations and 20 % were directed specifically against freedom of assembly².

Regimes across the world now use a similar range of tactics: increasingly strict approval and licensing procedures for CSOs; attaching the 'foreign agent' stigma to CSOs; placing limits or caps on the amount of money that CSOs can receive from donors; requiring funds to be channelled through government-controlled intermediaries; punitive taxes; and placing on CSOs a whole series of onerous administrative requirements.

The *Civics State of Civil Society* 2014 report says that, in 2014, there were serious threats to civic freedoms in at least 96 countries around the world. Taking these countries' populations into account, this means that 67 years after the Universal Declaration of Human Rights guaranteed freedoms of expression, peaceful assembly and association, six out of seven humans live in countries where these freedoms are under threat³.

In its *State of Civil Society* 2015 report, Civicus finds that freedoms for civil society declined significantly in 2015. Serious violations occurred in 109 countries in comparison with the 96 in 2014. Freedom of association violations increased from 84 in 2014 to 93 in 2015. Similar increases occurred on freedom of expression, from 82 to 92 countries, and on freedom of assembly from 63 to 73 countries⁴.

² D. Rutzen, 'Civil society under assault', *Journal of Democracy*, No 26(4), 2015.

³ Civicus, 'State of Civil Society Report 2014'.

⁴ Civicus, 'State of Civil Society Report 2015'.

Frontline Defenders reports that, in 2016, 281 human rights defenders (HRDs) were killed in 25 countries and that the number of travel bans against activists doubled⁵. Activists who assert land, environmental and indigenous peoples' rights in the face of large-scale development schemes have been especially vulnerable. Wherever civil society activists are threatened, so are journalists. In its 2016 report, Civicus chronicles the further extension of these measures: between 2014 and 2016 alone, over 60 states have restricted freedom of assembly and civil society's ability to receive funding⁶.

Threats come from state but also non-state actors. In Latin America gangs and armed groups are narrowing the space for civil society. In Brazil such groups killed more than 50 activists in 2015. Some attacks come not from governments but from fundamentalist groups. Such groups have targeted atheist bloggers in Bangladesh, Rohingyas in Burma, moderate activists in Pakistan, and Ukrainian community leaders critical of the Kiev government and accused of being traitors by far-right social movements.

In the last two years a further raft of countries has adopted restrictive NGO laws, following similar templates and using copy-cat methods of making life increasingly difficult for civil society actors. These include Angola, China, India, Israel, Jordan, Kazakhstan, Kenya, Laos, Mexico, Nigeria, Pakistan, Russia, Sierra Leone, South Sudan, Tajikistan and Uganda.

Russia remains perhaps the most emblematic case. It first introduced restrictive laws on civil society organisations in 2006 and has been intensifying and widening its array of measures against CSOs ever since then. In 2015 the government gave itself new powers to register NGOs as 'foreign agents' without their agreeing to this and also to ban a new category of 'undesirable' civil society organisations. Dozens of international NGOs have been forced to leave the country and well over a hundred Russian organisations are now defined as 'foreign agents'. Russia gradually extended the scope of its trailblazing legislation in 2016, tightening the definition of 'political activity' and opening prosecutions of organisations that have not registered as 'foreign agents'. Reports vary on how many organisations have closed operations. In parallel, the government has started offering active support and funding to 'NGOs' that support the state.

A sobering concern is that the trend is extending well into apparently well-consolidated democracies. The Indian government has tightened authorisation requirements for NGOs receiving funding and now forbids them from activities that are not in India's 'national interest'. The government cancelled nearly 10 000 civil society organisation registrations in 2015. Many reports also allude to new restrictions on NGOs, public gatherings and protests in several EU member states.

Thematic changes. Restrictive NGO laws are only one part of governments' arsenal. In addition to laws, we see increasing numbers of arrests, detentions, travel bans, and even assassinations of civil society activists. Particularly worrying cases in 2015 and 2016 included Angola, Azerbaijan, Burundi, Egypt, Kazakhstan and Turkey. Governments are also becoming sophisticated in the use of digital technologies to track and intimidate activists. In order to impede effective CSO actions, regimes today use a battery of techniques quite apart from the introduction of draconian NGO laws.

In the last two years, the security and terrorism dynamic behind the closing space assault has become more prominent. Concerns over radical groups are now perhaps the most potent driver of government control over parts of civil society. The most recent examples of new measures enacted in 2016 reflect this notable trend towards governments using anti-terror laws as a tool for disciplining and controlling civil society. Brazil's restriction of civil society rights has deepened appreciably under the rubric of anti-terrorist laws since early 2016, for example. This follows other examples of how anti-terror laws are being used to narrow

⁵ Frontline Defenders, *Annual Report on Human Rights Defenders at Risk 2016*, Front Line, the International Foundation for the Protection of Human Rights Defenders, Dublin, 2017.

⁶ Civicus, 'State of Civil Society Report 2016', p. 54. See also K. Roth, 'Twin Threats: How the Politics of Fear and Crushing of Civil Society Imperil Global Rights', in Human Rights Watch, *World Report 2016*, Seven Stories Press, New York, 2016.

civil society operations, for example in France, Spain, the UK, the United States of America (USA), in addition to developing states such as Chad, Ethiopia, Kenya, Sudan and Uganda. This is an even more preeminent trend in the Middle East, including in Egypt, Jordan and Oman⁷.

Country examples. Restrictions are spreading in countries covered by the EU's Development Cooperation Instrument and in nearly all European Neighbourhood countries. In Armenia, law enforcement agencies are increasingly hindering CSOs in the wake of protests since the summer of 2016. In Azerbaijan, new legislation covering 'Rules on Obtaining the Right to Provide Grants in the Republic of Azerbaijan' came into force in December 2015. In Moldova, a 'Foreign Agents Law' is being introduced in Transnistria, which involves legal means to criminalise external support to NGOs.

In Algeria, an association law restricting CSOs' operations entered into force in 2014. In Jordan the government has moved to ban the registration of groups whose aim is to violate 'national security, public health, public safety, public order, public morals or the rights of freedoms of others'. In Tunisia, the government is now moving against several village-level movements and councils that have challenged powerful business interests and landowners.

Egypt is, of course, the best-known example and an innovator in the shrinking space phenomenon. Over the last three years its authorities have frozen the funds and assets of a rising number of Egyptian human rights defenders and NGOs. Under changes to the penal code introduced in 2014, activists risk life-long prison sentences for accepting foreign funds. In November 2016, the Egyptian Parliament provisionally approved a new draft NGO law. The draft law requires a 30-day advance approval for a CSO to be allowed to receive domestic funding, and 60 days to receive foreign funding. If no answer is received within these 60 days, a funding request is automatically considered denied. If a group accepts foreign funding without permission, it will be directly closed down. Foreign CSOs will not be allowed to operate in the country without prior approval from a government-run National NGO Apparatus. While the president has not yet approved the law, the clampdown continues apace; on 9 February 2017 authorities sealed off the renowned El Nadeem Centre for the rehabilitation of torture victims.

In sum. While the shrinking space phenomenon seems clear-cut and is self-evidently spreading over an increasingly wide geographical area, it is important to specify what the trend does and does not involve.

The closing space is part of a general authoritarian pushback against democracy, but it is not only that. Neither is it simply a crusade against human rights defenders. The phenomenon counts many causal drivers, in part linked to the world's authoritarian turn, in part the reflection of an emboldened anti-Western social agenda.

In the latest phase of the phenomenon, regimes are increasingly brazen in their moves against civil society, and feel less need to act covertly or to contrive defensive justifications. Even a few years ago, as regimes began tightening restrictions, several offending governments tried to act quietly and dress their attacks on the civic sphere in all kinds of explanations to deflect the international community. Fewer regimes now make such efforts. Fewer of them act so surreptitiously in choking CSOs out of existence.

The deeper effect is that the burden of argumentation has now switched around to fall on civil society's shoulders. Civic groups are faced with the need to explain why they should have the right to exist unhindered and receive support from the outside. This is a major inversion of the whole civic climate that goes well beyond the individual NGO laws that have been introduced – and the significance of this inversion has still not been fully seized. It means *inter alia* that effective responses will need to rework a whole narrative about the merits and rights of civil society.

⁷ Civicus, 'State of Civil Society Report 2016', p. 58.

While the closing space has become a global trend, it exhibits varied characteristics across different countries. In some states, governments are reacting because they feel threatened by more effective and confrontational civil society activism. In other cases, regimes clampdown because they feel emboldened by increased political, economic and strategic control. Most often, the closing space is the result of a combination of defensiveness and proactive assertiveness on the part of regimes – a curious mix of strength and weakness, of confidence and paranoia.

In some cases the onslaught is mainly against foreign funding, in other cases this is a secondary by-product. In some countries, attacks on CSOs are helped by the weakness of judicial systems; in other countries regimes use very strong legal systems as a route to intimidating NGOs. In some cases, formal legal restrictions present the main problem, while in other countries the bigger challenge can come from a raft of more indirect measures like draconian health and safety inspections, reporting requirements and labyrinthine administrative hurdles. Some regimes insist they have a legitimate agenda of addressing the financial fraud and tax evasion of which some CSOs have been accused.

Motivations behind the restrictions differ – this is far from being a uniform phenomenon. Some governments are intent simply on making life more difficult for CSOs, increasing oversight of what the civic sector does and, in some instances, simply of finding a way to syphon off a portion of the money they receive from international sources. Many developing states would prefer aid to come directly into the central budget rather than go to civil society actors. For others the closing space is more radically about delinking from the international community more completely. Some governments' main target is foreign funding per se, while others seek to weaken civil society actors whether or not they get help from outside the country.

Some governments aim to decimate those parts of civil society focused on controversial political and rights issues, while leaving others parts of the civic sphere relatively free. In these cases, few service delivery NGOs risk their own safety to show solidarity for human rights NGOs being squeezed out of existence by a repressive regime. For the most hard-line regimes, the use of restrictive measures is targeted even at apolitical, developmental NGOs and is part of a wholesale attack on the very concept of civil society – an attempt to refashion a direct social contract between citizens and the state that is bereft of any intermediary role for an independent civil society.

The implication is that an EU response needs to take into account these variations across different countries and not focus exclusively on NGO laws, which are only one part of a broader problem. The shrinking space challenge comes from those regimes that are using subtle tactics with some efficacy to put civil society actors on the back foot, and is not only about the draconian cases of outright authoritarian attacks on civil society.

3 EU mechanisms against the shrinking space challenge

The EU has responded to the shrinking space through a range of policy mechanisms and instruments. This chapter lays out the various policy commitments and initiatives that the EU has developed to tackle closing space restrictions around the world. The following chapter assesses how effective these mechanisms have been.

The chapter first outlines the EU's main foreign and development policy commitments to tackle the shrinking space problem. It then divides the EU's policy tools relevant to the shrinking space into:

- funded initiatives aimed specifically at countering the shrinking space or dealing with its effects,
- more general funding mechanisms that have some indirect bearing on civil society conditions,
- the wider toolbox of foreign policy instruments.

The chapter also looks at the work of the European Endowment for Democracy and a selection of member states' initiatives – it does so in order to demonstrate that European actors beyond the EU institutions are also grappling with the shrinking space problem.

General foreign policy commitments

In the last three or four years the EU has reiterated a commitment to address the shrinking space more assiduously. Many different EU actors and strategies have expressed this commitment, at multiple levels.

The Global Strategy for the European Union's Foreign and Security Policy notes that 'societal resilience will be strengthened by deepening relations with civil society [...]. We will reach out more to cultural organisations, religious communities, social partners and human rights defenders, and speak out against the shrinking space for civil society'⁸.

In 2014 around 40 EU statements referred to shrinking space issues⁹. The Foreign Affairs Council listed measures against the shrinking space as one of the main Common Foreign and Security Policy priorities for 2016¹⁰.

The High Representative for Foreign Affairs and Security Policy said at the 2016 EU-NGO Human Rights Forum: 'There is no sustainable security when human rights are not fully respected [...]. But I see that the shrinking space is also for policy makers that have at the core of their decisions attention to human rights and we have to stick even more together, I believe, in these times'¹¹.

Commissioner for European Neighbourhood Policy and Enlargement Negotiations Johannes Hahn told the 8th annual assembly of the Eastern Partnership Civil Society Forum that the EU gives increased and priority importance within its Neighbourhood Policy instruments to supporting civil society that is 'facing pressure' from their governments¹².

A long line of policy statements, documents and actions plans have alluded to the shrinking space problem and formal commitments to tackle it have become more numerous and more fully elucidated. The EU drew up Human Rights Defenders Guidelines as long ago as 2004, with the aim of raising awareness of the problems facing human rights groups among policy-makers and mobilising delegations' diplomatic resources to protect activists. The EU updated and fleshed out these Guidelines in 2008. The Guidelines include commitments to high-level and public meetings with human rights defenders, including those in custody or put on trial, regardless of regimes' reactions¹³.

The 2012 communication on 'Europe's engagement with civil society in external relations' lists as its top priority: 'To enhance efforts to promote a conducive environment for CSOs in partner countries'¹⁴.

The EU Action Plan on Human Rights and Democracy, as updated in December 2015, states that 'the EU places great value on its regular dialogue with civil society both inside and outside the EU and is profoundly concerned at attempts in some countries to restrict the independence of civil society'. The update to the Plan says that the EU will 'step-up consistent support to HRDs by: raising cases of at-risk HRDs including

⁸ European Union, A Global Strategy for the European Union's Foreign and Security Policy, European Union, Brussels, 2016.

