OECD Public Governance Reviews

Civic Space Review of Romania



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Foreword

The current social, economic, geopolitical and environmental challenges that governments are facing present a critical juncture for democracies around the world. In many OECD Members, public confidence in government institutions has been decreasing, with this trend being accompanied by declining voter turnout, the rising prevalence of mis- and disinformation, growing political polarisation and larger groups dissociating themselves from traditional democratic processes. Within this context, the OECD launched the Building Trust and Reinforcing Democracy Initiative (RDI) in 2021 with the dual goals of strengthening democratic governance and protecting them from existing and emerging threats. Through this initiative, OECD members explicitly recognise the need to protect and promote civic space as part of enhancing participation, representation and openness in public life. Civic space is viewed as a cornerstone of democratic governance and a crucial means for citizens to meaningfully engage in shaping their societies.

Romania is currently developing a strategic vision for the protection of civic space as part of its national open government agenda. In asking the OECD to undertake a Civic Space Review, it has embarked on an ambitious process to place citizens and civil society organisations at the heart of policymaking. This focus arrives at a critical time in Romania, as the country's National Recovery and Resilience Plan will also introduce widespread reforms to embrace the twin green and digital transitions for a more sustainable future. Romania's ongoing OECD accession process provides a further opportunity to prioritise more inclusive and people-centred public decision making that fosters partnerships with diverse stakeholders. This window of opportunity could enable Romania to push through reforms that will help build trust and strengthen democracy overall. Romania's ambitions in this regard are highly commendable but will require sustained political commitment, dedicated resources, and strong co-ordination to achieve.

The Civic Space Review is part of a broader project on Enhancing Policy Coherence, Transparency and Coordination at the Centre of the Government in Romania, which is funded by the European Union via the Technical Support Instrument (TSI), and implemented by the OECD, in co-operation with the European Commission. In parallel, the OECD is undertaking an Open Government Review of Romania which will provide an evidence-based review of ongoing open government policies and initiatives, based on the ten provisions of the OECD Recommendation of the Council on Open Government. This Review – which analyses the enabling environment for open government reforms related to civic freedoms, media freedoms, online civic space and civil society – should thus be read in conjunction with the Open Government Review. Together, the Recommendations from these reviews offer a blueprint for Romania's desired – and possible – future: more responsive, interactive, transparent and accountable governance that keeps citizens informed and engaged to achieve shared objectives together.

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The OECD would also like to enthusiastically thank the public officials from the governments of Chile, Finland and Scotland who generously took part in the process as peer reviewers. Their contributions regarding good practices and lessons learned from their own countries are also integrated throughout the report. In addition, we would like to acknowledge the important role of Cristina Luchici from the Directorate-General for Structural Reform Support (DG REFORM) of the European Commission and her support during the process.

The report also benefitted from substantive comments from other OECD teams currently supporting Romania in a wide range of policy areas: open government; the centre of government; public sector innovation; digital government and open data; and policy coherence for sustainable development goals.

Some sections of the report analysing Romania's legal frameworks paraphrase material provided by the Library of Congress to the OECD Observatory of Civic Space as part of the process. Please see the OECD Civic Space website for the full Library of Congress "Romania: Civic Space Legal Framework" background report.

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Abbreviations and acronyms

ADR	Authority for the Digitalisation of Romania
ANCOM	National Authority for Management and Regulation in Communications
ANSPDCP	Romanian Data Protection Authority
APADOR-CH	Association for the Defence of Human Rights in Romania – the Helsinki Committee
APPC	Professional Media Association in Cluj
ApTI	Association for Technology and Internet
ARDOR	Romanian Oratory and Rhetorical Debating Association
ATI	Access to information
CONES	National Commission on Equal Opportunities for Women and Men
CDMiR	Coalition for the Rights of Migrants and Refugees
CESE	French Economic, Social and Environmental Council
CIJ	Centre for Independent Journalism
CMPF	Centre for Media Pluralism and Media Freedom
CNA	National Audiovisual Council
CNCD	National Council for Combating Discrimination
CoE	Council of Europe
CSO	Civil society organisation
DESI	EU Digital Economy and Society Index
DITP	Inter-Ministerial Directorate for Public Transformation
DNSC	Romanian National Directorate for Cybersecurity
EC	European Commission
EC-JRC	EC Joint Research Centre
ECPMF	European Centre for Press and Media Freedom
ECRI	European Commission against Racism and Intolerance
EDRi	European Digital Rights
EEA	European Economic Area
EEML	Eastern European Machine Learning
EIGE	European Institute for Gender Equality
ELI	European Law Institute
EU	European Union
FDSC	Civil Society Development Foundation
FONSS	Federation of Non-Governmental Organisations for Social Services
FRA	EU Agency for Fundamental Rights
GDP	Gross domestic product
GDPR	General Data Protection Regulation
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
GSG	General Secretariat of the Government
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICT	Information and communication technology
IPI	International Press Institute
IRES	Romanian Institute for Evaluation and Strategies

LGBTI	Lesbian, gay, bisexual, transgender and intersex
MPM	Media Pluralism Monitor
NEET	Not in education, employment or training
NRRP	National Recovery and Resilience Plan
OAS	Organization of American States
ODIHR	Office for Democratic Institutions and Human Rights
OECD	Organisation for Economic Co-operation and Development
OGP	Open Government Partnership
OPSI	OECD Observatory of Public Sector Innovation
OSCE	Organization for Security and Co-operation in Europe
RAF	Romania-American Foundation
RRF	Recovery and Resilience Facility
RSF	Reporters Without Borders
RUTI	Transparency of Interests Register
SLAPPs	Strategic lawsuits against public participation
SRI	Romanian Intelligence Service
UEFISCDI	Executive Agency for Higher Education, Research, Development and Innovation Funding
UJF	Union of Journalists in Finland
UNICEF	United Nations International Children's Emergency Fund
UN	United Nations
USAID	United States Agency for International Development
UZPR	Union of Professional Journalists of Romania
V-Dem	Varieties of Democracy
WJP	World Justice Project

Executive summary

When considering civic space protection in Romania, it is important to recognise the country's history and journey as a relatively young democracy. In part due to its accession to the European Union (EU) in 2007, Romania has spearheaded significant democratic reforms over recent decades. Today, the civic freedoms that underpin vibrant civic space are afforded the highest legal protection and the country has introduced a series of reforms to improve citizen and stakeholder participation. However, democratic participation remains low, as does trust between citizens and the state, and there is little targeted outreach to underrepresented groups. OECD's *Government at a Glance 2021* found that confidence in the Romanian government fell from 20% in 2007 to 16% in 2020. According to International IDEA, voter turnout is low in Romania, namely 31.8% in 2020 parliamentary elections and 51.2% in 2019 presidential elections. Romania's ability to effect reform has been further inhibited by frequent changes in government in recent years.

Romania's upcoming Open Government Strategy, which will include a component on engaging civil society in public decision making, can lay the groundwork for greater co-operation and partnership between public bodies and civil society. The process of designing, developing, implementing, and monitoring the strategy – as important as the strategy itself – will provide a crucial opportunity to forge a relationship based on shared goals and mutual trust and respect. This report provides an in-depth analysis of national legal frameworks, policies, institutions, and practices relevant to civic space protection, reviewing strengths and areas for improvement, and providing guidance on a wide range of issues.

Protecting civil liberties and empowering oversight mechanisms

Overall, fundamental civic freedoms of expression, peaceful assembly and association are well protected by legal frameworks in Romania. People in Romania can express their opinions freely: Romania is one of the few European countries to have decriminalised defamation. Nonetheless, hate speech remains a pervasive challenge. Furthermore, inequality and marginalisation hamper equal participation in public life and different types of exclusion – including high levels of poverty and low levels of representation of Roma – are often interlinked. The government recognises this issue, and several legislative reforms and government strategies aim to support vulnerable groups, such as Roma, migrants, people with disabilities, and lesbian, gay, bisexual, transgender or intersex (LGBTI) persons, who continue to face systemic exclusion and discrimination. Other such strategies seek to combat xenophobia and hate speech, as well as gender discrimination and violence, to ensure that citizens are safe, able, and willing to participate in public life on an equal basis.

The implementation of national strategies could be improved by identifying clear leadership, solidifying sources of funding, adapting objectives to the national and local context, and strengthening monitoring, oversight and evaluation. A dedicated strategy to address the challenges facing the LGBTI community would enhance inclusion. Human rights complaints mechanisms, such as the People's Advocate and the National Council for Combating Discrimination would benefit from greater financial resources to successfully fulfil their mandates.

Strengthening access to information, media freedoms and protected online civic space

Access to information is both a right and a key enabler of other civic freedoms. The legal right is recognised in the Romanian Constitution and operationalised through the Law on Free Access to Public Information. Its implementation requires attention, however. For example, there is a need to reduce response times for information requests, avoid illegitimate denials based on the General Data Protection Regulation, and introduce an independent oversight body to monitor these processes, including by gathering and publishing relevant data from across the public administration.

Press freedom and media pluralism are also essential components of vibrant civic space. In Romania, however, public and private media can be negatively perceived due to a lack of transparency in media ownership. Media outlets, especially smaller and regional outlets, face chronic financial difficulties. Journalists can face barriers in reporting objectively and without external interference; some note the use of strategic lawsuits against public participation (SLAPPs) to silence journalists and activists who are critical of public figures or engage in investigative journalism.

The government has developed digital platforms and tools to increase civic engagement and strengthen online civic space. However, barriers such as low Internet coverage and connectivity in many households, as well as a sharp rural-urban divide in terms of digital literacy and access to technology, still need to be overcome.

Policies and practices to provide an enabling environment for CSOs

A wide variety of civil society organisations (CSOs) play a fundamental role in Romanian society, especially during crises such as the COVID-19 pandemic and the refugee emergency due to Russia's war of aggression against Ukraine. However, the sector is precarious: many CSOs are volunteer-driven and struggle with heavy bureaucratic procedures. Up-to-date, consolidated national data on the sector is currently unavailable.

Registration for CSOs can be time-consuming and burdensome. The public utility status for CSOs offers limited value and there is little transparency regarding its beneficiaries. Access to public funding is uneven. Overall, the enabling environment could be strengthened through greater access to public and private funding opportunities, an improved registration process and public benefits system, and enhanced transparency and accountability to ensure equal access to public benefits for all CSOs. Romania could provide much-needed support to the sector by upgrading the national register with information from existing CSO databases to create a centralised portal that maps the sector and shares information on funding opportunities.

More inclusive and collaborative citizen and stakeholder participation

Drawing on the experience and knowledge of citizens and stakeholders help public institutions tackle complex policy problems and provide more people-centred policies and services. Romania has several laws governing citizen and stakeholder participation in public decision-making processes. Ministries and other public bodies also involve CSOs on a regular basis via social dialogue bodies and commissions, and the new E-Consultare platform streamlines consultations on legislation.

However, despite strong legal frameworks, the overall approach is restrictive and formulaic: laws are largely followed but do not foster close and meaningful co-operation between the government and civil society. CSOs are often involved late in the process and do not receive feedback on whether – or how –

their contributions were reflected. Furthermore, there is a tendency to overuse emergency proceedings – with fewer consultations -- to pass key legislation.

A more holistic approach would help Romania achieve its ambitions for citizen and stakeholder participation. Facilitating more contact between public sector officials and CSOs to foster mutual understanding, involving citizens and CSOs throughout the policy making cycle, and institutionalising collaboration would be beneficial. Opportunities exist to use more innovative practices, tools, and channels for both formal and informal dialogue and collaboration. A greater understanding among public officials of the benefits of collaboration will be essential in this regard, coupled with training and the necessary financial and human resources.

1 Introduction to the protection of civic space in Romania

This chapter provides an overview of Romania's commitment to protecting and promoting civic space. It discusses the government's strategic vision for civic space and accompanying institutional arrangements. It also examines challenges, including low democratic participation and trust, social inequalities and discrimination, pressures on the information and media landscape, and low levels of digitalisation affecting access to online civic space.

1.1. Setting the scene: Romania's strategic vision for civic space

Romania is in the process of developing a strategic vision for the protection and promotion of civic space as part of its national open government agenda. During the OECD fact-finding mission, government representatives emphasised the importance for Romania of developing a comprehensive strategy for effective engagement with citizens and civil society, including a mechanism to engage with them at the central and local levels.[1] There was broad consensus among interviewees on the need for such a strategy to develop the capacities of civil society actors, strengthen the relationship between civil society and the government and develop a genuine partnership as a means of building trust and achieving better governance in Romania.

Romania has certainly made progress through a series of reforms over the past decades, and its vision of the future is partially reflected in a variety of national strategies established by the government in recent years. In July 2022, Romania adopted its sixth and most recent Action Plan for the Open Government Partnership (OGP) for 2022-24 (hereafter the "OGP Action Plan") (OGP, 2022[1]), which includes detailed commitments relating to the improvement of the procedure for granting public utility status to civil society organisations (CSOs), fostering increased transparency and participation in public budgeting practices and achieving greater balance between men and women in public decision-making processes (OGP, 2020[2]). That said, evidence shows that initiatives which aim to foster open government are still designed and implemented in a scattered and isolated manner, without building the critical mass needed to create a shared government vision.

The Constitution of Romania guarantees the civic freedoms that underpin protected civic space, notably freedoms of expression (including freedom of the press) (Article 30), peaceful assembly and association (Articles 39 and 40) as well as the right of access to information (Article 31), privacy rights (Articles 26-28) and equality and freedom from discrimination (Articles 4 and 16) (Ministry of Justice, 1991[3]). The constitution explicitly foresees different forms of citizen participation, ranging from the sharing of information to co-operation in matters pertaining to policy and law making (Articles 102, para. 2 and 141), to situations where citizens may, under certain conditions, engage in legal drafting themselves (Article 74). These matters are regulated in further detail in legislation, notably Law 544/2001 on Free Access to Public Information, Law 52/2003 on Decisional Transparency in Public Administration (including a methodology for its implementation, adopted in June 2022), Law 367/2022 on Social Dialogue and Law 248/2013 on the Economic and Social Council, with the latter two laws regulating citizen participation processes via dedicated civic bodies established for this purpose.

In addition, Romania has introduced legislation regulating associations, stakeholder participation, peaceful assemblies, and access to information, to name a few, which further protect key aspects of civic space. The government has also developed strategies to address poverty and exclusion, aiming to better integrate minority groups such as the Roma community and persons with disabilities, in addition to combatting xenophobia and hate speech, as well as gender discrimination and domestic violence (see the section on equality and non-discrimination in Chapter 3).[2] Moreover, the General Secretariat of the Government (hereafter "General Secretariat") has issued guiding documents and organised training sessions for civil servants to improve co-operation with civil society and enhance stakeholder participation in decision-making, promote open government literacy and increase trust in public institutions, primarily as part of implementing OGP action plans. Digital platforms have been established to share information with civil society and to facilitate consultations and other forms of stakeholder participation. At the local level, certain municipalities have likewise developed digital platforms and related guidance to enhance communication and collaboration with stakeholders, ensure greater transparency of the local administration and operationalise participatory governance.

The above-mentioned sixth OGP Action Plan and its predecessors may, in some ways, be seen as precursors to the ongoing process of designing the country's first fully-fledged Open Government Strategy. The plan was prepared by the National Coordinating Committee of the OGP, which is likewise responsible

for co-ordinating and monitoring its implementation. This body comprises an equal number of representatives of the public administration and civil society. As part of the previous 2020 OGP Action Plan, the General Secretariat implemented, among others, a commitment to the field of civic space, which focused on "co-ordinating the management of innovative processes to streamline participation in public administration decisions" (Government of Romania, 2020[4]).[3] This key commitment and its implementation focused on developing a co-ordination mechanism under the General Secretariat to support central public authorities in managing innovative processes needed in the public sector with the purpose of interacting with civil society in a more meaningful and efficient way. In order to implement the commitment, the General Secretariat, with the support of the OECD Observatory of Public Sector Innovation (OPSI), developed and published two documents in 2021, namely *Analysis of the Evaluation of Central and Local Public Administration Practices the Decision-making Process and Ensuring Access to Information of Public Interest* (General Secretariat of the Government, 2021[5]) and a *Guide to an Innovative Approach to Citizen Involvement in Decision-making* (OGP, 2021[6]). As a next step, Romania is currently working with OPSI to build its innovative capacity, including in relation to new forms of participation. The interim assessment report, *Strengthening the Innovative Capacity of the Government of Romania* (OECD, 2022[7]), will be followed by the development of an action plan and establishment of an innovation lab.

In partnership with the Ministry of Justice and the Authority for the Digitalisation of Romania (ADR), the General Secretariat is in the process of implementing the *Capacity Building in the Field of Public Governance – A Coordinated Approach of the Centre of the Government of Romania* project financed by the Norwegian Financial Mechanism within the Local Development, Poverty Reduction and Increased Inclusion of Roma programme, which is in turn financed by European Economic Area (EEA) and Norwegian Grants 2014-2021. This aims to increase the capacity for centre-of-government co-ordination through a coherent and structured approach, in line with the government's reform agenda. As part of the project, Romania is benefitting from an OECD *Open Government Review*, which intends to provide the country with an evidence-based analysis of the governance of its open government strategies and initiatives, based on the ten provisions of the OECD Recommendation of the Council on Open Government, to which Romania adhered in 2020 (OECD, 2017[8]). The Review, to be published in 2023, will help to take stock of the last several years of implementing open government reforms, improve mechanisms to facilitate the implementation of key reforms and support Romania in developing the aforementioned national Open Government Strategy in 2022-23. This OECD *Civic Space Review* should thus be read in conjunction with the OECD *Open Government Review of Romania* (OECD, forthcoming[9]), which provides an in-depth assessment of open government reforms in the country.

This overarching Open Government Strategy – which aims to overcome the previously limited impact of open government initiatives in Romania – will include a dedicated component on engaging civil society in public decision-making.[4] Crucially, the civil society component (Box 1.1) will be informed by the findings in this *Civic Space Review* and will aim to "improve the government's capacity to create the necessary conditions for a robust civil society, to coordinate and engage more effectively with civil society, and to streamline civic engagement, with a view to more socially inclusive, responsive, coordinated and predictable policy and decision-making".[5] Thus, Romania's commitment to strengthening collaboration with civil society as part of its open government commitments aims to yield a transformative paradigm shift for civic participation and public governance across the country.

Box 1.1. Supporting civil society engagement in decision-making

Based on the findings and recommendations in this *Civic Space Review*, the OECD supported the General Secretariat in initiating discussions on a country-owned policy framework for engaging civil society more effectively in decision making in 2022.[1] Two workshops were held by the OECD with government (e.g. ministries, independent oversight bodies) and CSO representatives in Bucharest, Romania, on 29-30 September 2022, to begin discussions about the strategy and its implementation. The sessions focused on issues to be addressed in an overarching vision statement and potential short-, medium- and long-term objectives, in addition to identifying possible concrete actions, responsible actors, timelines and performance indicators for an implementation roadmap. Following the workshops, the OECD will continue to support the drafting process led by the General Secretariat (OECD, 2022[10]).

1. Initially Romania intended to develop two separate strategies – one on civil society involvement in decision making and another on open government – as part of two separate projects. In late 2022 the General Secretariat made a strategic decision to effectively merge the two, to develop an Open Government Strategy with a civil society component.
Source: OECD (2022[10]), "Workshops on preparing a strategy and implementation roadmap for civil society involvement in decision-making in Romania: Draft outcome document", Unpublished, OECD, Paris.

1.1.1. Institutional arrangements and main actors with a mandate related to the protection of civic space

Several key institutions are responsible in law for overseeing different dimensions of civic space in Romania. The General Secretariat, a structure with legal personality that is subordinated to the Prime Minister, has a general co-ordinating role within government. It is also responsible for strategic planning and the establishment of action plans at the governmental level (Ministry of Justice, 2020[11]). In addition, the General Secretariat "elaborates and implements policy in the fields of open government, transparency and access to information of public interest, [as well as] public consultations, and increases the operational capacity of non-governmental organisations" (Ministry of Justice, 2020[11]). As such, it plays a key role with respect to policy making on civic space issues and is the driving force behind the *Civic Space Review* and the forthcoming Open Government Strategy discussed above. Notably, in June 2022, the centre of government in Romania was restructured with a dual structure now consisting of the General Secretariat and the Chancellery of the Prime Minister. The Chancellery is considered the "political" arm of the centre of government while the General Secretariat acts as the "technical" arm (OECD, forthcoming[12]). Interviews with government representatives highlighted the Chancellery's potential as an institution that could give additional weight and high-level support to Romania's ambitions in promoting civic space, in collaboration with the General Secretariat.[6]

The Ministry of Labour and Social Solidarity is also an important actor in this field, as it collaborates and maintains an ongoing dialogue with trade unions and employers' organisations, with other professional associations, as well as the media and civil society in general in its field of activity (Ministry of Justice, 2020[13]). The main aim of such collaboration is to share information and improve the existing legislative framework relevant to both sides. The Ministry of Justice is generally responsible, among other things, for the proper functioning of the judicial system and for "ensuring the conditions for the achievement of justice as a public service, the protection of the rule of law and the rights and freedoms of citizens" (Ministry of Justice, 2022[14]). Given its competency to draft normative acts within its field of activity (Ministry of Justice, 2009[15]), the Ministry of Justice, in collaboration with the General Secretariat, led a joint working group that discussed amending Government Ordinance No. 26/2000 on Associations and Foundations in 2018-20. The ministry is also a key institutional player, as it maintains a public register of CSOs, namely the National

Register of Legal Entities without Patrimonial Purpose (Associations, Foundations and Federations) (Ministry of Justice, 2000[16]).[7]

In addition to the above government bodies, other ministries and state bodies also play key roles in the protection and promotion of civic space in their specific areas of work, particularly regarding policy making, the drafting of legislation and the execution of fundamental rights. Notably, Law 52/2003 on Decisional Transparency in Public Administration (Ministry of Justice, 2003[17]) sets out requirements and procedures for state bodies to follow when consulting on draft laws with CSOs and the public, and when involving civil society in governmental decision-making processes. Another means to achieve more regular input and dialogue with respect to draft normative acts, in particular, is the consultation mechanism involving the Economic and Social Council (Ministry of Justice, 2015[18]), which acts as an advisory body to the Romanian parliament and government. This council is autonomous and established explicitly to achieve a tripartite dialogue at the national level between employers' organisations, trade unions and representatives of non-governmental associations. The government and parliamentary deputies or senators are obliged to consult with the council on draft normative acts, which is composed of 45 members nationally representing employers' confederations, trade union confederations and associative structures of civil society (Ministry of Justice, 2015[18]).

At the local level, public administration authorities are required by law to organise public consultation processes for the draft acts they initiate (Ministry of Justice, 2003[19]). Moreover, according to the Administrative Code (Ministry of Justice, 2019[20]) and the Law on Social Dialogue (Ministry of Justice, 2022[21]), local public authorities may set up extra advisory councils and working groups, as needed, in certain areas of activity, whereby recommendations from citizens and stakeholders may be debated and incorporated into their work. Both central and local public administration authorities grant non-reimbursable financing to non-governmental organisations (NGOs) for their activities (Ministry of Justice, 2005[22]) but also through various other mechanisms such as the financing of social services, youth, cults or ethnic groups.

The Institution of the People's Advocate (national ombudsman) plays a vital role in safeguarding civic space. As an autonomous and independent national institution for the promotion and protection of human rights (Ministry of Justice, 1997[23]) within the meaning of the Paris Principles relating to the Status of National Institutions adopted by the United Nations General Assembly (UN, 1993[24]), its aim is to defend the rights and freedoms of individuals in their relations with public authorities. As a body that is independent of the executive, it helps ensure accountability among public bodies by investigating cases of alleged rights abuses. The National Council for Combating Discrimination fulfils a similar role in the areas of equality and non-discrimination (Ministry of Justice, 2000[25]).

With regard to the media, the National Audiovisual Council is an autonomous public authority under parliamentary control that functions as a guarantor of the public interest in the field of audio-visual communication (Official Gazette of Romania, 2002[26]). The council regulates all broadcast media and serves to "monitor the editorial content of broadcasters and take measures in cases of infringement" (CNA, n.d.[27]).

1.2. The changing role of civil society in Romania

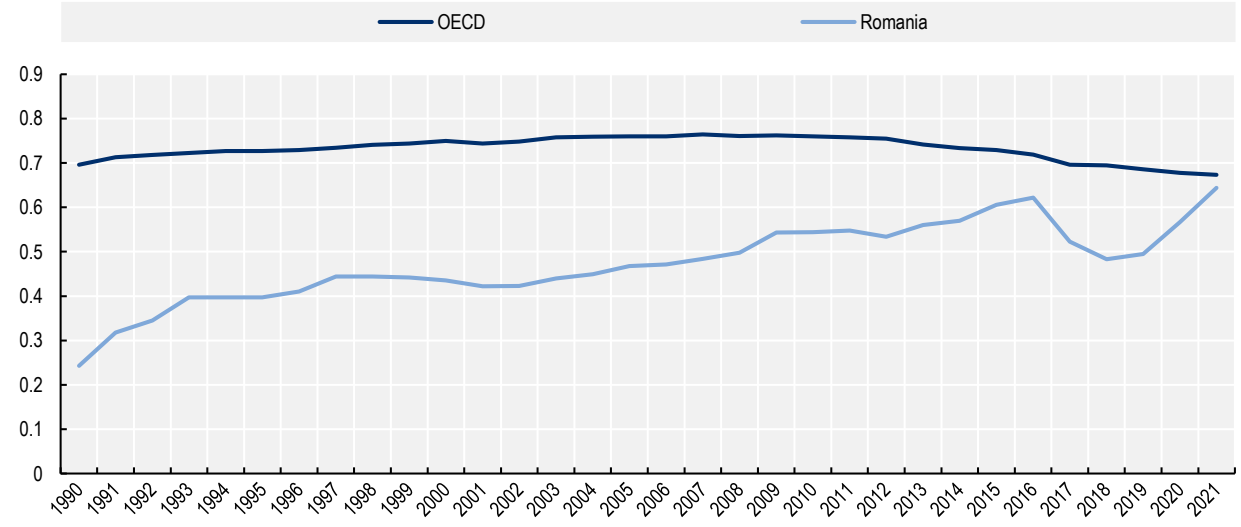
Any discussion of the protection and promotion of civic space in Romania must recognise the country's historical context and the changing relationship between the state and civil society over recent decades. The civil society sector was historically weak and was further hampered during the communist period (Bertelsmann Stiftung, 2022[28]). During the Ceaușescu regime (1965-89), unlike other countries in the region, Romania "had no human rights groups, independent unions, environmental groups, or other entities" that international donors and governments could support during the Cold War years (Rossi, 2012[29]). Moreover, Romanian dissidents were isolated from the main transnational coalitions against

authoritarianism – which included Czech, Hungarian and Polish dissidents – in the East European region (Rossi, 2012[29]).

It was only after the fall of Ceaușescu in 1989 that civil society began to emerge as a formalised group of stakeholders who could engage with the government (Bădescu, 2010[30]). During the 1990s, members of these newly formed groups gained new skills, such as creating and developing sustainable and independent organisations, making strategic plans and building partnerships, raising funds from domestic and foreign sources and recruiting volunteers (Bădescu, 2010[30]). Nevertheless, in the early 2000s, most CSOs lacked human and financial capacities in most areas and operated mainly at the local level, focusing on small-scale projects (Parau, 2009[31]). Romania's accession to the European Union (EU) in 2007 led to consolidation of the sector (Cuglesan, 2020[32]). Indeed, many civil society representatives interviewed during the OECD fact-finding mission remember the time of EU accession as a golden era when civil society and the government operated largely in tandem and when civil society benefitted considerably from EU and other international support, in terms of both funding and capacity building.[8]

The first incarnation of the modern Romanian state was a democracy but was dominated by a relatively small political and economic elite, which only partially represented wider societal interests (Bertelsmann Stiftung, 2022[28]). Progress on democratisation has, however, strengthened considerably since the early 1990s, as illustrated by the Varieties of Democracy (V-Dem) Liberal Democracy Index, with a slight regression observed between 2016 and 2019 (Figure 1.1). Figure 1.1 demonstrates that civil liberties, the rule of law, independence of the judiciary and effective checks and balances between branches of government have continuously improved, although they still lie below the OECD average (0.67) with a score of 0.64. The 2021 World Justice Project (WJP) Rule of Law Index has similar findings but notes that, compared to other countries in the EU and the European Free Trade Area and North America, there are fewer limitations and checks on government, in addition to more corruption and less open government; Romania thus ranks 41st out of 139 countries assessed (WJP, 2021[33]).

Figure 1.1. Romania's performance in the V-Dem Liberal Democracy Index, 1990-2021



Note: V-Dem asks, "To what extent is the ideal of liberal democracy achieved?" with scores ranging from low to high (0-1), "0" being worst and "1" being best. According to V-Dem, the liberal principle of democracy "emphasises the importance of protecting individual and minority rights against the tyranny of the state and the tyranny of the majority. The liberal model takes a 'negative' view of political power insofar as it judges the quality of democracy by the limits placed on government. This is achieved by constitutionally protected civil liberties, strong rule of law, an independent judiciary, and effective checks and balances that, together, limit the exercise of executive power. To make this a measure of liberal democracy, the index also takes the level of electoral democracy into account" (2021[34]).
Source: V-Dem Institute (2021[34]), *Liberal Democracy Index, Romania*, https://www.v-dem.net/data_analysis/VariableGraph/ (accessed on 14 June 2022).

Romania has since reformed its state institutions with increasing assistance and guidance from the EU, with new administrative structures and more resources benefitting the entire country, even though infrastructure in rural areas remains partly underdeveloped (Bertelsmann Stiftung, 2022[28]). According to the European Commission (EC) and other observers, Romania appears to generally comply with EU legislation, although concerns remain regarding the implementation and enforcement of legislation (EC, 2022[35]; 2021[36]; Cuglesan, 2020[32]). The frequent use of emergency ordinances in law making also poses a problem, as the use of such mechanisms means there is often no time for meaningful consultations with stakeholders and civil society or for adequate parliamentary oversight (for further details, see Box 6.8 on regulation by emergency ordinance and its effects on citizen[9] and stakeholder participation in Chapter 6).

As far as the civil society sector is concerned, more than 120 000 CSOs are currently included in Romania's National Register for Associations and Foundations operated by the Ministry of Justice,[10]although it is unclear how many of these are active, as no recent official figures are available. Furthermore, there are several datasets on the CSO sector available from different sources, from the National Register to the National Institute of Statistics, with no one repository that combines the data to provide an accurate overview. Thus up-to-date, consolidated data on the number and types of organisations in operation, the sectors and activities covered, and the amount of government funding to support the sector are unavailable. A 2017 report prepared by the CSO Civil Society Development Foundation (FDSC, 2017[37]) indicated that of 88 650 CSOs registered in the above-mentioned national register in 2015, 42 707 were active at the time.[11] Key sectors where CSOs work include sports and related activities, education, social assistance, financial activities, agriculture and animal care, consulting, healthcare, culture and mass media, and trade and energy (World Bank, 2020[38]). While paid employment positions in the civil society sector are scarce, with most CSOs relying on volunteer work (CMON, 2020[39]; Elbers and Grigore, 2019[40]), employment figures in the sector are relatively stable. Overall, civic involvement and volunteering have grown rapidly during the last decades, mostly in urban areas, although the numbers in Romania remain below the average levels in the EU (Lambru and Dobre, 2020[41]).

A survey of over 280 CSOs and more than 30 local government authorities conducted by the World Bank in 2020 showed that individual and company donations are the main funding sources for CSOs, followed by EU and international foundations, with public funding playing a minor role (World Bank, 2020[38]). At the same time, despite progress in terms of developing the sector overall, many organisations struggle to make their voices heard in public debates. Evidence suggests this is due to insufficient funding exacerbated by a lack of capacity to engage with state and international funding processes, which many find overly bureaucratic (Bertelsmann Stiftung, 2022[28]). During the OECD fact-finding mission, CSOs thus confirmed that a lack of sustainable funding and lengthy and burdensome registration proceedings remained among their top concerns. They also noted that consultation of CSOs in decision-making processes remains uneven across public administration (see the section on low democratic participation and trust in Chapter 6).[12] Despite the robust legal framework described above, existing consultation processes are viewed as rigid, are marked by low levels of participation, and tend to focus largely on consultations of formalised stakeholders and less on involving individual citizens in decision making (although there are more promising practices at the local level: see the section on strengthening participation at the local level in Chapter 6).

V-Dem's Civil Society Participation Index, which measures the extent to which CSOs are regularly and routinely consulted by policy makers, as well as other indicators such as how widely citizens are involved in CSOs, finds that Romania has had slightly lower scores than OECD Members and EU member states on average over the last decade (V-Dem Institute, 2021[34]) (see Figure 6.1 in Chapter 6).

1.3. Key challenges ahead to strengthen civic space in Romania

The OECD's civic space lens is broad (see Chapter 2) and indicates that while Romania's forward-looking vision and concrete plans to strengthen its civic space are commendable, it faces wide-ranging challenges, many of which are related to the ongoing consolidation of its democracy.[13]

At the outset of the *Civic Space Review*, the General Secretariat highlighted the following as being the most pressing current obstacles for the government in strengthening civic space and open government more broadly:[14]

- non-uniform application of the legal and procedural framework for public consultation processes
- a need to improve the current legal framework and strengthen use of the e-consultation platform[15] by central and local public administration authorities
- non-standard proactive disclosure of information of public interest and non-uniform application of legal and procedural frameworks on access to information
- non-uniform application of the legal and procedural frameworks for granting public funding to NGOs
- a general lack of co-ordination of open government policies and strategies at the central level of government.[16]

International rankings related to civic space also offer an overview of Romania's comparative standing and provide insights into areas for improvement (Box 1.2).

