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**STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)**

DRAFTING GROUP ON CIVIL SOCIETY
AND NATIONAL HUMAN RIGHTS INSTITUTIONS

(CDDH-INST)

**[Draft] Overview document
on the protection and promotion of the civil-society space,
based on the compilation of measures and practices
in place in the Council of Europe member States**

for consideration and possible adoption by the CDDH
at its 89th meeting (19-22 June 2018)

Introduction

1. In the course of the biennium 2018-2019, the Steering Committee for Human Rights (CDDH) is tasked by the Committee of Ministers to prepare, on the basis of work conducted in 2016-2017, a draft non-binding instrument of the Committee of Ministers and a guide of good practices with the aim that member States, through their legislation, policies and practices, effectively protect and promote the civil society space (activities of organisations of the civil society, human rights defenders and national institutions for the promotion and protection of human rights) (deadline: 31 December 2018).

2. Thus, following the Analysis of the impact of the legislation, policies and current national practices on the activities of civil-society organisations, human rights defenders and national institutions for the promotion and protection of human rights (“Analysis”), elaborated by the Drafting Group on Civil Society and National Human Rights Institutions (“CDDH-INST”) in 2017 and examined by the Committee of Ministers at the 1293rd meeting of the Ministers’ Deputies (13 September 2017), a questionnaire was sent to the member States with a view to preparing a draft compilation of good practices.

3. At its 3rd meeting in March 2018 the CDDH-INST held a discussion on and read through the compilation of the national contributions received in reply to the questionnaire, prepared by the Rapporteur Ms. Krista Oinonen with the assistance of the CDDH Secretariat. It then decided (see document CDDH-INST(2018)R3, §§ 11-12) to prepare two documents, one presenting an overview and general conclusions which could be drawn from the contributions (i.e. the present document, referring to the relevant sections of the Analysis and the Compilation), and the other one containing most of the measures and practices submitted, entitled: “The protection and promotion of the civil-society space - Compilation of measures and practices in place in the Council of Europe member States” (CDDH-INST(2018)05Rev). These documents should be submitted to the Committee of Ministers together with the draft Declaration on the need to strengthen the protection and promotion of the civil society space in Europe (CDDH-INST(2018)04Rev), and could serve both as a tool to facilitate the implementation of that Declaration and as an inspiration for the State action.

Background information

4. As observed in the above Analysis, while a great spectrum of standards and tools exist to support the work of civil society, human rights defenders and National Human Rights Institutions, there are still challenges lying in the way to achieve a thriving and vibrant civil society space. These challenges exist because a conducive political and public environment requires more than the mere implementation of legislation¹.

5. Various bodies of the Council of Europe have on repeated occasions drawn attention to the shrinking democratic space. The Parliamentary Assembly has, for example, noted that “in certain Council of Europe member States the situation of civil society has dramatically deteriorated over the last few years, in particular following the adoption of restrictive laws and regulations”², and the Secretary General has noted that “there is a trend among an increasing number of member States towards a more restrictive approach to freedom of association”³. 2018 also marks the 10th anniversary of the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities (adopted by the Committee of Ministers on 6 February 2008), in which the Committee of Ministers acknowledged that “whereas the prime responsibility and duty to promote and

¹ See paragraph 3 of the Analysis.

² See PACE Resolution 2096(2016), § 4.

³ Secretary General of the Council of Europe (2016), p. 9.

protect human rights defenders lies with the state, the Council of Europe shall also contribute to creating an enabling environment for Human Rights Defenders and protect them and their work in defending human rights". The Committee of Ministers further agreed to "keep under review the question of further Council of Europe action in this field".

6. The fact that in many parts of the European Union (EU) civil society is under threat is confirmed by the report of the EU Agency for Fundamental Rights (FRA), entitled the 'Challenges facing civil society organisations working on human rights in the EU', which in this regard points to:

- Threats, physical and verbal attacks against activists, as well as smear campaigns;
- Legal changes that negatively affect civil society, such as freedom of assembly restrictions, often a by-product of counter-terrorism laws;
- Shrinking budgets and increased difficulties in getting funding;
- Lack of appropriate involvement of civil society in law- and policy-making.