⁹ ECNL-OSEPI, 'Working Paper on the European Union's External Action and the Closing Civil Society Space', 2014.

¹⁰ Council of the European Union, 'CFSP Report – Our priorities in 2016', 2016.

¹¹ F. Mogherini, 'Speech by HRVP Mogherini at the EU-NGO Human Rights Forum', transcript, European External Action Service, 2 December 2016.

¹² J. Hahn, 'Speech by Johannes Hahn at the 8th Annual Assembly of the Eastern Partnership Civil Society Forum', transcript, European Commission, 28 November 2016.

¹³ European Union, 'Ensuring Protection – European Union Guidelines on Human Rights Defenders' (2008 revised version).

¹⁴ European Commission, 'Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the roots of democracy and sustainable development: Europe's engagement with Civil Society in external relations', COM(2012) 492, 2012.

during high-level visits, dialogues and missions; addressing impunity in cases of violations against HRDs; increasing burden sharing and co-ordination between EU delegations and member state embassies on HRD protection activities; sharing best practices on relevant mechanisms including temporary shelter schemes and emergency visas; continuing to support and cooperate with UN [United Nations] and regional mechanisms for the protection of HRDs'.

The Plan goes on to promise that the EU will 'proactively identify and report on threats to civil society space, including reprisals, and take steps to counter such threats'. It will also 'oppose through public or non-public messaging unjustified restrictions to freedom of peaceful assembly and association, confinement of civil society's space and attempts to hinder the work of civil society, including HRDs, such as the criminalisation of HRDs, ensuring these issues are regularly raised in bilateral meetings, human rights dialogues, and UN and regional fora'¹⁵.

3.1 Specific funding mechanisms

The EU has declared the protection of human rights defenders to be a top priority for funding from the European Instrument for Democracy and Human Rights (EIDHR), which has EUR 1.3 billion available for 2014-2020.

The Commission states that the 2014-2020 EIDHR instrument 'has a stronger focus on the most difficult countries and emergency situations where human rights and fundamental freedoms are most in danger. In such situations, the EU will be able to respond in a more flexible and timely manner through ad hoc grants. This will particularly be the case where less speedy solutions would expose beneficiaries to the risk of serious intimidation or retaliation and in order to address the urgent protection needs of human rights defenders on the ground'¹⁶.

EIDHR support for HRDs has been forthcoming for many years, but has also gradually evolved in response to the shrinking space.

The EIDHR's Emergency Fund for HRDs at risk is able to directly channel funds to human rights defenders quickly when these are facing a moment of acute risk. From 2010 to the end of 2016 the fund awarded 386 grants totalling EUR 2.99 million in around 45 countries. The Emergency Fund includes various types of support, up to EUR 10 000: fees for the legal representation of defenders, medical expenses, supporting families of imprisoned activists, security material for offices or homes, and the evacuation of a HRD to another country.

The EIDHR funds a Human Rights Defenders Protection Mechanism, now known as ProtectDefenders.eu. Under this mechanism, a consortium of 12 international NGOs channels and coordinates timely emergency support to HRDs at high risk¹⁷. The Mechanism has a EUR 15 million budget. The mechanism has created a Temporary Relocation Grants Programme to fund endangered human rights defenders to move out of their country.

ProtectDefenders.eu has so far provided 338 emergency grants covering emergency relocation (40 % of grants), individual security (17 %) and legal support (8 %). Most funds have gone to defenders from Burundi, Syria, China, Bangladesh and the Democratic Republic of Congo. The Temporary Relocation Grants Programme has supported 73 relocation initiatives benefiting almost 150 individuals.

¹⁵ Council of the European Union, 'EU Action Plan on Human Rights and Democracy', Publications Office of the European Union, Luxembourg, 2015.

¹⁶ European Commission, 'What is EIDHR?', EIDHR website.

¹⁷ Front Line Defenders, Reporters Without Borders, World Organisation Against Torture, International Federation for Human Rights (FIDH), Economic, Social and Cultural Rights Network, International Gay and Lesbian Association, Urgent Action Fund for Women's Human Rights, Protection International, Peace Brigades International, Euro-Mediterranean Foundation of Support to Human Rights Defenders, Forum Asia and East and Horn of Africa Human Rights Defenders Project.

The EIDHR Crisis Facility is used to respond more generally to human rights emergencies in countries where the EU cannot launch calls for proposals. It supports projects of up to EUR 1 million for a maximum of 18 months. Inter alia it has helped activists move operations outside of their country of origin.

In addition, there are standard calls for proposals under the EIDHR's objective 1, lot 1 of global calls for proposals, which include 'Human rights defenders at risk'. This has a budget allocation of 20-25 % of the EIDHR total budget, one of the two most generously funded of the instrument's five objectives. One example included a call aimed at enhancing human rights defenders' digital security in the face of regime attacks. The 2016 call was on women HRDs.

The EU has increased its support to national human rights institutions (NHRIs), as it sees these as having a role to play in preventing the adoption of laws restricting the space for civil society. Support to NHRIs is the first action of the first objective of the new EU Action Plan on Human Rights and Democracy 2015-2019. This is seen as integral to promoting local actors' ownership of the human rights agenda. As institutions of accountability NHRIs also have a role to play in the implementation and monitoring of the Sustainable Development Goals (SDGs) and in holding governments to account on these. They can also build bridges between civil society, the government and regional and international organisations. A firmer commitment to support NHRIs has been made under the EIDHR Regulation 2014-2020 and EIDHR Strategy 2014-2017. Following this, the EIDHR will fund two strategic, targeted programmes to support NHRIs. A targeted programme entitled 'Capacity Building of National Human Rights Institutions' started in mid-November 2015 for a period of three years and with an EU contribution of EUR 5 million. A second targeted programme is the forthcoming (2017) EUR 1 million programme to enhance the effectiveness of NHRIs to promote and protect human rights in situations of conflict or post-conflict in wider Europe.

In addition to the EIDHR, a joint *No Disconnect Strategy* by the European External Action Service (EEAS) and the European Commission's Directorate General for Communications Networks, Content & Technology (DG CONNECT) began in December 2011, to assist civil society organisations, political dissidents and citizens living in non-democratic conditions with tools to circumvent arbitrary disruptions of the internet and other electronic communications technologies. It has since been discontinued. According to the Commission its goals have been incorporated into the 'EU Human Rights Guidelines on Freedom of Expression Online and Offline'.¹⁸

3.2 General mechanisms with shrinking space link

Other instruments are more broadly about generic civil society support, but have also been imbued with a specified relevance to the shrinking space:

The EU's new *Civil Society Roadmaps* are designed to direct and coordinate EU and member state funding and to bolster the effectiveness of civil society support around strategic priorities. The Roadmaps commit to defending civil society and to building effective networks for locally driven development. In particularly difficult country contexts, EU delegations have chosen not to publish the roadmaps in order, they say, to keep open channels to threatened activists. The EU is now implementing 105 signed Roadmaps¹⁹.

Surveying these Roadmaps, it is possible to glean a number of observations. The Roadmaps are replete with many generic references to support for freedom of association and an 'enabling environment' for CSOs. They include some measures specifically related to the shrinking space challenge. These include: pressure for easier registration rules for CSOs, tax incentives for NGOs to focus on increasing domestic

¹⁸ Commissioner for Budget and Human Resources Günther Oettinger, answer given on behalf of the Commission to Parliamentary Question E-011923/2015, European Parliament website.

¹⁹ For published roadmaps, see European Commission, 'Capacity4dev Public Group on Civil Society: Roadmaps', 2015; and for newsletters, see European Commission, 'Capacity4dev Public Group on Civil Society: Keeping track', 2015.

revenue sources, EU support in the form of mentoring and other tactics that might evade new restrictions on direct funding from external actors, and support for alliances between CSOs and the private sector.

Beyond these commitments, the Roadmaps are mainly focused at a very general level on boosting civil society involvement in decision-making, especially in relation to economic development plans, and are less operationally detailed on the shrinking space challenge than other measures summarised in this section. In consequence: while these are important new tools, for the moment it remains unclear whether they will lead to any tangible effect on shrinking space concerns.

Human Rights and Democracy Country Strategy Papers: a new generation of these strategies includes a focus on the shrinking space, although the EU has not provided any detail on how they purport to do so. Critics complain that these strategies are still not made public and that this reduces their value in galvanising responses to the shrinking space. Nevertheless, their template is formally obliged to address the shrinking space and as these papers are periodically reviewed they can and should provide a means to adapt in a timely fashion to new civil society restrictions. Those that have been made public and that have language on the shrinking space include Kyrgyzstan, Israel and Uganda²⁰.

European Neighbourhood Instrument (ENI). Guidelines for the ENI state that support to civil society may be increased where there is a serious regression in the country and that government restrictions shall not lead to funding for civil society being reduced²¹. The Neighbourhood Civil Society Facility refers to an aim of 'promoting an enabling environment' for CSOs – even if it is concerned primarily with fairly non-political civil society capacity-building and is apparently bereft of any operational measures specific to the shrinking space²². Developing out of the EU's on-going structured dialogue with civil society in the region, the May 2016 Civil Society Forum-Neighbourhood South focused on the shrinking space as one of its three main themes.

Thematic programme under the Development Cooperation Instrument (DCI) for Civil Society Organisations and Local Authorities (CSO-LA) programme.

The DCI regulation contains generic references to the importance of civil society in development²³. More specifically, the CSO-LA thematic programme contributes to addressing the issue of shrinking space in a number of ways. The main objective of the CSO-LA thematic programme is 'to strengthen civil society organisations and local authorities in partner countries'. For the period 2015-2017, its primary two objectives in relation to CSOs are: first, to 'support Civil Society Organisations' [...] contributions to governance and accountability through inclusive policymaking – hence empowering citizens and populations through the voicing and structuring of their collective demands'; and second, to reinforce regional and global networks of CSOs.²⁴ The programme formally includes work on long-term impact as well as short, rapid reactions. Officials stress that more effort is now made to tighten the CSO-LA programme's complementarity with the EIDHR, usually by building long-term initiatives as a follow on from the latter's shorter-term interventions in particular countries.

²⁰ European External Action Service, 'Kyrgyzstan: EU Country Roadmap for Engagement with Civil Society, 2014-2017', 2014; European External Action Service, 'Israel: Updated EU Country Roadmap for Engagement with Civil Society, 2014-2017', 2014; European External Action Service, 'EU launches Human Rights and Democracy Country Strategy for Uganda', 2016.

²¹ OPEN Neighbourhood Programme, 'The European Neighbourhood Instrument', 2017.

²² European Commission, 'Civil Society', European Commission's website, 2017.

²³ Council and Parliament Regulation No 233/2014 establishing a financing instrument for development cooperation for the period 2014-2020, O.J. L 77/44 of March 11 2014.

²⁴ European Commission 'Commission Implementing Decision of 30 June 2015 on the Multi-Annual Action Programme for years 2015 part II, 2016 and 2017 "Civil Society Organisations and Local Authorities" to be financed from the general budget of the European Union', C(2015) 4574 final, 2015..

Under the rubric of the DCI, the CSO-LA programme has EUR 1.9 billion available for 2014-2020 with a general remit to strengthen civil society organisations. The programme's Multiannual Indicative Programme for 2014-2020 states that 'the promotion of an enabling environment for CSOs and LAs – in its legal, regulatory and operational dimensions – will be a crosscutting element'. The programme does not include any specific aid modalities or delivery mechanisms that are specific to the shrinking space challenge or make any commitments to allocate a specific share of resources for tackling this problem. The most specific reference is one results indicator: 'the number of countries where sets of guarantees that ensure rights and opportunities for CSOs to operate and participate to policy processes exist'²⁵. Yet, the EIDHR mid-term evaluation confirms a growing complementarity with the DCI.

Other development-related mechanisms

More general figures for the DCI and the European Development Fund (EDF) also suggest a measured relevance to the shrinking space. In 2009-2014, 13 % of EDF and 11 % of DCI funds went to governance aid, very broadly defined. In turn, about 15 % of this was classified as 'democratic governance and civil society', so about 2 % of the total aid from these funds. There have been fewer DCI recipients of this category of aid since 2014²⁶. The European Commission's 2016 own evaluation of EU-ACP relations concluded that "when participating in tri-partite discussions with the EU and the State, CSOs are mostly perceived and consulted as service providers, rather than as governance actors" and acknowledged that 'few stakeholders see the overall situation improving for CSOs in Africa, while many others see it declining, particularly for certain types of CSOs'²⁷. However, the evaluation also reports that for the 11th EDF 2014-2020 30% of the funds will be targeting governance.

The EU has signed 23 Framework Partnership Agreements with civil society networks that are not only about financial support but political partnership, including on enabling environment issues²⁸. The Policy Forum on Development, chaired by the European Commission's Directorate-General for International Cooperation and Development (DG DEVCO), also gathers together CSOs and local authorities for a structured dialogue.

