

## EU ANNUAL RULE OF LAW REPORT CONSULTATION – OECD CONTRIBUTION

This contribution is submitted by the OECD as part of the targeted stakeholder consultation launched by the European Commission to gather inputs for its 2023 Rule of Law Report.

### INTRODUCTION

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#### Building Trust and Reinforcing Democracy

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- **Declaration on Building Trust and Reinforcing Democracy:** On 18.11.2022 the Ministerial Meeting of the OECD Public Governance Committee joined together Ministers and representatives of 43 countries, including the EU and the following EU members: **Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain and Sweden.** The representatives signed a Declaration on Building Trust and Reinforcing Democracy in which they:
  - Restated their shared commitment to the core values of democracy, including respect for human rights and fundamental freedoms, free and fair elections and the integrity of electoral systems, respect for the rule of law, the separation of powers, the independence of the judiciary, transparency, integrity and accountability in the public sector, and an enabled and protected civic space.
  - Recognised the need for institutions to further adjust and adapt to the digital age and take full advantage of the new channels for public debate and participation, transparency, openness, accountability and oversight of public institutions, while striving to enhance digital literacy and inclusion.
  - Committed to act on the risks that have appeared regarding the preservation of the values of democracy and the defence of human rights as well as the rights of minorities and vulnerable groups, destabilised information ecosystems and polarisation, and commit to strengthen institutions to address those risks.
- **Report on Building Trust and Reinforcing Democracy**
  - On the occasion of the Ministerial Meeting, the report “**Building Trust and Reinforcing Democracy**” was launched under the OECD Reinforcing Democracy Initiative.
  - The initiative has the dual goal of reinforcing democratic governance in established democracies and protecting it from existing and emerging threats, highlighting that democratic governance has proven to be the best institutional system for the protection and promotion of individual rights and freedoms and for allowing long-term sustainable gains in well-being.
  - Some best practices from EU countries in the fields of justice and democracy were mentioned in the report, including:
    - Luxembourg is putting forward a reform to its legal aid scheme by introducing a partial legal aid model in which people who do not meet the income criteria for free legal aid, have the possibility of partial coverage. This initiative is

aimed at preventing that people with slightly higher income (than the set threshold) do not give up on their right to sue for the costs they have to bear<sup>1</sup>

- In Ireland, the government set up a Youth Climate Justice Fund, which has made EUR 500 000 available to support youth-led action and innovation on climate justice.
- Estonia's Supreme Court adjudicates online disinformation complaints within seven days from their filing<sup>2</sup>.
- The French Government announced in June 2021 the creation of a national agency to combat the manipulation of information coming abroad aimed at "destabilising the state". The objective of this new agency will be to identify and determine the origin of possible foreign digital interference targeting key democratic processes.

### Key Findings from the 2021 OECD Survey on Drivers of Trust in Public Institutions related to justice<sup>3</sup>

- EU countries that participated to the survey: Austria, Belgium, Denmark, Estonia, Finland, France, Ireland, Latvia, Luxembourg, the Netherlands, Portugal, Sweden.
- The Trust Survey shows that citizens' overall trust in the judiciary tends to be higher compared to other public institutions: on average, across countries, a solid majority (56.9%) of respondents say they trust the courts and legal system. This result roughly aligns with the share of respondents on average who think that courts make decisions free of political influence plus the share who hold a "neutral" view of courts' independence. The perceived independence of the courts is positively correlated cross-nationally with public trust in courts and the legal system. Also, poor public perception of the independence of the judiciary from political influence is strongly correlated with low trust in national government. Yet this confidence is bounded. Only about four out of ten (42.1%) respondents, on average, believe that a court in their country would make a decision free from political influence that could negatively influence the government's image (see figure below).
- Perceptions are most positive in **Denmark, Ireland, and the Netherlands**, where more than half of respondents expect the judiciary to make decisions free from political influence.

#### Figure. Only four out of ten respondents believe judiciaries make decisions free of political influence

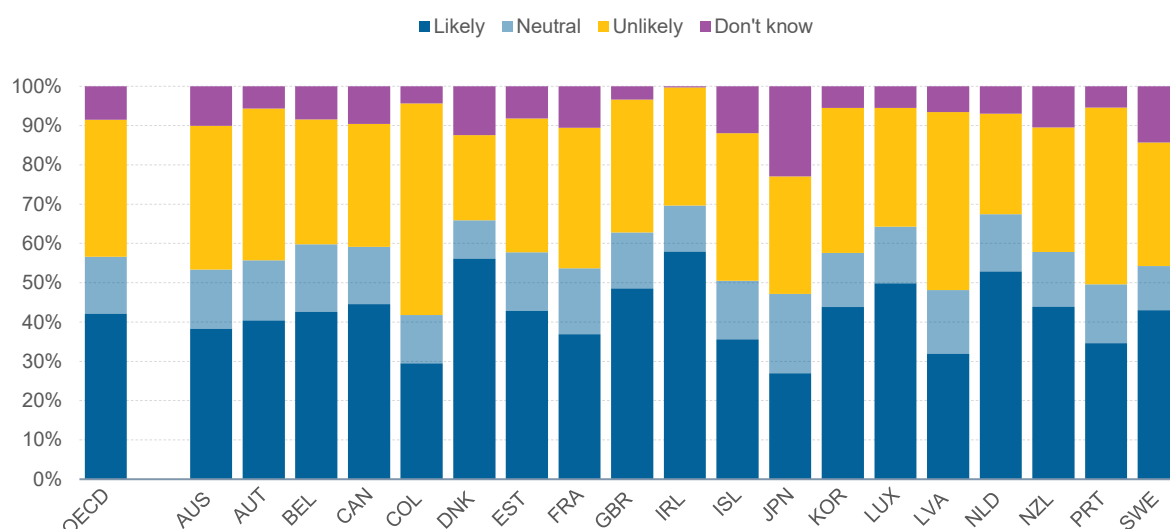
Share of respondents who indicate different levels of perceived likelihood that a court would make a decision that could negatively affect the government's image (on a 0-10 scale), 2021

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<sup>1</sup> OECD (2022), Building Trust and Reinforcing Democracy: Preparing the Ground for Government Action, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/76972a4a-en>

<sup>2</sup> International IDEA (2019), Cybersecurity in Elections: Models of Interagency Collaboration, International Institute for Democracy and Electoral Assistance, <https://www.idea.int/sites/default/files/publications/cybersecurity-in-elections-models-ofinteragency-collaboration.pdf>

<sup>3</sup> OECD (2022), Building Trust to Reinforce Democracy: Main Findings from the 2021 OECD Survey on Drivers of Trust in Public Institutions, Building Trust in Public Institutions, OECD Publishing, Paris, <https://doi.org/10.1787/b407f99c-en>



Note: Figure presents the within-country distributions of responses to the question “If a court is about to make a decision that could negatively impact on the government’s image, how likely or unlikely do you think it is that the court would make the decision free from political influence?” The “likely” proportion is the aggregation of responses from 6-10 on the scale; “neutral” is equal to a response of 5; “unlikely” is the aggregation of responses from 0-4; and “Don’t know” was a separate answer choice. “OECD” presents the unweighted average across countries. Finland, Mexico, and Norway are excluded from the figure as the data were not available. For more detailed information please find the survey method document at <http://oe.cd/trust>.