Box 1.2. Romania's international standing: A snapshot of global rankings related to civic space

- **Freedom House 2021 Freedom in the World index:** Romania is rated "free" with a score of 83 out of 100.[1]
- **World Justice Project 2021 Rule of Law Index:** Romania ranks 41st out of 139 countries.
- **CIVICUS:** Romania ranks as "narrowed" in 2022.[2]
- **Article 19 Freedom of Expression:** Romania ranks as "less restricted" and 44th out of 161 countries in 2021.[3]
- **Reporters Without Borders (RSF) 2021 World Press Freedom Index**: Romania ranks 48th out of 180 countries, with a score of 75.09 out of 100.
- **V-Dem 2022 Liberal Democracy Index:** Romania ranks 44th out of 179 countries.
- **United Nations 2020 E-Participation Index:** Romania ranks 46th out of 193 places.
- **Transparency International 2021 Corruption Perceptions Index:** Romania scores 45 out of 100, giving it a ranking of 66 out of 180 places.[4]

1. Freedom House classifies countries as free, partly free or not free.
2. CIVICUS uses the following classifications: open, narrowed, obstructed, repressed and closed.
3. Article 19 classifies countries as open, less restricted, restricted, highly restricted and in crisis.
4. Transparency International scores range from 0-100, with 100 being the best score.

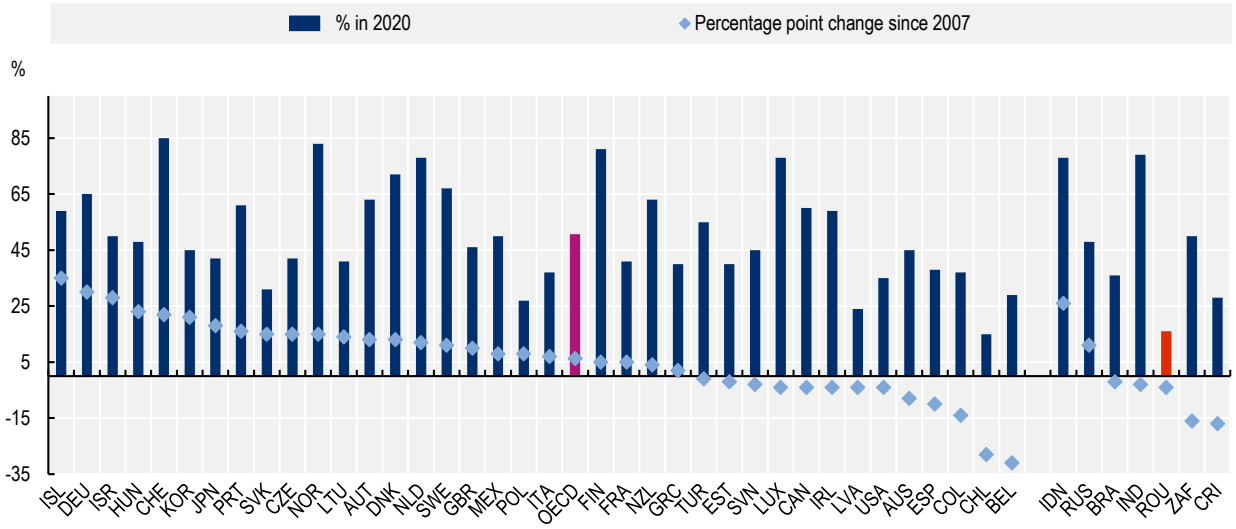
Source: OECD (2021[42]), *Government at a Glance 2021*, https://dx.doi.org/10.1787/1c258f55-en; CIVICUS (n.d.[43]), *Romania Country Profile*, https://monitor.civicus.org/country/romania/ (accessed on 15 June 2022); Freedom House (2022[44]), *Freedom in the World 2002 - Romania*, https://freedomhouse.org/country/romania/freedom-world/2022 (accessed on 15 June 2022); WJP (2021[33]), *WJP Rule of Law Index - Romania*, https://worldjusticeproject.org/rule-of-law-index/country/2021/Romania/ (accessed on 15 June 2022); Article 19 (2021[45]), *The Global Expression Report 2021: The State of Freedom of Expression Around the World*, https://www.article19.org/wp-content/uploads/2021/07/A19-GxR-2021-FINAL.pdf; RSF (2022[46]), *Romania*, https://rsf.org/en/country/romania (accessed on 29 April 2022); V-Dem Institute (2022[47]), *Democracy Report 2022: Autocratization Changing Nature?*, https://v-dem.net/media/publications/dr_2022.pdf (accessed on 15 June 2022); WEF (2019[48]), *The Global Competitiveness Report 2019*, https://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf; Transparency International (2021[49]), *2021 Corruption Perceptions Index*, https://www.transparency.org/en/cpi/2021 (accessed on 15 June 2022); EIR (2021[50]), *Democracy Index 2021: The China Challenge*, https://www.eiu.com/n/campaigns/democracy-index-2021/; UN (2020[51]), UN E-Government Knowledgebase, https://publicadministration.un.org/egovkb/Data-Center.

Taking the above into consideration, the fact-finding mission identified four overarching challenges for strengthening civic space in Romania moving forward: low voter turnout and low trust between government and civil society; high levels of social inequality and discrimination affecting particular groups; pressure on access to information and the media landscape; and low levels of digitalisation affecting civic space, both online and offline.

1.3.1. Low democratic participation and lack of trust between the government and civil society

Low voter turnout in elections, coupled with declining levels of confidence in the national government, present key challenges for Romania and these have been aggravated by frequent changes in government over the last five years. Using data from the World Gallup Poll, the OECD's *Government at a Glance 2021* (2021[42]) found that confidence in the Romanian government fell from 20% in 2007 to 16% in 2020. By comparison, the average confidence rate in national government among OECD Members is 51%, with a 6.3 percentage-point increase from 2007 (Figure 1.2). Romania also experiences relatively low voter turnout at the polls, namely 31.8% in 2020 parliamentary elections and 51.2% in 2019 presidential elections (International IDEA, 2022[52]). On average, EU countries had 66.8% voter turnout in their most recent parliamentary elections and 56.39% in their presidential elections, for those with such a system (International IDEA, 2022[52]).

Figure 1.2. Confidence in national government across OECD Members and Romania, 2007 and 2020

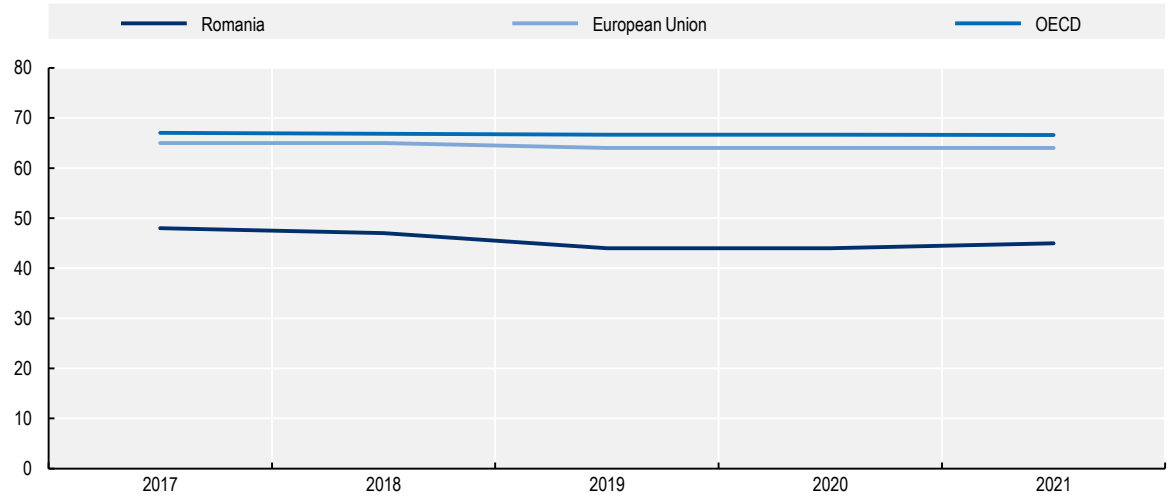


Source: OECD (2021[42]), *Government at a Glance 2021*, https://dx.doi.org/10.1787/1c258f55-en.

Despite ongoing democratic reforms described above, many citizens still feel that policy making in Romania is "crafted and captured by vested interests" and that reforms undertaken to enter the EU were relatively superficial, failing to address systemic problems (Brookings Institution, 2018[53]; Popescu-Zamfir, 2022[54]). Observers have placed the declining trust in public authorities within a wider context, noting general challenges to democratic consolidation in Romania and pointing to a wider reversal of democratic progress in many post-communist East European countries (Iftimoaei, 2013[55]; EIU, 2021[50]).

Corruption continues to be perceived as widespread, despite ongoing efforts to combat it in the public sector (OECD, 2022[56]; EC, 2021[36]), and Romania is currently ranked 66th out of 180 countries in the Transparency International Corruption Perceptions Index (2021[49]) (Figure 1.3). A recent 2022 Special Eurobarometer on Corruption shows that 72% of respondents in Romania still consider corruption to be widespread (just above the EU average of 68%) and 46% of respondents feel personally affected by corruption in their daily lives (24% average in the EU) (EC, 2022[57]). Such longstanding perceptions have led to significant demonstrations and protests over a perceived lack of public sector accountability, most recently in 2017-19 (Lambru and Dobre, 2020[41]). In a positive step, the National Anti-Corruption Directorate was established in 2002 as a prosecution office specialising in high-level corruption cases and the government has developed multiple anticorruption strategies, most recently in 2021 (Official Gazette of Romania, 2021[58]). However, the effectiveness of the directorate, and thus of the fight against corruption, was hampered by the dismissal of the chief prosecutor in 2018 (considered unjustified by the European Court of Human Rights in 2020 (2020[59])) and by legislation establishing a separate prosecutorial structure for offences within the judiciary (Selejan-Gutan, 2019[60]; EC, 2020[61]; Venice Commission, 2018[62]).[17] The effects of this can still be felt today, even though the separate prosecutorial structure was later dismantled and the Venice Commission, in a recent opinion, noted that currently there seems to be no political interference in the work of the directorate (Venice Commission, 2022[63]).[18] In a recent analysis, the Council of Europe Group of States against Corruption (GRECO) found that Romania's compliance with its recommendations on reducing corruption remains "globally unsatisfactory", however (GRECO, 2021[64]). To identify and address such shortcomings, Romania is undertaking an ongoing OECD *Public Integrity Review* (OECD, forthcoming[65]).

Figure 1.3. Romania's performance in the Transparency International Corruption Perceptions Index, 2017-21



Note: Scores range from 0-100, with 100 being the best score. The Corruption Perceptions Index ranks 180 countries and territories by their perceived levels of public sector corruption.
Source: Transparency International (2021[49]), *2021 Corruption Perceptions Index*, https://www.transparency.org/en/cpi/2021 (accessed on 15 June 2022).

The overall lack of trust in government extends to the civil society sector. Many of the CSOs interviewed during the OECD fact-finding mission praised the close and fruitful co-operation and partnership that existed with the government during and immediately after EU accession in 2007 but felt that such collaboration, as well as their capacity to influence policy making and service design and delivery, had decreased since this time.[19] In particular, the relationship suffered during the terms of previous governments in 2018 and 2019, which were seen as engaging in legal and policy activities to limit civic space (Osservatorio Balcani e Caucaso Transeuropa, 2022[66]). Currently, many interviewed CSOs do not feel sufficiently consulted or engaged in the development of policies and legislation, stating that they are often excluded from such processes or involved at a late stage when it is no longer possible to have an impact. Another concern relates to the manner in which consultations are organised and implemented; they are widely perceived as a box-ticking exercise to implement relevant legislation, but without the necessary understanding among public officials of the value or potential benefits of the exercise. Thus, while a raft of legislation and processes exist to involve citizens and stakeholders in decision-making processes, these laws and policies tend to be implemented in a legalistic manner, which can work against more frequent and innovative forms of participation. This has led to a lack of trust in laws and law-making processes and institutions (see Stakeholder perceptions of participation practice in Chapter 6). CSOs indicate that they are often not given sufficient time to review draft policies or laws and that recommendations are rarely implemented in final documents, with little or no explanation as to why.[20] On the other hand, government officials – who follow relevant legal frameworks carefully but often as a formality – expressed disappointment at the perceived lack of interest in consultations or engagement from civil society at national and local levels[21] (see Making participatory practices more effective and inclusive in Chapter 6).

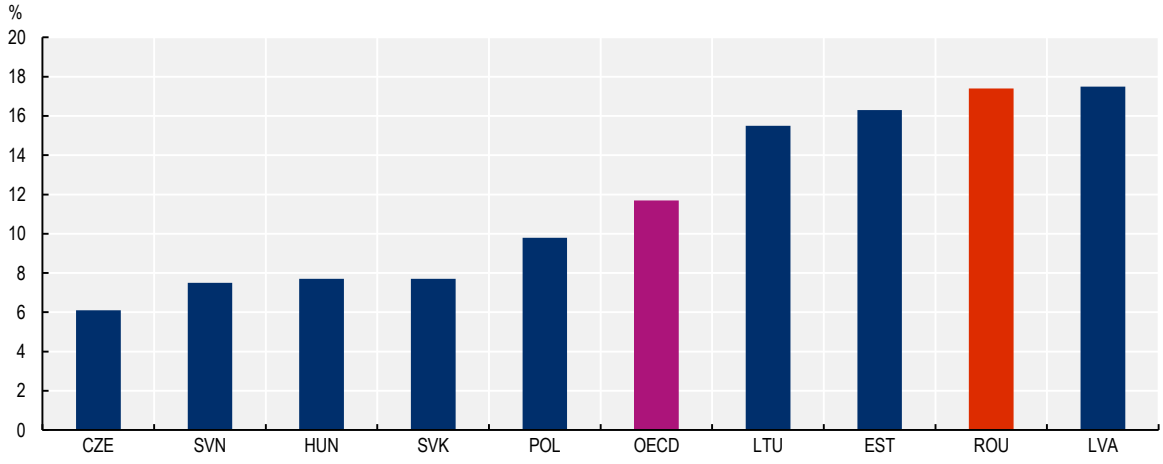
Both government officials and civil society representatives stated that communication was at times marked by a lack of real engagement and an unwillingness to compromise. This has led to frustration on both sides and acts as an obstacle to constructive dialogue on key policy areas.

1.3.2. Social inequalities, discrimination and social exclusion

Social inequalities, discrimination and perceptions of exclusion or marginalisation can all affect people's ability and willingness to engage with public institutions. Levels of education, income and health, as well as socio-economic status and place of residence, can all affect levels of trust. Socio-economic inequality can negatively impact both citizens' ability and willingness to engage with governments, despite those with low socio-economic status often being acutely affected by public policies, particularly in the social sector, and public services. For example, the OECD *How's Life 2020*: *Measuring Well-being* report finds that, in 20 out of 24 OECD Members, people with lower levels of education are less likely to vote (OECD, 2020[67]). Research shows that disempowerment, resulting from severely constrained options and life choices, is a core feature of poverty and is connected to social and institutional maltreatment, among other hidden dimensions (ATD Fourth World; University of Oxford, 2019[68]). People with low socio-economic status experience social exclusion, may have less awareness of their rights, have access to fewer channels through which to exercise said rights, and generally face greater obstacles in engaging with their governments and shaping their societies. Governments thus have an important role to play in empowering these citizens and ensuring that their voices are heard on an equal basis with others, as part of engaging with citizens, strengthening democratic participation and fostering people-centred governance.

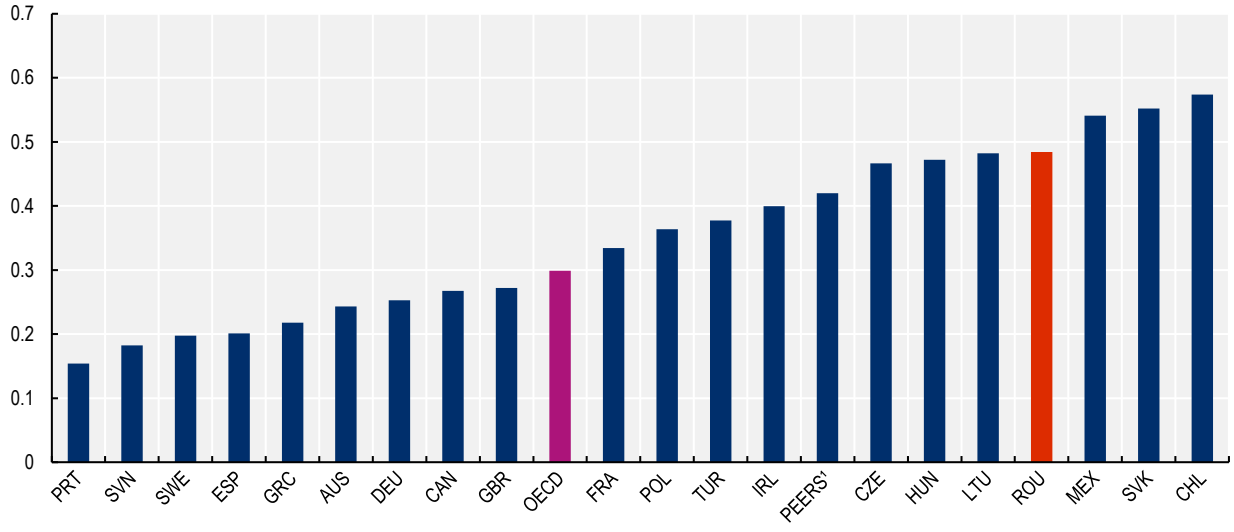
In Romania, poverty remains comparatively high and regional disparities in living standards and economic opportunities are large and widening, as in many EU countries (Figure 1.4). That said, Romania experienced impressive economic growth before the COVID-19 pandemic. In less than 20 years, it reduced the gap in the gross domestic product (GDP) per capita to the OECD average by half, from close to 70% to around 35% (OECD, 2022[56]). Moreover, the population at risk of poverty or social exclusion fell to 30% in 2020, from around 50% 13 years before (OECD, 2022[56]). Despite this, regional disparities persist and are much higher than the OECD average, as economic growth primarily benefits urban areas (OECD, 2022[56]) (Figure 1.5).

Figure 1.4. Poverty remains elevated, 2018



Source: OECD (2022[56]), *OECD Economic Surveys: Romania 2022*, https://doi.org/10.1787/e2174606-en.

Figure 1.5. Regional disparities per GDP in Romania and selected countries, 2019

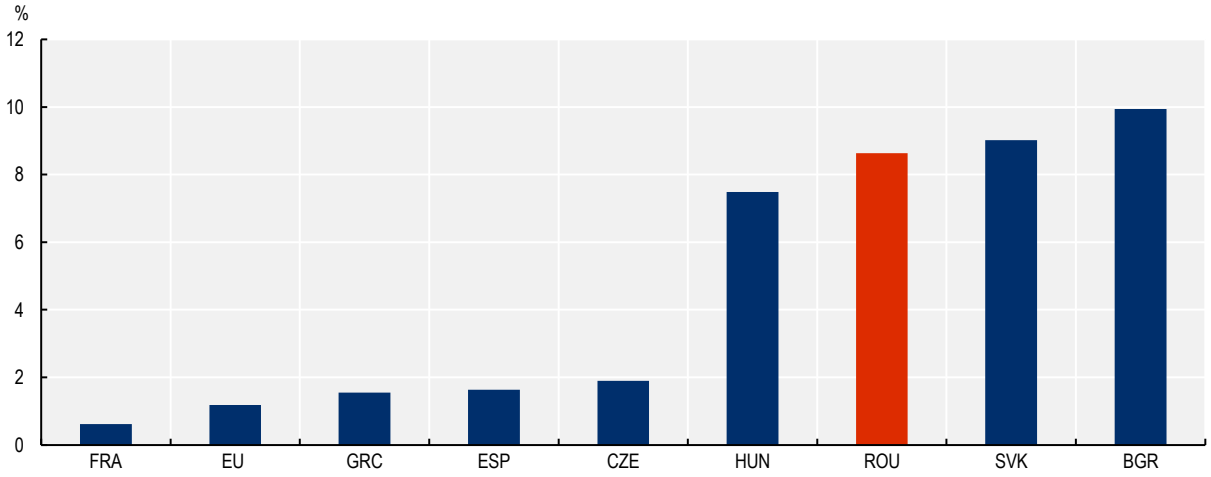


1. PEERS consists of the Czech Republic, Hungary, Lithuania, Poland and the Slovak Republic.
2. The unit of measurement refers to the coefficient of variation in each area, with higher scores signifying greater regional disparities.
Source: OECD (2022[56]), *OECD Economic Surveys: Romania 2022*, https://doi.org/10.1787/e2174606-en.

The most recent *OECD Economic Survey* in Romania notes that while Bucharest and many other cities have become "hubs of prosperity and innovation", poverty remains widespread in rural areas and that this has been aggravated by the COVID-19 crisis, particularly in marginalised communities (2022[56]). The EC (2020[69]) also noted in 2020 that despite an average growth of around 5% in the preceding 3 years, inequality is increasing. Moreover, rapid income growth has been accompanied by increasing disparities in income and inequality of opportunity (EC, 2020[69]).

The Romanian government's National Strategy on Social Inclusion and Poverty Reduction for the Period 2022-2027 (hereafter the "Anti-Poverty Strategy") acknowledges the improvement in recent years, but notes that within the EU, Romania has consistently been among countries with the highest proportion of people at risk of poverty or social exclusion (Government of Romania, 2022[70]). The Anti-Poverty Strategy further notes that in employment, there are significant disparities between men and women, as well as between urban and rural areas (to the detriment of the latter) and depending on the level of schooling. In terms of education, the strategy indicates that the high percentage of young people at risk of poverty or social exclusion is correlated with a persistently high early school dropout rate, predominantly in rural areas, noting that around 4 out of 10 15-year-olds in education are considered to be functionally illiterate (Government of Romania, 2022[70]). The risk of poverty is exceptionally high for families with children, people with low work intensity, low education levels or with disabilities, as well as members of the Roma community. Romania has a large Roma population compared to other countries in Europe (Figure 1.6 and Box 1.3), accounting for an estimated 8.32% of the overall population of approximately 19 million, according to the latest available data (EC, n.d.[71]).[22]

Figure 1.6. Romania is among the EU countries with the largest Roma population, 2012



Note: The presented shares represent the average of different estimates for 2012.
Source: OECD (2022[56]), *OECD Economic Surveys: Romania 2022*, https://doi.org/10.1787/e2174606-en.

Box 1.3. Romania's Roma minority

The Roma minority in Romania is considered to be among the largest in Europe (EC, 2021[72]), and is the second-largest ethnic minority after the Hungarian community (OECD, 2022[56]). Despite some progress over the last decade, poverty and exclusion have been particularly prevalent in Roma communities, affecting most aspects of everyday life (see the section on improving the inclusion of ethnic minorities, including the Roma community in Chapter 3). The at-risk-of-poverty rate decreased from 84% in 2011 to 70% in 2016 but remains three times higher than the average in Romania (OECD, 2022[56]). Labour market participation of Roma is also significantly weaker in Romania than in other OECD Members in Central and Eastern Europe, especially for women. The differences in outcomes between Roma and non-Roma in employment, housing, healthcare and education[1] are striking, as illustrated in Table 1.1. The prevalence of poverty among the Roma population is exacerbated by their relatively high geographical concentration in deprived and rural areas, where high-quality public services are missing (OECD, 2022[56]). Political representation of the Roma community is also low.

Table 1.1. Selected socio-economic indicators for the Roma community compared to the Romanian population, 2016

	Roma community (%)	Total Romanian population (%)
At-risk-of-poverty rate	70	25
Employment rate	28	53
Employment rate, women	13	44
NEET rate – neither in employment nor in education or training, youth aged 16-24	63	18
Dropout rate from education	77	16
Share of households living without a toilet, bathroom and shower inside the dwelling	80	31
People who do not seek healthcare when needed	42	25

Note: The employment rate definition slightly differs for the Roma population: it includes all persons in Roma households aged 16 years or over. For the total population, the measure includes all persons aged 15 and over.
Source: OECD (2022[56]), *OECD Economic Surveys: Romania 2022*, https://doi.org/10.1787/e2174606-en.

The Government of Romania acknowledges the vulnerability of the Roma minority and has had national strategies in place for their inclusion since 2011 (Government of Romania, 2022[73]). However, progress has been limited, according to the EU and civil society (FRA, 2021[74]; EC, 2021[72]; 2019[75]; Government of Romania, 2022[73]). In addition, up-to-date socio-economic data are unavailable on ethnic minorities in Romania, which limits the ability to monitor this particularly vulnerable group (EC, 2021[72]).

According to the EU Agency for Fundamental Rights (FRA) (2021[74]), the Roma minority is subject to discrimination in most EU member states, including Romania. Likewise, a survey issued by the Romanian Institute for Evaluation and Strategy in 2020 found that in Romania, seven out of ten people did not trust the Roma population (with trust much higher for other minorities such as the German, Hungarian and Jewish communities, but somewhat lower for immigrants). Furthermore, two out of three Romanians believe that Roma are dangerous (IRES, 2020[76]).

Reflecting these challenges, Romania was one of five countries, along with Bulgaria, the Czech Republic, Hungary, and the Slovak Republic, for which the European Council adopted country-specific recommendations on Roma inclusion (FRA, 2019[77]). CSOs in Romania have since criticised the absence of an evaluation of the implementation of Roma inclusion strategies and reported an increase in discriminatory language by national and local politicians, and in media reporting (EC, 2019[75]). In a positive development, Romania was the first country in the EU to adopt legislation (Law No. 2/2021) aimed explicitly at combatting antigypsyism, in 2021 (FRA, 2021[74]).

Note: Further, the Roma Inclusion Strategy (Government of Romania, 2022[73]), referring to a 2018 comparative study, noted that two-thirds of Roma had not graduated or completed secondary education, a share five times higher than that of the rest of the population. The same study indicated that half of Roma persons with low education (having completed no more than eight grades) either did not know how to write or had great difficulty writing (Government of Romania, 2022[70]). The government's Anti-Poverty Strategy also pointed out that, based on data collected by the EU FRA in 2016 and Eurostat, almost two-thirds of Roma young people were not in education or the labour market, with the percentage of excluded Roma girls and women significantly higher than that of boys and men. The reasons cited were high poverty rates, social exclusion, a low share of formal education, poor housing conditions, discrimination and institutional racism. In schools, the strategy referred to the segregation of Roma in separate schools and classes and low expectations and prejudice among teachers (Government of Romania, 2022[70]).
Source: OECD (2022[56]), *OECD Economic Surveys: Romania 2022*, https://doi.org/10.1787/e2174606-en; FRA (2019[77]), *Fundamental Rights Report 2019*, https://fra.europa.eu/en/publication/2019/fundamental-rights-report-2019; FRA (2021[74]), *Fundamental Rights Report 2021*, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-fundamental-rights-report-2021_en.pdf; EC (2021[72]), *Country Report Non-discrimination: Romania 2021*, https://www.equalitylaw.eu/downloads/5492-romania-country-report-non-discrimination-2021-1-34-mb; EC (2019[75]), *Civil Society Monitoring Report on Implementation of the National Roma Integration Strategy in Romania: Focusing on Structural and Horizontal Preconditions for Successful Implementation of the Strategy*, https://data.europa.eu/doi/10.2838/219177; IRES (2020[76]), *The Perception of Roma during the COVID-19 Pandemic*, https://ires.ro/uploads/articole/ires_agentia-impreuna_perceptia-romilor-in-timpul-pandemiei-covid-19_2020.pdf; Government of Romania (2022[73]), *National Strategy for the Inclusion of Romanian Citizens Belonging to the Roma Minority 2022-2027*, https://legislatie.just.ro/Public/DetaliiDocumentAfis/255081; Government of Romania (2022[70]), *National Strategy on Social Inclusion and Poverty Reduction for the Period 2022-2027*, https://legislatie.just.ro/Public/DetaliiDocument/254234.

Longstanding social inequalities are thus prevalent in Romanian society, as evidenced by the government's findings (2022[70]), international reports, and feedback from state and civil society representatives during the OECD fact-finding mission.[23] Roma, in particular, continue to perceive themselves as victims of persistent social exclusion and discrimination on ethnic grounds in multiple areas of life, notably employment, education, housing, healthcare and other public or private services. This is of particular concern as it prevents Roma people themselves from participating in decision making on matters that affect them and acts as a significant obstacle to civic space in Romania becoming more inclusive. The situation for other minority groups, notably the Hungarian and Jewish communities, is also marked by a lack of implementation of legislation strengthening their rights as minority (Huszka, 2021[78]; Costachie, Weckmüller and Lixandrescu, 2019[79]) and by discrimination and hate speech, respectively (although Romania recently introduced legislation to raise awareness of Jewish history and the Holocaust in schools) (Ministry of Justice, 2021[80]). Hate speech in public discourse and on the Internet is a widespread problem

in general, targeting a broad spectrum of persons including minorities (see the section on raising awareness of hate speech and seeking long-term solutions in Chapter 3).

Different areas of inequality and exclusion in Romania are often interlinked: thus, the urban/rural divide is connected to a larger school dropout rate in rural areas, as it is to the gap in income (Vasilescu, 2018[81]). Notably, employment rates are lower and unemployment rates are higher for people from the poorest regions but also for those from rural areas and small cities and for specific vulnerable categories, such as the Roma community, disabled persons and people with low levels of qualifications. High numbers of youth not in employment, education, or training, primarily among Roma (77% of women and 52% of men, with higher employment levels in rural areas) and disabled people (60%), are thus at risk of social exclusion and perpetuating existing patterns of exclusion in the future (Vasilescu, 2018[81]). Further inequalities exist in access to health services between rural and urban areas, where again, Roma people are affected disproportionately.

To address some of these inequalities, the government has, in addition to the Anti-Poverty Strategy, recently adopted a new *National Strategy for the Inclusion of Romanian Citizens Belonging to the Roma Minority* (Government of Romania, 2022[73]). In 2021, it introduced a *National Strategy for Preventing and Combating Anti-Semitism, Xenophobia, Radicalisation and Hate Speech* to respond to related challenges, particularly on social networks and especially targeting Romanians who are perceived to have a different ethnicity, religion, language or culture (Government of Romania, 2021[82]).

At the same time, there are worrying trends in Romania that merit attention as they undermine societal trust (see the section on equality and non-discrimination in Chapter 3). Numerous strategies to improve the plight of minority or otherwise disadvantaged groups such as disabled persons, the Roma community and women have existed for many years, without notable improvements in the lives of these groups, denoting a noticeable gap between theory and practice. Notably, while strategies to remedy the situation of the Roma community have existed for more than five years, the limited available data suggest that the overall situation for this community has not improved (Box 1.3) and that hate speech against this group has intensified during the COVID-19 pandemic, according to the government (2021[83]). Civil society representatives interviewed during the OECD mission noted that the development of these documents is rarely based on accurate or up-to-date data and that there is an absence of effective monitoring and evaluation mechanisms which would help to improve initiatives over time.[24]

Civic freedoms for disabled persons, women, and the lesbian, gay, bisexual, transgender, and intersex (LGBTI) community are further areas of concern. Persons with disabilities continue to suffer multiple forms of exclusion from employment, healthcare services, and political and social life more generally, according to interviewed CSOs who also reported less awareness and motivation in the public sector to combat gender inequality than previously.[25] The LGBTI community, while enjoying legal protection such as equal age of consent and protection against hate crimes (Norocel and Baluta, 2021[84]), continues to experience discrimination and targeted hate speech, including due to a recent flurry of proposed legal reforms aimed at diminishing the rights of this group. Romania ranked 26th out of 27 EU countries for LGBTI rights protection in practice in 2022 (Rainbow Europe, n.d.[85]). Additionally, while approaches to gender equality have progressed over the last decades, paternalistic attitudes continue to prevail (Băluţă and Tufiș, 2021[86]) and a lack of balanced representation in central and local public bodies (2019[87]) and gender-based violence (OECD, 2019[88]) remain issues.

The above creates a situation where a variety of disadvantaged or marginalised groups feel excluded from broader society and are less able to participate in public life, with a detrimental impact on civic space.

1.3.3. Pressure on access to information and the media sector

Ensuring access to information is crucial to protecting and promoting civic space. The forthcoming *OECD Open Government Review of Romania* shows that the country faces several challenges in this regard,

particularly related to implementation of the Law on Free Access to Public Information (OECD, forthcoming[9]). According to the Centre for Law and Democracy (n.d.[89]), the law on access to information (ATI) has several weaknesses, including the absence of an external appeals process and difficulties in enforcing sanctions for violations of the law. Challenges also remain in responding to requests in a timely manner. According to the Balkans and Caucasus Transeuropa Observatory, while the law indicates that simple requests must be answered in 10 days, many public bodies "exploit the ignorance of the applicant" by using the upper limit of 30 days as their deadline in practice (2017[90]). The European Commission has also noted that some public bodies use data protection rules as a justification to limit ATI, by stating that sharing requested information would be in violation of the GDPR (2021[91]). However, progress has been made in regard to both the legal frameworks and the implementation of ATI in recent years, with recent positive amendments in 2022 aiming to standardise and improve reactive and proactive disclosure of information at national and local levels. The General Secretariat also monitors how central and local government authorities apply relevant legislation and prepares related monitoring reports and recommendations, which have led to improvements (see the section on access to information in Chapter 4).

ATI underpins and reinforces other civic freedoms, including the right to freedom of expression. Freedom of expression is adhered to, with people in Romania generally able to express their opinions without retribution. At the same time, Article 19's *2021 Global Expression Report* (2021[45]), looking at, among other things, the space for individuals to express and communicate, post online, march, research and access information, has indicated that these freedoms may be somewhat hampered in Romania (see the section on promoting freedom of expression in Chapter 3).