A more general trend: under some funding sources, the EU has expanded eligibility criteria for non-registered organisations and organisations registered in another country in situations where registration in the targeted country is made impossible by the national authorities or might put the applicant in danger. Also, in a select number of instances, the EU has agreed to be more flexible in order to protect partners' confidentiality when requested to do so, and also to allow financial transfers between project partners to evade controls. Policy-makers say that the various budget instruments are driven by an aim of focusing more support on those countries where civil society is most threatened. Policy-makers find it impossible to quantify exactly how much funding is redirected through alternative organisations to circumvent new CSO restrictions, but insist this is being done more – for example, sub-granting was mandatory under Lot 1 ('reaching out to grassroots HRDs') of the 2014 EIDHR global call (worth EUR 5 million).

Even if the EU's general funding instruments may not include a great deal that is specifically targeted at the shrinking space, policy-makers express a commitment to using them as leverage over this challenge. Many policy-makers stress that the rights-based approach to such general development aid instruments has a specific added value in sensitive contexts where it might be difficult to work openly or directly on human rights.

²⁵ European Commission, 'Multiannual Indicative Programme for the Thematic Programme "Civil Society Organisations and Local Authorities" for the period 2014-2020', C(2014)4865 final, 2014.

²⁶ C. Hackenesch, 'Good governance in EU external relations: what role for development policy in a changing international context?', European Parliament report, 2016, p. 25.

²⁷ European Commission & High Representative of the Union for Foreign Affairs and Security Policy, Evaluation of the Cotonou Partnership Agreement, Joint Staff Working Document, SWD(2016) 260, 2016, p. 84.

²⁸ European Commission, 'Framework Partnership Agreements with CSOs: factsheet', 2016.

3.3 Foreign policy tools

EU delegations' capacity has been enhanced through Human Rights Focal Points and Human Rights Defenders Liaison Officers. These are charged with helping to protect vulnerable groups and individuals. A new focus of this diplomacy is to engage with businesses and other actors to speak out against cases where individual civil society figures are targeted and put in extreme danger. The Human Rights Focal Points have improved coverage and analysis of the shrinking space – although in practice their details are not always published on EU delegation websites, as they should be, and they struggle to reach out to remote areas. They play an important role now in monitoring developments that are related to the shrinking space.

There is a widespread agreement that the EU now has at its disposal a much fuller picture of new legislation and other measures than it did a few years ago. This information is now fed into the policy-making system on a more systematic and institutionalised basis than was previously the case. This enhanced capacity also assists coordination with and between member states within individual third countries on closing space challenges. A 2012 evaluation report found that communications from EU Missions have enhanced the EIDHR's ability to provide 'rapid and targeted EU responses' to human rights defenders in various countries²⁹.

The *EU's Human Rights Special Representative* (hereafter Special Representative) has increasingly addressed the shrinking space challenge. He has declared this his top priority. He often speaks out on this issue and raises concerns on his visits to third countries, and regularly meets HRDs. One illustrative example was when the Special Representative visited China in November 2015 and commented openly about the government's new NGO law: 'I am concerned that restrictive provisions in the current draft, as well as placing the governance of overseas NGOs under a national security umbrella, will put these [civil society] contacts at risk'³⁰. The Special Representative often urges partner countries to cooperate with the Council of Europe's Venice Commission on civil society legal norms.

The Special Representative has placed particular stress on diplomatic efforts within multilateral bodies. This has helped make the EU a lead player in activating the various UN instruments pertinent to the shrinking space problem. It is felt that this – in collaboration with the High Representative, the External Action Service, EU delegations and the European Parliament – has helped get some detained activists released in countries like Azerbaijan, Honduras and Guatemala. It has also helped make the shrinking space and freedom of association established issues within EU dialogues with regional organisations like the African Union, the Arab League, the Association of Southeast Asian Nations (ASEAN) and the Organisation of American States. The Special Representative stresses the need for coordination between all relevant EU actors to make sure they project a common message on the importance of freely functioning civil societies.

In addition to the multilateral level, the Special Representative is increasingly focused on developing a positive counter-narrative about the importance of civil society. The aim is to build wider coalitions in-country that can help protect human rights defenders, by demonstrating that civil society is essential for the interests of the wider population and business – and indeed, that civil society can be an important ally to government and more broadly for social stability and resilience, and does not need to be treated as an implacable enemy.

Human Rights and Political Dialogues. The shrinking space issue is now a central issue within the EU's dedicated human rights dialogues. Notably, officials insist it is also now raised as a high level geostrategic concern within broader political dialogues, beyond the specific realm of human rights consultations. This

²⁹ M. Hennion et al., 'Evaluation of the Commission of the European Union's Co-Operation with Ethiopia', No. 1, Directorate General for Development and Cooperation, 2012.

³⁰ European External Action Service, 'EU Special Representative for Human Rights Visits China', EEAS' website, 2015.

adds political weight to the issue, and highlights how far the EU sees the shrinking space as a political issue central to its core foreign policy agenda. Debate continues over the extent of CSOs' involvement in these dialogues – CSOs protest that in practice they have little chance for influence.

The EU has a well-developed set of mechanisms for *political conditionality*. Diplomats insist these mechanisms underpin the EU's increasing determination to exert political pressure in relation to regimes' restrictions on civil society. There is no specific conditionality trigger for shrinking space developments, although the issue fits within existing essential elements clauses on human rights and democracy.

Demarches. Officials insist that civil society restrictions are brought up now on a regular basis within informal consultations with government officials. The approach is generally one of favouring informal consultations, with formal demarches not easy to get through member states quickly – several member states are reluctant to raise the stakes by focusing criticism on civil society restrictions. The informal raising of EU concerns over new measures means that governments are at least obliged to discuss and justify such restrictions.

The European Parliament (EP) has a number of tools and procedures that are pertinent to shrinking space issues. These include: urgency resolutions, at a rate of around 36 a year in recent years, which respond to human rights crises around the world; the Subcommittee on Human Rights (DROI), which produces own-initiative reports, with non-legislative proposals, a number of which have covered the issue of human rights defenders; hearings and workshops that permit dialogue with civil society; inter-parliamentary delegations; the monitoring of human rights dialogues and compliance with essential elements clauses in third country agreements; follow-up review of the EU Strategic Framework and Action Plan on Human Rights and Democracy, and of the Annual Report on Human Rights; consent procedures for new agreements, and a particularly noteworthy role in the reform of the Generalised System of Preferences-Regulation; co-legislator powers over the EIDHR Regulation, giving the European Parliament sway over spending amounts and priorities; its political role in the annual programming exercise; and a 'strategic dialogue' with the European Commission for each review of the multiannual programmes under the external financing instruments. These are all tools relevant to the generic field of human rights; there is scope for them to be deployed more specifically for the shrinking space problem. The Sakharov Prize for Freedom of Thought can and often has been awarded to activists subject to shrinking space measures.

A recent report by the EP's Committee on Budgetary Control hones in specifically on NGO funding and presses the European Commission to ensure considerations of effective impact are more fully taken on board. However, some MEPs did not welcome this report and an opinion by the EP's Committee on Budgets urged 'the Commission to ensure that NGOs receiving EU funding do not engage in activities running counter to EU interests'³¹ – which would seem to add to, rather than counter, the shrinking space trend³².

3.4 European Endowment for Democracy

The European Endowment for Democracy (EED), standing outside the formal structure of EU institutions, has become an important part of the overall European arsenal against the shrinking space. The EED's flexible funding rules and relative lack of political impediments help it to explore innovative and ambitious approaches to limiting the closing space problem.

The EED supports a number of groups and activists who operate in highly repressive situations and challenging security environments, primarily in the EU neighbourhood. As these activists risk prison

³¹ European Parliament's Committee on Budgets, 'Opinion for the Committee on Budgetary Control on budgetary control of financing NGOs from the EU budget', 2015/2345(INI), 2016.

³² Details of the European Parliament's work are found in European Parliament Subcommittee on Human Rights, 'Activity Report 2009-2014', European Parliament, 2014; European Parliament, Study on 'Democratic Accountability and Budgetary Control of Non-Governmental Organisations funded by the EU Budget', European Union, Brussels, 2017.

sentences or other harsh consequences if their civic activism is exposed, specific examples of support cannot be provided here. In broad terms however, the EED contributes to ensuring the continued existence of human rights movements in several countries, and enables political activists to engage in their activities, thereby creating the basis for a more pluralistic political system. In some countries, the EED has helped independent media survive and continue to operate and provide credible and balanced reporting in media environments where none of the mainstream media outlets provide independent news reports.

The EED has for example supported individuals targeted by repressive regimes, seeking to offer protection to local activists not well known in Europe. It has also in some cases helped a number of the activists forced to flee their country. The EED has also provided emergency support to media outlets persecuted by authorities in repressive environments, helping them to either avoid prosecution or set up safe operations abroad. The EED has also opened initiatives to support innovative ways of citizen activism capable of evading the new legal restrictions on CSOs. These initiatives aim to protect human rights through artistic expression, community development, citizen journalism and social entrepreneurship.

In countries where other donors have left the scene, the EED has maintained its efforts to liaise with independent reformist activists and youth based groups and has provided logistical and political support to leading and internationally prominent pro-democracy activists to continue operations in exile. Additionally, the EED helped several organisations that were denied registration to ensure they could continue functioning.

3.5 Member state mechanisms

It is also worth recording that a number of member states have introduced new funding initiatives directly germane to the shrinking space. Space in this study precludes an exhaustive description of member state initiatives; but a brief selection of their efforts suffices to show that some national donors are beginning to take the issue seriously – and that these efforts consequently offer scope for stronger partnerships with EU institutions and mechanisms.

Swedish projects (via the Swedish International Development Cooperation Agency – Sida) include a strong focus on navigating hostile internet environments and avoiding government detection³³. Sida also stresses the importance of strengthening the security and visibility of vulnerable and diverse civic actors. Sweden funds a Civil Society Innovation Initiative (CSII), a joint programme with the United States Agency for International Development (USAID), the Aga Khan Foundation and the Open Society Foundations, which hosts regional forums where civil society organisations from around the world engage with private sector actors, donors, and each other to devise innovative solutions to closing space challenges³⁴.

The 2014 and 2015 British Foreign Office reports on human rights and democracy highlighted the need for the UK to ‘reverse the trend towards shrinking civil society space’ and integrated the protection of such space into criteria for projects related to freedom of expression³⁵. The UK has supported the Lifeline Embattled CSO Assistance Fund – created in 2011 and now run by a consortium of 18 governments, also including the Czech Republic, Denmark, Estonia, Latvia, Lithuania, Luxembourg, the Netherlands, Poland and Sweden. The current UK foreign secretary has now identified the shrinking space as one of his signature priorities.

³³ The Swedish Institute, *Results Strategy for Special Initiatives for Human Rights and Democratisation for the Period 2014– 2017* (UF2014/32089/UD/FMR), Stockholm, 2014.

³⁴ Sida, ‘Innovative Support to the Civil Society’, Sida’s website, 2014.

³⁵ Foreign and Commonwealth Office, *Human Rights and Democracy: The 2015 Foreign & Commonwealth Office Report*, Foreign & Commonwealth Office, London, 2016; Foreign and Commonwealth Office, *Human Rights and Democracy: The 2014 Foreign & Commonwealth Office Report*, Foreign & Commonwealth Office, London, 2015.

The UK and Sweden have supported the Digital Defenders Partnership (DDP) Fund that was formed in 2012 to promote internet freedom and protect internet dissidents from government repression by offering them legal aid, helping assure their physical security, and providing them with the internet infrastructure they need to stay active online.

The Danish International Development Agency (Danida) has made flexible emergency funds available to organisations under siege in Africa, Eastern Europe and Turkey³⁶. The Dutch government promises to offer civic actors encountering constrictions stronger 'political support' and has created a Human Rights Fund aimed at supporting human rights defenders³⁷.

In general, coordination between EU institutions and member states has improved most strongly on the ground in concerned countries; for example, the Human Rights and Democracy Country Strategies are documents agreed by EU delegations and member state missions.

Notwithstanding these commitments, overall EU member states lag behind United States (US) organisations on this issue. US funders have taken the closing space problem more seriously and are several steps ahead of their European counterparts in terms of their range of responses. The USA has pursued a more political approach. President Obama focused a number of his speeches on the shrinking space, promising diplomatic pressure and intensified civil society support to counteract regimes' harsh repression of CSOs. No European leader or EU officials have raised the issue to such a high level of political priority. Apart from the EU, only Canada, Finland, Norway, Switzerland and the USA have publicly available HRD guidelines – a list including only one EU member state.

The USA's National Endowment for Democracy has funded a number of initiatives, including a Scholars at Risk collaboration with New York University to assist civil society actors from various countries in bringing attention to attacks on academic freedom; a project for developing strategies with Chinese internet activists to bypass China's 'Great Firewall' and disseminate censored material into Chinese cyberspace; and cooperation with Egyptian civil society activists and human rights lawyers to demand a repeal of Egypt's restrictive NGO law and strengthen the legal basis for enhancing press freedom in Egypt³⁸.

4 Assessing policy responses

The range of mechanisms that are now in play indicates that the EU and several member states are taking the shrinking space problem seriously. If the EU and many national civil society funders were slow in recognising the scale of the challenge, they are now seized of its importance. When the challenge first emerged, many European donors believed it was a matter uniquely for US organisations; they no longer believe this is the case.

For all the new mechanisms, the EU – in combination with other powers, international organisations and foundations – has not yet been able to contain or limit the assault on global civil society. This is not to say that the EU has had no positive impact at all. In some cases, local civil society coalitions have worked with international backing to turn back some elements of the shrinking space. CSO pressure has got a number of governments – examples include Mexico, Ivory Coast and Burkina Faso – to introduce new legislation committing to protect human rights defenders. Overall, however, the problem continues to worsen.