Source: OECD Trust Survey (<http://oe.cd/trust>)

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## Developments on Access to Justice and the rule of law

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### OECD Draft Recommendation on Access to Justice and People-centred Justice Systems

- Following a call from several countries at the OECD Justice Network and the Advisory Group on Justice<sup>4</sup>, to embody the OECD Principles on People-centred Justice in a draft OECD Recommendation on Access to Justice and People-centred Justice Systems to elevate the work to an OECD-wide standard and strengthen its impact and reach.
- The OECD has conducted a public consultation on the draft text between 25 November 2022 and 6 January 2023. Several countries (including some EU countries), civil society organisations and experts have provided inputs to the draft text.
- The OECD is currently revising the draft text to integrate the inputs received where appropriate. The revised text will be then shared with the OECD Public Governance Committee via written procedure for approval to transmit it to the Council.

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<sup>4</sup> The OECD informal advisory group on Justice counts to date with 6 EU countries: Belgium, Italy, Portugal, Spain, Latvia and France.

## **Riga Global Access to Justice Roundtable**

- 18 EU countries participated to the Roundtable: **Belgium, Bulgaria, Croatia, Estonia, Finland, France, Germany, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia, and Spain.**
- During the High-Level Segment of the event EU countries mentioned key initiatives regarding Access to Justice and made the links between them and their rule of law protection efforts, including with the EU Rule of Law Report and Justice Scoreboard. In particular be below.
- **Belgium:**
  - 3 priorities in service delivery and access to justice: funding of justice; digital transformation and digital divide; people-centred approach.
  - Good practices: cooperation with associations with a people-centric approach (non-profit organization Office of lawyers) and initiatives to strengthen ADR are currently in place.
- **Bulgaria:**
  - Proposed areas to reform the Bulgarian justice system: equal access to justice to all people, including free legal aid, free legal consultations, free legal assistance, specific attention to implementing and developing ADR (especially mediation), new technologies to facilitate access to court (Unified portal for e-justice and unified information system for the courts, new procedural legislation to guarantee the possibility of holding video conferences).
- **Croatia:**
  - Main priority: providing fair and efficient procedure to restore citizen trust in the judiciary (fair and equal treatment for all citizens, predictable norm enforcement and well managed process to ensure efficient handling of cases).
  - Croatia is developing a project with the EC to measure performance of people-centred justice. TSI project with OECD to measure citizens satisfaction with key government services (including justice).
- **Estonia:**
  - Important aspects: communication, knowledge breach across groups; long-term funding and vision; multi-agency cooperation.
  - Call for the co-creation of ideas and development of skills in international fora.
  - Call for the establishment of an international compensation mechanism for Ukraine, to victims of atrocity crimes and to create a relevant registry.
- **Finland:**
  - Positive perception of the independence of the judiciary in Finland from citizens and business.
  - Important aspects: access to justice for vulnerable populations, engagement of CSO in design of legal and justice services, openness and transparency (initiative network of media judges).
  - Financial advice clinics: people at the centre of the process, easy access to services provided in one place. 30 clinics at the moment.
- **Latvia:**
  - Priorities: ensure efficiency in the use of resources, promote transparency of information (open and accessible), ensure respect to that the rule of law and a people-centred approach in justice.
- **Lithuania:**

- Main priorities: ensure a people-centred justice systems to reinforce democracy and rule of law, increase transparency and public trust in justice institutions through their modernisation and making legal procedures more effective,
- Support the European Commission's initiative regarding measures against SLAPPs. Initiated amendments to their national laws, aiming to specifically tackle this problem.
- This year Lithuania has achieved progress in distant court hearings. The Judicial Council made it possible for the public to observe remote court hearings. The publicity of courts is directly linked to public trust in justice institutions.
- Development of the Legal Aid Information System was finalised earlier this year. This tool is a supplementary method to reach legal information, receive legal aid services and use self-help instruments to find answers to legal questions. A feasibility study assessing the state-guaranteed legal aid system in Lithuania has been carried out.
- **Malta:**
  - Consensus on the people-centred justice: EU tools to give attention to population and OECD Framework for people-centred justice.
  - Important issues: put users at the centre; acknowledge interests; shortcomings/challenges in the delivery of services; need to strike a balance: the main input of people centred justice services needs to come from citizens and users (e.g. affordability; accessibility in language).
  - Restructuring of institutions to build trust in Malta – reforms: new justice agencies (victim support agency; department of justice; etc.), establishing separate agencies, funding, empowering and making them independent.
  - Creation of a data culture: from siloed and lack of data towards a culture with a data ecosystem to provide scientific knowledge; digital literacy.
- **Netherlands:**
  - Injustices impact to people's perception to access to justice and fairness.
  - The country has been doing efforts to strengthen access to justice by investing in: legal aid system, ADR. This will help to improve rule of law, people's perception and business environment.
- **Poland:**
  - Reforms to fill gaps taking into account data collection and monitoring; citizens need to know that the system is there for their own benefit; system improving operation of justice systems, spending of budget resources, etc.
  - Projects: dissemination of ODR by improving competence of mediators, establishment of mediator centres and skills, national register of mediators; access to justice with people with disability: take into account different needs.
- **Portugal:**
  - Portugal has been putting a strong focus on people-centred justice and digital transformation.
  - Areas of focus: trust (can only increase if include people/businesses at the centre of policy design, delivery, evaluation, monitoring); communication (inform people where government's projects stand and their advancements); purpose/trust (citizens' satisfaction depends on the flow of information of stakeholders and avoid limiting participation); better measure impact to improve transparency and make purpose clear; commitment; making sure people have skills.
- **Romania:**
  - Romania is committed to the EU rule of law toolbox; EU justice score board; annual rule of law report) to improve justice system.
  - Romania is adopting new justice laws and revision of legal framework, and applying EC recommendations to the judiciary.

- New strategy for the Development of the Judiciary 2022-2025 and Action Plan (approved 30 March 2022 under the RRP): independence, quality and efficiency of justice as well as the access to justice.
- Digitalisation: implementation of ECRIS V: digital processing of cases, collection of statistical data and electronic transfer of data.
- National anti-corruption 2021 – 2025 (adopted December 2021): objectives: reduce corruption, strengthening integrity, performance of enforcement.
- **Slovenia:**
  - To increase trust in the judiciary, Slovenia has been working in EQ project to improve skills of court staff; improve speedy and efficiency of judicial processes; the role of media needs to be acknowledged.
- **Spain:**
  - Main pillars: Organisational level (flexible structures in courts and modern offices to allow people connect to courts without traveling); continuing with specialisation; procedural efficiency and enhance ADR mechanisms, together with private sector initiatives; digital transformation (as it raises trust in justice with future generations).
  - Current projects: data-oriented justice (change from managing documents to managing data to help policy design in the future); electronic judicial file and remote hearings (helping to save time, resources); digital identity system; AI and automation of processes.
- Several EU countries participated also as panellists in technical sessions during the event, sharing best practices on digital transformation, justice data, people-centred justice planning, justice and inclusive growth, interagency coordination, people empowerment and legal capability, etc. The agenda and full streaming of the event are available [on the website](#).