Regarding freedom of the press, as in other countries, the economic crisis in 2008-09 and the emergence of social networks have affected mainstream media, leading to fewer outlets, lower circulation and less investigative journalism (Bertelsmann Stiftung, 2022[28]). The government provided support including anti-crisis economic subsidies but, overall, the media sector is now seen as weaker and more prone to clientelism than before, which negatively impacts citizens' capacity to obtain quality information and protect themselves from mis- and disinformation (Bertelsmann Stiftung, 2022[28]).[26] Small and regional media outlets find it increasingly difficult to survive, with many relying on any available government funding, which can impede their autonomy. The RSF 2022 World Press Freedom Index indicated ongoing challenges in the sector, including pressure from media owners, opacity regarding media funding and media ownership, growing harassment or violence against journalists and mistrust in the media fuelled by misinformation campaigns (RSF, 2022[46]).

CSOs interviewed during the fact-finding mission also noted some cases of strategic lawsuits against public participation (SLAPPs), typically initiated by the private sector or influential public sector entities with the aim of silencing journalists, undermining their reputation and draining their financial resources. This trend has also been identified in the OECD report, *The Protection and Promotion of Civic Space: Strengthening Alignment with International Standards and Guidance* (OECD, 2022[92]). The overall media landscape is thus considered to be under pressure due to external interference and lacking transparency and independence overall (see the section on freedom of the press in Chapter 4).

1.3.4. Online civic space and digitalisation

Governments increasingly recognise the transformative nature of the Internet as an open platform that facilitates and grants new opportunities to interact with citizens in innovative ways. An enabling environment where citizens, journalists and civil society actors can access information, express their views, operate freely, and thrive without fear of arbitrary or unlawful intrusion or interference in their online activities, is crucial for civic space. Several obstacles to online civic space remain in Romania, including low Internet coverage, connectivity and usage in many households, with a sharp rural-urban divide that excludes those without digital literacy and access to technology. Bridging digital divides – defined by the

OECD as “the gap between individuals, households, businesses and geographic areas at different socio-economic levels with regard both to their opportunities to access information and communication technology (ICT) and to their use of the Internet for a wide variety of activities” – requires more than merely providing Internet access to all citizens (OECD, 2001[93]). Education and skills are also needed for people to use ICT effectively. Romania has improved the situation in recent years with initiatives from both the government and civil society. The Presidency of Romania, for example, introduced the Educated Romania project, which includes specific targets on “ensuring basic digital skills for both teachers and students” (Radio Romania International, 2021[94]). In addition, as part of the EC 2021-27 Digital Education Action Plan and its Recovery and Resilience Plan, Romania committed to promoting lifelong digital education for all citizens (EC, 2021[95]). CSOs have also contributed, with one example being the Foundation for Digital Education, which provides access to programming courses and digital workshops to children in rural and disadvantaged communities (Business Review, 2021[96]).

As an EU member state, Romania has stepped up its digitalisation efforts in recent years and is committed to digital government reforms (see the section on ongoing initiatives and programmes for digitalisation in Chapter 4). The 2020 *National Strategy on Digital Agenda for Romania* (Government of Romania, 2014[97]) is the main framework outlining Romania’s ambitions for digital transformation and identifies upskilling citizens’ ICT skills as a core priority. However, despite a range of strategies and initiatives on digital government, interoperability and open data, Romania still faces significant barriers in several areas. Currently, it ranks last of all EU member states in the 2022 edition of the *EU Digital Economy and Society Index*, with low scores in digital public services and citizen use of e-government initiatives in particular (EC, 2022[98]). Romania is currently undertaking an OECD *Digital Government Review* to identify opportunities for improvement (OECD, forthcoming[99]). Improving its international standing regarding digitalisation is another priority of the *Recovery and Resilience Plan for Romania* (European Commission, 2021[100]) and will be key to ensuring protected civic space online.

1.4. Conclusion

Moving forward, the medium- to long-term challenge for Romania is to proactively build trust between public officials and the civil society sector to enhance and deepen collaboration, begin to transform their strained relationship, and foster vibrant civic space for a more fair, inclusive and accessible society for all Romanians. This will require a cultural shift within the public sector, moving from a technocratic, legalistic approach to participation focused almost solely on applying minimum rules set out in relevant legal frameworks to a more holistic understanding of the benefits of open government policies and practices, including citizen and stakeholder participation in policy and law making. This *Civic Space Review* and Romania’s accession process to the OECD provide a unique opportunity to focus national efforts on monitoring civic space, stemming negative trends and beginning to transform policy making into a more open, inclusive and people-centred process with benefits for democratic governance and society as a whole (OECD, 2022[101]). In the short term, and in light of plans to develop an Open Government Strategy with a dedicated civil society component, continued dialogue across the public administration will be essential to establish a common understanding of the added value and potential impact of enhanced co-operation. It will also be crucial to develop a cross-government consensus on next steps to implement Romania’s vision for its civic space and for enhancing the involvement of civil society in decision making.

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Notes

[1] Interviews with government representatives, February-July 2022.

[2] Some of these strategies such as those on gender equality and domestic violence, and on promoting the rights of persons with disabilities, have expired since being adopted, with new versions pending adoption as of March 2023.

[3] The 2021 action plan continued the efforts of the Romanian government to enhance civic participation and improve consultation.

[4] The Open Government Strategy is being developed in parallel by the government as part of a separate EU-funded project, *Enhancing Policy Coherence, Transparency and Coordination at the Centre of Government*, also with OECD support.

[5] Information provided by the Government of Romania in a background document for the *Civic Space Review of Romania*, November 2021.

[6] Interview with government representatives, March 2023.

[7] Associations and foundations acquire legal personality in Romania by registering with local courts and the relevant information, as well as any changes, need to be communicated to the Ministry of Justice, which updates the main register.

[8] Interviews with CSOs, February-July 2022.

[9] Throughout the Civic Space Review, citizen is used in the OECD's civic space work in the sense of an inhabitant of a particular place, not in the sense of a legally recognised national.

[10] The register can be found at https://www.just.ro/registrul-national-ong/.

[11] One recent CSO analysis, which has not been published or verified, estimated that 52 000 CSOs were active at the end of 2021. Information received from a CSO in October 2022.

[12] Interviews with government representatives and CSOs, February-July 2022.

[13] According to the Economist Intelligence Unit's Democracy Index 2021, democracy has somewhat declined in Romania since 2007, following a general trend worldwide (EIU, 2021[50]). In the Democracy Index, Romania ranked 61st out of 167 countries assessed globally; the country scored high on electoral processes and pluralism and low on political culture, which reflects a loss of confidence in democracy and weakened attachment to democratic institutions. A separate source, the 2019 Sustainable Governance Indicators from Bertelsmann Stiftung, ranked Romania 38th out of 41 countries assessed in the EU and OECD when evaluating the quality of democracy in the country, noting tensions between the government and civil society (Bertelsmann Stiftung, 2019[102]).

[14] Background information provided by the Government of Romania.

[15] The e-consultation platform, an online consultation platform on pending draft normative acts, established in 2019, can be found at http://e-consultare.gov.ro/w/.

[16] Background information provided by the Government of Romania.

[17] During interviews conducted during the OECD fact-finding mission, civil society representatives felt that these activities had threatened the independence of the judiciary, as they had weakened a previously strong anticorruption body by removing its head and by passing new legislation which called into question its mandate and created legal uncertainty.

[18] Interviews with government representatives and CSOs, February-July 2022.

[19] Interviews with CSOs, February-July 2022.

[20] Interviews with CSOs, February-July 2022.

[21] Interviews with government representatives, February-July 2022.

[22] According to data from the National Institute of Statistics in 2021, significant ethnic groups include the Hungarian community, accounting for 6.5% of the population, and the Roma community, accounting for 3.3% of the population (National Institute of Statistics, n.d.[103]).

[23] Interviews with CSOs, February-July 2022.

[24] Interviews with CSOs, February-July 2022.

[25] Interviews with CSOs, February-July 2022.

[26] Misinformation refers to false or inaccurate information not disseminated with the intention of deceiving the public. Disinformation refers to false, inaccurate or misleading information deliberately created, presented and disseminated to deceive the public.

2 The OECD approach to civic space in Romania

This chapter provides a brief overview of the OECD's general approach to assessing civic space, based on the OECD Civic Space Scan Analytical Framework in the Area of Open Government. It then discusses the methodology followed for the Civic Space Review of Romania.

2.1. Civic space for open government

Under the purview of the OECD Public Governance Committee and the OECD Working Party on Open Government, the OECD has been supporting countries around the world to strengthen their culture of open government by providing policy advice and recommendations on how to integrate its core principles of transparency, integrity, accountability and stakeholder participation into public sector reform efforts. The OECD's work on civic space is a continuation of this effort, recognising that civic space is an enabler of open government reforms, collaboration with non-governmental actors, and effective citizen and stakeholder participation. As a key contributor to an open government ecosystem, civic space is thus fully integrated into the OECD's open government work in support of the OECD *Recommendation of the Council on Open Government* (2017[1]).

The Observatory of Civic Space was established by the OECD in November 2019 to support member and partner countries in the protection and promotion of civic space. An advisory group comprising experts, funders and world-renowned leaders on the protection of civic space guides its work.[1] The observatory was established from within the Open and Innovative Government Division of the Directorate for Public Governance in light of the recognition that, while many countries were making significant progress in furthering their open government agendas, civic space – which facilitates and underpins open government reforms – was under pressure in different ways in many of the same countries. There is also a well-documented decline in the protection of civic space at the global level (OECD, 2022[2]).

The OECD approach to assessing civic space, developed in 2020, is articulated in the *Civic Space Scan Analytical Framework in the Area of Open Government* (OECD, 2020[3]). The starting point for this work is the OECD's working definition of civic space as "the set of legal, policy, institutional, and practical conditions that are necessary for non-governmental actors to access information, express themselves, associate, organise, and participate in public life" (OECD, 2020[3]).

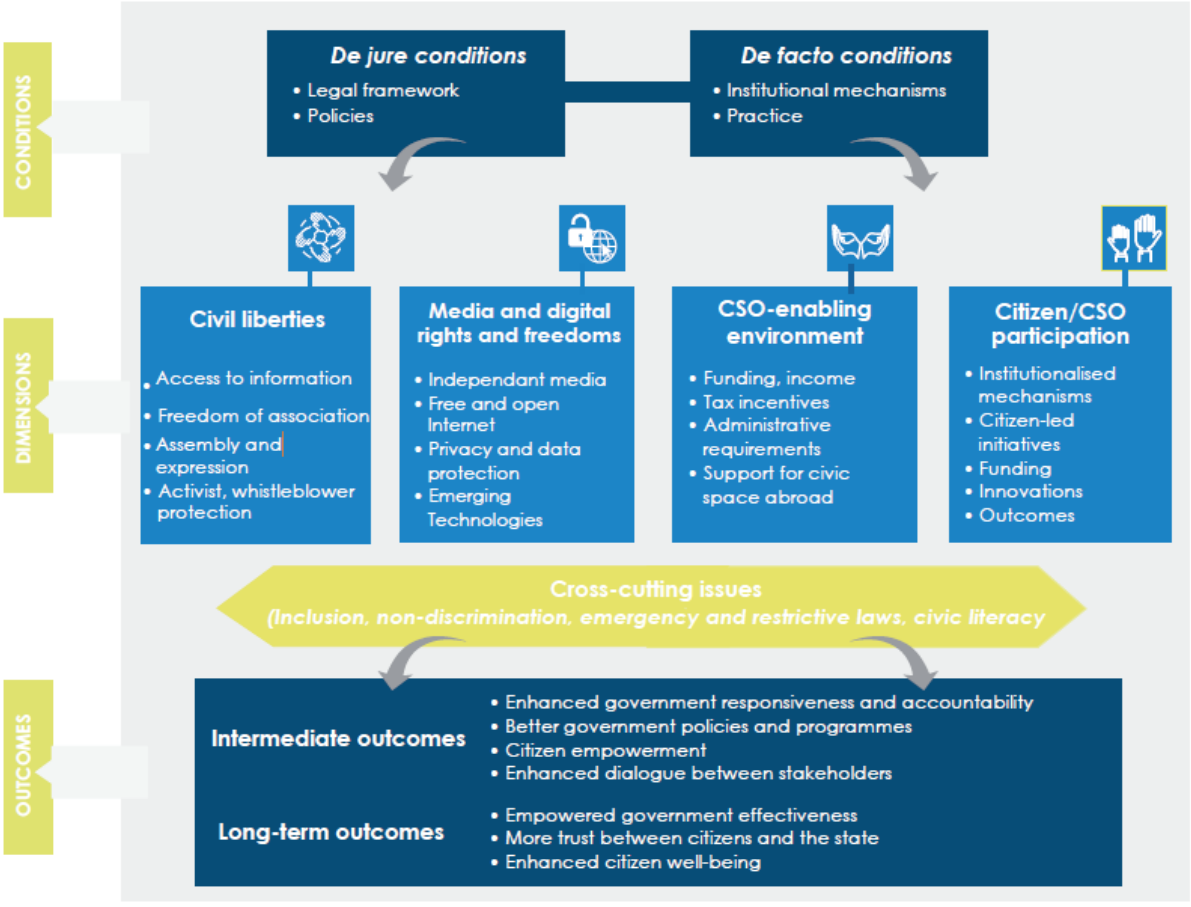
As the above suggests, the OECD approach to civic space is informed by its longstanding focus and expertise in good governance and open government, in addition to its constructive relationship with civil society actors. From a good governance perspective, the work aims to evaluate how existing legal, policy and institutional frameworks, as well as the public sector's capacities and management practices, shape and affect civic space. The open government focus addresses how these frameworks translate into participatory practices and mechanisms for accountability; in other words, how civic space can be transformed into a vehicle for effective stakeholder participation in policy making and service design and delivery as part of enhancing democratic governance. The intent is that this unique government perspective will contribute to a better understanding of civic space vitality, progress, opportunities, constraints, and outcomes at both the national and global levels.

Civic Space Reviews focus on four key thematic areas:

- Civic rights and freedoms, i.e. freedom of expression, freedom of assembly, freedom of association, access to information,[2] and protection for activists and human rights defenders.
- Media freedoms and civic space in the digital age, i.e. press freedom, an open Internet, privacy and data protection.
- The enabling operational environment created by governments for civil society organisations (CSOs) to operate in citizen and stakeholder participation in policy and decision making.
- Citizen and stakeholder participation mechanisms, methods and innovations.

Cross-cutting issues, such as inclusion and non-discrimination, emergency laws, civic literacy and the impact of COVID-19 are also key concerns (Figure 2.1).

Figure 2.1. Civic Space Review theory of change



Source: OECD (2020[4]), *Civic Space*, http://www.oecd.org/gov/open-government/civic-space.htm.

For governments interested in an external analysis of their civic space, Civic Space Reviews provide in-depth qualitative assessments of theory (*de jure* conditions) and practice (*de facto* conditions). The data-gathering process adheres to the well-established Open Government Review methodology and is based on a partnership with the requesting country (OECD, n.d.[5]). In all cases, the analytical framework is used as a guide and the precise issues discussed in reviews are determined at the country level.

2.2. Methodology underpinning the Civic Space Review of Romania

The *Civic Space Review* is part of a broader project on Enhancing Policy Coherence, Transparency and Coordination at the Centre of the Government in Romania, which is funded by the European Commission. The project aims to support Romania in its efforts to strengthen institutional and administrative capacity, including at regional and local levels, to facilitate socially inclusive, green and digital transitions. Within the framework of this project, the OECD Secretariat agreed to produce an assessment report of Romania's protection and promotion of its civic space, including benchmarking with OECD Members and European Union (EU) member states. Based on the findings and recommendations in the report, the OECD is supporting the General Secretariat of the Government (hereafter "General Secretariat") to develop a component on engaging civil society in decision making into its forthcoming national Open Government Strategy.

The Review draws on a wide range of sources and materials:

- **Government background report.** The General Secretariat responded to a questionnaire from the Observatory of Civic Space in January 2022. The detailed questionnaire included 20 questions covering a range of issues in the policy and legal context, Romania's strategic vision for civic space, challenges in protecting civic space, key actors, oversight mechanisms and related public funding.
- **Literature review.** The OECD team conducted an extensive review of legal texts, government policy and strategy documents, think-tank and academic reports, and government websites in both English and Romanian (using translation tools). The government background report and literature review were used to prepare a background report for the *Civic Space Review* and tailored questions for each of the fact-finding interviews.
- **Library of Congress legal analysis.** As part of a partnership with the OECD, the United States-based Library of Congress submitted a detailed background report on Romania's legal frameworks to the Observatory of Civic Space in November 2021 (Library of Congress, 2021[6]). This report will be published by the OECD alongside the Review.
- **Public consultation.** The Observatory of Civic Space held a month-long online public consultation (December 2021 to January 2022), inviting submissions from non-governmental actors on the following issues:
  1. How can Romania strengthen its commitment to civic space?
  2. How can Romania strengthen the enabling environment for CSOs, e.g. relevant laws, policy frameworks, access to public funding?
  3. How can Romania better engage with CSOs in policy making and service design and delivery?
  4. What steps could the Romanian government and CSOs take to build trust in one another?
  5. What content would you like to see included in a strategy for civil society involvement in decision making?

The consultation was advertised on OECD social media, in the OECD Civil Society Newsletter,[3] on the OECD website and by the General Secretariat. The consultation yielded over 70 substantive inputs from 14 different non-governmental actors or organisations overall. Submissions received were incorporated into the findings and recommendations.

- **Fact-finding mission.** On 31 January 2022 an OECD team hosted a briefing session for government officials taking part in the *Civic Space Review* to explain the purpose and format of the interviews, in addition to desired outcomes. They then undertook three weeks of one-hour interviews as part of a fact-finding mission with government officials and non-governmental actors, followed up with ad hoc interviews over the following months. The OECD team undertook separate interviews with non-governmental actors (academics, CSOs, think-tanks, journalism associations and umbrella organisations). Due to travel restrictions because of the COVID-19 pandemic, most of these interviews were held online. Interviews were frequently followed up by email with requests for information and clarifications.

In total, government representatives from 35 public bodies were interviewed during the fact-finding mission, either online or in person. Questionnaires were sent to five public bodies that could not participate in the interviews. The OECD also conducted interviews with 21 non-governmental actors in total. The content of the interviews and questionnaire responses was fully integrated into the report.

- **Peer review process.** Representatives from Finland's Ministry of Finance and Ministry of Justice participated in the fact-finding mission interviews as peer reviewers. The process was broadly in line with the OECD methodology on peer reviews (OECD, 2003[7]), which was adapted due to the need to hold many interviews online. Adaptations included allowing flexibility in terms of the number of interviews that the peer review country attended and the number of peer reviewers from each

country. Following the interviews and a debrief on preliminary findings from the OECD team, peer reviewers provided analytical input and shared examples of good practices from their administrations, then reviewed and commented on the draft report. Similarly, government representatives from Chile and Scotland (United Kingdom) reviewed and provided feedback on the draft report.

- **OECD missions to Romania.** The OECD team travelled to Romania from 11-14 April 2022 to meet with their Romanian counterparts, conduct follow-up interviews with selected government bodies, and undertake additional interviews with government and civil society actors. The mission served as an opportunity to present preliminary findings of the *Civic Space Review* to the General Secretariat and to discuss the strategy and roadmap for engagement with civil society.

A follow-up mission took place from 28-30 September 2022 to conduct two workshops with government officials and civil society, in support of drafting the civil society component of the Open Government Strategy. Learning from these workshops was fully incorporated into the report findings.

- **Fact checking and transparency.** A draft report was sent to the General Secretariat and peer reviewers for fact checking in July 2022 and to the General Secretariat again in November 2022. A draft was also sent to all fact-finding mission interviewees in October 2022. All comments and data received were incorporated into the analysis, to the extent possible.

The analysis in the Review is fully aligned with the forthcoming OECD *Open Government Review of Romania* (OECD, forthcoming[8]). This review will assess the governance of open government and elaborate a set of actionable recommendations on how to improve mechanisms that can allow for open government policies and practices to be successfully implemented, including the capacity to establish collaboration mechanisms with citizens and CSOs.

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OECD (forthcoming), *Open Government Review of Romania*, OECD Publishing, Paris. [8]

Notes

[1] The advisory group comprises: the Government of Finland; the Open Society Foundations; the Robert Bosch Foundation; the Ford Foundation; the International Center for Not-for-Profit Law; the Carnegie Endowment for International Peace; CIVICUS; and the Open Government Partnership.

[2] In this *Civic Space Review*, access to information is addressed in chapter 4 on media freedom and civic space in the digital age in Romania.

[3] More information on the OECD Civil Society Portal is available at https://www.oecd.org/about/civil-society/about/ and newsletter subscription is available at https://account.oecd.org/subscribeEmail.aspx?categoryKeys=4056.

3 The protection of civic freedoms in Romania

This chapter provides an overview of the protection of civic freedoms in Romania, with a focus on freedoms of expression, peaceful assembly, association, equality and non-discrimination. It provides a review of key legal frameworks before discussing challenges and opportunities relating to individuals' full enjoyment of civic space including related to hate speech, peaceful assembly, exclusion, and discrimination targeting particular groups and violence against women. It reviews the role of human rights protection mechanisms and provides guidance and concrete recommendations for the government on strengthening civic space in each area discussed.

3.1. Introduction

The promotion and protection of civic space hinges on how civic freedoms are guaranteed and enabled, both in law and in practice. As discussed in Chapter 2, the OECD defines civic space as the set of legal, policy, institutional and practical conditions necessary for non-governmental actors to access information, express themselves, associate, organise and participate in public life (OECD, 2020[1]). Equality and non-discrimination are cross-cutting issues in this respect, as are rule of law and accountability considerations.

Romania has a series of regulations governing civic space in addition to normative acts with references to the concepts of the "associative environment" and "civil society".[1] Generally, civic freedoms are protected by law and by general and specialised publicly funded and independent institutions, notably the People's Advocate and the National Council for Combating Discrimination (see the sections on equality and non-discrimination and non-judicial complaint mechanisms below). Key rights, such as freedom of expression and freedom of the press (both found in Article 30), the right to respect for private life (Article 28), the right of access to public information (Article 31), the right to vote and be elected (Articles 36-38), freedom of association and assembly (Articles 39-40), and freedom of religion (Article 29), are protected by the Romanian constitution (Ministry of Justice, 1991[2]). The constitution also prohibits discrimination (Articles 4 and 16). Furthermore, foreign citizens[2] and stateless persons living in Romania enjoy general protection of persons and assets, as guaranteed by the constitution (Article 18) and other laws. Article 20 of the constitution specifies that its provisions shall be interpreted and applied in accordance with the Universal Declaration of Human Rights and other treaties and pacts that Romania is a party to and that, in cases of conflict between these treaties and domestic law, international obligations take precedence unless constitutional or domestic laws contain provisions more favourable to individuals. The above freedoms may be restricted by law, and where necessary to achieve the legitimate aims set out in Article 53 of the constitution.[3]

Under the constitution, the abovementioned freedoms generally apply to anyone on Romanian territory, whether regularly or irregularly. However, Article 40 specifies that only Romanian citizens have the right to associate in different organisations, including trade unions and employers' associations. Article 16 makes a similar distinction, granting the rights of equality and non-discrimination to citizens, not all persons.

3.2. Restrictions on civic freedoms during the COVID-19 pandemic

During the COVID-19 pandemic, Romania introduced a state of emergency initially and later a "state of alert" to combat the effects of the virus. During these periods, certain civic freedoms were limited, thereby limiting civic space, as outlined in detail in Box 3.1 below. In March 2022, the state of alert ended in Romania and with it any related restrictions.

Box 3.1. Measures to fight COVID-19 in Romania and their impact on human rights and civic space

In March 2020, like many other states, Romania introduced a state of emergency by presidential decree (Ministry of Justice, 2020[3]) in order to effectively combat the first wave of the COVID-19 pandemic, which was extended once more in April, also by presidential decree. In May 2020, by decision of the National Committee for Emergency Situations, a state of alert was declared. Following the adoption of a new legal basis, namely a law regarding measures to prevent and combat the effects of the COVID-19 pandemic (Anti-Covid Law) (Ministry of Justice, 2020[4]), another decision declaring a state of alert was

passed later in the same month. The state of alert was prolonged several times afterwards and ended in March 2022.

During the state of emergency between March and May 2020, the government of Romania declared its official derogation from key human rights obligations set out in the presidential decree of March 2020 (including, for example, freedom of movement, the right to private life, the right to education, the right to freedom of assembly, the right to private property and the right to strike), with important repercussions for civic space in the country. In order to prevent the spread of COVID-19, in March 2020, the government limited public circulation outside of homes, put a ban on inside gatherings and prohibited outside public gatherings of more than 100 persons (Ministry of Justice, 2020[5]; 2020[6]). Additionally, Internet service providers were obliged to interrupt transmission and remove content promoting "fake news about the evolution of COVID-19 and the protection and prevention measures". Violations of these rules were punishable by fines, which were initially based on an emergency ordinance issued in April 2020. After the Constitutional Court declared this emergency ordinance to be unconstitutional, more detailed provisions on punishable offences were set out in the Anti-Covid Law (FRA, 2020[7]). In a decision issued in May 2021, the European Court of Human Rights found that restrictions on leaving homes had not violated the rights to freedom of movement and liberty of the respective applicant (a Romanian member of the European Parliament) (ECtHR, 2021[8]).

Between January and July 2021, the government maintained anti-COVID-19 regulations that allowed public gatherings of a maximum of 100 persons. In June 2021, a group of 65 non-governmental organisations (NGOs) sent a letter to the government complaining that religious, cultural or sports gatherings were allowed a significantly higher number of participants than rallies and demonstrations and called the regulations discriminatory and unjustified (U.S. DoS, 2021[9]). From August 2021 onwards, regulations allowed demonstrations or rallies of up to 500 participants in cities and villages with a COVID-19 incidence rate of less than 2 per 1 000 persons. Several NGOs and human rights activists still considered the new regulations to be discriminatory and unjustified (U.S. DoS, 2021[10]; Amnesty International, 2022[11]).

Despite some concerns regarding a lack of available information in minority languages and a rise in hate speech during the pandemic, comparative evaluations such as the Bertelsmann Transformation Index show that in Romania, violations of democratic norms during the pandemic were minor and were more in line with practice in Western Europe than other countries of the region (BTI, 2022[12]). Nevertheless, the overuse of emergency measures to pass legislation (thereby bypassing consultations with civil society and other stakeholders), even after the end of the state of alert, continues to raise concerns (for more information on this, see Box 6.8 in Chapter 6).

Source: Ministry of Justice (2020[3]), *Decree 195/2020 on the Establishment of the State of Emergency on the Territory of Romania*, https://legislatie.just.ro/Public/DetaliiDocumentAfis/223831; FRA (2020[7]), *Coronavirus Pandemic in the EU – Fundamental Rights Implications*, https://fra.europa.eu/sites/default/files/fra_uploads/ro_report_on_coronavirus_pandemic_june_2020.pdf; ECtHR (2021[8]), *Terheş v Romania, Admissibility Decision, Application no. 49933/20*, https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22terhes%22],%22itemid%22:[%22001-210026%22]}; U.S. DoS (2021[10]), *Romania Human Rights Report*, https://www.state.gov/wp-content/uploads/2022/03/313615_ROMANIA-2021-HUMAN-RIGHTS-REPORT.pdf; Amnesty International (2022[11]), *Romania 2021*, https://www.amnesty.org/en/location/europe-and-central-asia/romania/report-romania/; BTI (2022[12]), *Romania Country Report 2022*, https://bti-project.org/en/reports/country-report/ROU.

3.3. Promoting freedom of expression

Freedom of expression is one of the crucial elements of any democratic society and is an essential prerequisite for an enabling environment for civil society. More specifically, freedom of expression enables individuals to participate in public affairs in a meaningful manner, allowing discussions and interactions with peers and public officials, including the ability to critique government spending and decision making, thereby enhancing transparency and accountability.

3.3.1. Constitutional recognition and legislation

As stated above, Romania protects freedom of expression in its constitution, namely in Article 30. Under Paragraph 1 of this provision, the freedom to express ideas, opinions and beliefs, and the freedom of creation in any form – orally, in writing, through images, by means of sound or by any other means of public communication – are inviolable (Library of Congress, 2021[13]). Freedom of expression is also set out in Article 70 of Romania's Civil Code. The right to freedom of expression encompasses the right of access to information, which is also protected by Article 31 of the constitution. According to this provision, the right of access to information obliging authorities to provide accurate information to citizens on public affairs should not be restricted (see the section on access to information in Chapter 4).

Romania adheres to the freedom of expression provisions in Article 19 of the International Covenant on Civil and Political Rights (ICCPR) (UN, 1966[14]) and Article 10 of the European Convention on Human Rights (ECHR) (Council of Europe, n.d.[15]), respectively. Similarly, as a member of the European Union (EU), the EU Charter of Fundamental Rights applies, specifically Article 11 on freedom of expression and information. The abovementioned constitutional and other legal provisions protecting freedom of expression, as well as the circumstances and criteria of restricting this freedom, as set out in Article 53 of the constitution, appear to be in line with these human rights instruments.

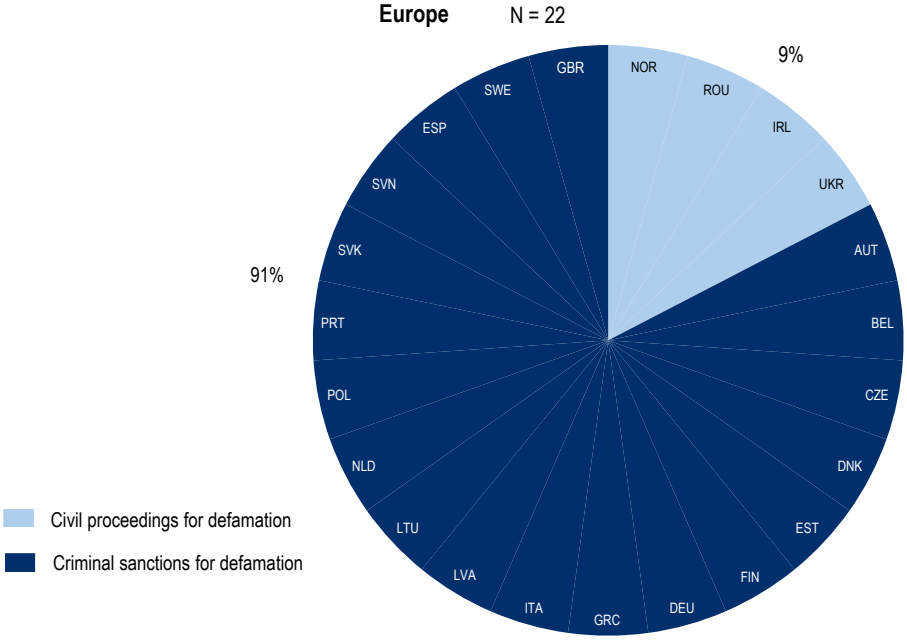
Defamation and hate speech are discussed below as two key exceptions to freedom of expression followed by a review of implementation challenges.

Defamation as an exception to freedom of expression

Article 30, para. 6 of the constitution states that freedom of expression "shall not be prejudicial" to the dignity and honour of individuals. Moreover, Paragraph 7 of Article 30 prohibits "any defamation of the country and the nation" (see section on barriers for journalists and media outlets in Chapter 4). As defined in other OECD publications, defamation is considered to be a false statement, made in any medium (written or oral), that is presented as a fact and that causes injury or damage to the character of the person it is about (OECD, 2022[16]).

Since 2014, claims concerning defamation of individuals can be pursued in Romania before civil courts. Romanian legislation is thus in line with standards set by the United Nations (UN) and the Council of Europe, representatives of which have been calling for the decriminalisation of defamation for many years to safeguard freedom of expression for journalists and other individuals (UN, 2011[17]; Council of Europe, 2007[18]). This is because, while the protection of a person's reputation may serve a legitimate interest, criminal sanctions – as opposed to civil remedies – are more likely to lead to limitations on civic space, such as censorship and self-censorship among journalists and activists, especially when sanctions include prison sentences (UN Human Rights Committee, 2011[19]; Griffen, 2017[20]). Romania is one of only a few states in Europe that adhere to this standard of decriminalisation of defamation. The OECD's 2022 report, *The Protection and Promotion of Civic Space: Strengthening Alignment with International Standards and Guidance* (OECD, 2022[16]) found that of 22 countries surveyed in Europe (OECD Members and non-OECD Members), only 4 countries (Ireland, Norway, Romania and Ukraine) do not criminalise defamation (Figure 3.1).

Figure 3.1. Criminal and civil proceedings for defamation, 2022



Source: Data from OECD (2022[16]), *The Protection and Promotion of Civic Space: Strengthening Alignment with International Standards and Guidance*, OECD Publishing, Paris.

Hate speech as an exception to freedom of expression

As in many countries hate speech, particularly online, is a growing threat to protected civic space in Romania as it frequently targets minorities, in addition to women, lesbian, gay, bisexual, transgender or intersex (LGBTI) persons and persons with disabilities, aiming to harass and attack them, and thereby exclude them from public discourse and spaces (both physical and online). While not internationally defined, hate speech may involve different forms of communication that attack or use pejorative or discriminatory language with reference to a person or a group on the basis of who they are or aim to incite discrimination or violence towards that person or group, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factors, for example (OECD, 2022[16]). These kinds of actions may serve to limit the manner in which individuals act or speak, and thus directly impact their participation in public decision making, as allowing open debate and freedom of expression and preventing attacks on others to ensure equal participation in public life, both online and offline, are essential elements of protected civic space. Freedom of expression and pluralistic public opinion cannot be realised if individuals feel they must refrain from discussing certain topics or withdraw from public debate for fear of vilification or harmful racial, gender-based or other stereotypes and discrimination (Illman, 2020[21]). It is thus important that governments take appropriate measures to ensure that all persons are able to engage online on an equal basis with others.