Against this background, it is necessary to ask whether the EU's mechanisms have been used as effectively as they might be in relation to the shrinking space challenge.

³⁶ Ministry of Foreign Affairs of Denmark, 'Project: Global Equality Fund (Phase I)', 2017.

³⁷ Ministry of Foreign Affairs of the Netherlands, *A World to Gain: A New Agenda for Aid, Trade and Investment*, Ministry of Foreign Affairs of the Netherlands, The Hague, 2013.

³⁸ National Endowment for Democracy, 'Where We Work – Egypt', NED's website, 2017.

Diplomatic and foreign policy instruments

As noted above, the EU has begun to build responses into its core diplomatic instruments. Such diplomacy backed up Kenyan NGOs in their successful campaign to get the government to water down restrictions on foreign funding. Asked to identify best practice, officials insist that dialogue, pressure and an operationalisation of Civil Society Roadmaps have either halted or reversed restrictive measures in countries like Nepal, Mexico and Zimbabwe.

Yet concrete conditionality is still absent. Western governments are not cutting aid, trade or strategic relations specifically because of regimes' moves to restrict civic space. Moreover, most EU governments are still reluctant to raise the issue of the closing space in deference to commercial and geostrategic interests³⁹.

Policy-makers have in practice been reluctant to deploy punitive conditionality, which in general they feel would be counter-productive. Diplomats mostly believe that a positive, rewards-based approach – or 'more for more' conditionality – is likely to be more useful. In practice, it is not easy to identify cases where this has been operationalised in any really significant way. The EU has offered new agreements and aid to many of the governments engaged in the most brutal restrictions against civil society. The Extractive Industries Transparency Initiative's (EITI) recent decision to suspend Azerbaijan due to government actions against civil society throws the EU's relatively un-critical diplomacy into sharper relief.

While it is an advantage in the current context for the EU to have a Special Representative specifically for human rights, many civil society representatives say they would like to see the Special Representative converting his rhetorical concern into more tangible actions. There is a concern that the post as such does not carry the necessary weight within the EU foreign policy system to counterbalance those that advocate a more overtly security-first policy that downgrades the focus on the shrinking space. Civil society perceives the Global Strategy as moving in a very security-oriented direction that does not augur well for the Special Representative's influence within the decision-making system. (Of course, officials deny this is the case.)

The EU now sponsors and leads a great deal of international dialogue and debate that covers the kind of generic improvements needed to NGO laws and the like. But this is undertaken in a way that feels somewhat disconnected from real-life, tangible risks within specific countries. While the EU has certainly been a lead player in raising the issue of the shrinking space within international venues, its approach can often seem to rely too heavily on calls for rather abstract multilateral principles.

Staking out a relatively typical position, for example, one NGO study welcomes the new Civil Society Roadmaps but laments that they fail to specify how their generic commitment to CSO consultations translates into concrete measures and benchmarks to protect them from the narrowing civic space⁴⁰.

An earlier study for the EP found that the Human Rights Defenders Guidelines are still not widely used by diplomats in most delegations; that most CSOs do not know of delegations' HRD Liaison Officers; and that 'the process for accessing emergency protection for HRDs (emergency visas, emergency funds, safehouses) are not well known or understood by a majority of diplomats'⁴¹. The European Centre for Not-for-Profit Law

³⁹ T. Carothers, 'The Closing Space Challenge: How Are Funders Responding?', Carnegie Endowment for International Peace, Washington DC, 2015, p. 24.

⁴⁰ Concord Denmark, 'Country CSO Roadmaps: How EU delegations can strengthen engagement with civil society', June 2013.

⁴¹ This study is referenced as K. Bennett, 'Assessing the Implementation of the European Union Guidelines on Human Rights Defenders: The Cases of Kyrgyzstan, Thailand and Tunisia', European Union, 2013.

and OSIZE lament that the EU still gives relatively little concrete detail or operational benchmarks on what an 'enabling environment' requires⁴².

BOX 1. ETHIOPIA: FUNDING ARRANGEMENTS AND DIPLOMATIC PRESSURE

In Ethiopia, EU responses include elements of good practice on funding arrangements, but largely ineffective diplomatic pressure.

When Ethiopia passed the Charities and Societies Proclamation in 2009, the EU released a statement saying it was 'especially concerned that the law could restrict support for programmes in areas of mutual interest'⁴³. In October 2016, the EU backed a demand by the UN High Commissioner for Human Rights for Ethiopia to allow independent international observers to monitor the country's human rights situation. In private the EU has used so-called Article 8 meetings (under the rubric of the Cotonou Partnership Agreement) to raise concerns about the shrinking space, after consultation with local civil society actors.

However, the EU has not imposed any strongly punitive measures against Ethiopia. The EU shifted development assistance away from budgetary support after the government's post-election crackdown in 2005. However, it re-channelled aid through the World Bank. The EU in fact then allocated Ethiopia extra aid as a Governance Incentive Tranche. The EU is currently rewarding Ethiopia with additional aid for cooperation on controlling migration.

The EU has continued with much of its general civil society support in Ethiopia and also deployed diplomats to supervise trials of dissidents and investigate violence against protestors in 2016. The EU was able to convince the Ethiopian government to label its Civil Society Fund (CSF) as a 'domestic source', due to the common ownership principles of the Cotonou agreement. This means the CSF falls outside limits on foreign funding – although it is co-managed by Ethiopian officials, ensuring that outspoken CSOs are rarely funded. EIDHR allocations to Ethiopia increased from EUR 600 000 for the 2011-13 period to EUR 2 million in the 2014-17 period⁴⁴. EIDHR projects have become more development-oriented due to the government's restrictions on support for political advocacy⁴⁵.

The European Parliament has urged the EU to make military and development assistance to Ethiopia conditional on an improvement in civil society conditions⁴⁶.

Emergency funds: reactive crisis response

The main focus of the EU response has been on basic, physical protection for human rights defenders through the various emergency-funding mechanisms outlined above. This is clearly the very crux of the shrinking space challenge. EU and member state support has undoubtedly helped many human rights defenders to escape, to defend themselves against attack and in some cases to stay active in some form of civil society activity – usually on a more covert and low-profile basis, and often in exile. This is the most

⁴² ECNL-OSEPI, 'Working Paper on the European Union's External Action and the Closing Civil Society Space', 2014, p. 4.

⁴³ European Commission, 'Declaration By The Presidency On Behalf Of The EU On The Adoption Of The Charities And Societies Proclamation By The House Of Peoples' Representatives Of The Federal Democratic Republic Of Ethiopia', 30 January 2009.

⁴⁴ European Parliament, 'Answer To a Written Question – European Instrument for Democracy and Human Rights Funding for Ethiopia – E-002822/2015', 6 May 2015.

⁴⁵ M. Hennion et al., 'Evaluation of the Commission of the European Union's Co-Operation with Ethiopia', No. 1, European Commission, 2012; Consortium PARTICIP-ADE-DIE-DRN-ECDPM-ODI, 'Thematic evaluation of the European Commission support to respect of Human Rights and Fundamental Freedoms', No. 2, European Commission, December 2011.

⁴⁶ European Parliament Resolution on EU Strategy for the Horn of Africa (2012/2026(INI)), P7_TA(2013)0006.

advanced element of EU responses and it is generally regarded as a welcome and necessary area of policy development. It is the area where the EU has most clearly established a pattern of good practice.

The draft evaluation of the EIDHR for 2014 to January 2017 is upbeat on the instrument's response to the shrinking space. It argues that support for human rights defenders at risk is the area where the EIDHR shows best value-for-money and most added value over other EU instruments and donors. It notes that support for human rights defenders is one of the fastest rising areas of funding (up from EUR 66 million in 2011-2103 to 76 million for 2014-January 2017), and that flexibility in funding rules has ensured a faster delivery of support in emergency situations⁴⁷.

The more open question is whether the balance in overall EU responses is as optimal as it could be. There may be a risk that human rights defenders initiatives are not matched in intensity by other areas of EU policy. Protecting these defenders is vitally important and more could and should still be done to this end. But, it is also important that the EU not focus too exclusively on this aspect of the challenge. Protecting defenders in the most basic sense should be the priority, but this will not get to the structural heart of the shrinking space problem.

The EU is trying to accompany support for human rights defenders to re-locate to European countries with longer-term capacity building and help to keep these activists inside their own regions. The EU has broadened its definition of 'human rights defenders', recognising that thousands of civil society activists working outside the human rights domain are suffering repression and must not be left vulnerable by the international community's priority focus on high-profile human rights activists. The EU will need to take further steps to deepen these welcome aspects of its evolving policies.

The very welcome focus on the physical defence of human rights defenders must not be a substitute for a broader range of policy responses capable of addressing the root causes of the shrinking space. In particular, these reactive and defensive initiatives should not unduly divert the EU from the need to upgrade democracy support more widely. Unfortunately, critics see some evidence that such a diversion is increasingly evident in EU policy in at least some countries. Compared to the hundreds of HRD grants, it is striking that since 2014 the EIDHR has funded only four projects on 'pluralism' and only four on parliaments (although other funding sources support these areas of reform)⁴⁸. While officials reject these criticisms and see democracy support becoming stronger, the EU will nevertheless need to assess whether it is striking the right balance between these two aspects of its policies – without prejudice to its commendable work on HRD protection.

In Russia – perhaps the most challenging of all contexts – the EU has moved towards a twin approach. On the one hand, the EU delegation and member states have stepped up coordination to help support and protect human rights defenders. While the EU applies carefully a 'do no harm' assessment, for now Russian CSOs still call for EU support, even if it can lead to their labelling as 'foreign agents' and other restrictions on their work. In particular, they welcome EU and member states' officials being visible in visiting CSOs and trials, for example in the context of the recent (April 2017) protests. On the other hand, the EU is stepping up cooperation with less political, more socially-oriented NGOs in fields like the environment, children's and disabled rights and social issues – while also carefully watching for any new regime restrictions in these areas too. For the moment, these twin strands have enabled the EU to retain some engagement despite the shrinking space for CSOs, although without systematic dialogue on the matter – which is made difficult by the Russian authorities' refusal to hold human rights consultations.

⁴⁷ AFE and PEM Consult, 'Draft Evaluation of the European Instrument for Democracy and Human Rights (EIDHR) 2014-2020', Draft Main Report, Volume 1, January 2017.

⁴⁸ AFE and PEM Consult, 'Draft Evaluation of the European Instrument for Democracy and Human Rights (EIDHR) 2014-2020', Draft Main Report, Volume 1, January 2017, p. 26.

Flexible funding instruments

As noted, new rules that apply to several EU policy instruments have begun to allow additional flexibility and this has enabled more support framed specifically as a response to the shrinking space. Beyond the short-term emergency funds targeted at frontline human rights defenders, the EU and other donors are beginning to develop other tactics too. There are several examples of emerging good practice. European donors have begun to fund CSOs operating outside their home country base where regimes are imposing prohibitive restrictions. They are showing a greater willingness to explore alternative types of recipient organisations for civil society funds, such as social enterprises. This responds to many activists' attempts to register as companies and the like to evade restrictions on civil society organisations. These new flexible approaches apply across most of the EU mechanisms described above.

Civil society actors generally welcome these steps. In essence, the EU is – somewhat belatedly – catching up with trends on the ground in many developing countries and rising powers. In many such countries, activists have for some time been mapping out strategies and forms of institutional organisation better suited to dealing with the shrinking space, but which do not necessarily fit the EU's templates and requirements for a CSO.

The EU has begun to take some steps towards rectifying this situation, as outlined above. It will need to continue such progress and extend its more flexible instruments in new directions. The EU could use its flexibility more often in allowing the NGOs it supports to transfer their EU funds abroad when they are forced to relocate. It could also make it easier for activists to get multiple entry visas for European countries, so they can go back home with the assurance that they can leave again in the event of further harassment.

In order to take its flexible funding instruments a step further, the EU will need to map out a more systematic approach to identifying new types of civil society actors. As already indicated, the shrinking space is not merely a problem of pushing back against NGO laws, but also requires a deeper reassessment of how new kinds of activism can help meet human rights and development objectives.

This is important because many activists and analysts talk of new kinds of informal social movements and leaderless organisations offering a way round the shrinking space problem. However, to date, the outside support received by these new kinds of civic actors is nowhere near sufficient to help them in this. Government restrictions on formal civil society organisations constitute one reason why activists increasingly search for more fluid and off-the-radar forms of activism. The EU could build on its incipient efforts to engage with and support this non-formal kind of civil society as part of its response to the shrinking space. In concrete terms, the EU could do more to find innovative ways to support individual activists and networks that are not registered as formal associations. Box 2 provides one example of good practice in this area, from Turkey.

One clearly healthy change is that Western donors and large international bodies are now taking the challenge of developing local, in-country funding sources more seriously. This is yet to reap significant dividends, however. Civil society in most developing states continues to be unhealthily dependent on external sources. The EU will need to significantly intensify its efforts here if it is to make any headway in helping develop national frameworks for civil society funding. Concretely, it should aim some of its civil society support at 'seeding' consortia of domestic funders and developing preferential fiscal rules and the like for national contributions to CSOs – at least in places where civil society is still reasonably open.