### **Measurement of people-centred justice**

- The OECD is co-custodian of SDG 16.3.3, together with UNDP and UNODC, in charge of global monitoring OECD member countries in reporting this specific indicator.
- The SDG global indicator 16.3.3 provides an opportunity for all countries to report on achieving access to justice for all to deliver on their commitments on the 2030 Sustainable Development Agenda, and in particular SDG target 16.3 “promote the rule of law at the national and international levels, and ensure equal access to justice for all”
- The indicator measures the proportion of the population who have experienced a dispute in the past two years and who accessed a formal or informal dispute resolution mechanism, by type of mechanism.
- It focuses on the first step of the process to obtain justice and in particular on the accessibility of justice institutions and mechanisms (both formal and informal). It aims to provide information about the overall accessibility of civil justice institutions and processes, barriers, and main reasons for exclusion. The disaggregation by type of dispute resolution mechanism provides additional information about the channels used by citizens in need of enforcing or defending their rights.

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[Digital technologies for access to justice](#)

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### **Online Dispute Resolution**

- The development of online dispute resolution (ODR) is part of an ongoing fundamental transformation of justice systems across the globe to bring justice closer to people and improve user experience. People and businesses are experiencing conflicts in new ways and becoming more demanding on how their conflicts are solved. Higher expectations of more empowered users in a context of growing internal and external pressures, such as lower levels of trust in public institutions, promises of the digital age, health, environmental and economic crises, are major drivers that call for change in justice systems. This implies that needs, preferences, dignity of users, and timeliness are put at the centre in the design and delivery of justice services. Digital technologies and data are important elements in the process of re-thinking and transforming justice services.
- ODR has a great potential to maximise access to justice. Adopting a people-centred justice approach in the process of using digital technologies and data to design and deliver ODR mechanisms are essential to ensure that people and businesses can obtain effective and timely resolution for their justice and legal needs, and have their rights enforced, in compliance with human rights. In addition, ODR can contribute to enhancing access to justice by improving affordability and proximity to parties to dispute settlement, and access to information (e.g. notifications, file cases, decisions available online). ODR can also contribute to continuity and effectiveness of justice services. For example, ODR increases available channels where people and business can settle their disputes. Likewise, ODR can help offer a simple, efficient and out-of-court solution to dispute settlement, having therefore a positive impact in workload, resources and quality of court services.
- Implementing ODR does not come without challenges and often requires attention to preserve rule of law and fundamental rights. The forthcoming **OECD Online Dispute Resolution Framework** provides a roadmap to make ODR a success. The Framework embraces the opportunities that ODR can offer to help countries advance in access to justice following a people-centred approach. At the same time, the Framework recognises the need to address challenges and minimise risks that digitalisation of dispute resolution services entails, emphasising human rights and justice values, as well as principles embedded in the OECD Criteria for People-Centred Design and Delivery of Legal and Justice Services.

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### Access to Justice for Children

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- The forthcoming **OECD Child-friendly Justice Framework** acknowledges that children and young people with their unique characteristics and needs encounter particular difficulties when accessing to justice. The general vulnerability of children is exacerbated by a range of individual and environmental factors, often placing them outside of effective protection systems, which in turn makes them particularly susceptible to experiencing poor well-being outcomes.
- The framework includes several good practices from EU countries, including:
  - **France:** Multi-year consultation process of youth in France
    - In 2019 the French Constitutional entity Defender of Rights (Défenseur des droits) launched a consultation process of youth called « J'ai des droits,

entends-moi » regard to the right of children to participate in issues that affect them. The three editions of this consultation are:

- **2019:** enabled 2,200 children aged between 4 and 17 to learn and reflect on their rights.
  - **2021:** focused on mental health of children and young people. Enables nearly 600 children aged 3 to 18 to express their reflections and recommendations on this subject.
  - **2022:** focuses on children's right to privacy. Roundtable discussions, participatory workshops and meetings with professionals are planned.
- **Ireland:** Youth Justice Strategy 2021 – 2027 recently developed in Ireland covers a number of issues relevant to children in contact with the justice system. It aims to provide specific training for professionals involved in the criminal justice system to provide effective services, including development of multi-disciplinary training modules (Strategic Objective 1.9).

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## Developments on Civic Space and the rule of law

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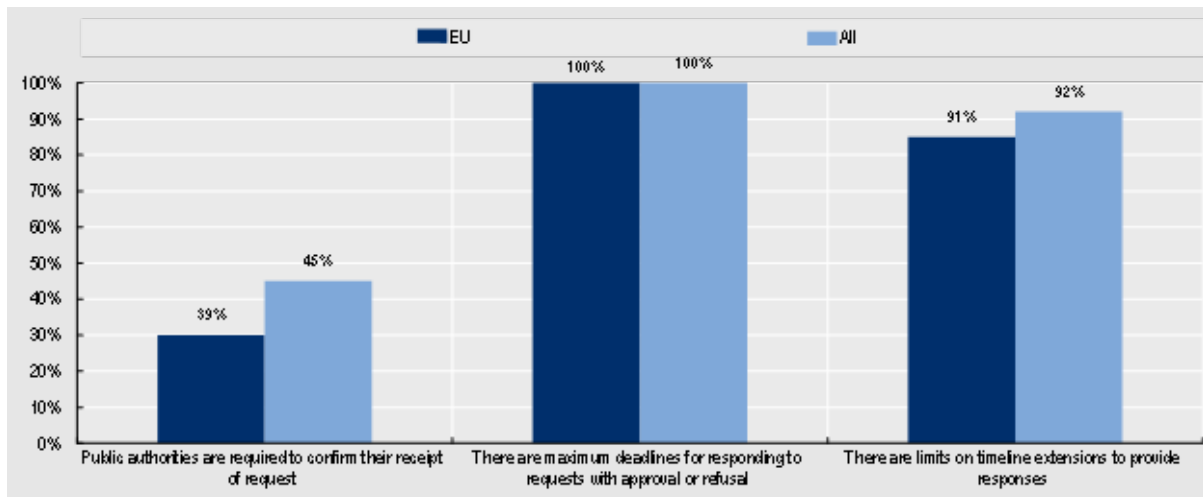
### Topic III. Media Freedom and Pluralism

- Framework for journalists' protection, transparency and access to documents - Rules and practices guaranteeing journalist's independence and safety, including as regards protection of journalistic sources and communications
- There have been numerous amendments to legal frameworks and court decisions governing media freedoms in recent years aimed at safeguarding the rights of the media and introducing clauses based on national security and counter-terrorism concerns. Germany and the Netherlands have recently passed legislation that protects journalists and their sources from undue disclosure and surveillance measures. Italy has amended its legislation on the media so that defamation is no longer punishable by cumulative penalties (involving prison sentences and fines); rather, while still a criminal offence, the sanction is now either a prison sentence or a fine.
- High courts in Germany and Lithuania have issued decisions strengthening the rights of journalists and media in cases related to state surveillance or other forms of state interference, access to information, oversight of public broadcasting and the accreditation of media representatives. These court rulings are a positive sign that in various OECD Members, the judiciary is protecting and safeguarding civic space.
- In Norway, since 2020, a new media responsibility law defines journalists' freedoms, responsibilities and editorial independence.