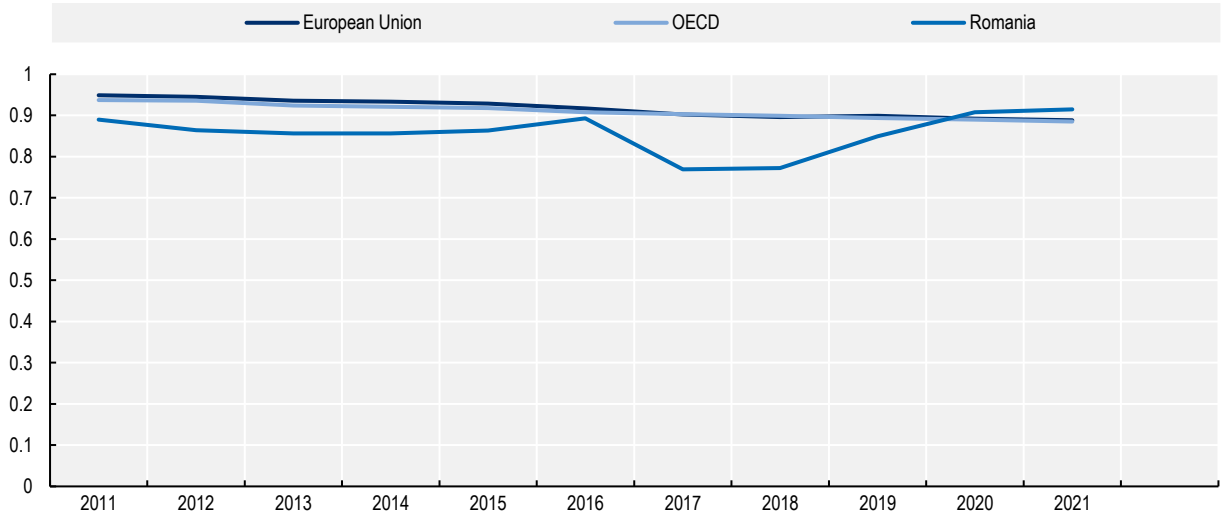
Romania has strong legal protection against hate speech, in line with international standards, although certain terms used are somewhat unclear and open to interpretation. Article 30, para. 7, of the constitution prohibits "any instigation to national, racial, class or religious hatred" and "any incitement to discrimination, territorial separatism or public violence"; while most of these terms are similar to those used in other states' anti-hate speech legislation, the term "incitement to territorial separatism" may require additional clarification. Article 369 of the Criminal Code, on the other hand, following amendments in early June 2022, prohibits incitement of the public to hatred or discrimination against any category of persons or against a person belonging to such category on the basis of race, nationality, ethnicity, language, religion, gender, sexual orientation, political opinion or belonging, property, social origin, age, disability, chronic non-contagious disease or human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) infection. Punishments are imprisonment of six months to three years or a fine. Article 368 of the Criminal Code also prohibits "urging the audience verbally, in writing or by any means, to commit offences punishable with imprisonment from three months to three years, or with a fine" (Romanian Ministry of Justice, 2009[22]). The sanctions for such behaviour are not specified in law but may not exceed the penalty for the offence that others were instigated to commit. Specific laws passed in previous years also combat antisemitism, Holocaust denial and distortion.[4] Romanian legislation likewise provides for the punishment of hate speech as a contravention under the Anti-Discrimination Law, the Audiovisual Law, the Law on Preventing and Combating Violence at Sports Games and the Law on Public Gatherings (ECRI, 2019[23]). The terminology used in the above laws and provisions does not appear to raise any further concerns in terms of compliance with international human rights standards, though some gaps remain (for further information, see the section on implementation challenges and opportunities below).

As discussed in Chapter 1, in 2021, the Romanian parliament adopted a Law for Preventing and Combating Anti-Gypsyism,[5] which considers any kind of promotion of "anti-gypsy ideas, concepts or doctrines" to be a crime punishable by imprisonment for three months to three years, and the prohibition of certain rights (Ministry of Justice, 2021[24]). The distribution or making available of anti-Gypsy materials is punishable by imprisonment of between one to five years.

3.3.2. Addressing implementation challenges and identifying opportunities for freedom of expression

Generally speaking, people in Romania are able to express their opinions freely, with some exceptions. Since 2017, Article 19's *Global Expression Report* (2021[25]) has classified Romania as a country where freedom of expression is considered "less restricted", ranking it 44th of 161 countries reviewed (Article 19, 2021[25]).[6] In the seven years preceding 2017, the *Global Expression Report* had considered Romania as a country where expression was "free", but Article 19's *Expression Agenda Report 2017/2018* had already noted a deterioration of media freedoms and transparency in Romania from 2014 onwards, driven in particular by negative assessments of freedom of discussion, media self-censorship, access to information and civil society activity (Article 19, 2018[26]). Taking a slightly longer view, the V-Dem Institute's Freedom of Expression and Alternative Sources of Information Index shows that between 2011 and 2021, freedom of expression in Romania was mostly stable, with a slight dip in 2016-19 and recently ranking slightly above the EU average (Figure 3.2) (V-Dem Institute, 2022[27]).

Figure 3.2. Freedom of expression in Romania, OECD Members and the EU, 2011-21



Note: The indicator asks: "To what extent does the government respect press and media freedom, the freedom of ordinary people to discuss political matters at home and in the public sphere, as well as the freedom of academic and cultural expression?". The scale goes from low to high (0 to 1).
Source: V-Dem Institute (2022[27]), *Varieties of Democracy*, https://www.v-dem.net/data_analysis/CountryGraph/.

Challenges related to defamation cases and the use of strategic lawsuits against public participation (SLAPPs) are addressed in Chapter 4. The growing use of hate speech is also addressed in detail below as a limitation to freedom of expression and civic space, given the impact that hate speech has on individuals' ability and willingness to engage in public debate.

Raising awareness of hate speech and seeking long-term solutions

Based on reports from within and outside Romania, hate speech is prevalent in the country and targets a broad spectrum of persons, including people of other nationalities or ethnicities, non-nationals studying and working in Romania, refugees, members of certain religious denominations, persons with disabilities or ailments, members of the LGBTI community and women (Government of Romania, 2021[28]).[7] According to the government's National Strategy for Preventing and Combating Anti-Semitism, Xenophobia, Radicalisation and Hate Speech for 2021-23, hateful content is rapidly becoming more prevalent, especially on social networks (Ministry of Justice, 2021[29]). Moreover, in its 2019 report on Romania, the European Commission against Racism and Intolerance (ECRI) found that racist and intolerant hate speech in public discourse and on the Internet was a widespread problem, with the Roma community, the Hungarian minority, LGBTI persons and the Jewish community as the main targets. In particular, anti-Roma hate speech has become commonplace, including by members of mainstream political parties, according to ECRI (2019[23]). At the same time, ECRI has noted the absence of coherent and systematic data collection on hate speech in Romania.

The government's abovementioned national strategy aims to respond to, among others, the rapid spread of these phenomena, particularly on social networks and especially targeting Romanians who are perceived to be from a different ethnicity, religion, language community or culture. The strategy mentions a series of measures that state authorities have taken, including: the adoption of a legislative framework to combat antisemitism, Holocaust denial and distortion; providing education concerning the Holocaust in Romania; the adoption of national strategies for the Roma community; the use of administrative and legal mechanisms to combat discrimination in Romania; and participation in international initiatives aimed at combating antisemitism, Holocaust denial and distortion. The current strategy continues these activities,

with a particular focus on, among others, improving data collection and activities on enhancing understanding of other cultures (Ministry of Justice, 2021[29]).

Programmatically, the strategy's main actions involve setting up a working group to assess the threats posed by antisemitism, xenophobia, radicalisation and hate speech for vulnerable groups, as well as developing a unified methodology to identify and report, at the level of the National Agency for Roma, related incidents targeting the Roma community. Additional foreseen actions include conducting opinion polls and evaluating existing training programmes in the law enforcement and education sectors and conducting various other activities in academia and beyond to combat and simultaneously raise further awareness of hate speech (Ministry of Justice, 2021[29]).

The above strategy constitutes an important step in the fight against hateful expression. A 2021 Campaign called Together against Hate, organised by the governmental Department on Inter-Ethnic Relations, also received positive feedback from civil society representatives interviewed during the OECD fact-finding mission.[8] The Romanian police is likewise implementing a project aimed at "Combating hate crimes and violent extremism, particularly against Roma population and increasing the quality of police service" (Ministry of Foreign Affairs of Romania, 2022[30]). This project involves awareness-raising campaigns at the national level to reduce victimisation and hate speech against Roma communities. The National Agency for Roma has integrated messages targeting the general public, mass media, online media and others in its public communication campaign to create awareness of stereotypes, prejudices and discrimination against Roma (Ministry of Foreign Affairs of Romania, 2022[30]). Moreover, in 2021, Romania set up a specialised national police unit for the investigation of hate crimes (currently composed of 3 police officers) and 48 specialised police officers tasked with the criminal investigation of hate crimes have been appointed at subnational levels (FRA, 2022[31]).

However, significant challenges remain. Thus, in the context of the execution of a key judgment of the European Court of Human Rights against Romania, the Committee of Ministers of the Council of Europe noted in 2021 that legal provisions related to hate crime "have rarely been applied and the response of the criminal justice system to such crimes remains, for the time being inadequate" (CoE Committee of Ministers, 2021[32]). In terms of implementation of key legislation on hate speech, ECRI and the Department of Inter-Ethnic Relations have both noted that the application of criminal provisions prohibiting hate speech remains extremely limited, leading to impunity in this regard (ECRI, 2019[23]; Government of Romania, 2021[28]). This, combined with the lack of uniform data gathering, results in crimes involving hate speech not always being taken seriously by prosecutors and judges, according to civil society.[9] In a report published in 2021, ACCEPT, a national civil society organisation (CSO), further indicated that relevant criminal provisions themselves may be unclear. In particular, there is no definition of hatred and the distinction between criminal hate speech and incitement to hatred under Government Ordinance 137/2000 on the Prevention and Sanctioning of All Forms of Discrimination (Ministry of Justice, 2000[33]), which is an administrative offence, is not always apparent (ACCEPT, 2021[34]). At the same time, state and civil society representatives noted that the recently passed Law for Preventing and Combating Anti-Gypsyism has so far led to a few complaints and that these are still pending resolution by the competent authorities.

Furthermore, hate speech against minorities and vulnerable groups reportedly increased during the COVID-19 pandemic, when Roma people were often scapegoated and accused of being "super spreaders" of the virus.[10] In its 2021 report, the government's Department of Inter-Ethnic Relations found that an increase in hate speech, including online hate speech, was fuelled by media reports (Government of Romania, 2021, p. 53[28]). Similar instances of hate speech against members of the LGBTI community were reported in the context of an (ultimately unsuccessful) 2018 referendum aiming to limit the definition of family in the Romanian constitution to a marriage between a man and a woman. According to ACCEPT, no action was taken by public authorities in these and similar cases involving public speech that incited hatred and marginalisation of LGBTI persons (ACCEPT, 2021[34]) (see the section on equality and non-discrimination). It should be noted in this respect that the abovementioned National Strategy for Preventing

and Combating Anti-Semitism, Xenophobia, Radicalisation and Hate Speech does not specifically target hate speech against LGBTI groups or individuals.

The challenge of online hate speech in particular is of widespread public concern in many OECD Members. Many citizens and CSOs are calling for for better moderation of harmful speech by social media platforms and collaboration between the public and private sector to combat the issue. As a response, a number of countries, including France, Germany, Israel and the United Kingdom have adopted legislation that encourages social media companies to take responsibility in removing hate speech and other harmful content from their platforms within a particular period (OECD, 2022[35]). That said, the OECD report *An Introduction to Online Platforms and Their Role in the Digital Transformation* underlines the need for governments to issue guidance for the platforms responsible for filtering or removing content to ensure that they comply with requirements without infringing on legitimate freedom of expression (OECD, 2019[36]).

Recommendations

To ensure equal participation in public life, Romania could:

- Engage in constant monitoring and reporting, awareness raising and targeted sanctions in the area of hate speech overall, but in particular related to existing legislation, notably the Law to Prevent and Combat Anti-Gypsyism, to ensure its effective implementation.
- Develop long-term plans for civic education and targeted and sustained awareness-raising campaigns for adults and children to address hate speech and discuss its impact, in co-operation with CSOs.
- Ensure targeted outreach to affected groups to ensure greater representation and participation in public decision-making. Consider the introduction of targets and quotas where necessary to promote equity.
- Consider investigating whether relevant criminal provisions are unclear in regard to the definition of hatred and the distinction between criminal hate speech and incitement to hatred.
- Take inspiration from OECD Members' efforts to curb online hate speech and collaborate with social media platforms to guide these actors on their responsibilities in moderating and removing hate speech and harmful content.
- Review training for judges, prosecutors and police to ensure cases are taken seriously, and consider expanding education initiatives to fully address discrimination and hate speech including within the public administration and parliament, as well as representatives of the media. Consideration may further be given to developing a code of conduct for public figures, given their impact on public opinions and perceptions.
- Initiate public consultations with key stakeholders, such as law enforcement and the judiciary, to identify and tackle the root causes underpinning the lack of reporting and insufficient implementation of legislation on hate speech, involving multiple stakeholders.

3.4. Protecting freedom of peaceful assembly

Similar to freedom of expression, freedom of peaceful assembly is a fundamental right in democratic societies (ECtHR, 2003[37]) and is essential for the public expression of views and opinions (UN Human Rights Committee, 2013[38]). The way individuals are allowed to publicly make their voices heard in areas of public space is a litmus test for openness and the protections afforded to civic space. Thus, laws regulating freedom of peaceful assembly and related practice need to reflect a presumption of the lawfulness of peaceful gatherings, which includes an obligation of tolerance and restraint towards such

events in situations where legal or administrative procedures and formalities have not been followed (OSCE/ODIHR/Venice Commission, 2020[39]). States are also obliged to respect and ensure the exercise of this right without discrimination (UN Human Rights Committee, 2020[40]) and should only intervene where necessary and proportionate. Given the importance of freedom of peaceful assembly for civic space, it is essential that relevant legislation is in line with international human rights standards and guidance and tends more towards facilitating assemblies within sight and sound of one's target audience than limiting this right.

3.4.1. Constitutional recognition and legislation

Overall, while the right to freedom of peaceful assembly seems to be largely respected in practice, key legislation regulating the holding of public gatherings is out of date, with some provisions that appear to be overly burdensome and restrictive. At the same time, Article 39 of the constitution, which stipulates that public meetings, processions, demonstrations or any other assembly shall be free and that such events may only be organised and held peacefully, without any arms whatsoever, is in line with international standards and with the constitutional protections offered by OECD Members and other countries of the region to everyone within their jurisdiction (OECD, 2022[16]). Law 60/1991 on the Organisation and Conduct of Public Meetings (Ministry of Justice, 1991[41]) likewise guarantees the freedom of citizens to express their political, social or other views and to hold and attend rallies, demonstrations, events, processions and other gatherings.

According to Article 1, para. 2, of the law, assemblies set to take place in public squares, public roads or other open-air spaces must be authorised and organisers must apply for a permit to the local mayor's office at least three days in advance of the event (Articles 6 and 7). Requiring organisers of assemblies to obtain prior authorisation is not *per se* incompatible with international human rights standards, although the UN Human Rights Committee has pointed out that having to apply for permission to hold an assembly undercuts the idea of freedom of assembly as a basic right (UN Human Rights Committee, 2020[40]). For this reason, the committee has noted that authorisation regimes should in practice function as notification systems, with the holding of assemblies authorised as a matter of course. When revising the law, it may thus be worthwhile to formulate the relevant provisions in a way that reflects these principles (see the section on implementation challenges and opportunities below). Domestic legislation reflects these requirements in different ways, in OECD Members and beyond. Thus, Ireland, for example, does not require the notification of a public assembly at all, even though it may be helpful to ensure that the police can help facilitate larger assemblies (Irish Council for Civil Liberties, 2020[42]). Countries such as Finland and Moldova do not require the notification of smaller assemblies or assemblies that for other reasons will not require policing (Finnish Ministry of Justice, 1999[43]; OSCE/ODIHR, 2008[44]). Spontaneous assemblies also enjoy equal protection under the right to freedom of peaceful assembly (UN Human Rights Committee, 2020[40]) and should thus not be prohibited.

Based on Article 10, para. 2, a refusal to grant a permit can be appealed before an administrative court. Articles 2 and 10 stipulate that organisers need to ensure that public assemblies are carried out in a civilised and lawful manner, without hindering the activity of public or private institutions, and that they must not continue after 11 pm. While it is important that assemblies do not unduly endanger public peace and order, a blanket ban such as the prohibition of hindering the activities of public or private institutions may at times not be compatible with the right of organisers to hold an assembly within sight and sound of the target audience (OSCE/ODIHR/Venice Commission, 2020[39]), especially as the prohibition of an assembly should always be considered a measure of last resort, according to international standards. This is especially relevant because Article 10 provides mayors with extensive rights to prohibit public assemblies. Likewise, a complete ban on assemblies after 11 pm and the rights of mayors to prohibit assemblies if extended public works are to be carried out at the time and place the assembly would be scheduled for would also appear to raise concerns with key freedom of assembly principles. Notably, the UN Human Rights Committee has emphasised the right of organisers to choose the time and place of an assembly

and the promotion of an enabling environment for the exercise of the right to freedom of assembly (UN Human Rights Committee, 2020[40]). Similar considerations apply with respect to the prohibition of assemblies in certain locations set out in Article 5 of the law, e.g. in the vicinity of locations such as train or metro stations, ports, airports, hospitals, military bases or certain economic units or machines whose operation poses certain dangers.

Article 5 also prohibits two or more assemblies from occurring simultaneously at the same place or along the same route, regardless of their nature. This likewise appears to unduly limit freedom of assembly, as the UN Human Rights Committee has explicitly stated that counter-demonstrations to an ongoing assembly are also covered by this freedom (UN Human Rights Committee, 2020[40]). The European Court of Human Rights has confirmed that in such cases, the state must protect the right of assembly of both demonstrating groups (insofar as this is possible and provided that the assemblies do not unduly endanger each other or public order) (ECtHR, 2012[45]).

Moreover, Article 9 rightly prohibits assemblies that endanger national security or violate public order, safety or morality, the rights and freedoms of citizens, or that endanger their health. The same applies to assemblies which involve "the propagation of totalitarian ideas of a fascist, communist, racist, chauvinist nature or of any terrorist-diversionary organisation, defamation of the country and the nation, incitement to national or religious hatred, incitement to discrimination, public violence and obscene manifestations, contrary to morals". While the limitation of assemblies in the interests of national security, public order, health or morals, or the rights and freedoms of others is permitted under international human rights law, it is important that legal provisions containing such limitations are formulated precisely and with care (UN Human Rights Committee, 2020[40]; ECtHR, 2003[37]). In particular, the European Court of Human Rights has stressed that restrictions on the freedoms of assembly and expression are only legitimate in cases of incitement to violence or rejection of democratic principles (ECtHR, 2015[46]). The propagation of "chauvinist" ideas or the "defamation of the country and the nation", or "incitement to obscene manifestations" that are contrary to morals, are ambiguous terms that lend themselves to multiple interpretations and that could in practice serve to threaten or suppress assemblies propagating minority or unpopular views of certain matters of public policy.

Services and technical arrangements to ensure the conduct of assemblies as set out above are provided by the competent municipality for a fee (Article 15). According to Articles 16 and 17, local police are responsible for ensuring the protection and safety of participants and are mandated to intervene in cases of unrest or violence (Library of Congress, 2021[13]). Given that ensuring the smooth and orderly conduct of an assembly is part of the state's duty to facilitate assemblies and reflective of its general public order mandate, requiring organisers to pay a fee for such services would not appear to be compatible with the right to freedom of peaceful assembly (UN Human Rights Committee, 2020[40]; OSCE/ODIHR/Venice Commission, 2020[39]).

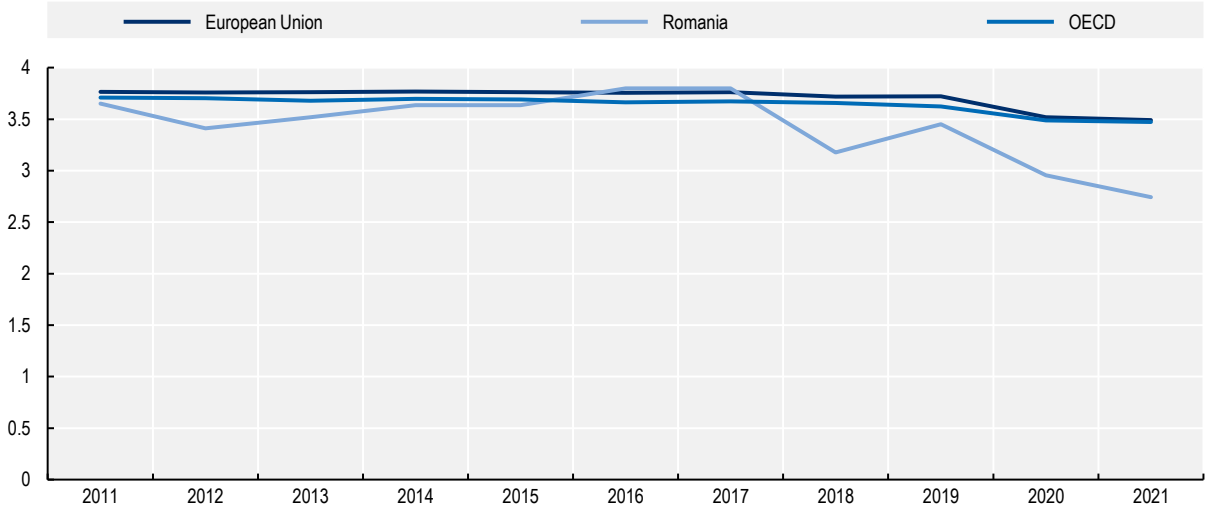
Penalties for violating Law No. 60/1991 are set out in Chapter V of the law and involve fines for offences specified in Article 26. According to this provision, organisers may be fined for organising and conducting undeclared, unregistered or prohibited assemblies, among others. The organisation or participation in counter-manifestations held at the same time or place as a declared public meeting also leads to fines. Bearing in mind the unclear and at times vague terminology used in provisions prohibiting assemblies from focusing on certain issues or from taking place at specific times or in specific locations, these sanctions would likewise not appear to be compatible with international human rights standards. Indeed, the UN Human Rights Committee has stressed that sanctions imposed for unlawful conduct during assemblies should be proportionate and non-discriminatory in nature and should not be based on ambiguous or over broadly defined offences, nor suppress conduct protected under the ICCPR (UN Human Rights Committee, 2020[40]).

3.4.2. Addressing implementation challenges and identifying opportunities for freedom of peaceful assembly

In practice, individuals are generally able to exercise their right to freedom of peaceful assembly but suffer from a restrictive interpretation of an already restrictive law and from its uneven implementation. Thus, while the violent dispersal of assemblies appears to be a thing of the past, whether an assembly may take place in a certain municipality or not depends largely on the attitude of the respective mayor in charge and whether local authorities facilitate it.

Similarly, the V-Dem Institute's Freedom of Peaceful Assembly 2021 Index concluded that state authorities "sometimes" respected and protected the right to freedom of peaceful assembly, meaning that they sometimes allowed peaceful assemblies but often arbitrarily denied citizens the right to assemble peacefully (V-Dem Institute, 2022[27]). This marked a downward turn from 2019 onwards, as previously Romania had experienced ups and downs but was generally considered a country that mostly respected the right to freedom of peaceful assembly. Before 2019, Romania already ranked lower than the EU average (V-Dem Institute, 2022[27]) and then dropped further between 2019 and 2021 (Figure 3.3).

Figure 3.3. Freedom of peaceful assembly in Romania and the EU, 2011-21



Note: The indicator asks: "To what extent do state authorities respect and protect the right of peaceful assembly?" Responses range from 0 (Never), 1 (Rarely) and 2 (Sometimes) to 3 (Mostly) and 4 (Almost always).
Source: V-Dem Institute (2021[47]), *Variable Graph*, https://www.v-dem.net/data_analysis/VariableGraph/ (accessed on 14 June 2022).

Frontline Defenders has reported cases where human rights defenders participating in peaceful assemblies received administrative fines (Frontline Defenders, n.d.[48]). Notably, in a recent judgment on fines imposed following environmental protests in Romania in 2013, the European Court of Human Rights found that sanctions for political speech, however lenient, can have negative effects on public speech and that the mere failure to notify of an assembly beforehand should not, in itself, justify such sanctions (ECtHR, 2022[49]).

During the OECD fact-finding mission, civil society representatives confirmed a number of challenges related to the implementation of Law 60/1991 and the exercise of freedom of peaceful assembly in general.[11] These focused on the following:

- Ambiguities in the text of the law.
- Outdated procedures that do not provide the possibility of seeking permits online.
- Restrictive interpretation of the law as an authorisation procedure by authorities and uneven standards across municipalities.
- A lack of clarity regarding the authority authorised to impose fines and related criteria for fines.

In 2020, 15 CSOs[12] from a CSO coalition, NGOs for Citizens, took steps to modernise and improve the legislative framework regulating the right to freedom of peaceful assembly, which resulted in a draft law submitted to parliament by some members of parliament and which is currently pending (Starea Democratiei, 2020[50]).

While during the state of emergency and the state of alert related to the pandemic (see Box 3.1) the ability to hold peaceful assemblies was largely limited, some restrictions on peaceful assemblies were loosened in 2021. Nevertheless, civil society representatives reported that, in cases where the number of participants in public gatherings exceeded permitted limits, organisers of assemblies were fined, as required by applicable legal provisions at the time (e.g. after a large Pride event in Bucharest in 2021), whereas the organisers of other large public events were not.[13] Overall, there is a perception among CSOs that religious, cultural or sports gatherings are allowed a significantly higher number of participants than rallies and demonstrations, according to human rights monitors (U.S. DoS, 2021[9]; Amnesty International, 2022[11]).[14]

Recommendations

To defend freedom of peaceful assembly, Romania could:

- Review Law 60/1991, in consultation with civil society, to assess whether it is implemented in a manner that does not unduly restrict civic space. Such a review process could be combined with pending efforts to amend the law, which could be prioritised.
- When amending Law 60/1991, consider moving towards a notification process for assemblies (rather than an authorisation process) and allowing spontaneous and simultaneous assemblies, while avoiding blanket bans of assemblies at certain locations or times, as well as unclear formulations, undue fines for assembly organisers and overly broad or high penalties.
- Develop clear and standardised procedures for municipalities, including local police, to follow when dealing with notifications of assemblies and the facilitation of such gatherings. The entire process could be enhanced by ensuring that online notifications are possible in all municipalities to ensure transparency.
- Offer training to local municipalities and police on how to ensure and protect freedom of peaceful assembly and facilitate assemblies in a non-bureaucratic and consistent manner, while seeking the help of CSO representatives in the development of relevant training modules.

3.5. Safeguarding freedom of association

The freedom to associate is also crucial to the functioning of democratic societies[15] and an essential precondition for exercising other human rights (OSCE/ODIHR/Venice Commission, 2015[51]). The European Court of Human Rights has recognised that the participation of citizens in the democratic process

is to a large extent achieved through belonging to associations which interact with each other and pursue common objectives collectively (ECtHR, 2004[52]). As such, it is also a fundamental element of protected civic space.

3.5.1. Constitutional recognition and legislation

Overall, legislation regulating associations in Romania is largely in line with international human rights standards (with some exceptions set out below and in Chapter 5). Freedom of association is protected by Article 40 of the constitution, which states that citizens may freely associate in political parties, trade unions, employers' associations and other forms of association. Article 9 of the constitution further states that trade unions, employers' associations and professional associations "contribute to the protection of their members' rights and the promotion of their professional, economic and social interests". The same applies to Article 12 of the EU Charter of Fundamental Rights. These international instruments expressly grant this right to everyone in a country's jurisdiction, whereas the wording of Article 40 of the constitution could imply that in Romania, this right is only granted to citizens.

At the same time, lower-ranking legislation, notably Government Ordinance 26/2000 on Associations and Foundations, does not make this distinction and, in practice, foreign citizens appear to be able to exercise this right.[16] They are permitted to join trade unions and professional associations. Additionally, in case of conflict between national law and international treaties, the latter, including international human rights treaties, take precedence (Article 20 of the constitution). Nevertheless, the OECD's *Protection and Promotion of Civic Space: Strengthening Alignment with International Standards and Guidance* shows that 82% of all respondents to an OECD survey, including 91% of OECD Members, explicitly grant this right to anyone in law (OECD, 2022[16]).[17] Adapting the text of Article 40 to this wording, which is also in line with international human rights standards, could help ensure consistency of the law and provide more explicit protection to all persons who are under the jurisdiction of Romanian courts.

According to Article 40 of the constitution, organisations whose aims or activities "militate against political pluralism, the principles of a State governed by the rule of law, or against the sovereignty, integrity or independence of Romania" are considered unconstitutional. Similarly, Articles 3 and 4 of Law 367/2022 on Social Dialogue (Ministry of Justice, 2022[53]) allow persons with work contracts, public servants, members of co-operatives and agriculture workers, as well as self-employed persons, to form or join a union but prohibit persons "holding positions of public dignity or assimilated to them" from joining labour unions.[18]

The main legislation governing associations is Government Ordinance 26/2000 on Associations and Foundations (Ministry of Justice, 2000[54]). The ordinance recognises two types of organisation - associations and foundations - as legal not-for-profit entities. Two or more associations or foundations may join together to form a federation (Library of Congress, 2021[13]). An association can be established by three or more persons who, based on an agreement, share "their knowledge and their lucrative activity, in order to accomplish activities of general interest, or on the interest or a group, or, as the case may be, their personal, non-patrimonial interest" (Article 4). Article 4, para. 2, also provides for a special type of association, established by citizens belonging to national ethnic minorities, the purpose of which is to defend, preserve and promote a national ethnic minority or the public representation of citizens belonging to a national ethnic minority to fulfil a public constitutional mission. Based on Article 15, a foundation may be established by "one or more persons who, on the basis of an act of will inter vivos or for cause of death, establish a patrimony designed permanently and irrevocably for achieving an objective of general interest or, as the case may be, of collective interest" (Library of Congress, 2021[13]). There have been attempts to reform the ordinance since 2018, with a recent amendment introduced to parliament in November 2022 (for further information on the legislative framework for associations and foundations, including registration proceedings, funding and reforms of such legislation of associations, see the section on key legal and policy frameworks governing freedom of association in Chapter 5).

Law 367/2022 on Social Dialogue provides more details on the regulation of trade unions, including who may found and join trade unions and what their purpose is (Ministry of Justice, 2022[53]). Article 2 of the law stipulates that trade unions must be independent of public authorities, political parties and employers' organisations. In the exercise of their duties, trade unions have the right to take any action provided for by law and to use specific means set out in Article 27 of the law, namely negotiations, dispute resolution procedures through conciliation, mediation, arbitration, petition, protest picket, marching, rallying and demonstration or strike, under the conditions provided by law (Ministry of Justice, 2022[53]). Law 367/2022 largely retains the provisions on trade unions already set out in the previous Law 62/2011, but no longer prohibits trade unions from carrying out actions of a political nature.

3.5.2. Addressing implementation challenges and identifying opportunities for freedom of association

For a detailed review of implementation challenges and opportunities and recommendations related to possible reforms of legislation related to freedom of association, see Chapter 5.

3.6. Committing to equality and non-discrimination

Equal treatment and equal opportunities for all who wish to participate in public life are essential prerequisites for a healthy and vibrant civic space. For this reason, both equality and non-discrimination (referring to the unjust or prejudicial treatment of different categories of people) are cross-cutting themes in the OECD's work on civic space. Moreover, to maintain an open and pluralist civic space, it is important for states to ensure that no group is excluded from decision making, public life or society overall, either *de jure* or *de facto*.

Discrimination can take many forms and shapes, ranging from unintentional unequal treatment or micro-aggressions to different forms of direct or indirect discrimination.[19] Overt harassment and verbal and physical attacks may also constitute discrimination. When individuals feel excluded, unprotected or threatened, they risk losing trust in state institutions, which directly affects their ability and willingness to engage with such institutions and participate in public decision making or debate. Discrimination, in its various forms, also affects individuals' ability to exercise other key civic freedoms related to civic space, notably the rights to freedom of expression, assembly and association.

3.6.1. Constitutional recognition and legislation

Romania guarantees the right to freedom from discrimination in its constitution, in addition to a number of anti-discrimination laws. The protection afforded by this legislative framework is generally in line with international standards, and the UN Human Rights Council's Working Group on Discrimination Against Women and Girls, which visited Romania in early 2020, noted positive legislative and other developments to secure women's rights (2020[55]). Similarly, a recent Council of Europe report issued by the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) praised the adoption of amendments to the domestic violence and equality laws, among others (GREVIO, 2022[56]).

Nevertheless, the wording of Articles 4 and 16 of the constitution only applies the principles of equality and non-discrimination to citizens and not to everyone on Romania's territory. Government Ordinance 137/2000 on the Prevention and Sanctioning of All Forms of Discrimination (Ministry of Justice, 2000[33]) reiterates this constitutional principle in Article 1 but, in other provisions, e.g. Articles 3 and 6-11, it speaks of "persons", not citizens. Such inconsistencies may affect legal certainty in this regard. Limiting the protection against discrimination to citizens would be at odds with relevant provisions in key international human rights instruments that Romania has ratified, notably the ICCPR (Articles 2, 3 and 26) and the ECHR (Article 14 and Protocol 12 thereto), which stipulate that everyone should be protected

against discrimination. Similar obligations arise out of the EU Charter of Fundamental Rights (e.g. Articles 20, 21 and 23, but also in the more specialised Articles 24-26, providing special protection for children, the elderly and persons with disabilities, respectively).