BOX 2. TURKEY: A NEW FUNDING FACILITY

One example of best practice is found in Turkey. In a context where well over a thousand CSOs have been closed down since the July 2016 attempted coup, the EU delegation has modified its Sivil Düşün (Think Civil) programme.

In 2012, under the rubric of this initiative, the EU made funding procedures lighter and easier; small grants were made available and the focus shifted towards supporting individual activists and 'active citizenship' – understood as a much broader concept than traditional NGO advocacy. The initiative is open to all types of civil society actors, whether legal entities or not. Active since early 2013, the Sivil Düşün initiative has two major components: the Active Citizenship Mechanism (Aktivist) and a Networks and Platforms Programme, financed under the Instrument for Pre-Accession (IPA).

The programme welcomes applications from everyone engaged (or hoping to engage) in rights-based work, even if they operate through extremely small or informal bodies or even as individuals without the institutional structures of a formally registered NGO. Sivil Düşün funds individual activists, associations, foundations, networks, loosely organised platforms, unions, and city councils. The EU has expressly oriented the initiative towards small, quick and short-term grants because the unpredictable and fraught political situation increasingly militates against large, high profile and multi-annual grants.

Almost half of the applications have come from individual activists – a figure that diplomats see as a testimony to the success of the programme, as the aim is to ensure that funds reach those individuals whose NGOs have been banned and can no longer apply as part of a formally registered association.

Notwithstanding this new initiative, EU civil society support has been facing severe difficulties. The EU supported the preparation of a 'code of conduct' for civil society involvement in decision-making, in particular related to the EU harmonisation agenda; implementation of this code is still awaited. Some 20 of the groups funded by the Sivil Düşün have been shut down by government decree. In recent months the number of applicants to the programme has decreased. The most affected groups are those working on human rights. Current applications have shifted towards less sensitive types of work – meetings, networking, information sharing and generic training programmes.

While the EU has commenced a new phase of its standard technical capacity-building support to CSOs linked to civic participation in the EU harmonisation process, it is now considering making Sivil Düşün (which runs outside these standard processes) its main facility for civil society funding. It is set to increase this programme's budget.

General funding mechanisms

As is evident from the above summary of EU mechanisms, policy-makers see a number of general development funding instruments – like the DCI, the EDF and the ENI – as increasingly important within the context of a shrinking civil society space.

However, even if the EU development community has become increasingly and helpfully engaged with the shrinking space issue, the use of such approaches and instruments has so far been less smooth and successful than many anticipated. In some parts of the EU machinery and in some member state development agencies, the temptation has been to respond to other governments' civil society restrictions by concentrating on developmental policy aims. Strategic challenges are pulling some EU policies even further in the direction of development cooperation and away from active democracy support; this can, for example, be seen in the EU's new migration pacts and funds aimed at generating stabilisation and economic improvements capable of stemming the flow of migrants and refugees into Europe.

Many NGOs are highly critical of the EU institutions for this shift in emphasis. Whether or not one agrees with these criticisms, it is undeniably the case that the strategy has encountered practical operational difficulties. This is because regimes have increasingly targeted restrictive measures at development NGOs as well as democracy and human rights campaigners.

The EU highlights its rights-based approach to development; this should make development and rights work inseparable from each other. The deepening of the shrinking space problem means that it is increasingly difficult for the EU or other donors simply to circumvent the issue by supporting 'non-political' organisations. This may have worked to a modest degree in some places, but has not served uniformly as a means of successfully keeping rights-based issues on the agenda.

A related concern has been for the EU to try to reassure governments that supporting civil society is not synonymous with opposing a regime. Some EU instruments and member state funders now acknowledge that they need to work with those parts of 'civil society' close to or supportive of governments, alongside more critical CSOs. While this may not be ideal, some donors argue, such an accommodating tactic can still give a useful access point into work on development and rights issues, carried out in a less confrontational manner.

This reflects a well-known and long-running debate within EU development and human rights policy, and some EU budget lines and other donors have long supported this kind of approach quite regardless of the shrinking space challenge. However, the latter has reinforced many policy-makers' conviction that the best funding strategy is to work with rather than against regimes to carve out modest spaces of civic autonomy. Some ministries within oppressive regimes are indeed still keen to work with donors on these conditions, almost as a means of limiting the influence of hard-liners inside the regime in question⁴⁹.

To some extent, the EU is surely right to be making additional efforts to clarify that 'supporting civil society' is not synonymous with 'supporting the opposition'. In general, donors are making more efforts to reach out to society as a whole and to explain that their aid is about helping local aims and not implanting a Western system or advancing Western aims. While this is extremely welcome and overdue, it does raise some concerns.

While EU programmes should be exploring ways of harnessing civil society as a bridge to regimes, rather than only seeking confrontational actors, the EU needs to stand firm against many regimes' total subjugation of autonomous civil society. Moreover, the evidence suggests that in many countries the EU is still struggling to get its more emollient message across. In many cases – like Egypt, Russia and Venezuela – the EU and member state donors have clearly not been able to convince regimes that they do not seek to undermine the government's power.

It is important to note there is a major tension here: in some instances the EU is trying to be more open and explain its funding activities more completely; but this runs against the grain of other changes it is introducing, which are designed to protect CSOs' confidentiality. It might be that a good response requires this mix of openness and confidentiality. But there is a risk that EU and member state donors are reacting in ad hoc ways and getting stranded between the two stools. Efforts to be transparent and tighten confidentiality guarantees could end up cutting across one another and almost cancelling each other out.

Civil Society Europe, a consortium of European NGOs, believes that the EU is giving up rather too easily on supporting civil society in difficult conditions. It expresses concern that the EU is shifting away from NGO funding for other reasons of its own – like security goals, along with humanitarian priorities – and that the shrinking space is a handy cloak for reducing funds to CSOs. They believe that by reducing support to key

⁴⁹ T. Carothers, 'The Closing Space Challenge: How Are Funders Responding?', Carnegie Endowment for International Peace, Washington DC, 2015, p. 11.

parts of civil society the EU is unnecessarily compounding the damage that the shrinking space is having on civil society⁵⁰. Even if this is a harsh judgement and the EU is not always guilty of reducing support, NGOs might be heeded to ensure this does not become a greater risk in the future.

BOX 3. EGYPT: COMPETING DIPLOMATIC OBJECTIVES

Egypt has proven a particularly difficult case – due both to the severity of the assault on civil society and the EU's prioritisation of other objectives.

In the first round of civil society restrictions in 2011, Germany was most directly affected as it protested against the raid on the Konrad-Adenauer-Stiftung's (KAS) office in Cairo. It summoned Egypt's ambassador in Berlin, and the German parliament passed a unanimous resolution demanding that Egypt stop the attacks against KAS and other NGOs⁵¹. However, the German government then decided to continue aid flows to Egypt. On several occasions, Germany negotiated for KAS to be allowed to reopen in exchange for Germany forwarding new cooperation. This attempt appeared finally to have paid off during Chancellor Merkel's visit to Cairo in March 2017.

The EU and many European governments have criticised the new NGO law put forward in 2013 and the more recent version now awaiting implementation. European and US pressure was probably a factor in the new law being delayed several times and in several prominent arrested activists being released. EU officials have continued to speak out against the crackdown, particularly the re-opened case against the large group of human rights activists, as described above (chapter 1). The EP has called on the EU to 'develop urgently a strategy' to respond to the re-opened NGO investigations⁵². The EU has, however, offered Egypt a new aid package and member states have provided increased amounts of weapons sales and counter-terrorism cooperation. As Egypt has now finally reached an economic reform agreement with the International Monetary Fund, the EU and member states are focused on new financial support to help implement this accord.

The EIDHR has funded a small consortium of civil society organisations to support work directly relevant to the shrinking space in Egypt. As the situation has worsened, a EUR 1 million grant has been forwarded to this consortium out of the Crisis Facility for 18 month beginning in early 2017. Most of these funds go towards relocation and legal support for activists. In contrast, NGOs complain that rights-oriented support from the EU delegation has dried up. Some member states have continued to offer unpublicised protection to some activists.

Civil society organisations have been critical of the EU's weak response to the Egyptian government's highly restrictive new NGO law and its moves to freeze the assets of a number of human rights defenders. One large consortium of European NGOs recently advocated that 'the conclusion of the EU-Egypt Partnership Priorities must depend on Egypt accepting a real commitment in the text to working with civil society in conformity with international human rights law and the Constitution'. It urged the EU to ensure that Egypt's willingness to reopen civil society space would 'decide bilateral cooperation'⁵³.

Multilateral dialogue and diplomacy

Perhaps far more than the United States, the EU has stressed the importance of the United Nations as an actor central to combatting the shrinking space. The EU and member states have played a leading role in mobilising UN special procedures and Universal Periodic Reviews as tools targeted specifically at closing space challenges. UN Assistant Secretary General Andrew Gilmour has recently been given a mandate to

⁵⁰ Civil Society Europe, 'Civil Society Paper on Budgetary Control of Funding NGOs from the EU Budget', 2016.

⁵¹ J. Moremi, 'How Egypt's President Tricked Germany's Chancellor Merkel – Again', *Daily News Egypt*, June 8, 2015.

⁵² E. Miller and M. Suter, 'Case No. 173: The State of Egypt's NGOs,' *Atlantic Council*, March 29, 2016.

⁵³ Joint NGO Letter on Egypt to Donald Tusk and Federica Mogherini, 12 December 2016.

consider and respond to allegations of intimidation and reprisals against human rights defenders and other civil society actors engaging with the UN.

The evidence suggests that UN instruments and rules are not a panacea in this field, however. Indeed, the EU has made more progress than the UN in toughening its policy instruments. Some NGOs appealing through UN procedures have been left more vulnerable, as this reveals their details to regimes.

A Report of the UN High Commissioner for Human Rights in April 2016 listed the generic steps that are needed to protect civil society – good laws, an open political environment, open information, an ability for CSOs to influence policy, support for CSOs to develop stronger institutional capacities. However, the report largely offered a list of improvements taking on board such reforms in countries around the world. It offered little criticism of those governments currently reducing civic space and few practical steps for donors to get round current restrictions⁵⁴.

UN efforts have helped limit or reverse some rights restrictions in Central America and anti-LGBT laws in Africa. It has not worked on a systematic basis, however. All this reveals how difficult it has been to make significant progress on this highly sensitive issue at the UN level, beyond simply re-stating the general nature of the problem. UN mechanisms have been introduced but have proven vulnerable to the very regimes guilty of increasingly unforgiving attacks on civil society. This suggests that the EU needs to enhance its diplomatic efforts within the UN, but also that it cannot rely on an advances in multilateral rules so heavily in the future. Many policy-makers stress that this is a lesson that they have indeed recently taken on board.

BOX 4. BANGLADESH: A DEVELOPMENT-ORIENTED APPROACH

Bangladesh provides an example of EU policy responses being led by a relatively development-oriented approach.

The EU issued a statement that expressed concern at the Foreign Donations (Voluntary Activities) Bill passed by the Bangladeshi parliament in October 2016. The statement said that the EU and member states were ‘concerned that the Bill may introduce provisions that can prevent the smooth and timely implementation of development projects. They have further noted the addition of a provision limiting the freedom of expression’. This statement did not specify any particular policy response.

In December 2016, the sub-group on Good Governance and Human Rights in the framework of the EU-Bangladesh Cooperation Agreement noted that ‘the EU expressed concerns on extrajudicial killings and enforced disappearances, the death penalty, freedom of association and freedom of expression, and overall on shrinking space for civil society’.

Despite these concerns, on 7 February 2017 the EU announced it was releasing a new EUR 126 million tranche of development aid from the DCI 2014-2020 programme. The list of EIDHR projects in Bangladesh does not show a great deal of work specific to the shrinking space. The closest to a targeted response is one project that has worked to build the capacity of indigenous communities’ HRDs. The list of member states’ funding items shows a great deal of work on generic rights issues but nothing directly targeted at the closing space.

⁵⁴ UN High Commissioner for Human Rights, ‘Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned’, 2016.

5 Ways forward

Policy-makers and civil activists may agree on the gravity of the shrinking space problem, but uncertainty and disagreement still exist on the right way to respond to it. Much debate gets stuck at the level of generality on the need to provide strong legal protections for civil society organisations, without specifying the precise ways in which foreign and development policy mechanisms need to be deployed. More specific guidelines and policy ideas are overdue.

The EU can improve its responses to the shrinking space at two levels. At one level, it should tighten its adherence to a number of overarching *strategy guidelines*. At another level, it should contemplate very specific changes to certain of its *policy mechanisms and instruments*.

5.1 Strategic guidelines

The EU needs to map out a clearer strategic approach to the shrinking space, as it is now clear that merely ad hoc and defensive responses will not be adequate. The EU should mould this strategy around a number of guiding tactical orientations, based on the following policy injunctions.

Move from reactive to proactive

The best-developed aspect of EU responses is the defence of NGOs and individuals in immediate or potential danger. This aspect needs to be strengthened, but also complemented by a systematic mapping of how the EU can get ahead of the curve and engage to head off such acute danger for frontline defenders.