- In Portugal, homicide is met with aggravated sanctions if committed against a journalist. Threats against national security, such as terrorism have led to more restrictive legislation in a number of OECD Members. In Latvia and Lithuania, broadcasting or retransmission permits may be refused or suspended where necessary in the interests of national security or public order. Similarly, the Netherlands has recently passed legislation that obliges anyone, including journalists, travelling to areas controlled by terrorist groups to request prior permission from the Ministry of Justice.
- Access to information and public documents (incl. transparency authorities where they exist, procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities, possible obstacles related to the classification of information)
- Access to information (ATI), understood as the ability of an individual to seek, receive, impart and use information is a core element of protected civic space. Thus, ensuring inclusive and equitable access to information for all citizens and stakeholders is key for the exercise of the right to access information. In principle, any person regardless of age, gender, sexual orientation, religious belief, legal status and political affiliations, and institutions and organisations, whether governmental or non-governmental, from civil society, academia, the media or the private sector, should be able to make a request for information. 85% of respondent EU Member States (78% of all respondents) have ATI laws that stipulate that anyone can file a request, while others, for example, stipulate that requests can only be made by nationals or legal residents.
- Clear standards regarding timelines for requesting information is crucial as it provides transparency to requesters on the length of the process. Respecting these timelines is essential for the legitimacy of ATI procedures and maintains citizen's trust in the administrative process. It is also important on a practical level, as some requests may be time sensitive. In 39% of respondent EU Member States and 45% of all respondents, public authorities are required to confirm their receipt of the request. In both categories, there are maximum deadlines for responding to requests with approval or refusal, with an average of 20 working days in EU Member States. Most countries (91% of respondent EU Member States, 92% of all respondents) have also established limits on timeline extensions on responses.

**Figure. Existence of a specific number of days to respond to a request at different stages of the information request process, 2020**

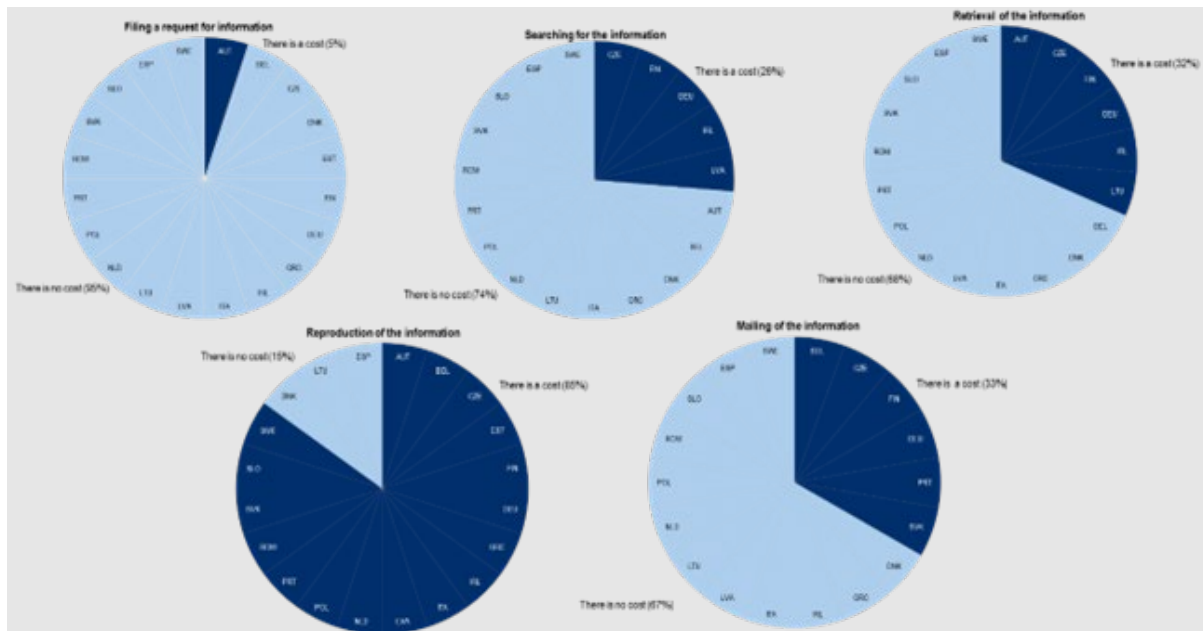


Note: In "Filing a request for information" and "Reproduction of the information", "EU" refers to 20 EU Member State respondents and "All" refers to 51 respondents; in "Searching for the information" and "Retrieval of the information", "EU" refers to 19 EU Member State respondents and "All" refers to 50 respondents; and in "Mailing of the information", "EU" refers to 18 EU Member State respondents and "All" refer to 49 respondents.

Source: Data adapted from OECD (2022), The Protection and Promotion of Civic Space: Strengthening Alignment with International Standards and Guidance, OECD Publishing, Paris, <https://doi.org/10.1787/d234e975-en>.

- Making requests for access to information free of charge is important to ensure all social demographics can exercise this right without undue barriers. Introducing costs for requests can negatively impact how inclusive ATI processes are and discourage stakeholders from lower socio-economic background. Filing a request for information in most EU Member States does not involve a cost. There can, however, be costs associated with obtaining the requested information in practice. In 5% of respondent EU Member States and 8% of all respondents, there is a cost for filing a request. In 26% of EU Member States and 22% of all respondents, there is a cost for searching for information; while in 32% of EU Member States and 22% of all respondents, have costs for the retrieval of information. Regarding reproduction, there is a cost in 85% in EU Member States and 82% of all respondents. Finally, there is a cost for mailing information in 33% of EU Member States and 41% of all respondents. When a variable fee is charged, some countries, including Austria, Finland and France have introduced a maximum cap on the cost to guarantee an upper limit.