General overview of the situation in Europe

7. The analysis of the submissions received from 22 member States⁴, numerous members of the European Network of National Human Rights Institutions (ENNHRI) and the European Roma and Travellers Forum (ERTF) reveals commendable efforts made by States to tackle the shrinking democratic space (the latter impacting in particular on vulnerable groups⁵, as demonstrated by examples of good practices pertaining to section 1.3 of the Analysis) and to strengthen the protection and promotion of the civil society space, as a field of play namely for civil society organisations (CSOs), human rights defenders (HRDs) and national human rights institutions (NHRIs).

8. In order to enable those civil society actors to do their work, the States must in the first place create a supportive legal framework as well as a conducive political and public environment, and remove any unnecessary, unlawful or arbitrary restrictions to the civil society space, in particular with regard to freedoms of association, peaceful assembly and expression.

9. As to an enabling regulatory framework (see section 3.1), many member States have adopted legislation aimed at enhancing a good functioning and governance of CSOs (e.g. Institutions and other related issues Law in Cyprus, Serbian Law on Associations, Spanish Act on Voluntary works and Organizations of Voluntary works, Ukrainian Law on Public Associations) or providing for institutional cooperation with them (e.g. Law on Public Council of Armenia, Greek laws on the National Council against Racism and Intolerance and on Anti-discrimination, Directive on the Government Office for Human Rights and Rights of National Minorities in Croatia). In several member States relevant national strategies, projects or action plans have recently been put in place (e.g. National Action Plan for Human Rights in Scotland, National Programme of Protection and Promotion of Human Rights in Croatia).

10. Ensuring a conducive political and public environment (see section 3.2) often consists of establishing specific public authorities (e.g. Legal Assistance and Civil Society Development Sector in Bosnia and Herzegovina, Government Office for Collaboration with NGOs in Croatia, Advisory Board for Civil Society Policy in Finland, Government Plenipotentiary for Civil Society and Centre for the Development of Civil Society in Poland); enhancing cooperation between public administration and civil society actors (e.g. Public Council adjunct to the Government in Armenia, Cooperation Agreement between the Council of Ministers and NGOs in Bosnia and Herzegovina, State Policy with respect to NGOs adopted by the Government of the Czech

⁴ References to "all States" in the following text shall be meant to apply to the States which have submitted their replies to the CDDH-INST questionnaire.

⁵ These may include migrants, refugees and asylum seekers, children, women, older persons, but also persons suffering from energy poverty (see measures taken by the Spanish *Defensor del Pueblo*).

Republic, Action Plan for Democracy Policy in Finland, Development Cooperation Policy Council in Poland, State Council for NGOs in Spain); and raising public awareness of the indispensable role of the civil society (e. g. State awards conferred on individuals engaged in human rights work in Russia, human rights awareness-raising through films in Northern Ireland).

11. Many States also support CSOs in their work by offering them specific means of exercising their rights to access information⁶ and to freedom of expression (see section 3.3). Legislation in most member States provides for free access to public/official information, which is often published as open data on specific website(s) or data portals.