Article 4 of the constitution, captioned "[t]he Unity of the People and Equality Among Citizens", states that "Romania is the common and indivisible homeland of all its citizens regardless of race, ethnic origin, language, religion, sex, opinion, political allegiance, wealth, or social origin". General protection against discrimination is provided in Article 16, which declares all citizens equal before the law and before public authorities, with no privileges and no discrimination. Article 6 of the constitution protects the right to identity, which includes a state guarantee for members of national minorities to preserve, develop and express their ethnic, cultural, linguistic and religious identity. This provision also states that "protective measures taken by the Romanian state for the preservation, development and expression of identity of persons belonging to national minorities shall conform to the principles of equality and non-discrimination in relation to the other Romanian citizens". Further provisions in the constitution relating to the rights of minorities include Article 32 on the right to education in one's mother tongue and Article 62, providing national minorities with a special seat in parliament each if they fail to obtain the necessary number of votes in elections. Article 50 also provides special protection for persons with disabilities and, in this context, specifically mentions the passing of a "national policy of equal opportunities, disability prevention and treatment, so that disabled persons can effectively participate in community life while observing the rights and duties of their parents or legal guardians".

The main act addressing discrimination and establishing the National Council for Combating Discrimination, a body responsible for monitoring, preventing and sanctioning acts of discrimination, is Government Ordinance 137/2000 (Ministry of Justice, 2000[33]). Article 1, para. 2, guarantees "[t]he principle of equality among citizens [and] the elimination of all privileges and discrimination", in particular with regard to the exercise of all fundamental rights. Article 3 of the ordinance defines several forms of direct and indirect discrimination and applies to public and private entities and public institutions with competencies in areas such as employment, social protection and social security, public and other services, education, the enforcement of public order and other domains of social life. Any provisions, criteria and practices which disadvantage certain persons, on grounds detailed by the ordinance, are considered discriminatory, except when they are objectively justified by a legitimate aim and the means employed to reach that aim are appropriate and necessary (Article 2, para. 3).

Article 2 of the ordinance protects a wide variety of persons against discrimination, based on characteristics such as race, nationality, ethnicity, language and religion or belief, but also sex, sexual orientation, age, disability or chronic non-contagious diseases and HIV infections. Moreover, LGBTI persons also enjoy other legal protections, such as equal age of consent and protection against hate crimes (Norocel and Băluţă, 2021[57]). In 2018, the Romanian Constitutional Court passed several judgments strengthening the rights of homosexual couples, notably in areas such as family rights and residency rights for same-sex spouses of EU citizens (Euractiv, 2018[58]; Reuters, 2018[59]). In 2020, it struck down a law adopted by parliament prohibiting activities aimed at spreading gender identity theory or opinion in educational settings (Human Rights Watch, 2020[60]).

Prohibition of discrimination, as well as measures to prevent discrimination, are further regulated and addressed in several Romanian laws, including Law 202/2002 on Equal Opportunities and Treatment between Women and Men (Ministry of Justice, 2002[61]) and Law 504/2002 on Audio-visual Media Services (Ministry of Justice, 2002[62]), which provides that commercial communications broadcasted by audio-visual media must not include any form of discrimination (Library of Congress, 2021[13]). Law 202/2002 also defines gender-based violence and specific actions to tackle it, including in cases of sexual harassment. Over the last four years, new laws have further been passed to better protect the Jewish and Roma communities and protection against hate speech has been enhanced (see the section on freedom of expression above). Notably, a new Law 276/2021 on Some Measures to Study Jewish History and the Holocaust (Ministry of Justice, 2021[63]) created a new discipline on "History of the Jews – The Holocaust",

which will be studied in schools from 2023. The law likewise foresees professional training for teachers and the establishment of a National Museum of the History of the Jews, as well as the merit-based Constantin Karadja Prize.[20]

Law 202/2002 established the National Agency for Equal Opportunities between Women and Men, a specialised administrative body subordinate to the Ministry of Family, Youth and Equal Opportunities. The National Agency "promotes the principle of equal opportunities and treatment between women and men in order to eliminate all forms of discrimination based on sex, in all national policies and programmes" (Article 23). Law 202/2002 also created the National Commission on Equal Opportunities for Women and Men (CONES), made up of representatives of ministries and other specialised central administrative bodies, trade unions and employers' associations, and representatives of CSOs. This commission is responsible for gender mainstreaming national policies and ensures the co-ordination of activities of county commissions and of the municipality of Bucharest in the field of equal opportunities between women and men, which have similar compositions and competencies at the local level (Articles 24 and 25). Additionally, electoral laws contain provisions which foresee the representation of both women and men on candidate lists for central, local and European Parliament elections (Ministry of Justice, 2015[64]; 2015[65]; 2007[66]). Legislation on elections for the Senate and Chamber of Deputies of Romania is currently being amended with a view to ensuring a balanced representation of men and women on party lists, with party lists for candidates for both houses of parliament drawn up in such a way as to comply with the minimum representation quota for women and men at 33% of the total number of candidates proposed (Chamber of Deputies, 2022[67]).

Romania was the 14th state to ratify the Council of Europe Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence, which entered into force in 2016. To implement the convention, the Romanian parliament adopted a legislative package that included, among others, Law 174/2018 on amending and supplementing Law 217/2003 for Preventing and Combating Domestic Violence (Ministry of Justice, 2003[68]) and Law 178/2018 on amending and supplementing Law 202/2002 on Equal Opportunities and Treatment between Women and Men.

Law 448/2006 protects and promotes the rights of persons with disabilities and established the National Authority for Persons with Disabilities (now National Authority for the Protection of Persons with Disabilities, under the Ministry of Labour and Social Solidarity), which develops policies and ensures the monitoring and control of the observance of the rights of persons with disabilities (Article 8) (Ministry of Justice, 2006[69]). Additionally, in 2020, a law on Romanian Sign Language recognised sign language as the mother tongue specific to deaf people (Ministry of Justice, 2020[70]).

Emergency Ordinance 78/2004 established a body to improve the situation of the Roma community, namely the National Agency for Roma, subordinate to the government (Ministry of Justice, 2004[71]). In 2019, the Law on National Education was amended to ensure better conditions allowing members of minority communities to be educated in their mother tongues (Ministry of Foreign Affairs of Romania, 2022[30]). At the same time, while the rights of national minorities such as the Roma community are recognised in the constitution, there is no consolidated legal framework related to the protection of minority rights in Romania, since the draft Law on the Status of National Minorities has not yet been adopted, according to the Advisory Committee on the Framework Convention for National Minorities (2018[72]). The absence of such legislation was mentioned as an ongoing challenge by government and civil society interviewees.[21] The advisory committee considers existing legislation regulating different aspects of national minority protection to be inconsistent and open to ambiguous, possibly contradictory interpretations.

Key national strategies and other government actions

The government has developed a range of national strategies to enhance equality and to protect and promote the rights of individuals threatened by exclusion or discrimination. These include strategies to reduce poverty and social exclusion, promote equal opportunity and treatment between women and men, combat domestic violence and sexual violence, offer barrier-free movement to persons with disabilities and to foster inclusion of Roma and migrants in society (see the section on implementation challenges and opportunities below). More detailed procedural steps on the preparation of such strategies, including consultations with stakeholders in the preparation phase, as well as overall government co-ordination in this regard and monitoring and evaluation of strategies, are set out in the 2022 Government Methodology on Developing, Implementing, Monitoring, Evaluating and Updating Government Strategies (Ministry of Justice, 2022[73]).

In the field of gender equality, the latest National Strategy for the Promotion of Equal Opportunity and Treatment between Women and Men and Preventing and Combating Domestic Violence spanned the years 2018-21. The equal opportunity pillar of the strategy focused on the following areas: education, labour market, healthcare, balanced participation of women and men in the decision-making process and gender mainstreaming. The pillar related to domestic violence focused on strengthening relevant legislation, enhancing victim support and protection measures, preventing domestic and sexual violence, and monitoring and evaluation measures taken. A new national strategy is pending adoption.

The most recent national strategy for people with disabilities, called “A society without barriers for people with disabilities”, covered the period 2016-20 and aimed to stimulate the active participation of people with disabilities in the community by increasing accessibility to the physical environment, information and communications, through quality social services and better monitoring of the way rights of persons with disabilities are respected. A new strategy is still pending adoption.

In April 2022, the government passed its latest Strategy for the Inclusion of Romanian Citizens belonging to the Roma Minority for the Period 2022-2027 (hereafter the “Roma Inclusion Strategy”). Crucially, the strategy notes that the development, implementation, monitoring, evaluation and review of public policies and programmes that impact Roma will be carried out with the active involvement of representatives of the Roma community while adopting an inter-cultural approach and bearing in mind the importance of maintaining gender awareness. Based on an in-depth evaluation of the status quo of the Roma community and an evaluation of the previous Roma Inclusion Strategy (2015-2020), the six main objectives of the strategy (Ministry of Justice, 2022[74]) focus on enhancing Roma access to housing, education, employment and healthcare services, and conducting research on Romani cultural heritage and cultural identity, as well as combating discrimination, anti-Roma discourse and attitudes generating hate speech or hate crimes. There are also individual action plans to achieve these six objectives.

To implement, monitor and evaluate the strategy, a special inter-ministerial committee was created by decree of the prime minister. This is co-chaired by a representative of the Prime Minister’s Office and the President of the National Agency for Roma. The committee is composed of representatives of various public institutions, including the line ministries responsible for areas as diverse as finance, development, investment, labour, entrepreneurship, health, education, family and culture, the ombudsman and various specialised national agencies or similar bodies dealing with equality, employment, pensions, public order and other related matters. The activities of the committee are carried out through various working groups which address the following matters: the right to housing; the right to education and cultural identity; the right to health; rights of the child; entrepreneurship and jobs; intra-community mobility; combating discrimination; and the promotion of legislative changes. The strategy further includes detailed instructions on how it should be implemented at the local, county and central levels and foresees at least one review in the middle of its implementation period.

In late November 2022, the government passed a Strategy for Surveillance, Control and Prevention of HIV/AIDS Infection for the Period 2022-2030 (Government of Romania, 2022[75]), which aims to improve the policy and regulatory framework and enhance inter-sectoral and inter-institutional collaboration and co-ordination by establishing a National Inter-Sectoral Committee for Tuberculosis and HIV/AIDS Control, but also to improve the capacities of the Ministry of Health in this field.

The above strategies are important instruments to protect and promote equality in Romania and to ensure that individuals and groups are not discriminated against. The initiating authorities have habitually involved relevant civil society groups in the course of their development, as is required by the relevant government methodology (Ministry of Justice, 2022[73]). However, civil society interviewees noted that the development of these documents is rarely based on accurate and up-to-date data.[22] Even where new strategies have been developed at regular intervals (e.g. in relation to Roma rights), the situation of many of the above groups has not always improved. This may be due to a lack of effective monitoring and evaluation in practice, despite existing monitoring rules and procedures in the government methodology and in a specialised government regulation outlining processes for developing, monitoring and evaluating public policies at the central level (Ministry of Justice, 2005[76]) (for further detail on weaknesses in monitoring and evaluation of strategies, see the section on implementation challenges and opportunities below).

At the same time, there is currently no overall governmental anti-discrimination strategy that focuses on equal rights in general and on strengthening anti-discrimination bodies. In 2007, a general anti-discrimination strategy was adopted by the National Council for Combating Discrimination (Ministry of Justice, 2007[77]) but this was not followed by further such strategies and was, in any event, not a government strategy. Moreover, there is no dedicated strategy in place to protect the rights of LGBTI persons.

In the education sector, the segregation of certain pupils based in particular on their ethnicity or disability constitutes a longstanding issue, which is, according to ECRI, not addressed in legislation on combating discrimination (ECRI, 2019[23]). The Ministry of Education has, however, passed Framework Order 6134/2016 on the prohibition of school segregation in pre-university schools, which these schools are obliged to follow. Articles 4 and 5 of the order defines segregation as the physical separation of pre-schoolers or pupils from their peers into units, groups, classes, buildings or separate parts of a classroom, in a manner that disproportionately reduces their numbers in classes when compared to the overall percentage of such groups in the population (Ministry of Justice, 2016[78]). In addition to prohibiting all forms of segregation, the above order creates a special National Commission for Desegregation and Educational Inclusion to co-ordinate the implementation of an action plan for school desegregation and to improve educational quality. Failure to comply with requirements of the order leads to different forms of liability, although the order does not contain references to particular offences set out in administrative or criminal law. While it is positive that the Ministry of Education is seeking to combat segregation in schools, including this phenomenon in anti-discrimination legislation would demonstrate the importance of fighting it and could help ensure accountability in schools which continue to practise it. Moreover, the consequences of violating legal provisions that prohibit segregation would also become clearer, which could further help eradicate this form of discrimination.

3.6.2. Addressing implementation challenges and identifying opportunities for equality and non-discrimination

While, as stated above, Romania has laws against discrimination and has developed many strategies to assist different groups suffering from exclusion and discrimination, implementation challenges remain. It is crucial that measures are taken to monitor, counter and raise awareness of inequalities and to create a level playing field where all persons benefit from equal protection of their rights and are enabled to contribute to policy making on an equal basis. The various challenges and opportunities facing particular groups are described in greater detail below.

Improving the inclusion of ethnic minorities, including the Roma community

As discussed above and in Chapter 1, numerous strategies and policies have been developed to enhance the inclusion of minorities including Roma into Romanian society and to reduce inequalities and discrimination. Thus, the Council of Europe has commended Romanian efforts to promote minority cultures and education and has recognised steps taken to facilitate the representation of minority communities in parliament (Council of Europe, 2018[72]). During the OECD fact-finding mission, government representatives reported that minority seats in parliament were mostly filled and that having lower electoral thresholds for deputies from minority communities worked well in practice.[23] ECRI has also praised Romania for its new legislation criminalising antisemitism as well as for the measures it has undertaken to address the educational needs of the Roma community, the school dropout rate and school segregation affecting the Roma community (ECRI, 2019[23]).

The government has likewise reported instances where prefects have organised consultations between civil servants and Roma NGOs, including on how to improve social assistance and reduce unemployment and the school dropout rate in the Roma community (Ministry of Foreign Affairs of Romania, 2022[30]). It has further organised awareness-raising campaigns and projects in different counties relating to education and Roma children's rights and combating discrimination. To combat school segregation, a National Committee for Desegregation and Educational Inclusion was established and a methodology for monitoring school segregation was implemented in the 2021-22 school year, as well as related training sessions (Ministry of Foreign Affairs of Romania, 2022[30]). Government interviewees noted that in a number of counties, public officials responsible for Roma issues have strong ties to the local Roma communities and to grassroots movements, allowing them to develop action plans based on adequately assessed community needs.[24] However, they acknowledged that it is also sometimes difficult to identify those in need due to a lack of trained social workers at the local level. Both government and civil society representatives described the National Agency for Roma as severely understaffed and under-resourced.

Notably, as discussed in Chapter 1, the Roma Inclusion Strategy also confirmed, with reference to a 2018 comparative study on the needs of Roma communities conducted by the Romanian Institute for Evaluation and Strategies, that while the situation has improved in some respects, there remain visible differences between the Roma and majority populations (Government of Romania, 2022[79]). During the OECD fact-finding mission, representatives of government and civil society alike noted that Roma continue to be excluded from many aspects of daily life, including infrastructure, employment, healthcare and education.[25] This negatively impacts their ability to engage with public institutions and officials and to influence decision making, compared with the rest of the population.

Pertinent reports further indicate that prejudice against minority groups, particularly Roma, persists within the majority population (see Chapter 1) (IRES, 2020[80]). In surveys aiming to ascertain how comfortable individuals would be with minorities and vulnerable persons (including Roma and persons with a different gender, skin colour, sexual orientation, ethnic background, age or disability) in the highest political positions, in a work environment or in a private/family context, responses from Romania demonstrated a significantly higher level of discomfort than the EU average (EC, 2019[81]). In its *Fourth Opinion on Romania*, published in 2018, the Council of Europe's Advisory Committee on the Framework Convention on National Minorities noted as concerning the persistent negative attitudes against the Roma community, and also anti-Hungarian sentiment (Council of Europe, 2018[72]). These challenges hamper effective implementation of the abovementioned laws, strategies and other activities to reduce inequalities and combat discrimination.

In its recently adopted Roma Inclusion Strategy (2022-27), the Government of Romania reflected on the challenges experienced when implementing the previous strategy (2015-20). Based on evaluation reports prepared by both civil society and international bodies and institutions, it found that implementation had been hampered by a lack of an effective monitoring and evaluation mechanism and the fact that action plans adopted at local levels merely replicated national measures but did not adapt them to the realities

on the ground or available resources (Government of Romania, 2022[79]). Similarly, the Advisory Committee on the Framework Convention for National Minorities concluded that the 2015-20 strategy had not identified sources of funding, nor did it contain mechanisms to ensure implementation at the local level (Council of Europe, 2018[72]).

One particular challenge in this respect is the absence of up-to-date national-level data on the Roma population, on which strategies are based.[26] This lack of regular data collection was confirmed by civil society representatives, some of whom noted that the government was not permitted to collect individual data relating to a person's ethnicity.[27] A 2018 report monitoring the implementation of the 2015-20 strategy indicated that this may be due to a misinterpretation of the EU General Data Protection Regulation (GDPR) and of existing legislation on data protection (EC, 2019[82]), notably Law 677/2001 for the Protection of Individuals with Regard to the Processing of Personal Data and the Free Movement of Such Data (Ministry of Justice, 2001[83]) which has since been repealed. In 2015, the then UN Special Rapporteur on extreme poverty and human rights noted such a misconception during his country visit to Romania, stating that while Law 677/2001 prohibited the processing of data of a personal nature on a person's ethnic or racial origins, the relevant provision (Article 7 of the law) also allowed for certain exceptions, e.g. where the respective individuals had given their consent, or where data collection serves the protection of important public interest and relevant safeguards are in place (UN, 2015[84]). Given that up-to-date and accurate data is an essential prerequisite for conducting evidence-based policy making in specific areas, Romania should focus on developing its national data-gathering capacity as a priority.

Ensuring equal participation for persons with disabilities

Mechanisms are in place to help persons with disabilities exercise their civic freedoms on an equal basis with others. Thus, according to the government, access to buildings is verified on a regular basis (Ministry of Foreign Affairs of Romania, 2022[30]). The quality of public and private social services facilities is regularly assessed (Ministry of Foreign Affairs of Romania, 2022[30]) and Romania guarantees the right to education of all persons with special educational needs. In the employment sector, policies and laws have been amended and projects have been implemented with funds from the state budget and EU funds, to stimulate the employment of vulnerable groups, including people with disabilities (Gîrlescu, 2021[85]).

However, as in many other countries, civic space for persons with disabilities is restricted by multiple obstacles in their daily lives, which range from challenges accessing institutions, buildings, their own homes, information and public transport, to unemployment and consequently, poverty, social exclusion and obstacles to participating in political and social life and decision making (Grigoraș, Salazar and Vladu, 2021[86]). Overall, the rate of employment of people with disabilities in Romania is low, by some definitions as low as 17.97% (Gîrlescu, 2021[85]). Relevant laws and policies are described as ineffective by the abovementioned European Network of Legal Experts, largely due to reduced training opportunities, poor infrastructure, and pervasive stigma and discrimination, with employers often not willing to adapt their working conditions (Lordache, 2021[87]). More than half of Romania's children with disabilities are educated in segregated settings or are completely excluded from the education system; the quality of their education is often poor, according to a 2021 diagnosis commissioned by the National Authority for the Rights of Persons with Disabilities, Children and Adoptions (now the National Authority for the Protection of Persons with Disabilities) (Grigoraș, Salazar and Vladu, 2021[86]; Gîrlescu, 2021[85]).

Civil society interviewees confirmed that persons with disabilities suffer numerous forms of discrimination in their daily lives, especially in the employment sector, and struggle to make their voices heard.[28] They reported that a chronic lack of employment or underemployment leads to widespread social exclusion from public life, particularly in rural areas.

Countering discrimination against the LGBTI community

The situation for members of the LGBTI community has improved in some ways over the last decades, as evidenced by Article 2 of Government Ordinance 137/2000 (Ministry of Justice, 2000[33]) which explicitly protects against discrimination on the basis of a person's sexual orientation (among others), coupled with other legal protections for LGBTI people, related to equal age of consent and hate crimes (Norocel and Băluţă, 2021[57]). Still, this group of persons continues to suffer daily attacks, both verbal and physical, according to civil society. A national survey commissioned in 2021 by the NGO ACCEPT found that 43% of people surveyed supported a legal form of same-sex union in Romania, either as civil unions or marriage (ACCEPT, 2021[88]). However, against the backdrop of this progress in creating an inclusive environment, the LGBTI community has nevertheless been targeted by recent legislative proposals with the aim of restricting key rights and acts of aggression during NGO-organised events, according to the European Commission (EC) network of legal experts in gender equality and non-discrimination (European Network of Legal Experts) (Lordache, 2021[87]). These attacks remain uninvestigated, with no sanctions or other forms of accountability for the initiators, and CSOs interviewed during the OECD's fact-finding mission noted that key judgments of the European Court of Human Rights involving the rights of LGBTI persons remained unimplemented.[29] Moreover, in 2018, a number of political parties initiated a referendum seeking to constitutionally limit marriage to a man and a woman, thereby excluding same-sex marriage (Norocel and Băluţă, 2021[57]; ACCEPT, 2021[34]). The 2021 country report on Romania of the European Network of Legal Experts noted that while the referendum failed due to an active boycott leading to a low turnout, no measures were taken to assess, respond to and tackle the homophobia that persisted after the referendum was declared invalid (Lordache, 2021[87]).

According to observers, there is a growing homo- and transphobic climate in Romanian society and LGBTI persons experience different forms of discrimination in their daily lives (ECRI, 2019[23]). In 2022, Romania ranked 26th out of 27 EU countries for LGBTI rights protection (Rainbow Europe, n.d.[89]). In addition, a 2020 EU Fundamental Rights Agency (FRA) survey found that Romania, alongside Poland, had the joint highest rate in the EU of LGBTI victims of physical or sexual attacks (FRA, 2020[90]). Thus, in Romania, 15% of survey respondents reported that they had been attacked due to their sexual identity in the preceding 5 years (the EU average is 11%) (FRA, 2020[90]). Currently, a draft law prohibiting the use of materials in schools that allegedly promote being LGBTI is pending before the lower house of parliament (Gupta, 2022[91]; Human Rights Watch, 2022[92]). CSOs working on the protection of human rights expressed concerns regarding the above initiatives and saw them as attempts to restrict civic space for LGBTI persons.[30]

Strengthening gender equality and combating violence against women

Recent years have seen Romania pass a spate of legislation and policies to strengthen and protect the rights of women, enhance equal opportunities and combat violence against women. This is of particular importance to ensure their equal and full participation in public life. At the same time, while approaches to gender equality have progressed over the last decades, paternalistic attitudes continue to prevail and both a lack of balanced representation in central and local public bodies and gender-based violence are ongoing challenges. Notably OECD data on social institutions and gender from 2019 demonstrates that, with a score of 16.6,[31] there is a moderate level of discrimination against women in Romania (OECD, 2019[93]). According to civil society interviewees, the COVID-19 pandemic and ensuing lockdown have since reinforced traditional gender roles in families and the working environment for organisations focusing on gender issues has deteriorated overall.[32] While the National Agency for Gender Equality was praised for its willingness to collaborate with civil society, it is perceived as weak and lacking continuity in its work programmes, as being stretched too thin and as requiring more broad political support.[33]

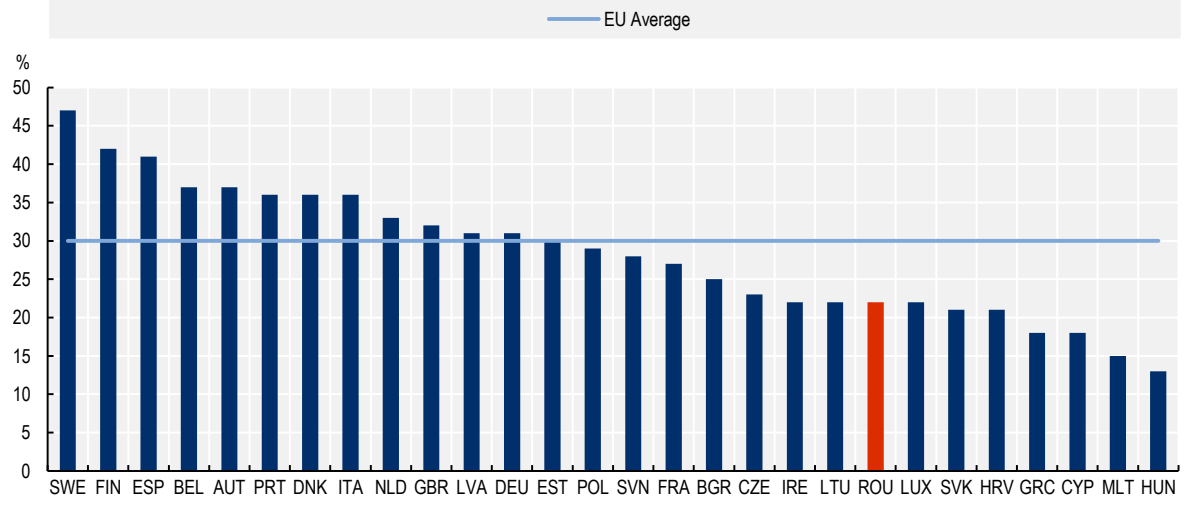
Many international observers have likewise noted that Romania could do more to ensure gender equality at all levels of society. Thus, Romania ranked 25th in the 2021 Gender Equality Index of the European

Institute for Gender Equality, with a score 13.5% below the EU score (EIGE, 2021[94]). In 2020, the UN Human Rights Council's Working Group on Discrimination Against Women and Girls noted that Romania was progressing towards gender equality at a slower pace than other EU member states, stating that political instability – due to frequent changes of government – had hindered the continuity and implementation of relevant laws, public policies and institutional reforms (2020[55]). One explanation from civil society is that, in Romania, gender equality policies may have been introduced as a result of EU accession, in a top-down manner, meaning that broad political support may still be lacking.[34]

This is confirmed by international and national observers, noting that in Romania, gender, gender equality and gender studies have been publicly delegitimised and portrayed as threats to tradition and nation (Băluţă and Tufiș, 2021[95]), with a backlash against women's rights by conservative cultural, political and religious movements, in particular with regard to sexual and reproductive rights. On this note, the UN Human Rights Council's Working Group on Discrimination Against Women and Girls noted that there was no comprehensive national strategy on sexual and reproductive health or sexuality education in place, even though Romania has one of the highest teenage pregnancy rates in Europe, predominantly in rural areas (2020[55]). Overall, a European Values Study conducted in 2020 found that traditional stereotypes as to the roles of men and women in society were twice as prevalent in Romania as in other EU countries (Băluţă, 2021[96]), although a Gender Barometer[35] conducted in 2018 demonstrated that the vast majority of people surveyed unanimously considered that in a family, both spouses should earn money to support the family (96%) (Băluţă and Tufiș, 2021[95]). The same 2018 Gender Barometer also found that over the last 20 years, perceptions of women in leadership roles in economics or politics have changed significantly for the better.

Nevertheless, one of the key issues raised by civil society representatives was the insufficient representation of women in politics.[36] A 2019 report on equality between women and men in the EU noted that, in Romania, the proportion of women in single or lower houses of parliament was lower (21.9%) than the EU average (30.2%) (Figure 3.4).[37] Additionally, men occupy four out of every five seats in regional assemblies and women's representation in local assemblies is likewise very low, with Romania ranking lowest of all EU countries with local assemblies only comprising 12% women (EC, 2019[97]). It is hoped that pending amendments to electoral legislation (which already contain provisions on ensuring the representation of both sexes on party lists) will ensure a greater gender balance in such bodies.

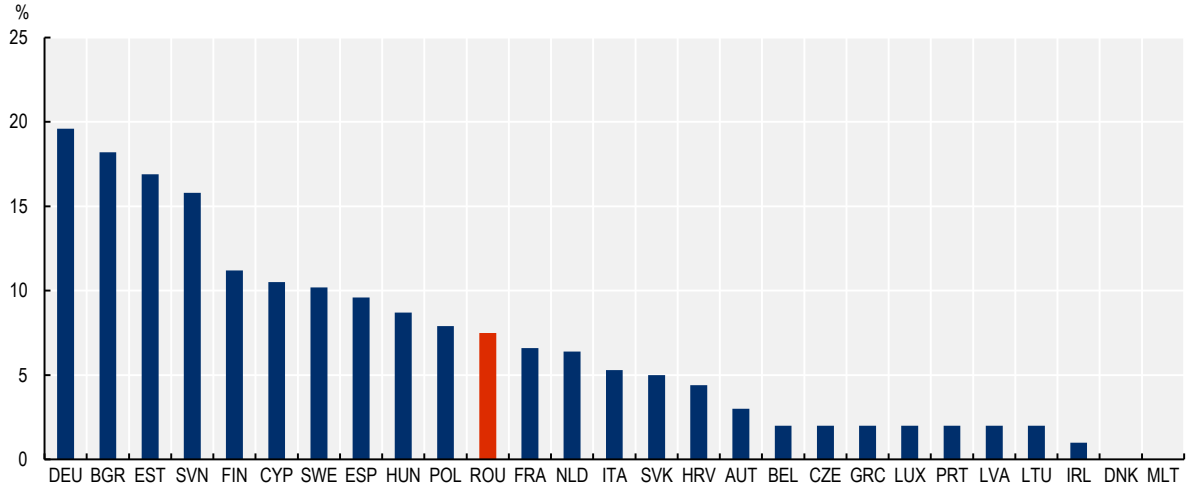
Figure 3.4. Proportion of women and men in single/lower houses of parliament, 2018



Source: EC (2019[97]), *Report on Equality between Women and Men in the EU*, https://ec.europa.eu/info/sites/default/files/aid_development_cooperation_fundamental_rights/annual_report_ge_2019_en.pdf.

A further obstacle to women's full participation in society is the discriminatory violence they face. OECD data on violence against women from 2019 indicates that in Romania, 24% of women have experienced physical and/or sexual violence from an intimate partner at some time in their lives, which is among the higher levels of EU countries surveyed (OECD, 2019[98]) (Figure 3.5).[38] The UN Human Rights Council's Working Group on Discrimination Against Women and Girls has also reported high tolerance of domestic violence, as well as victim-blaming attitudes, resulting in under-reporting of gender-based violence, in addition to relevant authorities' tendency to minimise the seriousness of such offences (2020[55]). The 2021 Gender Index of the European Institute for Gender Equality noted that Roma women and girls were particularly vulnerable to domestic violence, sexual violence, trafficking of women and early marriage, as were girls whose parents work abroad, girls and women with disabilities (particularly those who live in state institutions), and women and girls who work and/or live on the streets (EIGE, 2021[94]). The Gender Index further identifies new forms of gender-based violence, such as revenge pornography and cyber violence as particularly concerning for girls and young women.

Figure 3.5. Violence against Women indicator, OECD, 2019



Note: The percentage of women who have experienced physical and/or sexual violence from an intimate partner at some time in their lives
Source: OECD (2019[98]), *Gender, Institutions and Development - Violence Against Women (indicator)*, https://data.oecd.org/inequality/violence-against-women.htm.

Recommendations

To counter inequality and discrimination more effectively, Romania could:

- Prioritise adopting the Law on the Status of Minorities as a first step to strengthening the rights of minorities in practice and enhancing legal clarity. Constitutional and other legislation could likewise be amended, so that not only citizens but all people in Romania are protected by law from discrimination.
- Adopt a more co-ordinated and inclusive approach when implementing the new Roma Inclusion Strategy. It may further be useful to debate ways of obtaining up-to-date data prior to the mid-term review of the strategy and to use this review to conduct an in-depth monitoring and evaluation exercise of what has worked well in the past and what has not (and why not).
- Likewise prioritise the adoption and implementation of relevant new national strategies (e.g. on persons with disabilities and domestic violence) in consultation with affected communities, once existing ones have expired, as well as a general strategy for enhancing equality in Romania by

ensuring the implementation of relevant anti-discrimination legislation and by strengthening anti-discrimination bodies. Consideration may also be given to addressing problems faced by the LGBTI community in Romania, and whether a strategy or other public document focused on protecting and enhancing the rights of LGBTI persons could help to resolve them. Existing and future strategies should focus on the collection of up-to-date data in addition to evidence-based monitoring and evaluation mechanisms.

- Initiate special training and awareness-raising programmes for teachers and parents in the education sector regarding the needs of Roma children and children with disabilities. In addition, existing orders on combating segregation in schools may need to be reviewed to assess their usefulness, identify hurdles to their effective implementation and introduce sanctions for non-compliance, with consideration given to including measures to combat school segregation in relevant anti-discrimination legislation.
- Further strengthen implementing bodies such as the National Agency for Roma, the National Authority for the Rights of Disabled Persons, and the National Agency for Equal Opportunities for Women and Men, e.g. by providing them with sufficient funds, staff and political backing to ensure they can adequately fulfil their mandates.
- Provide more civic education to adults and children on civic freedoms, notably of different under-represented population groups (e.g. LGBTI persons, disabled persons, Roma community, women), especially in rural areas, and engage in awareness raising initiatives to prevent discriminatory violence.