The EU needs to make sure that for each admirable effort to protect frontline defenders, it supports a concrete engagement on the structural roots of the shrinking space. A plea commonly heard from CSOs (and, in fairness, some diplomats) is that the EU needs to be more willing to engage with and help activists well before they are put on trial or targeted with specific restrictive measures. At present, EU delegations often recoil from supporting activists that regimes are already discrediting prior to them needing emergency assistance. The EU needs to help CSOs widen their domestic networks of supporters and donors so that they are better protected when restrictive measures hit.

Some NGO representatives fear that the focus on evacuating activists, even though essential, inadvertently almost helps regimes 'get rid' of troublesome opponents – at least, if such emergency measures are not accompanied with equally committed positive measures to build stronger civil society resilience⁵⁵. At events and multi-stakeholder dialogues it is generally recognised that the next stage of international responses is to build on the protection of individual HRDs to also tackle the broader parameters of the shrinking space for civil society as a whole. This is categorically not to suggest that HRDs should receive less support, but rather that both the short-term and long-term aspects of the challenge must be tackled more resolutely and together⁵⁶.

In some cases there may be scope for deeper dialogue with regimes on concerns over CSO transparency and on the line between civil society and the sphere of oppositional political activity – although in some countries, regimes are clearly intent on simply weakening civil society regardless. It may be useful to get EU security policy-makers and experts involved: these could help convey to third country governments that restricting civic space is rarely a recipe for security and stability, indeed quite the opposite.

⁵⁵ Ariadne, International Human Rights Funders Group and the European Foundation Centre, 'Challenging the Closing Space for Civil Society: A Practical Starting Point for Funders', 2015, p.23.

⁵⁶ See for example, Human Rights and Democracy Network, 'Promoting and Protecting Civil Society Space', Report from 17th EU-NGO Human Rights Forum, December 2015.

Balance politics and development

The EU needs to strike a careful balance between political responses and a development-oriented approach. Neither is sufficient on its own. Neither the political approach nor the development approach should be pursued to the exclusion of the other.

Some experts note how a number of CSOs and funders have reacted to the shrinking space by adopting a lower profile, moving into less sensitive areas of work and approach political questions from a more oblique angle. It is often argued now that, in such a heated and toxic political climate, donors need to switch focus completely to support apolitical cultural exchanges and support international networks of writers, artists, journalists, lawyers and the like that can defend their members in repressive states⁵⁷. Aligned to this, many policy-makers feel it would be sensible to focus on development projects and indirectly build in civil society components to these kinds of initiatives, as a means of avoiding direct confrontation with regimes over the closing space.

There is much sense in this approach. The EU should certainly avoid an overly political approach that subjugates all other areas of policy to a head-on confrontation with regimes over highly political NGOs. However, the EU should be careful not to tilt too far towards an apolitical approach. As indicated above, the space for even apparently anodyne or apolitical campaigns is increasingly curtailed.

The EU needs to be more wary of accepting governments' insistence that development funds only go to 'NGOs' that they approve – an increasingly common occurrence. The EU risks actually assisting regimes' efforts to divide civil society between 'acceptable' NGOs and 'unacceptable' rights-focused organisations. While it may often make sense to try to build in a long-term and development-oriented angle that prioritises efforts to keep some channels of communication open to civil society, the evidence in recent years suggests this should not displace a more political strategy.

Enabling environment versus direct support

A common view among practitioners is that the EU and other funders should focus on facilitating the general institutional conditions for civic activism but, in an increasingly constricted civic space, steer clear of any direct engagement with highly political NGOs. A widespread view is that donors should facilitate the 'enabling environment' as a means of limiting the shrinking space problem, rather than provide direct support to some of the more controversial CSOs.

While a focus on the enabling environment is essential, the EU needs to make sure this is pursued in a way that is not so generic and abstract, and is more connected to immediate diplomatic policy in specific countries. There is a need for more assertive international diplomacy that includes concrete measures of pressure to protect the right to assembly and the freedom to protest, and for this diplomacy to raise such issues on a more consistent basis and much more directly in relation to concrete cases of restriction.

So far the international community has been relatively cautious in taking on this challenge. The enabling environment is a necessary but not a sufficient focus. The growing scale of the problem requires donors to move beyond a focus on indirect support and the enabling environment and to explore more committed types of support for a wider range of civil society actors. Formal improvements in the legal environment for CSOs often fail to protect civic activists in practice. The EU needs a foreign policy capable of attacking the political, structural roots of the shrinking space problem. Freedom of association must be backed up by a more expansive focus on the right to participate.

Oblique conditionality

While the EU of course has a well-developed toolbox of political conditionality, policy-makers have been reluctant to adopt punitive measures specifically in relation to the shrinking space. The EU is probably

⁵⁷ S. Nossel, 'Pushing back against the tyrants', *Democracy: A Journal of Ideas*, No. 41, 2016.

correct to reason that converting the shrinking space into a high-level and confrontational geopolitical battle could easily be counterproductive. If regimes are able to portray EU criticism as a strategy of heavily-handedly threatening punitive measures merely to look after a small number of its favourite, Western-oriented NGOs, then it will be harder to build a narrative that this problem matters to local populations more widely.

This does not mean, however, that there is no scope for the EU to exert more effective and assertive pressure tailored specifically to the closing space challenge. The way forward should be to link shrinking space problems to specific sectors in which the EU is engaging in cooperative fashion. It is at this level that it makes sense to exert pressure. For example, where restrictions on civil society in the economic, educational or health sectors impede the kind of trade and development partnerships that the EU has identified as central to its own cooperation, it is proper that the EU react – and indeed, its rights based approach ostensibly entails exactly this kind of linkage.

In such instances, a greater degree of positive conditionality would be appropriate, allocating new development funds to those governments allowing wider space for civil society. The flip side of a subtle, indirect and ‘more for more’ approach to conditionality is that the EU not award those governments cracking down on civil society most brutally with generous new aid and trade accords.

It might be useful for an independent body to prepare a simple chart each year showing, say, the 50 worst shrinking space countries and any EU ‘rewards’ given to those 50 states. This could form the basis of a series of monitoring debates within the NGO community, the EP and other bodies. The EU needs some kind of more tangible use of political pressure, beyond policy-makers simply reassuring CSOs that they are raising the closing space issue in private. While caution and sensitivity are certainly needed, this should not justify a lack of transparency or of any tangible EU reaction to serious attacks on civic activists.

Political analysis capacity

Policy-makers across the EU institutions generally concur that the EU’s ability to follow and critically monitor new civil society restrictions in third countries has improved greatly in the last several years. It would still be useful, however, for the EU to have additional capacity to cover this issue. Capacity is needed to make sure there is monitoring not simply of new NGO laws but of the wider set of political threats to civil society. Diplomats say that the most imperative need is to have greater institutional capacity to match the assessment of each country’s shrinking space trends, on the one hand, with the detailed specificities of EU programming, on the other hand. For example, analysis could distinguish the different types of shrinking space challenge – forces such as strong versus weak state drivers, as detailed in chapter 2 – as these require different types of response.

The recent reduction in human rights capacity in the EEAS has not helped this task. It might be helpful to create some kind of ‘Shrinking space task force’ with the capacity to oversee cooperation, foreign policy and programming decisions with a specific remit to ensure these are coherent with trends in the closing space phenomenon. The Council’s Human Rights Working Group (COHOM) allows for such task forces that should be based on partnership with member states and other like-minded countries.

This task force would have oversight of comparative lessons drawn from the many different cases of what has worked and what has not worked in relation to the shrinking space. As the EU tends rather too easily to argue that keeping contacts open with regimes and regime-backed ‘CSOs’ is a good thing, additional political capacity is needed to assess the *negative* consequences of such cooperation – that is, the cases where the EU is actually making the shrinking space problem worse rather than better, as currently in Azerbaijan, for example. There should be a systematic assessment of where the EU trade and security policies are having a negative impact on civil society freedoms.

Build coalitions

An effective fight back against the shrinking space requires much stronger and wider coalitions among civil society actors and international organisations. The International Service for Human Rights argues that where some progress has been made in limiting or reversing closing space restrictions it has generally been the result of broad coalitions being formed. This means, in particular, that the problem can only be tackled effectively if human rights NGOs make more efforts to get broader 'movements' on board, and indeed find ways to make this an issue for the general population⁵⁸. The EU needs to push CSOs to pay more attention to building links downwards through their own societies – if they were less isolated domestically, they would be better protected from regimes.

In its 2017 *Global Risks Report*, the World Economic Forum dedicates a whole chapter to this issue and acknowledges that businesses need to recognise it is in their own interest to engage more on keeping civil societies open⁵⁹. Some NGOs point out that they have on occasions got European multinationals to speak out against detentions; this is important because regimes often detain activists working on issues like land rights as they see this as necessary to keep investment flowing in from the West. Dutch and Finnish companies did pull out of Honduras after leading activist Berta Caceres was killed in 2016. However, NGOs lament that they have not yet enjoyed systematic EU backing for building such alliances with businesses.

A report by the Ariadne network stresses the importance of building broad networks that include business actors and those concerned with security, in order to help build a narrative that vibrant civil societies are actually good for economic growth and security⁶⁰. Future policy will need to be about building channels of communication between grass-roots movements, large NGOs and government officials – a role beyond the standard model of grant funding for civil society. And these channels will be needed to address the assaults on civil society that are coming from non-state actors, like radical groups, as well as regimes.

Some funders have begun to move in this direction. An initiative of the Fund for Global Human Rights, the Oak Foundation and the Sigrid Rausing Trust brings together more than 40 foundations concerned about the closing space issue. The EU could and should do far more to encourage a broad range of different civil society actors to cooperate on the shrinking space. More European funding could be directed at facilitating such coordination and fostering these kinds of NGO coalitions.

The current situation cries out for a major multilateral initiative, and much more commitment among activists themselves to form effective partnerships with reformers across borders. An expectation that a civil society organisation will show solidarity with targeted groups could be attached to the receipt of EU funding. If the EU can stop regimes playing divide and rule between different elements of civil society, this could make a major contribution to mitigating the shrinking space problem.

Look for new civic actors

The EU needs to devote more resources and effort to systematically identify and support new kinds of civil society actors. The standard or classical form of human rights NGO is especially vulnerable to restrictive measures. As this kind of CSO has been the main target of governments' attacks, civil society must show itself to be fluid and adaptive as it reshapes itself into innovative kinds of organisational forms that are less susceptible to restrictions. Civil society is beginning to take steps in this direction in many countries; the basic structures of civil society have begun to shift. A general theme that emerges in dialogues with CSOs

⁵⁸ B. Leather, T. Webster and T. McEvoy, *Protecting our Space: Human Rights Defender Strategies to Protect Civil Society Space*, International Service for Human Rights, Geneva, 2016.

⁵⁹ World Economic Forum, *The Global Risks Report 2017*, Geneva, 2017, p. 31.

⁶⁰ Ariadne, International Human Rights Funders Group and the European Foundation Centre, 'Challenging the Closing Space for Civil Society: A Practical Starting Point for Funders', 2015, p. 23.

is that they feel that the international community is lagging behind in its support for these new kinds of civic activism.

While individual EU policy-makers generally accept the case for supporting more flexible forms of activism, the EU has struggled institutionally to keep pace with promising changes to the civic sphere around the world. New forms of social organisation and civic movements have often requested EU support, only to be rebuffed because they do not accord with the standard structures of big NGOs. This is a perennial problem in EU funding, but it is rendered even more damaging by the shrinking space challenge. The EU needs a systematic and dedicated programme to help it catch-up with the new forms of civil society activity that are taking shape across the world. It also needs to do more to engage with grass-roots HRDs outside capitals.

The shrinking space means that the EU and other donors need, more than ever, the ability to support unregistered groups on a far more systematic basis than is currently done. As this pool of the unregistered becomes larger, if the EU does not have this ability, it will exclude itself from supporting some of the most relevant human rights, democracy and even development actors. Smoother ways are needed of helping CSOs develop as limited companies where national conditions make this a relevant option. The EU needs to do more to engage with very small, local level groups. Rights issues are often experienced in a more real and acute way at a local level and it is possible to get local groups and administrations signed up to human rights measures that can be used in a cascade of pressure upwards to push back against restrictive measures at the national level – indeed this could be an effective supplement to focusing only on defending the most famous or internationally recognised NGOs at the national level.

One operational implication is that some modest part of EU development funds – specifically those that are currently not used in any politically informed fashion under the DCI or ENI (possibly in future the EDF if legal constraints can be overcome) – might productively be channelled through the EED, which benefits from a more flexible and politically less constrained set of funding rules. The EU could encourage and support the European Endowment for Democracy to group together the various elements of its work that are relevant to the shrinking space into a programme dedicated much more specifically and systematically to mitigating this challenge.

Build non-financial support

In helping to build networks, foster new types of organisational structures and enhance civic resilience, the EU will need to think out of the box in terms of how it delivers its support. Most civil society organisations stress that the shrinking space phenomenon should encourage donors to devise forms of support that do not rely on the traditional type of capacity-building financial grant. The EU and other donors need to draw up a new menu of support options that go beyond the traditional path of financial support. This support should aim at strengthening civic movements' links with other actors – moving both upwards into the political sphere, and downwards to individual citizens. Such options might include more regular joint CSO partnerships, expressions of political solidarity, exchanges of personnel, two-way visits, and prizes for courageous activists – all encouraged and facilitated by the EU even if they do not require any or significant funding. More effort should be invested in demonstrating and communicating the generic public benefits of a strong civil society, to help CSOs bolster their domestic support.