**Figure. Costs associated with the request for information process, 2020, all countries**

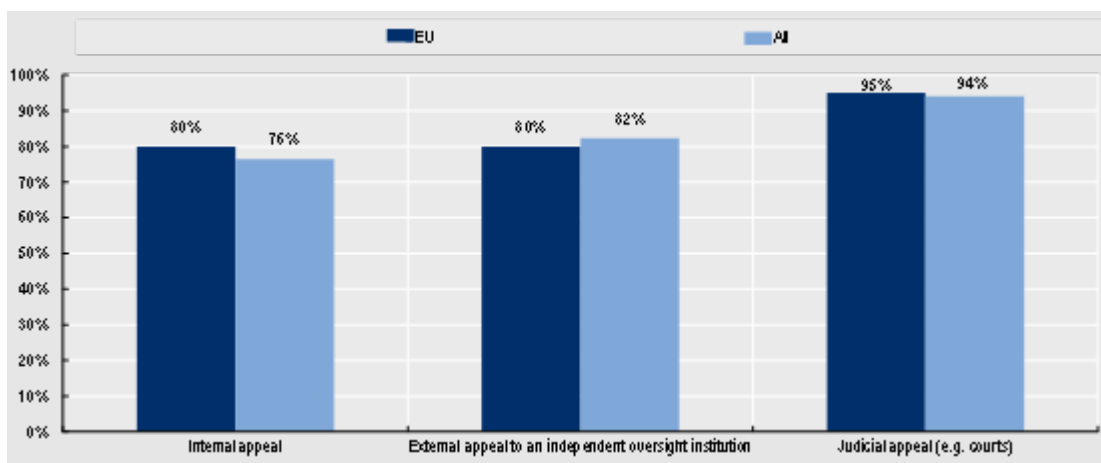


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- In the event of a request for information being denied, most countries have at least one mechanism for appeal, if not more. 80% of respondent EU Member States (76% of all respondents) having in place an internal appeal; 80% of respondent EU Member States (82% of all respondents) an external appeal; and 95% of respondent EU Member States (94% of all respondents) having a judicial appeal.

**Figure. Mechanisms in place for appeals in the event of a denied ATI request, 2020**



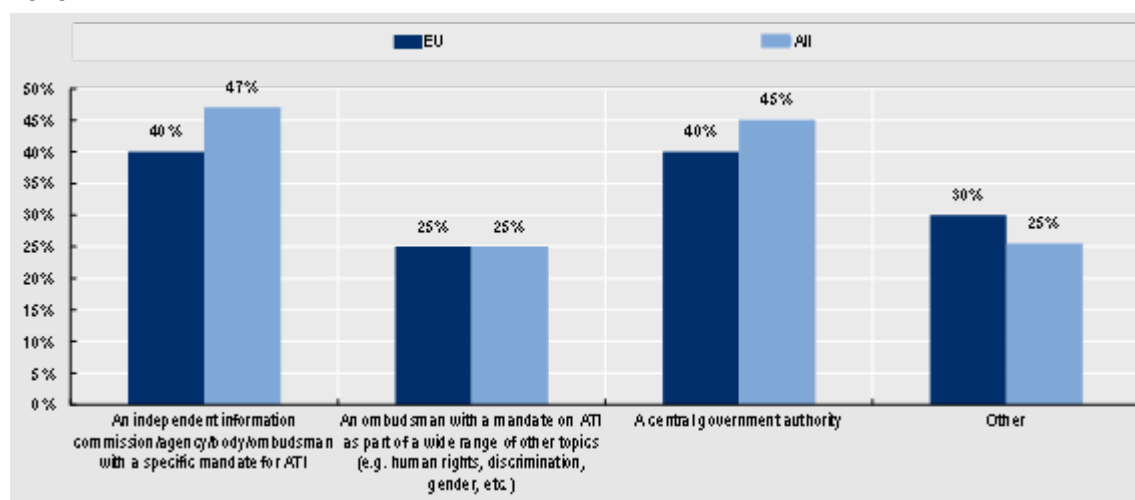
Note: "EU" refers to 20 EU Member State respondents and "All" refers to 51 respondents

Source: Data adapted from OECD (2022), The Protection and Promotion of Civic Space: Strengthening Alignment with International Standards and Guidance, OECD Publishing, Paris, <https://doi.org/10.1787/d234e975-en>.

- Most countries have one or more dedicated oversight bodies for ATI, which can take the form of an information commission, agency, body or ombudsman (40% respondent EU Member

States, 47% all); an ombudsman with a wider mandate that includes ATI (25% for both categories); or a central government authority (40% respondent EU Member States, 45% all). Their mandates and responsibilities vary and can range from monitoring and oversight of implementation of the ATI law to promotion and raising awareness of the right among both public officials and citizens. Regarding the “other” category, in some countries, the oversight body is not specified in the law (for example, Latvia), or there is no such body with responsibility for ATI (for example, Lithuania). Moreover, 50% OECD and 61% all foresee the establishment of an ATI office or officer in their laws.

**Figure. Bodies responsible for the enforcement, monitoring and/or promotion of ATI laws, 2020, 2020**



Note: "EU" refers to 20 EU Member State respondents and "All" refers to 51 respondents

Source: Data adapted from OECD (2022), The Protection and Promotion of Civic Space: Strengthening Alignment with International Standards and Guidance, OECD Publishing, Paris, <https://doi.org/10.1787/d234e975-en>.

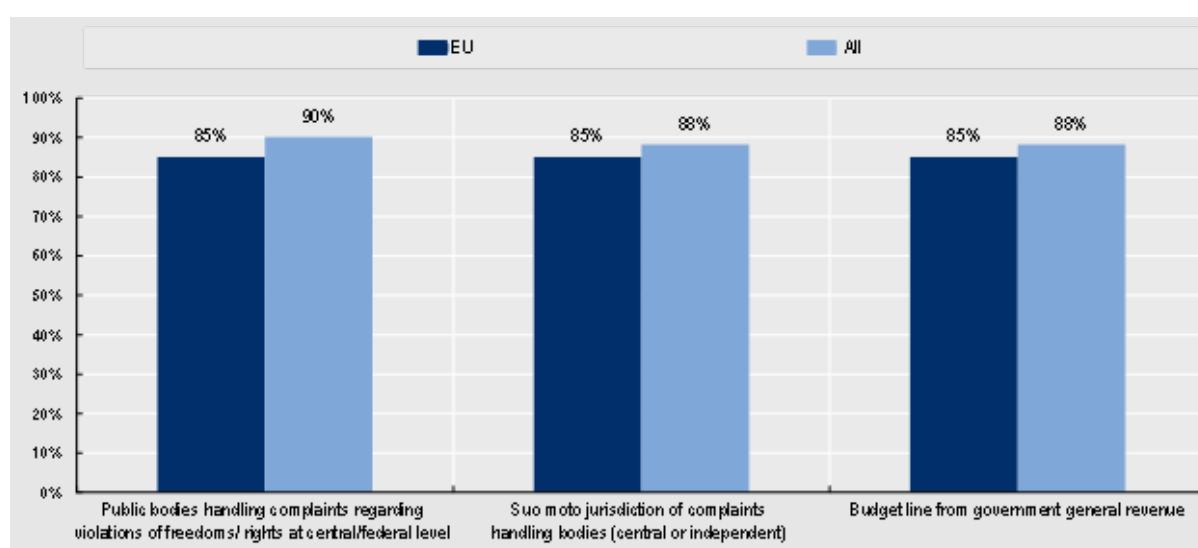
## Other institutional issues related to checks and balances