12. In line with the Council of Europe Guidelines for civil participation on political decision-making, member States strive to seek input into law and policy proposals by civil society actors (see section 3.4). Hence, national consultation and participation procedures are being institutionalized or improved (e.g. new platforms for public consultations in Armenia and Bosnia and Herzegovina, rules providing for auditions of civil society representatives by the Belgian and Flemish Parliaments, Public Consultation Day and Civil Society Session in Cyprus, Citizens Initiative Finland, Open Government Georgia's Forum, public councils in Russian executive bodies, Guidelines for inclusion of CSOs into the procedure for adoption of regulations in Serbia, new consultation procedure in Switzerland, thematic consultation forum in Sweden, Single Electronic Register of Regulations in "The Former Yugoslav Republic of Macedonia"); civil society actors are represented in public advisory bodies (e. g. several councils under the Ministry for Human Rights and Refugees of Bosnia and Herzegovina, State Council for Gypsy population and Observatory of Childhood in Spain, Council for Cooperation between the Government and Civil Society in "The Former Yugoslav Republic of Macedonia"); and civil society is consulted on a wide range of issues (e. g. anti-corruption policy in Armenia and Georgia, youth policy and children's rights in Belgium, judicial reform in Montenegro, Polish National Action Plan for the Implementation of the UN Guiding Principles on Business and Human Rights).

13. The right to freedom of association also encompasses access to resources (see section 3.5). As concerns examples of good practice in funding CSOs, several of the responding states referred notably to financing CSOs from lottery revenues⁷ (e. g. in Croatia, Finland and Poland) and to assigning a percentage of the personal income tax for social purposes (e. g. in Poland and Spain); structural subsidization (financing of selected CSOs through the Flemish Equal Opportunities Policy) and preferential treatment of CSOs under VAT regime (in Finland) have also been mentioned.

14. Since human rights defenders (HRDs) are in need of special protection, the regulatory framework may contain provisions which are specific to them, namely rules on the protection of whistle-blowers (see section 4.1.2) which have been recently introduced in several member States (e. g. France, Montenegro, Serbia). Member States, assisted by NHRIs, may also adopt specific measures and practices to create an environment conducive to the work of HRDs (see section 4.2), including awarding human rights prizes (e. g. in Denmark, France and Spain), implementing protection mechanisms (see in particular the Dutch Shelter City Initiative under section 4.2.2) and addressing lack of proper investigations (see section 4.2.3) into attacks on HRDs (e.g. by mapping human rights situation by the Croatian Ombudswoman, issuing internal instructions for prosecutors and giving the Ombudsman the right to participate in criminal proceedings in Poland).

15. Efforts are devoted to guaranteeing HRDs' right to information and freedom of expression (see section 4.3), with trainings for journalists provided by NHRIs (e. g. in Armenia, Georgia and Luxembourg), as well as their right to access and communicate with international

⁶ The Council of Europe Convention on Access to Official Documents (ETS no. 205) still remains to be ratified by most of the member States.

⁷ This practice is seen to be promising also by the FRA (see the above mentioned report, p. 30).

bodies (see section 4.3.1). Hence CSOs and HRDs are involved in reporting on human rights situation in their country within the UN Universal Periodic Review (in Denmark and France) or to various monitoring bodies (in Luxembourg and United Kingdom).

16. Forming a bridge between civil society and State authorities, NHRIs - established in most member States in form of an ombudsperson or a national human rights institute/commission - play a key role in promoting and implementing human rights norms and standards (see section 5). International standards aimed at enabling the independent and effective functioning of NHRIs are set down in the "Paris Principles"⁸. NHRIs are periodically reviewed on their compliance with the Paris Principles by the GANHRI Sub-Committee on Accreditation (section 5.1.4). Technical advice to assist NHRIs to be in compliance with those Principles and to obtain A-status accreditation is provided by ENNHRI. Like other human rights defenders, NHRIs also face negative implications of shrinking democratic space and ENNHRI has a policy in place to support NHRIs under threat⁹.