The EU should draw up a comprehensive inventory of non-grant forms of support to civil society. This is not to suggest that grant support will not be needed, but rather that in some cases alternative means of help must be devised. Some of the most effective forms of support are, in some situations, likely to be through non-financial means, and will thus require a shift away from the standard model of grant funding. Tomorrow's civil society support will need to be much more about helping to construct looser networks of activists, coalitions that extend beyond the CSO circle and about linking new social movements more smoothly into political processes.

Define red lines and reassurances

The EU must do more to make sure that the CSOs with which it partners do not overstep some important red lines. While repressive regimes are clearly responsible for the shrinking space problem, this issue also obliges funders to examine their own operational modes.

Some governments have perfectly legitimate concerns about outside donors – whether governments or wealthy individuals – wielding too much influence in a way that is not accountable to local populations. And these funders are still too reluctant to accept that in the past they may have crossed a line into taking sides in too overtly a political fashion. Governments may not be entirely unreasonable in appealing to the principle of ‘local ownership’ in development funding and in suggesting that civil society support needs to be more transparent and better coordinated. Indeed, the International Covenant on Civil and Political Rights, the UN Declaration of Human Rights and the European Convention on Human Rights all allow some restrictions on civil society organisations on these grounds. The problem is when today’s attacks become so arbitrary, unpredictable, political and uncertain that they do not meet these legitimate grounds⁶¹.

Therefore the EU needs to set red lines to its civil society objectives. While some degree of covert action may well be justified in situations of high risk, in general the EU should work towards a positive civil society narrative based more on the principle of transparency. In this sense, the EU should be a less controversial funder than some high profile private philanthropists with more explicitly political intentions or than US funders. Policy-makers could usefully acknowledge that at least some of the concerns expressed by third countries might be justified – and they could work towards a series of principles that go some way to addressing those concerns. More effort to improve CSOs’ internal governance will be a necessary part of this policy shift.

Support internal efforts too

The shrinking space is a problem within the EU and not only outside it. Many member state governments are narrowing space for CSOs within the EU itself – so they have hardly been stout defenders of civil society freedoms abroad. The EU needs to do far more to join together efforts to combat the shrinking space in third countries with efforts to tackle new restrictions on civil society within the EU. So far, policy-makers and MEPs have been reluctant to support this kind of linkage between internal and external challenges. Many CSOs report that various parts of the EU institutional machinery are increasingly defensive about recognising the scale of problems within European civil society – rather than being willing to address these problems.

Deepen cooperation with other partners

There remains much scope for the EU to cooperate more systematically with the other international organisations working on the shrinking space issue. One example where additional effort might pay dividends is the Community of Democracies Working Group on Enabling and Protecting Civil Society. The Working Group's membership comprises the European Union and 13 governments (Botswana, Canada, Chile, the Czech Republic, Denmark, Mongolia, the Netherlands, Poland, Slovakia, Spain, Sweden, Tanzania and the United States), along with five civil society organisations. This initiative has gathered some momentum, benefitting from the Community of Democracies’ large and diverse membership.

The Working Group holds events, promotes the sharing of experience and oversees some technical assistance. While the EU’s participation is welcome, in general it is acknowledged that the group could develop a far higher role than it has assumed so far, and could do more to take advantage of its ability to act as a bridge between funders in different regions. In particular, its early warning ‘Calls for Action’ have

⁶¹ D. Rutzen, ‘Civil society under assault’, *Journal of Democracy*, No 26(4), 2015.

yet to become a primary diplomatic channel for coordinated international responses to the shrinking space.

An OSCE Parallel Civil Society Conference issued the Hamburg Declaration on 6 December 2016, recommending that the OSCE appoint a special representative on civil society to deal with this issue, introduce a rapid reaction mechanism to protect civil society activists, create an expert panel on freedom of association, re-install a focal point for human rights defenders, foster a lot more contact with and incorporation of CSOs into OSCE missions and programmes, and link a pushback against shrinking civil society space to OSCE conflict interventions⁶². The EU should explore such potential cooperation with the OSCE.

5.2 Changes to specific EU instruments

In line with these principles of strategy, the EU could consider a number of very specific changes to its current set of policy mechanisms and instruments. Some of these could be implemented in the short term; some depend on set timelines for reviewing EU funding mechanisms; others will take more time to develop and need to be considered as long-term reform measures.

- The EU should make a firm commitment that when a government restricts space for civil society in the most egregious fashion then the overall amount of EU funding going to CSOs from that country will not decrease (as indeed, often it does not). Under those instruments – like parts of the DCI, EDF and ENI – that are negotiated with governments, this would require much more determined and targeted diplomatic pressure to be exerted from the highest levels than is currently evident.
- The EU should create a ‘Shrinking Space Early Warning’ mechanism. This would count on a strong degree of capacity to report on new proposals in the pipeline to close civic space in third countries. Where this mechanism issued an alert that a given government was preparing serious new restrictions against civil society, the EU foreign-policy machinery would have to justify any failure to react with concrete and tangible policy readjustments.
- Several reports and NGOs have previously suggested that more effort is needed to make the HRD Guidelines more widely known among diplomats and for more Human Rights Defenders Liaison Officers to be given more concrete orientation in their work. Despite improvements, such a high-level political initiative is still warranted and should be pursued.
- Financial regulations might include firmer and more significant exceptions for those CSOs in particular danger, enabling support to flow more smoothly to such bodies even where they might not fulfil all the EU’s normal accounting requirements. Of course, policy-makers have for long insisted such changes cannot be made; moreover, it is beyond the scope of this study to enter in detail into the complexities of the EU’s different layers of financial regulation. Suffice it to say here that some kind of common benchmarking for defining a CSO ‘at risk’ would need to cut across the general financial regulation, regulations for each individual funding instrument and the Common Implementation Rules.
- The EU should commit to increase the various EIDHR funds relevant to the shrinking space. When current amounts are broken down, they leave annual sums per country at a low level, in most cases.
- The EU should undertake to transfer funds when a grantee NGO is forced to relocate so that it can access its EU funds in its new country base, as is currently possible under existing rules.
- The EU should introduce more generous visa and asylum rules specifically for activists forced to flee their country of origin.

⁶² Civic Solidarity, ‘Hamburg Declaration on Protecting and Expanding Civil Society Space’, 7 December 2016.

- The EU should extend its existing efforts to keep ‘extracted’ activists close to and engaged in their home country. NGOs working on HRDs have moved to create safety hubs to which activists can escape within their own regions. The EU could look into ways of supporting such initiatives in line with its own declared aims to keep activists within their own regions if possible rather than bringing them into Europe.
- The EIDHR should fund a new initiative aimed specifically at funding new types of civil society support less vulnerable to the shrinking space problem, in a more specific way than its 2015 global call on grassroots organisations. One possibility would be to fund this through the European Endowment for Democracy, with the latter being given the responsibility of coordinating work among member state donors too.
- More specific benchmarks relating to the shrinking space should be included in the mid-term review of the EU Action Plan for Human Rights and Democracy, against which tangible progress can be measured.
- The EU’s new Civil Society Roadmaps should include very tangible and operational benchmarks relevant to the shrinking space.
- The Human Rights Special Representative should be asked to report each year specifically on the progress made on reversing the shrinking space. While respecting the need to protect CSOs, the EU could be more transparent in reporting on what has been done against the shrinking space.
- The High Representative for Foreign Affairs and Security Policy should be obliged to justify new cooperation and resources offered to those states guilty of the most serious crackdowns against civil society.
- The EU should offer support to regional organisations to tackle the shrinking space in their respective areas; it should also link some cooperation with such organisations to their willingness to address the closing space issue. This is a realistic aim in cases such as the Organisation of American States, ASEAN and the African Union where there are some governments keen to cooperate on this issue and in need of help to strengthen regional mechanisms as a tool against offending regimes – examples could include Indonesia, Brazil and Nigeria.
- The EU should invite a consortium of non-EU NGOs to suggest recommendations for concrete action on the shrinking space within Europe itself, as follow up on the reports recently compiled that describe this problem.
- The EU could do more to link the specificities of the shrinking space problem to the SDGs – that is, portraying it as a trend that undermines the SDGs that all countries have signed up to. Concretely this could take the form of the EU doing more to build broad networks of support from CSOs and governments to project a narrative around the core civil society dimension of the SDGs.
- The EU should support and encourage activists from those states like Tunisia, Mali and Cote d’Ivoire where pressure has successfully led to governments passing new protective legislation for civil society to speak out on the closing space in other developing states. The message might be more powerful coming from such actors than always coming from European actors.
- An inter-institutional ‘Shrinking Space Task Force’ should be created and charged with overseeing the effective implementation of these and other aspects of an upgraded EU assault on the closing space worldwide.
- Using its reputation as a ‘regulatory power’, the EU should look beyond the HRD elements of the shrinking space and devise a mechanism specifically to address regimes’ use of regulatory norms to constrict civil society. The EU could do this by creating a specific shrinking space focal point to oversee the EU’s many initiatives on regulatory harmonisation in third countries. This is important because regimes are now

using a wide range of health, environmental, fiscal, competition and financial laws to restrict CSOs – not just draconian NGO laws per se – and most observers insist this is where the EU enjoys its most significant influence over other states.

- While the EU has funded projects on digital security for activists, it could do more to offer guarantees that those appealing through multilateral bodies are not obliged to reveal details that render them more vulnerable to government attack.
- The EP should use its strategic dialogue with the Commission, its follow-up reviews of the EU Strategic Framework and Action Plan on Human Rights and Democracy and of the Annual Report on Human Rights to lay out the specific impact of EU policies on the shrinking space and to push for the broader approach to this problem that this study has advocated. It should use its monitoring of EU human rights dialogues more specifically to highlight EU failures to improve worsening civil society environments. The EP's Subcommittee on Human Rights should produce an own initiative report each year measuring the progress and failings of EU shrinking space responses, including systematic assessment of where EU policies may be compounding CSOs' difficulties. The EP should also issue more resolutions when things go wrong or are about to go wrong. MEPs could make more effort to engage parliamentarians in the concerned countries and to press them on why preserving civil society is important. Most generically, the various concerned EP committees should also press to preserve EU funding for civil society through the EIDHR and the CSO-LA programme.

Finally, a concluding observation relating to the broader attempt to create a new, more positive narrative around civil society: the EU might think about how to employ a terminology that has greater resonance among the general population. Much contemporary political rhetoric stresses the need for 'ordinary people' or 'citizens' to be given greater power and voice vis-à-vis entrenched elites. While this kind of rhetoric gains traction successfully, the terminology of 'civil society' has a lower profile and still seems to speak of and to a more rarefied world of professional advocacy. In this sense, the terminology of 'shrinking space' or 'closing space' seems to imply a somewhat anodyne problem; yet it is essentially about citizens and ordinary people being under danger of attack, repression and detention from regimes. The EU might think of ways to project this problem other than through the standard 'civil society' lexicon, as a means of mobilising broader populations against government restrictions.

Bibliography

- AFE and PEM Consult, 'Draft Evaluation of the European Instrument for Democracy and Human Rights (EIDHR) 2014-2020', Draft Main Report, Volume 1, January 2017, http://ec.europa.eu/europeaid/sites/devco/files/draft-eval-eidhr-exec-sum_en.pdf (last accessed 10 April 2017)
- Ariadne, International Human Rights Funders Group and the European Foundation Centre, 'Challenging the Closing Space for Civil Society: A Practical Starting Point for Funders', 2015, http://www.ariadne-network.eu/wp-content/uploads/2015/03/Ariadne_ClosingSpaceReport-Final-Version.pdf (last accessed 10 April 2017)
- Bennett, K., 'Assessing the Implementation of the European Union Guidelines on Human Rights Defenders: The Cases of Kyrgyzstan, Thailand and Tunisia', European Union, 2013, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/410221/EXPO-DROI_ET\(2013\)410221_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/410221/EXPO-DROI_ET(2013)410221_EN.pdf) (last accessed 10 April 2017).
- Carothers, T., 'The Closing Space Challenge: How Are Funders Responding?', Carnegie Endowment for International Peace, Washington DC, 2015, http://carnegieendowment.org/files/CP_258_Carothers_Closing_Space_Final.pdf (last accessed 10 April 2017)
- Civic Solidarity, 'Hamburg Declaration on Protecting and Expanding Civil Society Space', Hamburg, 7 December 2016, http://www.civicsolidarity.org/sites/default/files/parallel_civil_society_conference_outcome_documents_hamburg_december_2016_final.pdf (last accessed 10 April 2017)
- Civicus, 'State of Civil Society Report 2014', <http://www.civicus.org/documents/reports-and-publications/SOCS/2014/SOCS2014-Full-Report.pdf> (last accessed 10 April 2017)
- Civicus, 'State of Civil Society Report 2015', <http://www.civicus.org/images/StateOfCivilSocietyFullReport2015.pdf> (last accessed 10 April 2017)
- Civicus, 'State of Civil Society Report 2016', <http://www.civicus.org/images/documents/SOCS2016/summaries/SoCS-full-review.pdf> (last accessed 10 April 2017)
- Civil Society Europe, 'Civil Society Paper on Budgetary Control of Funding NGOs from the EU Budget', 2016, <http://civilsocietyeuropedoteu.files.wordpress.com/2016/11/civilsocietypaperbudgetarycontrolngofundng.pdf> (last accessed 10 April 2017)
- Commissioner for Budget and Human Resources Günther Oettinger, answer given on behalf of the Commission to Parliamentary Question E-011923/2015, <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2015-011923&language=EN> (last accessed 10 April 2017)
- Concord Denmark, 'Country CSO Roadmaps: How EU delegations can strengthen engagement with civil society', June 2013, <http://www.ft.dk/samling/20121/almdel/euu/bilag/412/1257258.pdf> (last accessed 10 April 2017)
- Consortium PARTICIP-ADE-DIE-DRN-ECDPM-ODI, 'Thematic evaluation of the European Commission support to respect of Human Rights and Fundamental Freedoms', No 2, European Commission, December 2011, http://ec.europa.eu/europeaid/sites/devco/files/evaluation-cooperation-ec-human-rights-1298-main-report-201112_en_0.pdf (last accessed 10 April 2017)