### B. Independent authorities

- Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions
- Aside from bodies of the executive and courts, publicly funded independent oversight mechanisms are fundamental to protecting civic space. Many of these independent public institutions have individual complaints mechanisms set out in law. Once an individual has submitted a complaint, these institutions review the case. In case the institution concludes that a human rights violation or case of abuse of powers has taken place, it may engage in different kinds of actions to resolve the case, depending on its respective mandate. In some countries, such institutions have additional power to take cases to court or to issue sanctions.
- Figure below shows that 85% of EU Member State respondents to an OECD survey and 90% of all respondents have established independent public institutions that address human rights

complaints such as an NHRI, including ombudsperson offices. In 85% of EU Member State respondents and 88% of all respondents, the independent public institution may initiate human rights investigations of its own accord (*suo moto*), regardless of whether an individual human rights complaint was received or not. This is crucial to ensure complete and consistent human rights protection in a country, as, in this way, human rights protection mechanisms can engage proactively in a given situation and do not depend on individuals to review alleged human rights violations that have come to their attention, especially in sensitive matters where individuals may fear negative consequences if they lodge a complaint. This role has been recognised in relation to ombuds institutions by the European Commission for Democracy through Law (Venice Commission), which has advised that ombudspersons should have discretionary power to investigate cases on their own initiative.

**Figure. Independent oversight and complaint mechanisms for civic freedoms, 2020**

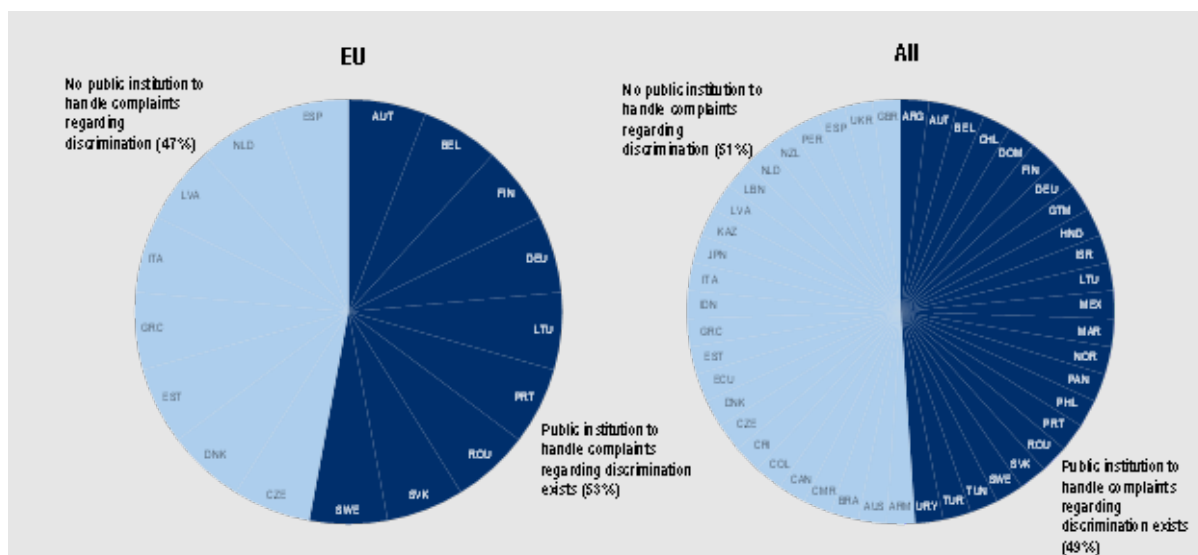


Note: "EU" refers to 20 EU Member State respondents and "All" refers to 51 respondents. For the sub-question "Budget line from government general revenue", "All" refers to 48 respondents (30 OECD Members and 18 non-Members). Data on Austria, Guatemala, Ireland, Slovenia and Türkiye are based on OECD desk research for at least one of the categories and were shared with them for validation.

Source: Data adapted from OECD (2022), *The Protection and Promotion of Civic Space: Strengthening Alignment with International Standards and Guidance*, OECD Publishing, Paris, <https://doi.org/10.1787/d234e975-en>.

- Figure below shows that 52% of EU Member State respondents and 49% of all respondents have separate oversight institutions that specialise in discrimination cases and promoting equality.

**Figure. Institutions that specialise in discrimination cases, 2020**



Note: "EU" refers to 17 EU Member State respondents and "All" refers to 47 respondents.

Source: Data adapted from OECD (2022), The Protection and Promotion of Civic Space: Strengthening Alignment with International Standards and Guidance, OECD Publishing, Paris, <https://doi.org/10.1787/d234e975-en>.

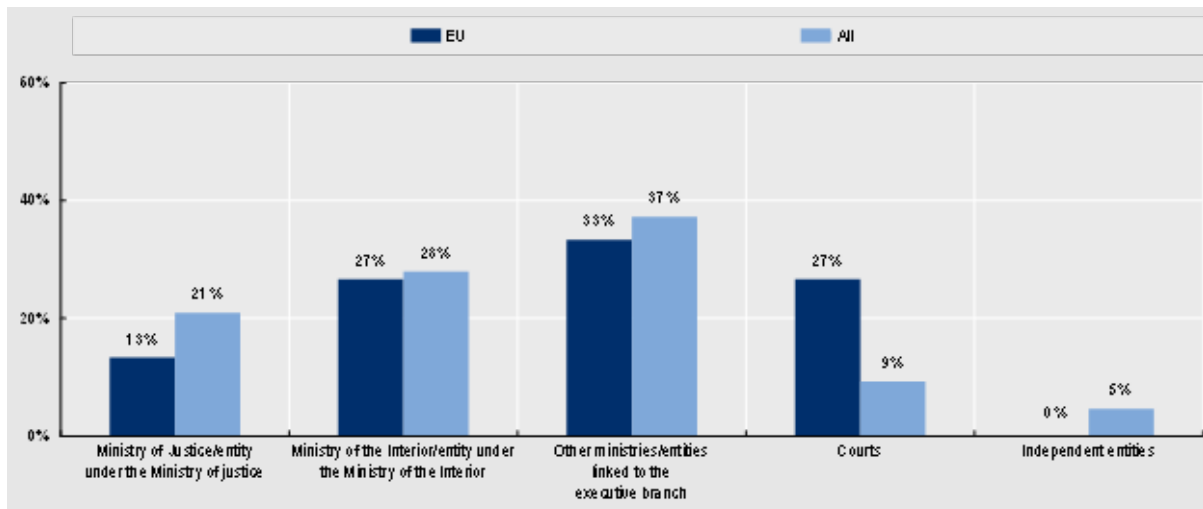
#### D. The enabling framework for civil society

Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration and dissolution rules).