17. In line with the Paris Principles, NHRIs need to be conferred a broad mandate to independently promote and protect human rights (see section 5.1.1). Some NHRIs are also accorded additional mandates, such as Equality Body (e.g. Bosnia and Herzegovina, Ireland, Netherlands), National Preventive Mechanism against Torture (e.g. Armenia, Georgia, Portugal), or Ombudsman (e.g. Poland¹⁰, Serbia, Ukraine). The Paris Principles provide key requirements to ensure the structural and functional independence of NHRIs, which are in member States implemented through constitutional and legislative provisions (see section 5.1.2). NHRIs' pluralistic character and close cooperation with diverse strands of civil society are reflected also by their advisory councils, featuring representatives of civil society, NGOs, academic circles, national minorities (e.g. in Croatia, Denmark, Georgia, Greece). There is a wide variety of methods of operation, models, roles and activities conferred on NHRIs, which can contribute to a vibrant space for civil society and a culture of respect for human rights (see section 5.1.3). NHRIs often produce monitoring reports on the human rights situation, have advisory/consultative role in the policy-making and legislative processes, organise educational, training and awareness activities in the field of human rights. NHRIs also contribute to national implementation of international and regional human rights norms, including the national implementation of judgments of the European Court of Human Rights (see section 2.1.1), and may also exercise some procedural rights in the course of domestic proceedings.

Conclusions

18. The analysis of the submissions received in reply to the questionnaire reveals a number of promising practices likely to have a positive effect on the functioning and operation of the civil society actors. This does not mean however that there remain no challenges which can potentially affect the civil society space. It is with a view to pointing to these challenges that the draft Declaration on the need to strengthen the protection and promotion of the civil society space in Europe (CDDH-INST(2018)04Rev) has been prepared by the CDDH-INST.

19. First, there might appear gaps in the protection afforded by existing legal frameworks since no standard guidelines exist as to the regulatory environment that should be in place with regard to the effective functioning of all civil society actors, with the exception of the Paris Principles applicable to NHRIs. In particular, relevant legislation must not place disproportionate

⁸ Adopted by the UN General Assembly Resolution 48/134, 20 December 1993. Also: Committee of Ministers' Recommendation No. R(97) 14, 30 September 1997.

⁹ See paragraph 30 of the Analysis.

¹⁰ For example, the Commissioner for Human Rights in Poland is an independent body for supporting, protecting and monitoring the implementation of the UN Convention on the Rights of Persons with Disabilities.

requirements on civil society actors and must not have a discriminatory impact on them. Decision-makers further need to ensure that civil society is included in all stages of policy and law making and that its important work is not undermined through policy and legal changes and funding cuts.

20. There is also a need to strengthen and institutionalize channels of dialogue between State authorities and civil society, so as to ensure that the latter's concerns are heard and addressed. Civil society should be involved in law and policy making on a regular basis, acting as States' partner. In the area of resources, a key challenge ahead is to ensure a stable (long-term) funding instead of project-based funding¹¹.

21. The stigmatization of human rights defenders remains a concern in Europe. Member States should fully implement their positive obligations under international law in order to create a safe space for human rights defenders, prevent threats and attacks on them and ensure independent and effective investigation of such acts. It can be noted in this regard that a Model Law for the Recognition and Protection of Human Rights Defenders¹², developed by the International Service for Human Rights in consultation with defenders worldwide, provides technical guidance to States on how to support the work of defenders and protect them from reprisals and attacks.

22. In early 2018, 25 of 47 Council of Europe member States have A-status NHRIs, compliant with the Paris Principles¹³; those States should be encouraged to strengthen the NHRIs' capacity. Remaining member States should consider establishing such institutions and giving them competence to effectively protect civil society space through their monitoring, investigation, reporting and complaints handling functions.

23. On the basis of the above, it is suggested to invite the Committee of Ministers to take note of this document and to encourage States to continue their efforts to strengthen the protection and promotion of the civil society. The Council of Europe bodies and institutions should also continue to pay special attention to issues concerning the enabling environment in which all civil society actors can safely and freely operate in Europe.

¹¹ Promoting sustainable forms of funding is considered promising practice also by the FRA (see the above-mentioned report, p. 33).

¹² See paragraph 157 of the CDDH-INST Analysis.

¹³ Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Denmark, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Russian Federation, Serbia, Spain, Ukraine, United Kingdom.