3.7. Empowering oversight mechanisms to promote civic freedoms

It is crucial that the exercise of civic freedoms, essential for maintaining and protecting civic space, is protected by functioning, accessible and effective oversight mechanisms, in both law and practice. Such mechanisms may include administrative proceedings, which can lead to court proceedings that also address human rights complaints. However, the focus of administrative proceedings in Romania is often on violations of administrative or other laws by public administrations and only indirectly on the violation of individuals' human rights. Human rights complaints mechanisms explicitly examine human rights violations but unlike courts, do not generally issue binding decisions or sanctions for non-compliance with the law. On the other hand, ombudsman institutions traditionally interact closely with citizens and act as guardians of their rights and mediators with the public administration. Their privileged contact with citizens as well as their expertise in the functioning of public administration puts them in a unique position to promote the principles of open government, both in its own functioning and in that of the public administration as a whole (Zuegel, Cantera and Bellantoni, 2018[99]). Generally, it is important that all oversight bodies, both judicial and non-judicial, are well funded and sufficiently staffed, with appointment and funding mechanisms that strengthen their independence from the executive.[39]

In Romania, the law provides individuals or groups alleging violations of civic freedoms with a number of options: they can either take their case to non-judicial human rights complaints mechanisms such as the People's Advocate, the National Supervisory Authority for Personal Data Processing or the National Council for Combating Discrimination, or they can follow court processes. The above complaints mechanisms each have a somewhat different focus but are all independent from the executive, both structurally and financially. This independence has allowed these bodies to review and raise awareness of cases where state actions have impacted the civic freedoms of individuals and groups, and to evolve into important protectors of civic space as a whole.

3.7.1. Non-judicial complaints mechanisms

The People's Advocate (ombudsman)

The main human rights protection mechanism and thus one of the key guarantors of civic space in Romania, aside from the courts, is the People's Advocate, established by Chapter IV of the constitution to defend individuals' rights and freedoms (Article 53). Furthermore, based on Article 59 of the constitution, the incumbent may exercise his/her duties upon the request of aggrieved persons or *ex officio*.[40]

Article 1 of Law 35/1997 on the Organization and Functioning of the People's Advocate specifies that this body is a national human rights institution under the Paris Principles adopted by the UN General Assembly (UN, 1993[100]), which is also reflected in the fact that the institution is an autonomous organ independent of any other public authority (Article 2) (Ministry of Justice, 1997[101]).[41] The law contains further provisions on appointment procedures (Chapter II), complaints procedures (Article 17 and following), and accountability, incompatibilities and immunities (Chapter VI).

The institution of the People's Advocate exercises its powers either *ex officio* or at the request of individuals (Article 16). He/she may also be consulted by the initiators of draft laws and ordinances which, based on their content, concern citizens' civic freedoms (Article 30) or by the Constitutional Court when it reviews matters falling within his/her purview. At the same time, this institution may notify the Constitutional Court of the unconstitutionality of laws before their promulgation. Like other national human rights institutions, the findings of this body are not binding.

The head of the institution is appointed by the Chamber of Deputies and the Senate, in a joint sitting, based on nominations made by the permanent bureaus of both houses of parliament, following recommendations received from parliamentary groups from both houses; his/her term of office may be renewed once (Articles 6 and 7 of Law 35/1997). Under Article 9, the incumbent may be dismissed before the end of his/her term if he/she violates "the Constitution and laws", by a majority vote of the deputies and senators present in the Chamber of Deputies and the Senate in a joint sitting, at the proposal of the permanent bureaus of both houses of parliament, which in turn is based on a joint report of the legal commissions of both houses.

In mid-June 2021, the legislative committees of both houses of parliament convened and voted to dismiss the current People's Advocate, claiming that she had violated the constitution and other laws (IOI, 2021[102]). Following notification of the unconstitutionality of this act before the Constitutional Court, the latter issued a decision in late 2021 confirming that this removal from office had been unconstitutional and reinstated her. While stressing that, in principle, parliament was competent to remove the People's Advocate from office, the Constitutional Court noted that it had over-interpreted the law, as the existing legislative framework did not regulate separately and exhaustively in which circumstances such a step would be justified (International IDEA, 2021[103]). The People's Advocate has remained in office since her reinstatement but the legislative framework has so far not been clarified.

According to Article 59 of Law 35/1997, the institution has its own budget, which is part of the state budget and is approved following an advisory opinion of the Ministry of Public Finances and then forwarded to the government for separate inclusion in the draft state budget. Any objections to the government's draft budget may be raised in parliament.

In its latest annual report for 2022 (People's Advocate of Romania, 2022[104]), the People's Advocate reported that in the same year, it conducted 2 468 *ex officio* proceedings and received 12 033 complaints, the majority of which concerned access to justice (2 011 complaints), the right to petition (1 865), the right to private property (1 373), the right to a decent standard of living (950) and the right to information (906). Furthermore, in line with the above, it conducted 281 investigations and issued 174 recommendations and 3 special reports. It also submitted 11 complaints to the Constitutional Court.

The National Supervisory Authority for Personal Data Processing (ANSPDCP)

For Information on the National Supervisory Authority for Personal Data Processing, see the section on institutional frameworks and constraints under the section on protecting personal data and open Internet in Chapter 4.

The National Council for Combating Discrimination

A third key human rights protection institution is the National Council for Combating Discrimination (hereafter "the council"), established by Government Ordinance 137/2000, as an autonomous public state authority tasked with: preparing and enforcing public policies on non-discrimination; preventing all forms of discrimination; mediating in discrimination disputes; investigating, ascertaining and sanctioning acts of discrimination; monitoring cases of discrimination; and providing specialised assistance to victims of discrimination (Articles 16-19 of the Government Ordinance). According to Article 19, para. 2, of the Government Ordinance, the council exercises its legal authority in response to petitions and complaints from natural or legal persons or takes action *ex officio*. Article 30 of the Government Ordinance states that the council's budget is covered by the state budget. The council draws up the draft budget with the Public Finance Ministry's approval.

Decisions of the council are taken by its steering board, which also appoints the president from among the council members under Article 22 of the Government Ordinance. As stated in Article 23, the steering board is a collective and deliberative decision-making body composed of nine members appointed in plenary sessions by both houses of parliament. Based on Article 24, nominations to appoint members to the steering board are filed with the permanent bureaus of the two houses of parliament, which conduct interviews of the respective candidates in a joint session. The candidates are then confirmed during a joint session of the Chamber of Deputies and the Senate by majority decision, based on the report of the permanent bureaus.

The council submits annual reports to parliament, in line with Article 22, para. 2, of the Government Ordinance. In its 2021 report (2021[105]), it found that in 153 out of 1 048 petitions received (the highest number of petitions ever), public officials had engaged in discriminatory behaviour. The main grounds for discrimination were cited as "social category" (301), beliefs (98), nationality (75), disability (73) and ethnicity (49). The topmost areas where discrimination was found to have occurred were access to employment and profession (397), personal dignity (mostly relating to harassment or demeaning treatment of others; 263) and access to public services (248).

Addressing challenges and identifying opportunities for oversight bodies

Generally, the work of the People's Advocate and the council is viewed positively by civil society.[42] Both bodies have collaborated frequently with civil society and with other human rights bodies to raise awareness of key challenges. The People's Advocate has numerous collaboration agreements with CSOs in areas as diverse as LGBTI rights, children's rights, the situation of persons deprived of their liberty and persons with disabilities. During the OECD fact-finding mission, the council's engagement in support of vulnerable groups was praised. Most recently, it has partnered with different organisations to implement projects addressing discrimination in relation to education and the rights of LGBTI persons (CNCD, n.d.[106]).

Tensions between parliament and the People's Advocate leading to her dismissal in 2021 appear to have dissipated with the new government. On numerous occasions the People's Advocate has made use of its competencies to raise concerns about the constitutionality of draft laws and laws or emergency ordinances impacting the rights of individuals (EC, 2020[107]). It remains very active overall; in 2022 it submitted 14 complaints to the Constitutional Court (People's Advocate of Romania, 2022[104]). The office is also widely

respected. Recommendations of this body are generally followed, despite not being legally binding.[43] In a positive step, it has also recently enhanced its capacity for outreach by improving its online presence.

The council's steering board takes decisions that help raise awareness of exclusion and discrimination in all parts of life; in 2022, decisions were taken as regards discrimination in media publications and in areas such as public services, employment and healthcare (n.d.[108]). At the same time, numerous civil society representatives expressed concern regarding the lack of funding for the council, in addition to the fact that members of its steering board are appointed by political parties, both of which pose risks to its independence and the quality of decisions.[44] Similar concerns regarding the politicisation of the appointment process have been raised for many years and, in 2018, the Constitutional Court revoked the appointment of one member for not respecting the legal requirements (Gîrlescu, 2021[85]).

Recommendations

To ensure more effective oversight, Romania could:

- Review the needs of the People's Advocate and of the National Council for Combating Discrimination, as key mechanisms that oversee the exercise of civic space in Romania, to ensure that their budgets allow them to fulfil their mandates and ensure independence and sustainability.
- Consider amending the relevant law to ensure that the reasons for dismissing the People's Advocate are outlined clearly and unambiguously, in line with international standards and recommendations, as a means to safeguard the stability of this institution.
- Review the process by which members of the steering board of the National Council for Combating Discrimination are appointed.

3.7.2. Strengthening the role of the judicial system in protecting civic space

Individuals who assert that rights related to civic space have been violated by an administrative act or by the acts of other individuals, may also initiate proceedings before competent courts to decide on the matter by alleging a violation of the relevant applicable legislation. In cases involving criminal acts, such as hate speech or hate crimes, they may send a complaint to the public prosecutor who can then decide whether to initiate criminal proceedings in any given matter.

According to Article 21 of the constitution, "[e]very person is entitled to bring cases before the courts for the defence of his legitimate rights, liberties and interests". The same provision also refers to administrative justice that is "optional and free of charge". Article 124 of the constitution specifies that justice shall be rendered in the name of the law and that it shall be "one, impartial and equal for all". The provision further includes a reference to the independence of the judiciary.

The Romanian judicial system is made up of district courts, tribunals (at the county level and in Bucharest), specialised tribunals (for cases involving minors and family law, as well as commercial law), courts of appeal and military courts (EU, n.d.[109]). As per Article 126 of the constitution, the highest court is the High Court of Cassation and Justice, which ensures that other courts apply and interpret a unitary interpretation of the law.

The Constitutional Court of Romania is the "guarantor for the supremacy of the Constitution" (Article 142). According to Article 146 of the constitution, this court adjudicates on, among others, the constitutionality of laws prior to their promulgation by the president and the constitutionality of (promulgated) laws, ordinances or treaties. Before promulgation, notifications may be submitted to the Constitutional Court by the president, one of the presidents of the two parliamentary chambers, the government, the High Court of

Cassation and Justice, the People's Advocate, or at least 50 deputies or 25 senators. The court may also review initiatives to revise the constitution *ex officio*. Once laws have been promulgated, the Constitutional Court will review their potential unconstitutionality if brought before a court, commercial arbitration or by the People's Advocate.

Improving the independence, quality and efficiency of the judicial system

While the court systems generally function well, a number of weaknesses have the potential to impact the rule of law. Thus, the World Justice Project (WJP) Rule of Law Index 2021 ranks Romania relatively low for both civil and criminal justice (at 37th and 50th place among 139 countries around the world) in terms of accessibility, affordability, corruption, government influence, delays and enforcement, among others, although it scored higher on the question of "no discrimination" regarding both civil and criminal procedure (WJP, 2021[110]). Additionally, the 2022 EU Justice Scoreboard, based on Eurobarometer surveys (EC, 2022[111]), noted that the level of perceived judicial independence in Romania continues to be average among both the general public and companies, with 48% of the general population and 49% of companies perceiving the level of independence of courts and judges to be "fairly or very good" in 2022, which is a slight decrease from 2021 (51%) and 2016 (51%).[45] More than one-third of the persons and companies surveyed based this on their belief that the judiciary was subjected to interference or pressure from government or politicians and economic interests.

As outlined by the EC in its 2021 and 2022 country reports, amendments to justice laws defining the status of magistrates and organising the judicial system and the Superior Council of Magistracy in 2018 and 2019 had a serious impact on the independence, quality and efficiency of the justice system (EC, 2021[112]; 2022[113]), all of which are central to the protection of civic space and of the rights of individuals. In mid-November 2022, the president of Romania promulgated three new laws relating to the status of judges and prosecutors, judicial organisation and the Superior Council of Magistracy, respectively (Ministry of Justice, 2022[114]; 2022[115]; 2022[116]). In a recent urgent opinion (Venice Commission, 2022[117]), limited in scope to certain key points,[46] the Venice Commission regretted that parliament adopted these laws in October via an emergency procedure, thus leaving little time for debate, although earlier drafts had been consulted upon with all stakeholders (see Chapter 6 for a discussion of the use of emergency procedures to pass key legislation in general). At the same time, the commission noted that in Romania, response to the new laws was largely positive and many reforms reviewed (relating to the appointment of judges to managerial positions, the appointment and removal of high-ranking prosecutors and instructions to lower-ranking prosecutors) did not appear contrary to European standards. However, the Venice Commission did find that provisions on the appointment of judges to deputy manager positions, the appointment of high-ranking prosecutors, the competencies of the General Prosecutor to intervene in prosecutorial decisions and the reporting hierarchy of the judicial police should be revisited and rendered more compliant with key rule of law requirements.

The above reforms are a welcome improvement and will help ensure greater independence of the judiciary and prosecution services. Functioning justice systems are key to safeguarding the rights of individuals and civic space in general. It is hoped that, following the additional recommendations made by the Venice Commission, further reform efforts will ensure full compliance of the relevant laws with international rule of law principles. In its most recent report on Progress in Romania under the Cooperation and Verification Mechanism (EC, 2022[118]),[47] the EC considered recent reforms to be an important overhaul of the legislative framework and welcomed the Romanian government's commitment to engage in further reforms while bearing in mind the Venice Commission's recommendations. Based in part on the above reforms and a continuing commitment to pursue further reforms, the EC recently decided to discontinue the special rule of law monitoring process (under the Cooperation and Verification Mechanism) that existed since 2007, following Romania's joining of the EU.

In terms of the practical functioning of the judiciary, interviewees pointed to the important role that the Constitutional Court in particular plays in upholding important civic freedoms.[48] In its 2020 country report on Romania, the EC likewise praised the fact that the process for preparing and enacting laws was well regulated and specifically mentioned the possibility of constitutional review both before and after the adoption of legislation, as part of an extended institutional setup of checks and balances (EC, 2020[107]). Additionally, the OECD noted as a good practice the speed with which Romanian courts moved to online processes and innovative technologies during the COVID-19 pandemic (OECD, n.d.[119]).

Recommendation

Romania is encouraged to continue positive reforms relating to its judiciary and prosecution service, in line with recommendations made by regional bodies such as the EC and the Council of Europe's Venice Commission, as a means to further strengthen judicial independence and impartiality and prosecutorial autonomy, thereby ensuring due process for all individuals.

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Notes

[1] Notably, Article 51 of Government Ordinance No. 26/2000 on Associations and Foundations states that within central and local public administration authorities, it is mandatory to operate "structures for the relationship with the associative environment", while Article 7, para. 7, and Article 8, para. 2, speak of public officials in administration who are responsible for the relationship and for interaction with "civil society".

[2] Foreign citizen refers to a citizen from a country other than Romania.

[3] According to Article 53 of the Romanian constitution, these legitimate are: the defence of national security, public order and health or morals; conducting a criminal investigation; and preventing the consequences of a natural calamity, disaster or an extremely severe catastrophe.

[4] See, for example, Emergency Ordinance No. 31 of 13 March 2002 on the Prohibition of Fascist, Legionnaire, Racist or Xenophobic Organisations, Symbols and Facts and the Promotion of the Cult of Persons Guilty of Committing Crimes of Genocide against Humanity and of War Crimes, published in Official Gazette No. 214 of 28 March 2002, with amendments of 2015; Law No. 157 of 2 July 2018 on Measures to Prevent and Combat Anti-Semitism, published in Official Gazette No. 561 of 4 July 2018; Law No. 174 of 9 October 2019 on the Establishment of the National Museum of Jewish History and the Holocaust in Romania, published in Official Gazette No. 820 of 9 October 2019; and Law No. 276 of 25 November 2021 on Some Measures to Study Jewish History and the Holocaust, published in Official Gazette No. 1127 of 25 November 2021.

[5] The law defines anti-Gypsyism as any "perception regarding the Roma [that is] expressed as hatred against them", as well as "the verbal or physical manifestations motivated by hatred against Roma" that is directed against members of this ethnic group, their property, their institutions and leaders or their traditions and culture.

[6] In its report, Article 19 places each country surveyed into one of five expression categories: free, less restricted, restricted, highly restricted and in crisis. Each country's freedom of expression score reflects not only the rights of journalists and civil society but also how much space there is for individuals and members of organisations to express and communicate; how free each and every person is to post online, to march, to research and to access the information they need to participate in society and hold those with power to account.

[7] Interviews with CSOs, February-July 2022.

[8] Interviews with CSOs, February-July 2022.

[9] Interviews with CSOs, February-July 2022.

[10] Interviews with CSOs, February-July 2022.

[11] Interviews with CSOs, February-July 2022.

[12] The CSOs were: CeRe: Resource Center for Public Participation; ActiveWatch; Center for Public Innovation; Greenpeace Australia; Miliția Spirituală civic association; MozaiQ Association; Centrul FILIA civic association; Văcăreşti Natural Park Association; Civil Society Development Foundation (FDSC); Association for Technology and Internet (ApTI); Federation of Non-Governmental Organisations for Social Services (FONSS); E-Romnja Association; Center for the Study of Democracy (CSD); and Átlátszó Erdély Egyesület (Transparent Transylvania Association).

[13] Interviews with CSOs, February-July 2022.

[14] Interviews with CSOs, February-July 2022.

[15] See European Court of Human Rights (2004[52]), Paragraph 92, where the court emphasised that associations, including those protecting cultural or spiritual heritage, pursuing various socio-economic

aims, proclaiming or teaching religion, seeking an ethnic identity or asserting a minority consciousness, are important to the functioning of democracy.

[16] The exception to this is a limitation on non-EU foreigners being members of political parties.

[17] The report was based on a survey of civic space protection in 32 OECD countries and 19 non-OECD countries.

[18] Based on Article 4 of the law, magistrates and military personnel within the Ministry of National Defence, the Ministry of Internal Affairs, the Romanian Information Service, the Protection and Guard Service, the Foreign Information Service, the Special Telecommunication Service and subordinate or coordinating units and/or sub-units of these offices are not allowed to join labour unions.

[19] Indirect discrimination occurs where a general policy or measure which, though couched in neutral terms, has a particular discriminatory effect on a particular group; see, for example, European Court of Human Rights, Biao vs. Denmark, Application No. 38590/10, [GC] Judgment of 24 May 2016, para. 103.

[20] According to the law, the prize is awarded to Romanian and foreign citizens, institutions, associations, foundations and other non-governmental organisations in the country and abroad, for special merits in presenting and promoting: the history, culture and traditions of Jewish communities in Romania; the national and international knowledge of the contribution of this national minority to the evolution and modernisation of Romanian society over time; protecting the memory of Holocaust victims; developing educational and research programmes on the Holocaust in Romania; and promoting the fight against antisemitism.

[21] Interviews with government and civil society representatives, February-July 2022.

[22] Interviews with civil society representatives, February-July 2022.

[23] Interviews with government representatives, February-July 2022.

[24] Interviews with government representatives, February-July 2022.

[25] Interviews with government and civil society representatives, February-July 2022.

[26] Most strategies are largely based on EU reports and statistics.

[27] Interviews with civil society representatives, February-July 2022.

[28] Interviews with civil society representatives, February-July 2022.

[29] These judgments include, among others, ECtHR, M.C. and A.C. v Romania (ECtHR, 2016[120]), application no. 12060/12, judgment of 12 June 2016 regarding hate speech against LGBTI persons, and ECtHR, X. and Y. v Romania (ECtHR, 2021[121]), application no. 2145/16, judgment of 19 April 2021, regarding gaps in legal gender recognition proceedings.

[30] Interviews with civil society representatives, February-July 2022.

[31] According to the data, the lowest OECD score (best) is Switzerland at 8.1 and the highest (or worst performer) is Chile at 36.1.

[32] Interviews with civil society representatives, February-July 2022.

[33] Interviews with civil society representatives, February-July 2022.

[34] Interviews with civil society representatives, February-July 2022.

[35] The 2018 Gender Barometer was conducted by the IMAS Survey Institute in collaboration with the Center for Curricular Development and Gender Studies: FILIA and the Center for Support and Training for the Development of a Fair Society. The study was conducted between 15 November 2018-23 December 2018, on a representative sample of 1 140 people.

[36] Interviews with civil society representatives, February-July 2022.

[37] At the same time, a 2021 study on political representation of women in Romania found that the number of female candidates in both national and local elections in 2020, while still low, had increased somewhat since the previous elections in 2016, see Ionela Băluţă and Claudiu Tufi, Political Representation of Women in Romania, commissioned by Friedrich-Ebert-Stiftung, December 2021, at https://www.academia.edu/71806700/Political_Representation_of_Women_in_Romania.

[38] Austria is at the lowest end of the spectrum with 13% and Latvia at the highest end with 32%.

[39] For national human rights institutions, these requirements are also reflected in the UN Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the "Paris Principles"). The Paris Principles were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris (7-9 October 1991) and adopted by UN General Assembly Resolution 48/134 of 20 December 1993. See in particular B.2 (Composition and guarantees of independence and pluralism).

[40] *Ex officio* refers to instances where the People's Advocate initiates investigations on his/her own initiative, and not based on an individual complaint, as per Article 16 of Law 35/1997.

[41] Article 2 of the law indicates that this institution also functions as the National Mechanism for the Prevention of Torture in Places of Detention based on the Optional Protocol of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The People's Advocate also has special competencies related to protecting children's rights, with one Deputy Advocate designated by law (Articles 13 and 14) as the Advocate of the Child.

[42] Interviews with civil society representatives, February-July 2022.

[43] Interviews with government and civil society representatives, February-July 2022.

[44] Interviews with civil society representatives, February-July 2022.

[45] The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good or very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

[46] The urgent opinion focuses only on topics raised by the Council of Europe's Parliamentary Assembly in its Resolution 2466 of 13 October 2022, namely the civil and disciplinary liability of magistrates, the

competitions for admissions into the judiciary and rules on the status as well as the appointment and removal of specialised and high-ranking prosecutors. The opinion emphasises that due to its urgent nature, it also did not cover these points in their entirety and cannot be seen as expressing a view on the compatibility of the three laws with European standards on any points other than those mentioned above.

[47] The Cooperation and Verification Mechanism (CVM) was established at the accession of Romania to the EU in 2007 as a transitional measure to facilitate Romania's continued efforts to reform its judiciary and step up the fight against corruption. It represents a joint commitment by Romania and the EU. In line with the decision setting up the mechanism and as underlined by the Council of Europe and the Court of Justice of the EU, the CVM ends when all benchmarks applying to Romania are satisfactorily met.

[48] Interviews with civil society representatives, February-July 2022.

4 Media freedoms and civic space in the digital age in Romania

This chapter explores the status of media freedoms and civic space in the digital age. It discusses access to information, pressures on free and pluralistic media in Romania and barriers facing journalists in their work. It then focuses on efforts around digitalisation as well as challenges relating to personal data protection, privacy and digital divides. It also analyses current efforts to develop a strategy for artificial intelligence. Concrete recommendations for government are provided throughout.

4.1. Introduction

An enabling environment for free and pluralistic media, along with protected online civic space, is critical for citizens living in a democracy so that they can be informed of and engaged with the issues that affect them. In practice, this requires that governments promote access to public information, support media outlets and journalists, and counter attempts at censorship, media control and mis- and disinformation,[1] in support of a healthy and vibrant public interest information ecosystem. Unimpeded access to information also leads to a more active citizenry, encourages greater citizen participation in public decision making and allows citizens to hold their government to account. In Romania, there are several key legal and policy frameworks governing the information and media ecosystem. The right to information is enshrined at the constitutional level and implemented through Romania's access to information (ATI) law, introduced in 2001. Similarly, legislation guarantees press freedom and regulates audio-visual media. However, both face implementation challenges, with journalists and media outlets facing significant barriers in their daily work, including external interference and political influence, limitations arising from the misuse of the General Data Protection Regulation (GDPR) (EC, 2021[1]) and a perception of increased use of strategic lawsuit against public participation (SLAPP) cases to silence investigative reporting.

As a European Union (EU) member state, Romania has ramped up its digitalisation efforts in recent years and is committed to digital government reforms to foster strong online civic space. The COVID-19 crisis served to advance many of these initiatives; however, progress has stagnated due to a complex and ever-changing institutional architecture without clear ownership of the digital agenda. The country faces significant obstacles in ensuring universal connectivity across Romania, promoting digital public services and encouraging citizen usership of e-government initiatives (EC, 2022[2]).

Regarding data protection and the right to privacy, in 2004 Romania famously became the first country to implement a law to protect whistleblowers in both the public and private sectors. However, concerns have been raised by civil society regarding data protection and privacy in recent years. It is thus essential that public officials take all measures to comply with EU standards on data protection and privacy, namely those of the GDPR, to build trust with citizens and civil society organisations (CSOs). Romania is also developing a strategy for AI, with the potential to prioritise civic freedoms and position civil society in a central decision-making role regarding the use of technology in the public sector.

4.2. Access to information

4.2.1. Constitutional recognition and existing legal frameworks

Transparency is a core pillar of open government and ATI is a cornerstone of the principle of transparency. It plays a crucial role in enabling citizens to be informed and to take action to defend their interests. In this regard, ATI underpins and reinforces other civic freedoms, in particular the right to freedom of expression. As outlined in the 2017 OECD Recommendation of the Council on Open Government, access to "clear, complete, timely, reliable and relevant data and information" is a vital element of open government (OECD, 2017[3]) and thus a wider public interest information ecosystem and a functioning democracy more broadly. The OECD *Open Government Review of Romania* also highlights the need for sound institutional arrangements for ATI and transparency more broadly (OECD, forthcoming[4]).

Similar to about two-thirds of OECD Members, the right to information is enshrined in the Romanian constitution (Government of Romania, 1991[5]; OECD, 2022[6]). Notably, Article 31 of the constitution states: "A person's right to have access to any information of public interest may not be curtailed. Public authorities are obliged to provide citizens with correct information concerning public affairs and matters of personal interest falling within their respective jurisdiction" (Government of Romania, 1991[5]). This

recognition serves to protect ATI through changing political cycles and solidifies its status as a fundamental human right.

ATI is operationalised through Law 544/12 of 2001 on Free Access to Public Information (Parliament of Romania, 2001[7]). Under this law, "the individual's free and unconstrained access to public information represents one of the fundamental principles of the relations between individuals and the public authorities in conformity with the Romanian Constitution and the international documents ratified by the Romanian Parliament" (Library of Congress, 2021[8]). Furthermore, the law defines public information as "any information related to or resulting from the activities of a public authority or organisation, regardless of the medium, material form, or manner in which the information is conveyed" (Library of Congress, 2021[8]), which offers the government an opportunity to take a broad and "open by default" approach. The law resulted from a consultation process with CSOs, academia and the media, and subsequent processes for amendments have also invited input from a range of stakeholders. Government Decision 123/2002 outlines the methodological rules regarding application of the law to provide guidance to public officials (Government of Romania, 2002[9]) and was supplemented by Government Decision 830/2022 approved by Government Decision 123/2002 (Government of Romania, 2022[10]).

The Centre for Law and Democracy's Global Right to Information (RTI) Rating finds that the legal framework for ATI in Romania has several weaknesses (n.d.[11]). As of 2022, it ranks Romania 73rd out of 136 countries, with a score of 83 out of 150 (challenges are outlined below). Since 2018, the General Secretariat of the Government (hereafter the "General Secretariat") has held regular technical meetings with representatives of central and local public administrations on complying with the law and improving reactive and proactive disclosure of information.

The General Secretariat also monitors how central and local government authorities apply relevant legislation and prepares related reports and recommendations. Furthermore, it prepares and publishes summaries of the monitoring process and the extent to which central and local public administrations adhere to obligations to display information of public interest *ex officio*[2] (General Secretariat of the Government, n.d.[12]). The most recent monitoring was conducted between June and July 2022 and was the first carried out based on new legislative changes surrounding ATI, including the updated standards for displaying information in the public interest *ex officio,* as outlined in both the annexes of the National Anti-corruption Strategy 2021-2025 (Government of Romania, 2021[13]) and the aforementioned Government Decision 830/2022 (Government of Romania, 2022[10]). According to these reports, there has been progress in regard to the *ex officio* disclosure of information by public bodies, with an increase in information disclosed at the national and local levels (General Secretariat of the Government, 2021[14]; General Secretariat of the Government, 2021[15])

Regarding transparency more broadly, a new Law 179/2022 on Open Data was adopted in June 2022, transposing EU Directive 2019/1024 of the European Parliament and of the Council on Open Data and the Re-use of Public Sector Information (Parliament of Romania, 2022[16]). The law specifies that public bodies "shall make documents available in any pre-existing format or in any available language and, if possible and appropriate, by electronic means, in formats that are open, automatically processable, accessible, easy to find and reusable" (Parliament of Romania, 2022[16]).

4.2.2. Addressing barriers to ATI across the public administration

During the OECD fact-finding mission, CSOs generally praised the quality of Law 544/2001, although some noted that implementation had been regressing in recent years. Interviewees highlighted delays and refusals in response to information requests.[3] The Balkans and Caucasus Transeuropa Observatory reports that while the law indicates that simple requests must be answered within 10 days, an answer must be provided no longer than 30 days after a request, with many public bodies "exploit[ing] the ignorance of the applicant" by using this upper limit as their deadline (2017[17]). As stipulated by Article 8 of the law, "information of public interest verbally requested by the mass media will be communicated, as a rule,

immediately or within 24 hours at most"; however, testimonies from journalists and the media indicate that this is rarely the case (IPI, 2020[18]).

Emergency measures introduced during the COVID-19 crisis further affected the implementation of the law and exacerbated existing challenges.[4] As was the case in many countries, the Romanian Decree regarding the establishment of the state of emergency in 2020 (see Box 6.8 Regulation by emergency ordinance) extended the legal deadlines for responding to ATI requests (President of Romania, 2020[19]). According to the International Press Institute, in practice, many of the obligations to provide information were suspended entirely (IPI, 2020[18]). Several amendments to the law were also proposed in 2020, with some still under parliamentary scrutiny (Romanian Chamber of Deputies, 2020[20]). For example, one government initiative proposed that public bodies could share information in whatever format it was available, without any further processing of the data.[5] The reasoning behind this change was to reduce the administrative burden of data cleaning. However, some CSOs, including the International Press Institute and the Association for the Defence of Human Rights in Romania – the Helsinki Committee (APADOR-CH), raised concerns that this could grant the government free rein to refuse to release information if it is requested in statistical or summary format (IPI, 2020[18]; APADOR-CH, 2020[21]), as it would require additional data processing. Overall, the latest 2022 EU Rule of Law Report for Romania finds that "insufficient and inconsistent responsiveness of authorities to freedom of information requests represent an ongoing problem, including on urgent decisions taken on e.g. the COVID-19 pandemic or the Ukrainian refugees crisis" (EC, 2022[22]).

During the OECD fact-finding mission, ATI requests were cited as a burdensome challenge for some public bodies. One interviewee mentioned that ministries often receive requests which should be directed elsewhere. For example, citizens send requests for information to the Ministry of Health, which should be sent to local hospitals instead.[6] Redirecting these requests and responding to the requester can be time-consuming and causes delays in responding. While Romania already has an open data portal (https://data.gov.ro/), the introduction of a "one-stop shop" or a single portal for making ATI requests and issuing responses could prove useful in reducing the burden for both public officials and citizens. Romania could take inspiration from good practice in Brazil in this regard: the Fala.BR platform is a centralised system where citizens can submit requests, lodge complaints, provide feedback and suggest ideas for the improvement of public services (OECD, 2022[23]).

Public officials can restrict access to information in many ways, from denials of information and negative administrative silence to breaches of timelines or excessive fees. When such violations occur, corrections and sanctions are essential in ensuring that citizens do not lose trust in the process. The ATI law notes that "the explicit or tacit refusal of the designated employee of a public authority or institution to apply the provisions of this law constitutes a violation" (Article 21). That said, it does not provide further detail on what sanctions exist and there is no enforcement mechanism for sanctions. In addition, a range of public officials can be responsible for responding to requests for information, which can make introducing sanctions against a specific public official for administrative silence or illegitimate denial a challenge (Balkans and Caucasus Transeuropa Observatory, 2017[17]).

In the case of denials of ATI, requesters first have the right to an internal appeals process, meaning they can communicate a grievance to the same body to which they originally made the request. However, there are no conditions for an external appeal process, for example to an independent oversight body, outlined in the law (Centre for Law and Democracy, n.d.[11]). Following an internal appeal, the law provides for a judicial appeal process whereby an individual may file a complaint to the administrative litigation section of the court in their region or the region where the public body is located. The 2021 *EU Rule of Law Report* finds that "access to court for redress is onerous" (EC, 2021[1]) and undertaking such a process requires considerable resources and is often not worthwhile if the information requested is time-sensitive. External appeals are common in OECD Members (85% have such a process) (OECD, 2022[24]) and usually involve lodging a complaint with an independent oversight body, prior to launching a judicial process. External

appeals are often more accessible to citizens because they are usually free of charge and do not require legal representation.

Relatedly, there is currently no independent oversight body with a mandate to monitor and evaluate ATI processes, collect and publish data on requests and responses, and issue corrections and sanctions in the case of violations of the law. The OECD report, *The Protection and Promotion of Civic Space: Strengthening Alignment with International Standards and Guidance* (2022[6]) finds that most OECD Members have an ATI oversight body, which can be one or a combination of the following: an information commission/agency/body or ombudsman with a specific mandate for ATI (44% of OECD Members, 49% of all countries), an ombudsman with a broader mandate (28% of OECD Members, 24% of all countries) or a central government authority (50% of OECD Members, 45% of all countries) (OECD, 2022[6]). In this regard, Romania could consider the creation of such a body and also establish an ATI officer or office within each public body with a clearly defined responsibility for ATI, to report back to the oversight body. Box 4.1 illustrates some examples of oversight bodies with a mandate for ATI in other country contexts.