- Legal provisions governing CSO registration have a significant impact on civic space. Based on international guidance<sup>2</sup>, CSOs should be allowed to exist either as unregistered bodies or organisations that are registered and/or have legal personality. Furthermore, while a requirement of registration may be necessary for CSOs seeking legal personality, state benefits, or a certain legal status (e.g. public benefit status), unregistered CSOs should be allowed to operate. Contrary to international guidance, CSOs and associations are required to register in order to operate in 55% of all respondents and 35% of EU Member State respondents.

**Figure. Legal requirement for CSOs to register in order to operate, 2020**



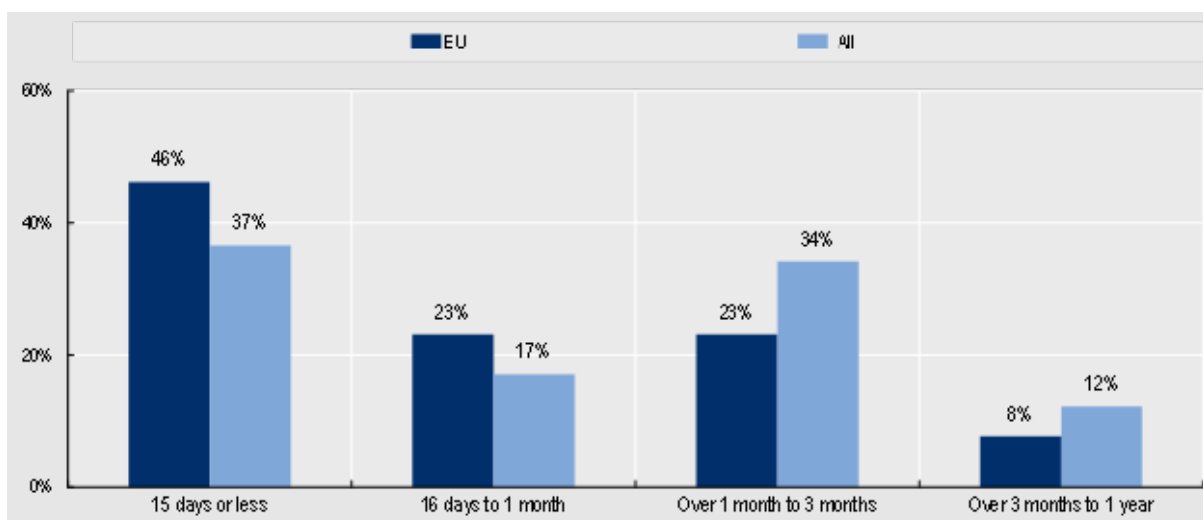


Note: "EU" refers to 15 EU Member State respondents and "All" refers to 43 respondents. Data on Germany and Italy are based on OECD desk research and were shared with them for validation.

Source: Data adapted from OECD (2022), The Protection and Promotion of Civic Space: Strengthening Alignment with International Standards and Guidance, OECD Publishing, Paris, <https://doi.org/10.1787/d234e975-en>.

- The timeline for registration is important as delays can hinder CSO operations. International guidance suggests that laws should set short time limits for public authorities to respond to applications for registration. Figure below shows that 42% of EU Member States surveyed and 37% of all respondents have relatively short timelines of 15 days or less. Long timelines of 3 months to 1 year for obtaining a decision on registration exist in a minority of respondents (8% EU Member State respondents, 13% all).

**Figure. Average length of time between submission of a request for registration by CSOs and a decision by state authorities, 2020**



Note: "EU" refers to 13 EU Member State respondents and "All" refers to 41 respondents. Only those who responded "yes" to Question 19 related to the registration of CSOs were asked to respond to this question in the survey.

Source: 2020 OECD Survey on Open Government.

## Other rules on CSO registration


















































- While in most countries, a minimum number of only 2 to 3 persons is required to create an association, the minimum number is 20 persons in Greece and 7 in Germany. Generally speaking, international guidance suggests that two or more persons or groups of persons should be a sufficient basis for establishing an association.<sup>4</sup> Often, regulations also set a minimum age for CSO founding members, which is generally the national age of majority. Some respondents have specific registration criteria for specific types of CSOs. For example, Greece introduced specific criteria in 2020 for the registration and certification of national and foreign CSOs and their staff working in the field of migration.

## Regulations on CSO political engagement

- The enabling environment for CSOs is also protected when they are allowed to participate in political debates. Legal restrictions on CSO engagement in political activities relate to support to political parties and elections, public policy activities more generally, or to CSOs with a public benefit or charitable status. In EU Member state respondents, restrictions only relate to CSOs that have a public benefit or charitable status.
- Whether particular activities of CSOs are characterised as being “political” ultimately depends on the interpretation of the courts. The enabling environment for CSOs can be protected by avoiding legal restrictions that are overly broad or vague, as legal uncertainty can result in CSOs abstaining from engagement in political matters altogether.

**Table. Domestic rules on political campaigning and political activity of CSOs, 2020**

Country	No restrictions	Restrictions or requirements on all types of CSOs	Restrictions or requirements on public benefit organisations/charities	Restrictions and requirements on CSOs that receive foreign funding	Disclosure requirements	Country	No restrictions	Restrictions or requirements on all types of CSOs	Restrictions or requirements on public benefit organisations/charities	Restrictions and requirements on CSOs that receive foreign funding	Disclosure requirements
	✓						✓				
	✓						✓				
					✓			✓	✓		
	✓						✓				
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Count All							28	6	12	2	2
Percentages All							62%	11%	28%	4%	4%
Count EU							16	0	4	0	0
Percentages EU							79%	0%	21%	0%	0%

Source: 2020 OECD Survey on Open Government.