Council and Parliament Regulation No 233/2014 establishing a financing instrument for development cooperation for the period 2014-2020, O.J. L 77/44 of 11 March 2014, http://eeas.europa.eu/sites/eeas/files/regulation_eu_no_2332014_of_the_ep_and_the_council_establishing_a_financing_instrument_for_development_cooperation_2014-2020_0.pdf (last accessed 10 April 2017)

Council of the European Union, 'CFSP Report – Our priorities in 2016', 2016, <http://data.consilium.europa.eu/doc/document/ST-13026-2016-INIT/en/pdf> (last accessed 10 April 2017)

Council of the European Union, 'EU Action Plan on Human Rights and Democracy', Publications Office of the European Union, Luxembourg, 2015, http://www.consilium.europa.eu/en/documents-publications/publications/2015/pdf/web_en_actionplanhumanrights_pdf (last accessed 10 April 2017)

ECNL-OSEPI, 'Working Paper on the European Union's External Action and the Closing Civil Society Space', 2014

Edwards, M. (ed.), *The Oxford Handbook of Civil Society*, Oxford University Press, New York, 2011

European Commission & High Representative of the Union for Foreign Affairs and Security Policy, 'Evaluation of the Cotonou Partnership Agreement', Joint Staff Working Document, SWD(2016) 260, 2016, http://ec.europa.eu/europeaid/sites/devco/files/evaluation-post-cotonou_en.pdf (last accessed 10 April 2017)

European Commission 'Commission Implementing Decision of 30 June 2015 on the Multi-Annual Action Programme for years 2015 part II, 2016 and 2017 "Civil Society Organisations and Local Authorities" to be financed from the general budget of the European Union', C(2015) 4574 final, 2015, http://ec.europa.eu/europeaid/sites/devco/files/commission-decision-cso-las-maap-30062015_en.pdf (last accessed 10 April 2017).

European Commission, 'Capacity4dev Public Group on Civil Society: Keeping track', 2015, <http://capacity4dev.ec.europa.eu/public-governance-civilsociety/minisite/brochures-roadmaps/keeping-track-newsletters> (last accessed 10 April 2017)

European Commission, 'Capacity4dev Public Group on Civil Society: Roadmaps', 2015, <http://capacity4dev.ec.europa.eu/public-governance-civilsociety/minisite/roadmaps> (last accessed 10 April 2017)

European Commission, 'Civil Society', European Commission's website, 2017, http://ec.europa.eu/neighbourhood-enlargement/policy/policy-highlights/civil-society_en (last accessed 10 April 2017)

European Commission, 'Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the roots of democracy and sustainable development: Europe's engagement with Civil Society in external relations', COM(2012) 492, 2012, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52012DC0492> (last accessed 10 April 2017)

European Commission, 'Declaration By The Presidency On Behalf Of The EU On The Adoption Of The Charities And Societies Proclamation By The House Of Peoples' Representatives Of The Federal Democratic Republic Of Ethiopia', 30 January 2009, http://europa.eu/rapid/press-release_PESC-09-7_en.htm (last accessed 10 April 2017)

European Commission, 'Framework Partnership Agreements with CSOs: factsheet', 2016

European Commission, 'Multiannual Indicative Programme for the Thematic Programme "Civil Society Organisations and Local Authorities" for the period 2014-2020', C(2014)4865 final, http://eeas.europa.eu/sites/eeas/files/cso_la_mip_cso_la_2014_2020_en.pdf (last accessed 10 April 2017)

European Commission, 'What is EIDHR?', EIDHR website, <http://www.eidhr.eu/what-is-eidhr/what-is-eidhr-?LANG=en> (last accessed 10 April 2017)

European External Action Service, 'EU launches Human Rights and Democracy Country Strategy for Uganda', 2016, http://eeas.europa.eu/headquarters/headquarters-homepage_en/16280/EU%20Launches%20Human%20Rights%20and%20Democracy%20Country%20Strategy%20for%20Uganda (last accessed 10 April 2017)

European External Action Service, 'EU Special Representative for Human Rights Visits China', 2015, http://eeas.europa.eu/headquarters/headquarters-homepage/5567/eu-special-representative-for-human-rights-visits-china_en (last accessed 10 April 2017)

European External Action Service, 'Israel: Updated EU Country Roadmap for Engagement with Civil Society, 2014-2017', 2014, <http://europa.eu/capacity4dev/public-governance-civilsociety/document/israel-update-roadmap-eu-engagement-civil-society> (last accessed 10 April 2017)

European External Action Service, 'Kyrgyzstan: EU Country Roadmap for Engagement with Civil Society, 2014-2017', 2014, http://eeas.europa.eu/sites/eeas/files/2014_09_24_cs_roadmap_final.pdf (last accessed 10 April 2017)

European Parliament Subcommittee on Human Rights, 'Activity Report 2009-2014', European Parliament, 2014, <http://www.europarl.europa.eu/document/activities/cont/201409/20140905ATT88457/20140905ATT88457EN.pdf> (last accessed 8 March 2017)

European Parliament, 'Answer To a Written Question – European Instrument for Democracy and Human Rights Funding for Ethiopia – E-002822/2015', 6 May 2015, <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2015-002822&language=EN> (last accessed 10 April 2017)

European Parliament, 'Democratic Accountability and Budgetary Control of Non-Governmental Organisations funded by the EU Budget', European Union, Brussels, 2017

European Parliament, Resolution on EU Strategy for the Horn of Africa (2012/2026(INI)), P7_TA(2013)0006, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2015.440.01.0038.01.ENG&toc=OJ:C:2015:440:FULL (last accessed 10 April 2017)

European Parliament's Committee on Budgets, 'Opinion for the Committee on Budgetary Control on budgetary control of financing NGOs from the EU budget', 2015/2345(INI), 2016, <http://www.europarl.europa.eu/sides/getDoc.do?type=COMPARL&reference=PE-582.095&format=PDF&language=EN&secondRef=02> (last accessed 10 April 2017)

European Union, 'Ensuring Protection – European Union Guidelines on Human Rights Defenders' (2008 revised version), <http://www.consilium.europa.eu/uedocs/cmsUpload/16332-re02.en08.pdf> (last accessed 10 April 2017)

European Commission, 'Civil Society', European Commission's website, 2017, http://ec.europa.eu/neighbourhood-enlargement/policy/policy-highlights/civil-society_en (last accessed 10 April 2017)

European Union, *A Global Strategy for the European Union's Foreign and Security Policy*, European Union, Brussels, 2016, http://eeas.europa.eu/sites/eeas/files/eugs_review_web_0.pdf (last accessed 10 April 2017)

Foreign and Commonwealth Office, *Human Rights and Democracy: The 2014 Foreign & Commonwealth Office Report*, Foreign & Commonwealth Office, London, 2015,

http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415910/AHRR_2014_Final_to_TSO.pdf (last accessed 10 April 2017)

Foreign and Commonwealth Office, *Human Rights and Democracy: The 2015 Foreign & Commonwealth Office Report*, Foreign & Commonwealth Office, London, 2016, http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/518658/FCO755_Human_Rights_Report_2015_-_WEB.pdf (last accessed 10 April 2017)

Frontline Defenders, *Annual Report on Human Rights Defenders at Risk 2016*, Front Line, the International Foundation for the Protection of Human Rights Defenders, Dublin, 2017

Hackenesch, C., 'Good governance in EU external relations: what role for development policy in a changing international context?', European Parliament, 2016

Hahn, J., 'Speech by Johannes Hahn at the 8th Annual Assembly of the Eastern Partnership Civil Society Forum', transcript, European Commission, 28 November 2016, http://ec.europa.eu/commission/2014-2019/hahn/announcements/speech-johannes-hahn-8th-annual-assembly-eastern-partnership-civil-society-forum_en (last accessed 10 April 2017)

Held, D., *Models of Democracy*, 2nd edition, Polity Press, Cambridge, UK, 2006

Hennion M. et al., 'Evaluation of the Commission of the European Union's Co-Operation with Ethiopia', No. 1, Directorate General for Development and Cooperation, 2012 http://ec.europa.eu/europeaid/sites/devco/files/evaluation-cooperation-ec-ethiopia-1301-main-report-201201_en_0.pdf (last accessed 10 April 2017)

Human Rights and Democracy Network, 'Promoting and Protecting Civil Society Space', Report from 17th EU-NGO Human Rights Forum, December 2015, <http://www.hrdn.eu/wp-content/uploads/2016/03/OSEPI-HRF-4-Low-res.pdf> (last accessed 10 April 2017)

Joint NGO Letter on Egypt to Donald Tusk and Federica Mogherini, 12 December 2016, <http://www.hrw.org/news/2017/02/06/joint-ngo-letter-european-union-officials> (last accessed 10 April 2017)

Leather, B., T. Webster and T. McEvoy, *Protecting our Space: Human Rights Defender Strategies to Protect Civil Society Space*, International Service for Human Rights, Geneva, 2016

Miller, E. and M. Suter, 'Case No. 173: The State of Egypt's NGOs,' *Atlantic Council*, 29 March 2016, <http://www.atlanticcouncil.org/blogs/menasource/case-no-173-the-state-of-egypt-s-ngos> (last accessed 10 April 2017)

Ministry of Foreign Affairs of Denmark, 'Project: Global Equality Fund (Phase I)', 2017, <http://openaid.um.dk/en/projects/DK-1-223413> (last accessed 10 April 2017)

Ministry of Foreign Affairs of the Netherlands, *A World to Gain: A New Agenda for Aid, Trade and Investment*, Ministry of Foreign Affairs of the Netherlands, The Hague, 2013, <http://www.government.nl/binaries/government/documents/letters/2013/04/05/global-dividends-a-new-agenda-for-aid-trade-and-investment/a-world-to-gain-en.pdf> (last accessed 10 April 2017)

Mogherini, F., 'Speech by HRVP Mogherini at the EU-NGO Human Rights Forum', transcript, European External Action Service, 2 December 2016, http://eeas.europa.eu/headquarters/headquarters-homepage/16292/speech-by-hrvp-mogherini-at-the-eu-ngo-human-rights-forum_en (last accessed 10 April 2017)

Moremi, J., 'How Egypt's President Tricked Germany's Chancellor Merkel – Again,' *Daily News Egypt*, June 8, 2015, <http://www.dailynewsegypt.com/2015/06/08/how-egypts-president-tricked-germanys-chancellor-merkel-again> (last accessed 10 April 2017)

National Endowment for Democracy, 'Where We Work – Egypt', 2017, <http://www.ned.org/region/middle-east-and-northern-africa/egypt-2015> (last accessed 10 April 2017)

Nossel, S., 'Pushing back against the tyrants', *Democracy: A Journal of Ideas*, No. 41, 2016

OPEN Neighbourhood Programme, 'The European Neighbourhood Instrument', 2017, <http://www.euneighbours.eu/en/policy#SixENItargets> (last accessed 10 April 2017)

Roth, K., 'Twin Threats: How the Politics of Fear and Crushing of Civil Society Imperil Global Rights', in Human Rights Watch, *World Report 2016*, New York, Seven Stories Press, 2016, <http://www.hrw.org/world-report/2016/twin-threats> (last accessed 10 April 2017)

Rutzen, D., 'Civil society under assault', *Journal of Democracy*, No 26(4), 2015

Sida, 'Innovative Support to the Civil Society', Sida.se, 2014, <http://www.sida.se/English/partners/our-partners/Civil-society-organisations/How-to-cooperate/civil-society-innovation-program> (last accessed 10 April 2017)

The Swedish Institute, 'Results Strategy for Special Initiatives for Human Rights and Democratisation for the Period 2014– 2017 (UF2014/32089/UD/FMR)', Stockholm, 2014

UN High Commissioner for Human Rights, 'Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned', 2016, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/20 (last accessed 10 April 2017)

World Economic Forum, *The Global Risks Report 2017*, Geneva, 2017, http://www3.weforum.org/docs/GRR17_Report_web.pdf (last accessed 10 April 2017)

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES

POLICY DEPARTMENT

Role

Policy departments are research units that provide specialised advice to committees, inter-parliamentary delegations and other parliamentary bodies.

Policy Areas

Foreign Affairs
Human Rights
Security and Defence
Development
International Trade

Documents

Visit the European Parliament website:
<http://www.europarl.europa.eu/supporting-analyses>



ISBN 978-92-846-0902-4 (paper)
ISBN 978-92-846-0901-7 (pdf)
doi:10.2861/366385 (paper)
doi:10.2861/69493 (pdf)