Box 4.1. Institutional oversight of ATI in Europe and Latin America

Chile

In Chile, the institutional dimension of the right to information is strengthened through the Council for Transparency, which is an autonomous and independent oversight body with the power to monitor and evaluate the implementation of the law (Chilean Council for Transparency, n.d.[25]). Its mandate is to contribute to democracy "through accountability and social control, enforcing the right to access information, transparency and personal data protection" (Chilean Council for Transparency, n.d.[25]). The body also aims to improve regulation on transparency, raise standards on the right of ATI and increase the efficiency of public management in this area overall.

Denmark

The Parliamentary Ombudsman in Denmark also has a mandate for maladministration with a specific focus on ATI. According to the 2020 OECD Survey on Open Government, the Parliamentary Ombudsman undertook an internal investigation of the Access to Public Administration Files Act in 2016, with a focus on how it was interpreted and used by ministries and how the government could foster greater openness in the future (OECD, 2022[6]).

Ireland

The Freedom of Information Central Policy Unit in the Department of Public Expenditure and Reform provides information, guidelines and other resources which are relevant to the recently amended 2014 Freedom of Information Act. According to the 2020 OECD Survey on Open Government, as part of the amendment process, two expert review groups considered and reported on the institutional arrangements for ATI in Ireland in order to inform drafting. An internal group was composed of public sector stakeholders, while an external group consisted of representatives of academia, journalists, the Information Commissioner, citizens and activists. The Information Commissioner is required to prepare a report on their activities in the previous year and submit it to the government annually (OECD, 2022[6]).

Source: 2020 OECD Survey on Open Government; OECD (2022[6]), *The Protection and Promotion of Civic Space: Strengthening Alignment with International Standards and Guidance*, https://doi.org/10.1787/d234e975-en; Chilean Council for Transparency (n.d.[25]), *About Us*, https://www.consejotransparencia.cl/en/about-us/.

4.2.3. Ensuring ATI is inclusive

Promoting inclusive and equitable ATI for all social demographics is crucial to protecting and promoting civic space. Romania has a range of initiatives to improve the accessibility of official websites. In 2017, the Ministry for Public Consultation and Social Dialogue, in partnership with the Ministry of Communications and Information Society, developed a guide on making the webpages of public institutions in Romania more accessible.[7] The General Secretariat also monitors the display of institutional webpages to gauge whether they need to increase or decrease font size, change colours, underline links or transform any text into audio files, for people with visual impairments. The government of Romania also produces a weekly synthesis of its activities which is adapted for people with hearing impairments (Government of Romania, n.d.[26]).

Romania could provide additional support to specific groups who need assistance in finding public information and in making information requests. As indicated in the OECD report, *The Protection and Promotion of Civic Space: Strengthening Alignment with International Standards and Guidance* (2022[6]), 50% of OECD Members provide additional support for requesters with special needs. Guidance around ATI could be issued in plain language that is accessible to all and in as many minority languages as possible (e.g. Hungarian, Romani, Ukrainian). In a positive step in this regard, in the context of the war in neighbouring Ukraine, the government developed a platform dedicated to Ukrainian refugees, in Ukrainian, on which they can find information related to legal, medical and social assistance (General Secretariat of the Government, n.d.[27]).

There are no fees for filing an information request in Romania, which contributes to a more accessible system. However, as in many other countries, requesters can be subject to a fixed cost (which cannot exceed 0.05% of the minimum wage per hour per page) if the public body in question is asked to reproduce information, as is the case in many countries (OECD, 2022[24]). In 2020, a proposed legal amendment would have made requesters liable to cover costs related to searching for, collecting, reproducing and mailing information, for example (Balkan Insight, 2020[28]). As there are no exceptions in law for impecunious requesters who cannot afford these potential costs, such a measure would have significantly limited ATI. Ultimately, the initiative was not approved and withdrawn (Senate of Romania, 2020[29]), with only the costs regarding reproduction remaining. To guarantee that the right to ATI is unrestricted for all citizens, it will be important for Romania to ensure that any costs related to access to information remain minimal and that any fees serve to cover real costs, without a profit for the public body concerned.

Romania has made recent efforts, through the aforementioned Government Decision 830/2022, to update and standardise reactive and proactive disclosure of information at the national and local levels (Government of Romania, 2022[10]). For example, one measure establishes an obligation for public bodies to update relevant information on the website of the respective institution, to publish information on those responsible for carrying out the activity, and requires them to display the date of publication for each type of information (Government of Romania, 2022[10]). Furthermore, Government Decision 830/2022 contains a number of promising amendments, including a new paragraph which notes that a "public authority or institution may communicate, *ex officio*, on its own website, frequently requested information, depending on its object or field of activity", in an effort to promote proactive disclosure and reduce the number of requests for information (Government of Romania, 2022[10]). While 84% of OECD Members outline specific conditions for proactive disclosure in their guidelines on access to information (OECD, 2022[24]), it is less common for countries to share frequently requested information on an ongoing basis, thus Romania provides a positive example of progress in this area.

Romania could strengthen these efforts further by including a commitment to improving the inclusivity of the ATI law in its next Open Government Partnership (OGP) Action Plan, especially as several commitments to transparency are outlined in the most recent 2022-24 Action Plan, including transparency on national investment funds, participatory budgeting, and publishing open datasets (Open Government Partnership, 2022[30]). Such a commitment could prioritise undertaking outreach and awareness-raising activities – particularly at the local level – to target different minority groups, members of which may not be aware of their right to seek and receive information from public authorities.

Recommendations

To enhance access to information from the public sector, Romania could:

- Embrace the broad and objective criteria for the definition of information of public interest, as outlined in Law 544/2001 ("information related to the activities or the results of the activities of a public authority or public institution, regardless of the format or form of expression of that information") and ensure that exemptions are clearly defined and only applied where legitimate to do so.
- Ensure fees for requests to access information are kept to a minimum and reflect the actual costs involved for the public administration in reproducing information.
- Create an independent body such as an information commission/agency or ombudsman with responsibility for oversight of ATI. This body could also serve to collect and publish data on requests, respond to complaints and concerns, and impose sanctions for misdemeanours.
- Create a proposed single/central portal for all requests to access information, to reduce the burden on both public officials and citizens, as is the case in Brazil with the Fala.BR platform.
- In the short to medium term, establish an ATI officer or office within each public body with a clearly defined role and responsibility for ATI, which could guide public officials on relevant procedures and report back to the independent oversight body. The office or officers could also serve to promote the ATI law among citizens and CSOs to raise awareness and educate them on where and how to channel requests.
- Commit to offering training and capacity building for public officials on the importance of searching, retrieving and sharing information with requesters within the initial ten-day timeline, and encourage them to identify existing bottlenecks that hinder their ability to do so.
- Clarify the internal and judicial appeals processes and ensure that they are simple, subject to clear timelines and well-advertised. Such appeals processes should also be accessible without cost, to the extent possible, and not require legal representation.
- Continue to promote inclusiveness in ATI with the use of plain language, providing information on the right in minority languages, offering additional support to marginalised groups and those with disabilities and ensuring that filing a request remains free of charge, with exceptions to existing costs for those in need. In this regard, Romania could potentially include a commitment to improving the inclusivity of the ATI law in its next OGP Action Plan.

4.3. Press freedom

4.3.1. Legal and regulatory frameworks

Freedom of the press is an essential component of vibrant civic space as a prerequisite for the unrestricted flow of information and the open exchange of opinions and ideas. Free and pluralistic media allow citizens to engage in public debate and to hold their governments to account. In Romania, press freedom is guaranteed in Article 30 of the constitution on freedom of expression and Article 31 on freedom of information, which state the following (Government of Romania, 1991[5]):

- **Article 30:** "Freedom of the press also includes the freedom to establish publications. No publication may be banned".

- **Article 31:** "The public and private mass media organs must ensure that public opinion receives correct information"; "The public services of radio and television are autonomous"; "They must guarantee that significant social and political groups have the right to broadcast".

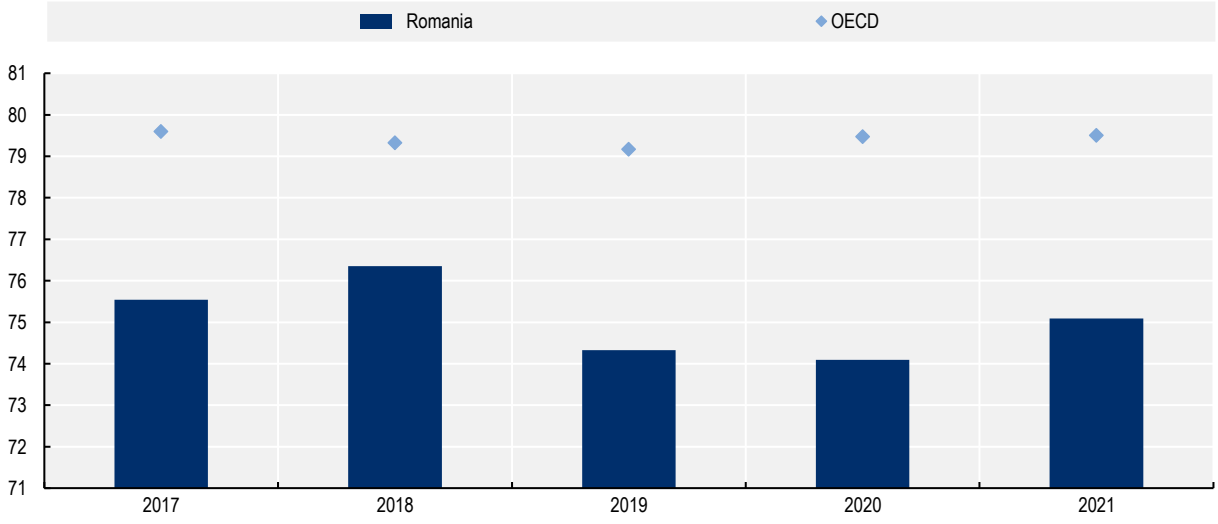
Furthermore, Law 544/2001 on the right of free access to public information states that "public authorities must issue press accreditations to journalists and media representatives without discrimination" (Library of Congress, 2021[8]). Accreditation "may be refused or withdrawn only for acts which hinder the normal activity of the public authority and not in connection to opinions lawfully expressed by the journalist". In addition, public bodies must inform mass media of upcoming press conferences and public events and cannot restrict press access to any public government events (Library of Congress, 2021[8]).

Audio-visual media services in Romania are regulated by Law 504 of 2002, which covers television and radio broadcasting and on-demand media service providers (CNA, 2002[31]). The act "prohibits censorship and interference on the part of public authorities or private persons, guarantees the confidentiality of sources and maintains that public authorities must ensure the protection of journalists who are subjected to pressures or threats that may interfere with the exercise of their profession" (Library of Congress, 2021[8]). This legislation also establishes the National Audiovisual Council (CNA) (see Box 4.2), which regulates whether media content adheres to the law as well as to "the human rights instruments to which Romania is a party" (Library of Congress, 2021[8]).

4.3.2. The current status of press freedom and journalistic freedom of expression

While press freedom is relatively well-protected by Romania's legal frameworks, some challenges remain. The Reporters Without Borders (RSF) 2022 World Press Freedom Index ranks Romania 56th out of 180 countries assessed, with a score of 68.46 out of 100 (n.d.[32]).[8] While Romania's scores have fluctuated over the past five years, they have remained below the OECD average (Figure 4.1), with the 2022 index raising ongoing challenges related to censorship, self-censorship, and opacity regarding media funding and media ownership (RSF, 2022[33]).

Figure 4.1. RSF World Press Freedom Index: Romania and OECD Members, 2017-21

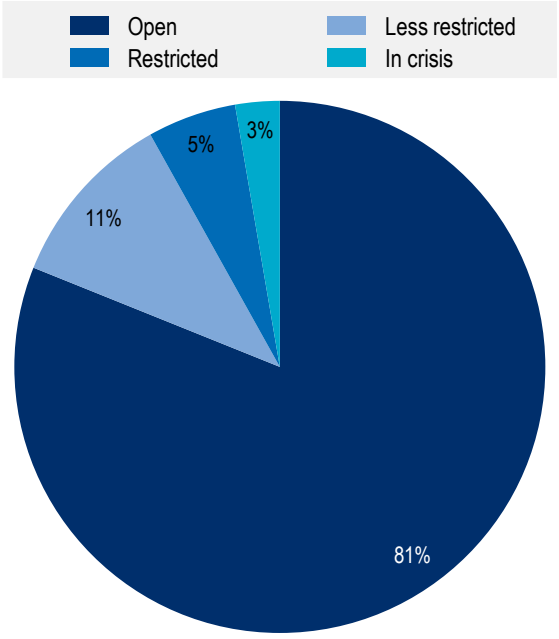


Note: The degree of freedom available to journalists in 180 countries is determined by pooling the responses of experts to a questionnaire devised by the RSF. The index's rankings are based on a score ranging from 0 to 100 that is assigned to each country or territory, with 100 being the best possible score (the highest possible level of press freedom) and 0 the worst.
Source: RSF (n.d.[32]), *Index*, https://rsf.org/en/index (accessed on 29 April 2022).

Freedom House's Freedom in the World 2022 index gives Romania a score of 83 out of 100 with a rating of "free" (Freedom House, n.d.[34]).[9] In particular, the index's indicator on free and independent media gives Romania a score of three out of four[10], citing challenges such as media outlets being controlled by political interests and public authorities influencing some media outlets through publicly funded advertising (Freedom House, n.d.[34]). Civil society interviewees confirmed these challenges and noted that both the government and the public's perception of private media was largely negative as a result.[11] Article 19's Global Expression country ranking categorises Romania as "less restricted" whereas81% of OECD Members are deemed to be "open" (Figure 4.2) (Article 19, 2021[35]).

Figure 4.2. Article 19's Global Expression country rankings: Romania and OECD Members, 2021

Romania is categorised as "less restricted"



Note: The chart is based on available data from 36 OECD Members (no data available from Luxembourg or Mexico) and Romania.
Source: Article 19 (2021[35]), *The Global Expression Report 2021: Country Rankings*, https://www.article19.org/wp-content/uploads/2021/07/GxR-2021-Country-Rankings-Final.pdf (accessed on 29 April 2022).

Romania's media landscape mirrors wider trends in Europe and worldwide with the number of print media outlets decreasing as online media outlets increase (2022[33]). Large European groups (e.g. Dogan Media International, Ringier) are present in the Romanian media market alongside other national and local outlets (RSF, 2022[33]). The Romanian public broadcaster, Romanian Television (TVR), has the status of an autonomous public service of national interest and broadcasts on six channels, with almost full coverage nationally, through its five territorial studios: Cluj, Craiova, Iasi, Timișoara and Tîrgu-Mureş (TVR, 2022[36]). It is funded from the state budget and from advertising (CIRCOM, n.d.[37]). TVR's mission is to be "the main source of information, education and entertainment for Romanians" (TVR, 2012[38]). TVR also states that diversity is one of its core values, and as such, it aims to represent different minorities, religions and perspectives equally (TVR, 2012[38]). In terms of private media, ProTV and Digi24 lead both in terms of online and offline consumption and in citizen trust in their content, even more so than public service radio and television (Reuters Institute, 2021[39]). Other significant online outlets include Adevărul online, Libertatea online, Mediafax online and Ziare.com (Reuters Institute, 2021[39]).

Alongside the general lack of trust in public institutions discussed in Chapter 1, there is also low trust in media. The Reuters Institute at the University of Oxford ranks Romania 38th out of 46 countries surveyed for trust in the news (Reuters Institute, 2021[39]). Romania's scores have fluctuated significantly over recent years, increasing from 35% in 2019 to 38% in 2020 and 42% in 2021, and currently stand at 33% in 2022 (Reuters Institute, 2021[40]). In 2021, the institute noted that "rarely […] have Romanians been so hungry for up-to-date information […], and journalists so ill-equipped to provide accurate information" given the challenging context (Reuters Institute, 2021[40]). The Central European University (CEU) Democracy Institute has noted that while the media sector is "vibrant and diverse", independent journalism survives "thanks to a string of small online outlets that are struggling financially and grappling with a low level of trust and a public unwilling to pay for media content" (CEU Democracy Institute, 2019[41]).

4.3.3. Tackling challenges to free and pluralistic media

Political pressure, censorship and self-censorship

The ability of journalists to report objectively and independently on events is crucial for press freedom. One of the most common issues raised by interviewees during the fact-finding mission was the tendency for media and journalists to be prone to external inferences on their reporting.[12] The 2021 EU *Rule of Law Report* also notes that political pressure is a significant issue, especially for media outlets that rely on government funding (EC, 2021[1]). Interviewees reported that some of those who have received government funding have felt pressure to censor their content or engage in self-censorship to avoid challenges to their coverage. For this reason, some media outlets such as G4Media and PressOne state explicitly on their websites that they do not receive government funding due to the perceived associated risks.[13] Interviewees also stressed that this causes particular concern at the local level, as it is difficult for small media outlets to survive without government support.[14]

Furthermore, according to the Centre for Media Pluralism and Media Freedom, editorial autonomy – meaning the ability of journalists and editors to make decisions without consideration of the ownership of the outlet, the political views of the publication or any other external pressures – is at high risk in Romania (CMPF, 2021[42]). No legal or self-regulatory safeguards currently "prevent arbitrary appointments or dismissals" or undue commercial or political pressure, for example (CMPF, 2021[42]). Industry-wide guidelines to establish basic codes of conduct do not exist, including to safeguard against unfair appointments or dismissals, or to guide editors on the line between journalistic content and advertising (CMPF, 2021[42]). While outlets can and do establish their own guidelines, there are no overall standards in place, either through self-regulation or legislation, on editorial independence (EC, 2021[1]).

Both large and small private media outlets are essential elements of a pluralistic media environment as contributors to varied public discourse and debate. However, while the leading five media outlets in Romania by weekly reach (Pro TV, Digi24, Antena 1, Antena 3 and Romania TV) generally offer balanced and moderate coverage of current events (Reuters Institute, 2021[40]), interviewees stated that private media outlets are generally viewed as being highly politicised.[15] In fact, the Reuters Institute for the Study of Journalism finds that "much Romanian news coverage is sensationalist, with outrage the stock in trade for many commentators" (Reuters Institute, 2021[40]). The perception among citizens of private media as biased and polarised has implications for access to information due to people limiting the types of media they consume. For example, if a media outlet is seen to cater to a certain political demographic, even if its information is accurate, others from opposing sides of the political spectrum may not watch or read the content. In this sense, the public may become more likely to choose television and radio that aligns with their views, thereby avoiding engaging with more varied perspectives.

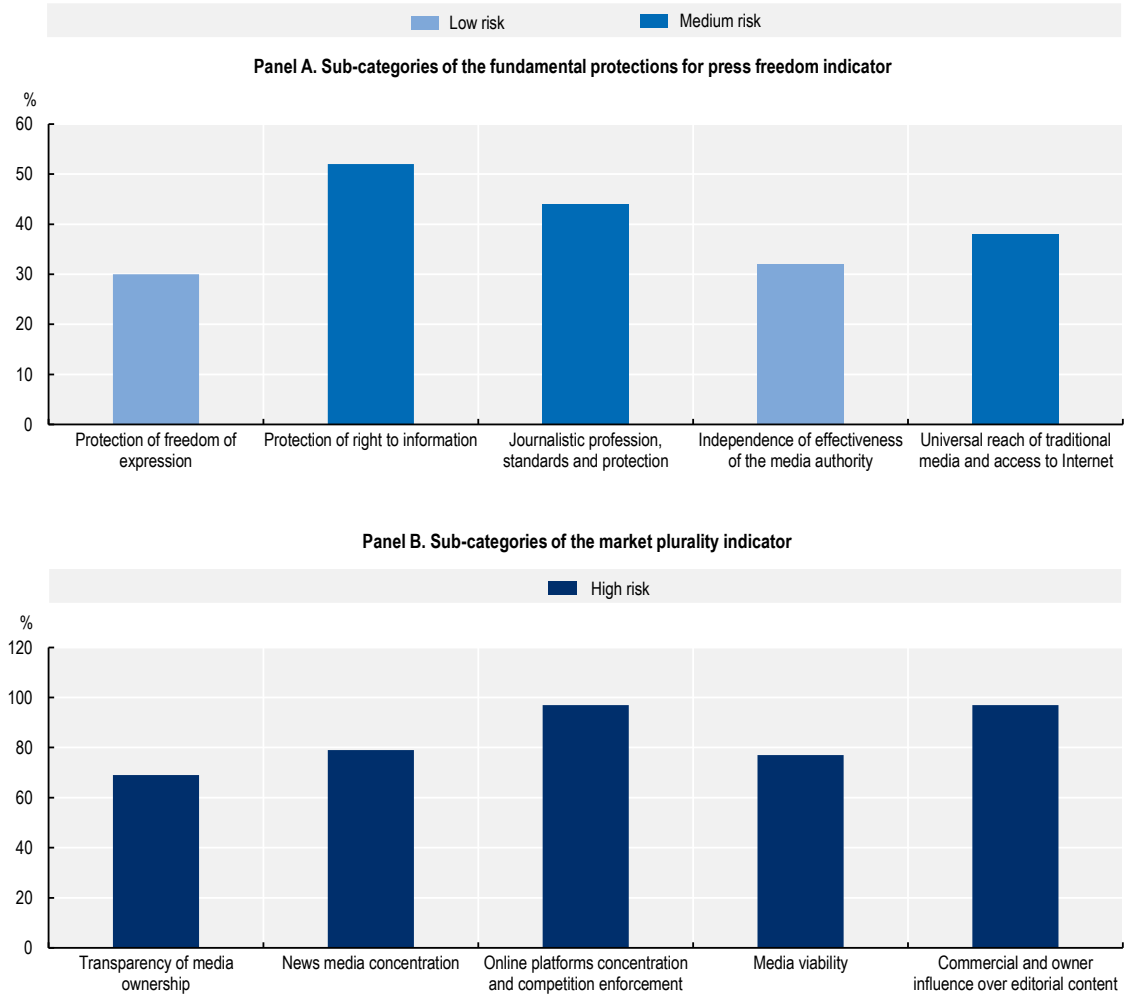
CSOs have raised concerns that political parties spend state subsidies on mass media to influence public opinion. In 2021, the Romanian Permanent Electoral Authority (AEP) reported that political parties had spent approximately EUR 22.5 million from January to September 2021 on "press and propaganda" (Balkan Insight, 2021[43]). Media outlets do not explicitly announce that they receive such money, due to both legal loopholes and insufficient regulation, resulting in sponsored content being presented in a manner that is misleading.[16]

Transparency of media ownership

Transparency of media ownership, meaning that citizens can access data on individual, commercial, or governmental influence or control of different forms of media, is a key component of a free press within a democratic society. Publicly available information on media ownership allows citizens to critically assess their sources and enables governments and civil society to investigate whether media ownership is concentrated in the hands of a limited few. Longstanding concerns continue to be raised in Romania concerning the opacity of media ownership. In fact, interviewees noted that state capture of the media is an ongoing issue and, while some independent journalists have attempted to organise to combat this trend, there is little centralised co-ordination and thus negligible impact.[17]

The European Commission (EC) has highlighted this issue in more than one Rule of Law Report, with the 2021 edition stating that "transparency of media ownership continues to be incomplete" (EC, 2021[1]). The EU 2021 Media Pluralism Monitor (MPM) report places Romania in the high-risk category for its transparency of ownership indicator, along with Albania, Cyprus, the Czech Republic, Finland, Hungary, Latvia, the Slovak Republic, Spain and Turkey (CMPF, 2021[42]). Furthermore, the 2021 *Romania Country Report* finds transparency limited "due to both the presence of loopholes and the lack of media-specific regulations for all media other than audio-visual media" (Popescu, Bodea and Toma, 2021[44]). Romania is also considered medium to high risk for several other categories under the fundamental protections for press freedom and market plurality indicators (Figure 4.3), including news media concentration, media viability, and commercial and owner influence over editorial content.

Figure 4.3. Medium- and high-risk categories in the 2021 Media Pluralism Monitor: Romania, 2020



Source: Popescu, M., R. Bodea and R. Toma (2021[44]), *Monitoring Media Pluralism in the Digital Era: 2020 Romania Country Report*, https://cmpf.eui.eu/mpm2021-results/ (accessed on 30 May 2022).

The National Audiovisual Council plays a valuable role in protecting press freedom (Box 4.2) by answering queries on media, investigating complaints, and imposing fines and sanctions where necessary. However, the council does not share information on the ownership of media, on the basis that this violates data protection laws (RSF, n.d.[45]).[18]

Box 4.2. The role of the National Audiovisual Council in Romania

The National Audiovisual Council (CNA) in Romania regulates all broadcast media with the aim of safeguarding the public interest. The CNA is the interface between the state and the television and radio industry and is empowered by the Romanian parliament "to monitor the editorial content of the broadcasters and take measures in cases of infringement" (CNA, n.d.[46]). The council also oversees the issuing of all broadcast licences. As of December 2021, there are 938 audio-visual licences in force, owned by 331 companies (CNA, 2021[47]).

According to its 2021 report, the CNA ensures observance of the pluralistic expression of ideas and opinions, a diversity of information sources in the media, the protection of Romanian culture and language and those of minority groups, the protection of minors and the defence of human dignity (CNA, 2021[47]). It also aims to safeguard balanced reporting between national broadcasting services and local or regional services (CNA, 2021[47]). In 2021, the council had 65 public meetings and applied 195 sanctions for violations, 66 of which were fines. The most common issues were ensuring correct information and pluralism (101 sanctions), protection of human dignity and right of publicity (58 sanctions), child protection (19 sanctions), and discrimination, xenophobia and defamation (12 sanctions) (CNA, 2021[47]). In 2021, 3 409 notifications and complaints were received from citizens, CSOs and other actors regarding the programmes broadcast by television stations, with the most notifications received for Romania TV, Kanal D and Antena 1 (CNA, 2021[47]).

The council has 11 members, 3 of which are appointed by the government and 2 by the president. Each member is evaluated by the Romanian parliament. The council meets twice every week and holds regular public meetings, conferences and debates. The council's budget is part of the state budget. It proposes the budget needed and Economic Committees of both the Senate and the Chamber of Deputies then discuss the amount. After these discussions, the state budget is voted on by these committees, followed by the plenary of the parliament. However, the CNA does face challenges due to inadequate human and financial resources (EC, 2021[1]).

If a media company violates any element of the regulatory code as outlined in Law 504 of 2002 (CNA, 2002[31]), the council issues a public notification as a first response. Following this, any further misdemeanours are subject to gradual fines before more serious sanctions are considered. The council publishes these decisions on a on its website (https://www.cna.ro).

Source: CNA (n.d.[46]), *Mission*, https://www.cna.ro/-Mission-.html (accessed on 2 May 2022); CNA (2021[47]), *2021 Annual Report*, https://www.cna.ro/Raport-anual-2021.html (accessed on 30 May 2022); EC (2021[1]), *2021 Rule of Law Report: Romania*, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021SC0724&from=EN (accessed on 25 April 2022); interviews with the CNA, February 2022.

Combatting online restrictions on freedom of expression and press freedom

Civil society and government interviewees alike highlighted worrying trends of overreach by public bodies in Romania in restricting and blocking online platforms[19] in recent years, with two of the most recent examples taking place during the COVID-19 crisis and the ongoing war in Ukraine.

During the pandemic, Presidential Emergency Decree 195/2020 (Official Gazette of Romania, 2020[48]) included provisions intended to tackle mis- and disinformation related to COVID-19 and government measures to combat it. The National Authority for Management and Regulation in Communications (ANCOM) was vested with additional powers beyond its mandate to implement this decree (Kokoly, 2021[49]). As the Library of Congress underlines in its legal analysis for this Review, this allowed a body with "no expertise in media content" to remove any reports, publications or websites if they appeared to be spreading false information (2021[8]). The national authority suspended 15 websites without outlining any mechanisms for appeal or redress (Library of Congress, 2021[8]). The Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media expressed concerns regarding the special powers granted to the government by this decree and its potential to curb freedom of information and expression (OSCE, 2020[50]). Similarly, the Romanian Ombudsman requested clarification from the Strategic Communication Group (GCS) – the official COVID-19 communication task force under the direct co-ordination of the Department for Emergency Situations, within the Ministry of Internal Affairs – on how notifications were received, how sites were monitored, and how decisions were made on blocking and removing content (Stirileprotv, 2020[51]). CSOs including APADOR-CH unsuccessfully requested that the composition of this committee be made public (APADOR-CH, 2020[52]).

More recently, organisations such as the European Digital Rights (EDRi) association and the Association for Technology and Internet (APTI) in Romania have raised concerns about the government's decision to block sites linked to the spread of Russian propaganda during the war in Ukraine.[20] Despite not having the mandate to do so, the Romanian National Directorate for Cybersecurity (DNSC) took the initiative to publish a list of domains linked to Russia Today and Sputnik as well as any other media that are "used to deploy cyberattacks and malware that may also impact Romania in the context of the Ukrainian-Russian Crisis" (EDRi, 2022[53]). In April 2022, the list contained 37 domains and 311 Internet Protocol (IP) addresses (EDRi, 2022[53]); however that number has grown to include over 35 000 IPs as of October 2022 (Hot News Romania, 2022[54]). The DNSC did not explain the criteria or outline the system for choosing which websites posed a threat. The list was then forwarded to ANCOM, who shared it with Internet service providers (ISPs) which could then decide whether to block the relevant platform or not (EDRi, 2022[53]). As noted by the APTI, some websites were then blocked erroneously by ISPs, including legitimate journalistic websites and a book blog (APTI, 2022[55]). Some of these cases were highly publicised, with the government acknowledging the error and unblocking the sites after calls from CSOs, journalists and activists. Regardless, civil society interviewees have stressed that blocking websites is not a solution, and that the government should instead focus its efforts on initiatives to educate citizens about identifying mis- and disinformation themselves.[21]

Promoting media literacy and combatting mis- and disinformation

The proliferation of mis- and disinformation online and its evolving nature presents significant challenges for governments as they attempt to ensure that accurate and factual information reaches all social demographics. These phenomena have the potential to divide public opinion, encourage further polarisation across society and even promote hate speech. In addition, mis- and disinformation are harmful to governments as they can undermine people's trust, not only in their fellow citizens but also in the democratic institutions that seek to serve them. In this regard, media literacy and civic education are vital tools to empower citizens to process information in a critical and analytical way and to ensure that they are well-informed, understand the benefits of being active and engaged citizens, and seek opportunities to be involved in decision making.

The 2021 *OECD Report on Public Communication* recommends that governments "engage in a whole-of-society effort to combat misinformation and disinformation […] that includes working with and benefiting from civil society, the private sector and individuals to support the timely and effective sharing of information and data and to promote democratic discussion" (2021[56]). One of the suggested avenues for collaboration is the use of media literacy initiatives, which foster citizens' abilities to identify and disregard false information and fake news (OECD, 2021[56]). Similarly, the 2018 EU report *Tackling Online Disinformation: A European Approach* has acknowledged the role of "educational initiatives and awareness campaigns to improve media literacy" (EC, 2018[57]). The forthcoming OECD *Principles of Good Practice for Public Communication Responses to Mis- and Disinformation* emphasises prevention as one of its ten principles, encouraging proactive government interventions to identify and anticipate disinformation vulnerabilities and risks (forthcoming[58]).

The exposure of citizens to large-scale disinformation, including misleading or outright false information, is a significant challenge for Romania and the rest of Europe (EC, 2018[57]). A 2018 study found that "in general, Romanians lack the abilities to cope with the fake news phenomenon" (Bârgăoanu and Radu, 2018[59]). Moreover, the Open Society Institute Media Literacy Index 2021 ranked Romania 28th out of the 35 European countries (OSI, 2021[60]).

The government has made efforts to combat the phenomenon, notably by earmarking EUR 40 million for media public information and awareness campaigns. However civil society and government interviewees alike noted that this initiative did not strongly emphasise improving the media and information ecosystem but rather focused on providing general financial support to struggling media outlets due to the COVID-19 pandemic.[22] Furthermore, this initiative was criticised by CSOs and journalists for the opaque criteria and selection process used to allocate funding (RSF, 2022[33]). A specific platform to fight mis- and disinformation and share accurate information was also established by the government during the pandemic (https://covid19.stirioficiale.ro). The project was launched through the Authority for the Digitalisation of Romania (ADR) and in partnership with the CSO Code for Romania.

Several interviewees stressed the need for critical thinking and media literacy skills to be embedded in the school curriculum as part of broader civic education.[23] Currently, there are no centralised government initiatives targeting youth or the wider public to raise awareness about the rise of mis- and disinformation, for example. CSOs have attempted to fill this gap. For example, the Romanian Centre for Independent Journalism and the Romania-American Foundation (RAF), with support from the United Nations International Children's Emergency Fund (UNICEF) in Romania, have been running a media literacy programme since 2016, with the aim of teaching students how to identify factual information and separate opinion from fact (UNICEF, 2021[61]). The organisation has entered a partnership with the Ministry of Education to pilot it across the education system, and to ensure sustainability and scale-up. Since 2014, the RAF has also supported testing and developing civic education models in schools and communities through other organisations like *the Romanian Association for Debate, Oratory and Rhetoric* (ARDOR) and the Intercultural Institute Timișoara. About 700 Romanian language teachers were trained in promoting media literacy elements, 600 civic education teachers were introduced to active citizenship project-based learning and approximately 500 teachers were trained in using debate as part of their teaching.[24] In addition, more than 15 000 Grade 7 students experimented with active citizenship in civic education classes, more than 14 000 high school students benefitted from the integration of media literacy into the Romanian language curriculum and about 3 000 students participated in debate clubs.[25] Two university communities of expertise (in Bucharest and Cluj) are now emerging, providing research and insights on civic education prerequisites and outcomes. Romania could be inspired by good practices in OECD Members which also promote media literacy (see Box 4.3).