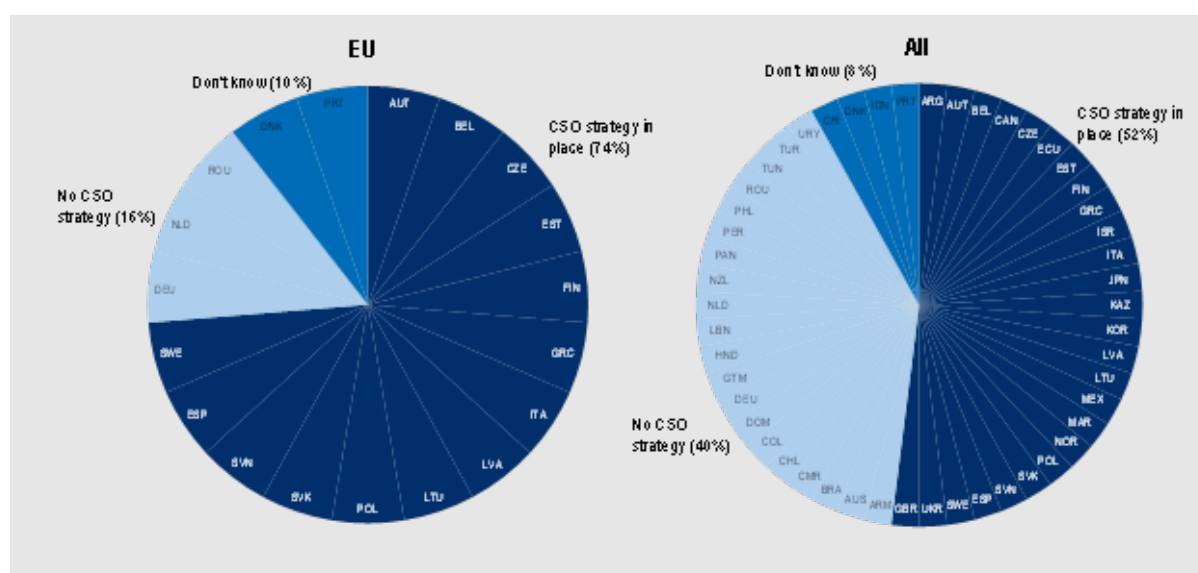
- According to international guidance - such as from the UN or the Council of Europe<sup>5</sup> - CSOs should be free to participate in matters of political and public debate, including in election-related activities. International guidance recommends that while any organisation supporting a particular candidate or a party in an election should be transparent in declaring its

motivation, all associations should be allowed to engage in activities related to the electoral process. The OECD report suggests that governments should avoid catch-all definitions of “political activities” or “political purposes” in relevant legal frameworks, as these risks being applied to a range of public policy activities or purposes that are broader than those pertaining to direct engagement with elections or referenda.

### National strategies to protect a CSO enabling environment

- National CSO strategies can help to strengthen the enabling environment leading to robust and independent CSOs, strong CSO-state relationships. Figure below shows that 74% of EU Member State respondents and 52% of all respondents have a policy or strategy in place to improve or promote an enabling environment for CSOs.

**Figure. Respondents with a policy or strategy to improve or promote an enabling environment for CSOs, 2020**



Note: "EU" refers to 19 EU Member State respondents and "All" refers to 50 respondents. Data on Guatemala and Türkiye are based on OECD desk research and were shared with them for validation.

Source: Data adapted from OECD (2022), The Protection and Promotion of Civic Space: Strengthening Alignment with International Standards and Guidance, OECD Publishing, Paris, <https://doi.org/10.1787/d234e975-en>.

- Several common elements can be found in most government strategies to improve or promote an enabling environment for CSOs. The first is that most propose a definition of civil society, as in the Czech Republic, Finland, Slovenia and Sweden. Many of the 15 CSO strategies that were reviewed also include an assessment of the current operating environment or state of play for CSOs. Most include, to varying extents, information such as figures on the numbers of registered CSOs, financial flows and types of organisations in the country, alongside the historical background of civil society and, in some cases, relevant legal and policy developments.

- Organisation of financial support for civil society organisations and human rights defenders (e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding)
- A favorable financial environment for CSOs is yet another important pillar of an enabling environment for CSOs. This includes state funding and other forms of public support, such as tax exemptions, as well as access to financial assistance from private, foreign and multilateral sources. Access to government funding remains a critical challenge for CSOs, with additional pressures since 2020 due to COVID-19. Medium- to long-term funding, as well as unconditional funding (which can be used for any purpose the CSO sees fit) and core funding (for organisational expenses that cannot be allocated to specific projects, including administrative costs, infrastructure costs, and institutional capacity building), can provide predictability and sustainability for the sector; however, short-term funding continues to be the most common funding modality used in most countries. Comprehensive data on the length and modalities of government funding for CSOs is lacking, in part because public resources for CSOs come from a wide range of sources, involving different ministries, budget lines, and local and regional governments. The absence of an overview in many countries, including those giving generously towards the CSO sector, makes it difficult to strengthen systems and monitor funding trends. By enhancing data collection, disaggregated by funding modality, type of support and focus area, governments can develop a more strategic approach to support civil society
- Government funding for CSOs is typically provided via the national budget or in a few respondents via other dedicated funding streams such as lotteries or specific taxes. In several OECD Members, for example, lottery funds are used to fund the non-profit sector, including in Belgium, Germany and Ireland. In Estonia, gambling taxes are used to finance non-profit associations and foundations to implement projects related to social progress for example. In Finland, more than EUR 1 billion is provided per year to civil society from the Veikkaus gaming system.
- In Lithuania, the Constitutional Court ruled that existing laws that set aside a particular percentage of the state budget for programmes or funds violate the constitutional rights of the government to form a state budget independently; CSOs have raised concerns that this ruling risks depriving CSOs of long-term funding.
- Core funding and unconditional core funding: In some countries, there are examples of so-called “core funding”, which is a funding modality that is directed at supporting CSOs’ organisational expenses that cannot be allocated to specific projects, including administrative costs, infrastructure costs, institutional capacity building, board meetings, audit expenses and other recurring costs. Core funding is important for organisations’ successful operations and for increasing the capacity of the CSO sector. For instance, in Finland, the Ministry of Education and Culture provides subsidies to CSOs that cover costs related to their operations and the construction of educational and cultural sites. Sweden provides investment grants and business development grants to CSOs and companies that establish public meeting rooms with the precondition that “in their activities, they respect the ideas of democracy, including the principles of gender equality and prohibition of discrimination”. In Spain, organisations

engaged in promoting equality, social inclusion and the fight against poverty can be awarded grants that can cover a wide range of running costs and capacity-building activities. The Ministry of Education in Estonia also provides funding to strategic partner organisations for a three-year period. This funding includes an operating grant aimed at building the organisation's capacity to participate in policy-making processes.

- Specific tax regimes for CSOs: Governments can support CSOs by offering them tax exemptions. In addition to being a good practice, specific tax regimes provide an opportunity to encourage and reward activities that contribute to the public interest. All EU member states that responded to the survey have provisions for tax exemptions in place. While the exemptions differ significantly regarding the types of organisations that qualify, the taxes concerned and the extent of the tax reduction, states typically give CSOs a full or partial exemption from corporate income taxes, value-added tax (VAT) preferences and/or tax reductions on donations to CSOs by private individuals or legal persons. Recent legal developments in tax relief in OECD Members have, in most cases, improved the enabling environment for CSOs. In 2019, Latvia increased the tax relief for donations to public benefit organisations from 75% to 85% of the amount donated, valid for 3 years, with the aim of creating a more favorable framework for CSO fundraising for example. Latvia also introduced further options for tax benefits for individuals that allow taxpayers to directly donate a portion of their tax returns to public interest organisations. In a few countries, such as Belgium and Slovenia, legal frameworks include a single definition of associations/not-for-profit co-operatives that enables all CSOs to benefit from tax exemptions. Germany has expanded the types of activities justifying charitable status for CSOs by adding climate and protection against discrimination based on a person's gender identity and orientation as a legitimate purpose for CSOs to be granted charitable status. Germany also reduced taxes on services performed by public benefit organisations.