Box 4.3. Promoting media literacy: Good practices from OECD Members

Estonia

Estonia views the fight against mis- and disinformation as a fundamental element of its digitalised culture and as a national security issue, and has been continually praised for its success in "inoculating against disinformation" (BBC Future, 2022[62]). The Estonian Ministry of Education and Research defines media literacy as "the skills, knowledge and attitudes that help to critically analyse and evaluate information presented in different channels and to form adequate assessments" (Government of Estonia, n.d.[63]). The school curriculum explicitly states that two of the core competencies to be developed in students include:

- **Social and civic competency**: This teaches students to act as informed and active citizens who engage with public officials and contribute to a democratic society, with a focus on respecting diversity and human rights, both in person and in online environments (Government of Estonia, 2021[64]).
- **Digital literacy**: This competency develops students' abilities to use digital technologies, assess the reliability of information and be cognisant of the risks of the online environment. It also fosters their skills in protecting their personal data, digital identity and privacy and encourages students to follow "the same moral and value principles in the digital environment as in everyday life" (Government of Estonia, 2021[64]).

United Kingdom (UK)

The UK Department for Digital, Culture, Media and Sport published its Online Media Literacy Strategy in 2021, which intends to establish a co-ordinated approach to activities on media literacy, address gaps in the existing landscape and create new opportunities for organisations undertaking media literacy initiatives (UK Government, 2021[65]). The strategy specifically emphasises the need to upskill citizens to ensure greater resilience in identifying and stopping the spread of false narratives (UK Government, 2021[65]). It also highlights the role of CSOs with expertise in this area and notes that they are well-placed stakeholders to advocate for what is needed in the education system and to collaborate with governments to deliver media literacy initiatives (UK Government, 2021[65]). The UK Council for Internet Safety (UKCIS) Education Working Group has also developed a framework to encourage media and digital literacy among youth (UK Government, 2020[66]).

Source: BBC Future (2022[62]), "The country inoculating against disinformation", https://www.bbc.com/future/article/20220128-the-country-inoculating-against-disinformation (accessed on 2 June 2022); Government of Estonia (n.d.[63]), *Media Literacy*, https://www.hm.ee/et/tegevused/meediapadevus (accessed on 2 June 2022); Government of Estonia (2021[64]), *Upper Secondary School National Curriculum*, https://www.riigiteataja.ee/akt/129082014021?leiaKehtiv (accessed on 2 June 2022); UK Government (2021[65]), *Online Media Literacy Strategy*; UK Government (2020[66]), *Education for a Connected World*, https://www.gov.uk/government/publications/education-for-a-connected-world (accessed on 2 June 2022).

Reducing barriers for journalists and media outlets

Some of the barriers facing journalists in Romania are increasingly common across Europe, but others pose more of a challenge than elsewhere. This section will discuss the misuse of legal frameworks against journalists, either to restrict information – through the GDPR – or to silence journalists through targeted strategic lawsuits against public participation (SLAPPs). Instances of hate speech, harassment and even some rare cases of physical violence have also contributed to a hostile environment, and few associations or organisations support journalists facing such circumstances.

SLAPPs being used to deny information and silence journalists

In many countries, the daily work of journalists and CSOs is increasingly endangered by lawsuits which aim to silence the voices of those who publicly criticise or investigate powerful individuals, companies or interest groups (OECD, 2022[6]). Such lawsuits, known as SLAPPs, are typically initiated by the private sector or influential public sector entities and serve to harass individuals or organisations, undermine their reputation and drain their financial resources (BHRRC, 2021[67]). SLAPPs refer to lawsuits which are filed by powerful organisations or public figures against CSOs, journalists and ordinary citizens on issues of social, economic, or political significance. They usually take advantage of a power imbalance and aim to silence criticism by depleting the human or financial resources available to the defendant in bringing the case to court (Resource Centre on Media Freedom in Europe, 2019[68]). Journalists interviewed for this Review[26] expressed concern regarding a number of SLAPP cases being used to silence journalists in Romania and cases of the GDPR being used to restrict access to information. Such cases can have an adverse effect on freedom of expression and pluralistic public debate in addition to deterring investigative journalists from uncovering instances of misconduct, misuse of public funds and corruption in the public sector. While interviewed CSOs cautioned that SLAPPs are being initiated by a relatively limited group of public figures and that it is thus difficult to speak of a trend, concerns remain.[27]

As discussed in Chapter 3, Romania is one of a handful of countries in Europe that has decriminalised defamation, alongside Cyprus, Ireland, Malta and the UK (MPM, 2019[69]), which is in line with international guidelines (OCSE, 2017[70]) from the UN Special Rapporteur on Freedom of Expression, the OSCE Representative on Freedom of the Media and the Organization of American States (OAS) Special Rapporteur on Freedom of Expression (OECD, 2021[71]). While this is a good practice in Romania, civil proceedings for potential defamation cases can still pose risks to journalists when used illegitimately. In fact, despite the fact that Romania does not criminalise defamation, over the last five years, the European Court of Human Rights has found more than once that defamation proceedings before Romanian courts against politicians or journalists violated their rights to freedom of expression, noting the importance of protecting political speech and media contributions relating to matters of public interest. It also emphasised that disproportionately high damage payments could have a dissuasive effect on freedom of expression.[28]

At a general level, SLAPP cases have low visibility in Romania and journalists often have difficulty defending themselves (2021[72]). Furthermore, the EU CITIZEN Academic Network on European Citizenship Rights' *Strategic Lawsuits against Public Participation (SLAPP) in the European Union: A Comparative Stud*y report notes that "mainstream media have almost abandoned hard investigative reporting" in Romania (EU-CITZEN, 2021[72]), including because of a fear of legal repercussions. Several interviewees mentioned instances in 2021 when public figures had begun legal proceedings against journalists.[29] The Platform for the Safety of Journalists reported on one such investigation into both Newsweek Romania and Libertatea following a complaint which claimed that journalists at these outlets were involved in "organised criminal blackmail" (CoE, 2021[73]). The Direction of Investigation of Organised Crime and Terrorism Crimes has since closed the complaint, citing a lack of concrete evidence, while the National Anticorruption Directorate (DNA) opened a separate investigation in December 2021 (CoE, 2021[73]). After months of deliberation, prosecutors decided to close the file (International Press Institute, 2022[74]). In 2021 the European Centre for Press and Media Freedom (ECPMF) published a letter from a coalition of CSOs concerned about legal action taken against the Centre for Investigative Media, Dela0.ro (an alternative journalism platform) and three journalists (ECPMF, 2021[75]). CSOs warned that the case – which arose following reporting on sexual abuse allegations – had many characteristics of a SLAPP case. Citing this Romania case, a letter signed by CSOs including Article 19, ActiveWatch and the Civil Liberties Union for Europe recommended that new standards should be introduced at the EU level to combat this worrying trend across the continent (ECPMF, 2021[75]). In 2022, the EC announced it would begin "taking action to improve the protection of journalists and human rights defenders from abusive court proceedings" (EC, 2022[76]). The proposed Directive aims to establish "procedural safeguards and

remedies" for those accused as well as dissuasive penalties for those who launch abusive lawsuits, with judges also having the ability to dismiss "manifestly unfounded lawsuits" (EC, 2022[76]).

The GDPR restricting ATI

Alongside standard delays, many public bodies use data protection rules as a justification to limit ATI, by stating that sharing would be in violation of the GDPR, according to the EC (2021[1]). Furthermore, there have been instances of some using the GDPR as a basis to interrogate journalists and demand that they reveal the sources of their information. One example occurred in 2018, when the National Supervisory Authority for Personal Data Processing (ANSPDCP) sent the RISE Project, a Romanian media outlet, a letter demanding the source of the personal data used in an article and access to the data, citing GDPR regulations, according to Privacy International (2018[77]). In the case of non-compliance, the body warned of a potential fine of up to EUR 20 million (Privacy International, 2018[77]). Privacy International, European Digital Rights and the APTI, together with other CSOs, have addressed the European Data Protection Board, the ANSPDCP and the EC on this issue (Privacy International, 2018[77]). A statement issued in 2018 sent a strong message that the GDPR "must not be used as a tool to silence journalists" (Privacy International, 2018[77]). Furthermore, in 2019, the Association for Technology and Internet (APTI) sent a formal complaint to the EC regarding the problematic approach to the implementation of the GDPR in Romania (EDRi, 2019[78]).

The protection of whistleblowers is also key to safeguarding freedom of expression, freedom of the press and ATI. In a positive step, Romania recently adopted Law 361/2022 in December 2022, on the Protection of Whistleblowers in the Public Interest, which intends to support individuals in reporting wrongdoing or any other threats or harms to the public interest deriving from the private and public sectors, in line with international standards (Government of Romania, 2022[79]).[30]. The Romanian Ministry of Justice launched a public debate on the draft Law in April 2021. CIVICUS reported that despite this consultation, proposals made by APADOR-CH and others were not reflected in the new draft text (CIVICUS, 2021[80]). Specifically, civil society had expressed concerns that under the new law, whistleblowers would have an obligation to report within their institutions before reaching out to media and risked losing their legal protection if they did not comply (CIVICUS, 2021[80]). Under the final provisions of the law, concerns from civil society are somewhat reflected. Whistleblowers are protected if they report using internal and external channels, as well as if they report via unofficial channels when they have reasonable grounds to believe the behaviour or violation in question is a danger to the public interest or if there is a risk of retaliation (Government of Romania, 2022[79]). At the time, the Whistleblowing International Network (WIN) has stated that implementation challenges still lie ahead as, for example, the criteria for anonymous reporting "do not meet international best practice principles" (EU Whistleblowing Monitor, 2023[81]). In March 2023, a draft law to amend the newly adopted legislation was submitted to parliament, with one change removing the need for whistleblowers to provide identifying details alongside reports of wrongdoing. The President of the Association for Cooperation and Sustainable Development noted that the amendments were insufficient to tackle weaknesses in the legislation, including "problematic terminology" in its provisions (EU Whistleblowing Monitor, 2023[81]).

Recognising and addressing hate speech and harassment targeting journalists

As in other countries across the EU, journalists in Romania can also be subject to instances of hate speech, harassment and even in some rare circumstances, physical violence (European Parliament, 2019[82]; IPI, 2020[83]). In fact, the 2022 EU *Rule of Law Report* notes that "the situation regarding threats, instances of harassment and violence against journalists is more concerning" compared to 2021 (EC, 2022[22]). This contributes to a threatening environment for those working in the media overall and hinders the ways in which they operate.[31]

Hateful discourse and online hate speech are increasingly common challenges in many countries (OECD, 2022[6]). While national data on the phenomenon is not available, the 2021 Centre for Independent Journalism report noted that in Romania, reporters are sent comments which "affect them profoundly" and that the number of such incidents is on the rise with comments often containing explicit language and death threats (CIJ, 2021[84]). Interviewees for the Review also noted that hateful discourse was a growing phenomenon including from political figures.[32] As mentioned above, ordinary citizens in Romania have become more distrustful of media and hateful comments generated on media platforms, as well as on social media, in response to reporting are now considered commonplace.[33]

Journalists have also faced harassment and smear campaigns due to their investigative reporting with interviewees stressing their fear that such cases could dissuade journalists, especially investigative journalists, from tackling sensitive issues or those involving public figures in positions of power. Instances of outright violence against journalists are rare in Romania, as is the case for the rest of Europe. However, some notable cases have occurred in recent years. In 2018, RSF reported on police violence against journalists during protests against the Romanian government in 2017-19 (RSF, 2018[85]). More recently in 2021, journalists were attacked by citizens. A journalist and freelance filmmaker, a director and an environmental activist were making a documentary on illegal logging in a remote forest region of Romania when all 3 were attacked by 20 people "armed with sticks and axes" (ECPMF, 2021[86]). The police have since identified and questioned 11 people involved, with CSOs urging them to ensure that they are prosecuted (ECPMF, 2021[86]).

Establishing centralised support for the media sector

There are a range of media outlets across Romania, in both large cities and small towns. However, many regional outlets only publish press releases and are devoid of content from factual or investigative reporting (CIJ, 2020[87]). Interviewees stressed that smaller media outlets across Romania are struggling and often unable to compete.[34] Furthermore, many outlets struggle with hiring and retaining journalists and are understaffed, especially outside major cities (CIJ, 2020[87]). This is partly because of short-term contracts, coupled with precarious conditions and a lack of financial stability.

Journalism associations can serve as centralised bodies to identify barriers facing journalists, allowing them to voice concerns while strengthening their power as a collective rather than as individuals or as sole media outlets. These associations assist journalists in advocating for their profession and voicing their concerns on longstanding and emerging issues, as well as engaging with the government on challenges for the sector. In Romania, national and local organisations exist to represent journalists in this regard. For example, at the national level, the Union of Professional Journalists of Romania (UZPR) was founded in 1919 and is the largest professional membership association for journalists in Romania. The UZPR is a "community of journalists committed to advancing diversity in the news industry and at the heart of its mission to increase members' perspectives and representation in newsrooms, media, and publishing in general" (UZPR, n.d.[88]). A similar example at the local level is the Professional Media Association in Cluj (APPC) (n.d.[89]). However, despite this, interviewees expressed dissatisfaction with the support available for journalists at the national level, noting that the UZPR could do more to raise awareness of the issues affecting media workers and could, for example, conduct surveys and collect data on instances of censorship or harassment.[35] They also noted that unions could be bolstered financially by the government. Romania could look to Finland for good practices in this regard (Box 4.4).

Box 4.4. Good practices from Finland's Union for Journalists

The Union of Journalists (UJF) in Finland is a trade union with nearly 14 000 members working in print, broadcasting, publishing and new digital media (UJF, n.d.[90]). The UJF works to safeguard and promote journalistic standards and regularly influences and engages with policy-making processes that may affect freedom of expression or freedom of the press. In addition, freelance journalists can opt to join the Association of Freelance Journalists in Finland, affiliated with the UJF, for representation on issues they face (OECD, 2021[71]).

The UJF runs several initiatives to protect journalists and offers support through financial resources and legal advice and action. For example, it has issued advice kits for journalists experiencing hate speech and harassment, filed formal complaints with the Finnish prosecutor's office over its reluctance to press charges in cases of severe harassment of journalists and established a fund specifically for journalists who wish to take these cases to court (OECD, 2021[71]). The UJF has conducted surveys among members on the prevalence and content of threats which journalists have received (OECD, 2021[71]).

Source: UJF (n.d.[90]), *About the Union of Journalists in Finland*, https://journalistiliitto.fi/en/about/about-ujf/ (accessed on 6 June 2022); OECD (2021[71]), *Civic Space Scan of Finland*, https://dx.doi.org/10.1787/f9e971bd-en.

Recommendation

To address external pressures and censorship, Romania could:

- Investigate instances of both national and local-level interference in reporting and how such cases have led to censorship and self-censorship, particularly where government funding is involved. The government could try to rebuild trust with journalists by creating a dialogue on their challenges in interacting with the government. In the meantime, funding could be channelled to media outlets through EU programmes for those outlets that feel their work could be compromised by accepting government financing.
- The government could also work with relevant stakeholders to create quality benchmarks to address concerns regarding money invested in media content by political parties from public sources and to avoid conflicts of interest.
- Commit to establishing a multi-stakeholder forum to co-develop standards on editorial codes of conduct and professional norms in the media with journalists.
- Launch an awareness-raising campaign on the importance of citizens varying their sources of information and the media that they consume to confirm its accuracy and to reduce polarisation.

To improve the transparency of media ownership, Romania could:

- Further support the role of the CNA with adequate resources to fulfil its mandate and ensure that the oversight body publishes information on media ownership.
- Consider amendments to existing legislation with explicit requirements for transparency of media ownership so the public can evaluate the objectivity of specific media outlets and identify undue political influence.

To promote media literacy and protect civic space online, Romania could consider:

- Reviewing and publicising the criteria for blocking sites related to mis- and disinformation to ensure transparency and guarantee that affected sites have recourse to mechanisms for appeal as needed.
- Moving away from the risk of restricting freedom of expression online by adopting a holistic approach that prioritises teaching citizens (both children and adults) how to analyse information critically and detect mis- and disinformation.
- Encouraging the Ministry of Education and the Authority for the Digitalisation of Romania to collaborate to identify potential approaches to combatting mis- and disinformation through initiatives to improve media literacy and analytical skills in schools.

To reduce barriers to journalists undertaking their work and contributing to a public interest information ecosystem, Romania is encouraged to:

- Consider exploring the frequency of SLAPP cases in Romania to assess whether this is a common trend and ensure necessary protections are in place against these cases, both in law and in practice, including by introducing anti-SLAPP measures and legislation or amending the Civil Procedure Code.
- Ensure that public officials have adequate information on, and understand the terms of, the GDPR and investigate situations when public bodies have misused it to silence journalists, including by taking appropriate measures to rectify or sanction such conduct.
- Foster independent investigative journalism which can contribute to more transparent and accountable public decision making.
- Consider concerns raised by civil society regarding the newly adopted Law on the Protection of Whistleblowers on an ongoing basis during its implementation, to ensure that whistleblowers are adequately protected in practice from risks of retaliation.

To combat hate speech, online and offline, and harassment, Romania could:

- Work with media outlets and independent journalists to identify ways to track cases of intimidation, harassment, violence and online hate speech targeting journalists, to raise the profile of such threats and foster accountability.
- Undertake preventative measures such as awareness-raising campaigns on the crucial role of journalism in society and the negative impact of hate speech on freedom of expression and democratic debate.
- Consider undertaking regular training of police and law enforcement officials in understanding and identifying cases of hate speech and taking action to deter offenders, including prosecutions.

To strengthen centralised support to media outlets, Romania could:

- Channel EU funds into the existing national union for journalists, which could enable it to provide legal advice and support, undertake analysis on key trends and challenges for the media, and advocate on behalf of media workers.

4.4. Digitalisation, personal data protection and online civic space

Digitalisation is crucial for government outreach to citizens, helps to strengthen trust between citizens and the state, and facilitates a healthy and vibrant civic space. In that regard, it is important for governments to ensure that human rights and values are at the core of digital government and data policies, strategies, projects and initiatives, and that public integrity is upheld through data ethics and the right to privacy (OECD, 2021[91]).

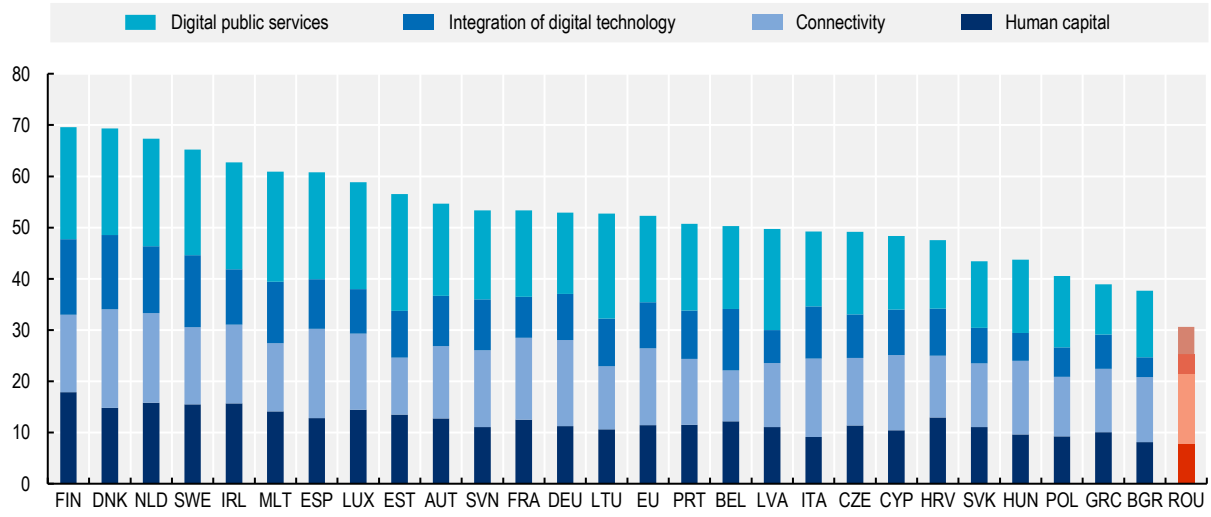
4.4.1. Ongoing initiatives and programmes for digitalisation in Romania

Digital transformation is a powerful tool for renewing civic engagement and establishing new channels of communication with citizens. Since joining the EU, Romania has followed other member states' lead in channelling significant efforts and funds into strengthening digitalisation and Romania's endeavours to improve digital government through various strategies, agendas and working groups are expected to produce significant results in the years to come.[36] The 2020 National Strategy on Digital Agenda for Romania (Government of Romania, 2014[92]) is the main framework outlining Romania's ambitions for digital transformation. The strategy sets key priorities, with upskilling being a cross-cutting objective in all of the following focus areas: i) employment, research and development; ii) climate change and energy sustainability; iii) education; and iv) fighting poverty and social exclusion (Government of Romania, 2014[92]). There are four fields of action: e-government, interoperability, cybersecurity and open data; ICT in different sectors (e.g. health, education); e-commerce; and broadband and digital service infrastructure (EC, 2020[93]).

Several other projects related to the digital agenda are in progress. An EU-funded digital identity system is also under way (EC, 2020[93]). There are a multitude of related working groups in existence, including on interoperability and ICT, with over 300 different people involved. There are currently 15 projects dedicated to making online platforms more accessible,[37] with the government also intending to put all public services online by 2030.[38] Furthermore, an e-Governance Council has been established in the General Secretariat, in charge of implementing the Zero Bureaucracy project, which aims to leverage digitalisation to eliminate unnecessary administrative bureaucracy (Government of Romania, 2022[94]). As a last example, the Executive Agency for Higher Education, Research, Development and Innovation Funding (UEFISCDI), within the Ministry of Education, launched the BrainMap platform in 2016, which serves as a community for all stakeholders working in the fields of research, technology, innovation and entrepreneurship (Romanian Ministry of Education, 2022[95]).

Despite these initiatives, Romania still faces significant challenges in several areas. Currently, it ranks 27th among all EU member states in the 2022 edition of the EU Digital Economy and Society Index, with low scores in digital public services and citizen usership of e-government initiatives, in particular (Figure 4.4).

Figure 4.4. Digital Economy and Society Index 2022: Romania and the EU



Source: EC (2022[2]), *Digital Economy and Society Index*, https://digital-agenda-data.eu/charts/desi-composite#chart={%22indicator%22:%22desi_sliders%22,%22breakdown%22:{%22desi_hc%22:5,%22desi_conn%22:5,%22desi_idt%22:5,%22desi_dps%22:5},%22unit-measure%22:%22pc_desi_sliders%22,%22time-period%22:%222022%22} (accessed on 10 June 2022).

Government interviewees recognised these shortcomings but also note that COVID-19 has accelerated the digitalisation process.[39] For example, the Romanian government set up a National Emergencies Platform (https://fiipregatit.ro/) to inform citizens about various issues, from alerts on the health crisis to announcements on domestic violence cases. As discussed in Chapter 6, many ministries and public bodies have also created their own online platforms to communicate with the public about their activities and opportunities for participation (see section on enhancing online participation portals). The government is now attempting to establish one platform with a single set of credentials for access, without the need to create multiple accounts and search through numerous public platforms. As the main governmental platform has approximately 50 000 annual users (http://e-consultare.gov.ro/), it will be used as a gateway for this interconnected platform. In this sense, the pandemic brought new opportunities and a renewed focus on the need to prioritise digitalisation, but challenges remain regarding institutional architecture and knowledge and skills.

Internal challenges to implementing Romania's digital agenda

Strengthening the institutional architecture

Romania's institutional architecture governing digitalisation has undergone rapid changes. The former Agency for the Digital Agenda (ADR) of Romania, which functioned under the supervision of the Ministry of Communications and Information Society, was dissolved in 2019. The current ADR was established in 2020 (ADR, n.d.[96]) with a mandate to cover all aspects of digitalisation under the Ministry of Research, Innovation and Digitalisation, including strategies, policies and programmes.[40] While interviewees noted that institutional memory is strong, they emphasised a number of ongoing challenges. Some strategies and projects can be box-ticking exercises without clearly allocated responsibilities and interviewees mentioned a general reluctance from senior public officials to delegate, contributing to hesitancy among junior colleagues to take control of projects.[41] Parts of strategies without clear ownership or attachment to specific funds risk being abandoned.[42] The OECD *Strengthening the Innovative Capacity of the Government of Romania: Interim Assessment Report* found that, in general, institutional strategic plans are "under-utilised due to a lack of employee involvement in the[ir] design and implementation". The

General Secretariat is currently undertaking efforts to "improve prioritisation, collaboration and planning around key agendas" to strengthen institutional responsibilities (OPSI, 2022[97]).

The ADR has a National Council for Digital Transformation, which functions as an advisory body that allows the government to collaborate and seek input from the private sector and CSOs (ADR, n.d.[98]). Interviewees noted that the council's creation was a positive shift away from only involving public officials with no subject-specific expertise in digitalisation.[43] However, the council currently meets infrequently and government interviewees themselves noted that whenever there is time pressure on deliverables, "the first thing to go is consulting civil society".[44] Civil society interviewees reported that the council was not active at all over the past two years and that its members were often not informed of available public consultations regarding digitalisation, indicating that there is an opportunity to reinvigorate this institution.[45]

Romania is making ongoing concrete efforts to improve the existing system. The government has set up an Inter-ministerial Committee on e-Government and Reducing Bureaucracy which will propose specific measures to simplify administrative procedures for businesses, citizens and institutions (Government of Romania, 2021[99]). The committee is chaired by the prime minister, together with two vice-chairs, respectively a state counsellor from the Chancellery of the Prime Minister and the chair of the ADR. It aims to provide a framework for debate and decision making on key initiatives, measures and projects on de-bureaucratisation in addition to ensuring coherence in the implementation of the e-government policy proposal (Government of Romania, 2021[99]).

Increasing knowledge and skills among public officials and attracting talent

As mentioned above, upskilling public officials and citizens is a core tenet of Romania's National Strategy on Digital Agenda for Romania (Government of Romania, 2014[92]). Interviewees corroborated the need for more knowledge on digital transformation, greater awareness of the benefits of digital government and the development of digital skills within the public administration. However, they noted that one of the most significant challenges is attracting top ICT talent, especially at senior levels. This is mainly related to salaries and positions being less competitive than in the private sector. That said, Romania is hoping to remedy this and gain more qualified personnel as one of the main aims of its Recovery and Resilience Plan (Box 4.5). While introducing more highly paid positions may not be possible, Romania does intend to invest in digital skills and training for those working on the digital agenda and to digitalise processes across the public administration to make working in the public sector a more attractive prospect. The government could also create more opportunities for increased responsibility and leadership for public officials.

Box 4.5. Efforts to improve the digitalisation of public administration as part of Romania's Recovery and Resilience Plan

The EC has taken numerous measures to help member states deal with the economic fallout caused by the COVID-19 pandemic. To benefit from such support, EU member states have submitted recovery and resilience plans to the EC, which set out the reforms and investments that the individual country plans to implement by the end of 2026 (EC, 2021[100]). Romania's Recovery and Resilience Facility (RRF) entered into force on 19 February 2021. Investments included in the plan are expected to contribute to the areas of sustainability of public finances and the pension system, healthcare, public administration, business environment, education, and green and digital transition. The plans prioritise this green and digital transition in COVID-19 recovery (EC, 2021[100]). Some 21% of the total funding for the plan will be dedicated to reforms and investments that support digitalisation (EC, 2021[100]). In a 2021 analysis of 22 member states' recovery and resilience plans conducted by the Open Procurement EU Coalition, a collaboration of non-governmental organisations and professionals in Europe working on enhancing transparency in procurement and government spending, Romania was one of two

countries (the other was Sweden) scoring top points for transparency, due to its proactive communication on the plan and on final recipients of the funds (EU, 2021[101]).

In the realm of digitalisation, Romania's key objectives include creating an electronic identity card for Romanians, cloud investment, spending on microelectronics and improving connectivity. Digitalisation is a cross-cutting goal across the plan's different sectoral components, including health, justice, environment, public procurement, employment and social welfare (EC, 2021[102]). Regarding the digitalisation of public administration, aims include increasing training and digital competency in government and making the public sector a more attractive prospect for highly skilled individuals. Lastly, the plan proposes a "comprehensive package of reforms and investments in order to provide secure, interoperable, cost-efficient and fast user-centred services for citizens" (EC, 2021[102]), which will necessitate gathering feedback from citizens and listening to their needs.

Source: EC (2021[100]), *Laying the Foundations for Recovery: Romania's Recovery and Resilience Plan*, https://doi.org/10.2775/146116; EC (2021[102]), *Proposal for a Council Implementing Decision on the Approval of the Assessment of the Recovery and Resilience Plan for Romania*, European Commission; EU (2021[101]), *The Need for Transparency over Europe's Recovery and Resilience Facility*, https://www.access-info.org/wp-content/uploads/RFF_transparency.pdf (accessed on 30 June 2022).

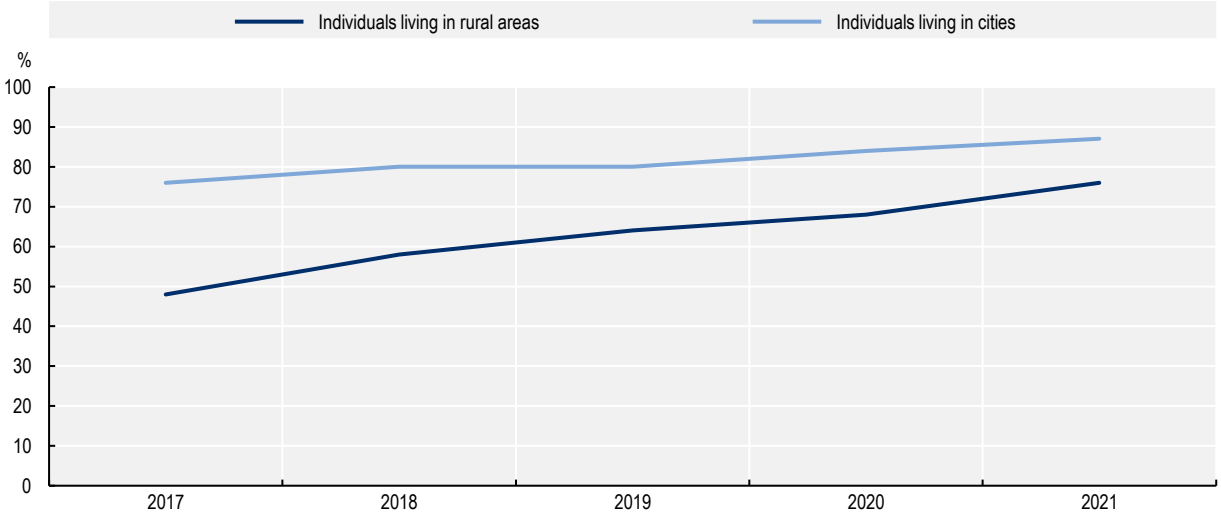
4.4.2. Reducing barriers to inclusive digitalisation

Expanding Internet coverage and usage

Measures to improve digitalisation and strengthen online civic space cannot be inclusive without widespread Internet access and broadband coverage across urban and rural areas. Reliable Internet access allows all citizens to access and share public information, seek guidance on public services and make suggestions or complaints, and use online platforms to engage with their governments on policy making. In Romania, fixed broadband coverage remains an issue. The EU Digital Economy and Society Index (DESI) 2021 illustrates that, while this is universal in most EU member states, Romania is lagging "with less than 90% of households covered" (EC, 2021[103]). In addition, there is a significant rural-urban gap in households with a broadband subscription (54% versus 81%) (EC, 2021[103]). Data from Eurostat illustrates a significant divide in the frequency of access to the Internet (Eurostat, n.d.[104]). In 2021, 87% of individuals in urban areas used the Internet at least once a week, with only 76% in rural areas (Figure 4.5). On a positive note, there has been a steady improvement in access for both population demographics over the last five years, as shown in Figure 4.5.

Figure 4.5. Frequency of access to the Internet in Romania (urban and rural)

Individuals' frequency of access to the Internet: once a week (including every day)



Source: Eurostat (n.d.[104]), *Data Explorer*, https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do (accessed on 10 June 2022).

Bridging digital divides by enhancing ICT literacy

Bridging digital divides – defined by the OECD as "the gap between individuals, households, businesses and geographic areas at different socio-economic levels with regard both to their opportunities to access ICTs and to their use of the Internet for a wide variety of activities" – requires more than providing Internet to all citizens (OECD, 2001[105]). Certain demographic groups may have less education and fewer skills to use ICT effectively. Regarding human capital, Romania is well below the EU average, with less than one-third of adults having basic digital skills (EC, 2022[2]). Only 10% of citizens have above-basic digital skills, according to the EC (EC, 2022[2]).

Romania has taken a number of steps in recent years to do improve digital literacy. The Presidency of Romania, for example, introduced the Educated Romania project after several phases of public consultation, which intends to improve school infrastructure, combat high drop-out levels, cut the functional illiteracy rate and ameliorate teacher education (President of Romania, n.d.[106]). It includes specific targets on "ensuring basic digital skills for both teachers and students" (Radio Romania International, 2021[107]). In addition, as part of the EC 2021-27 Digital Education Action Plan and its Recovery and Resilience Plan, Romania has allocated EUR 881 million for the digitalisation of education (EC, 2021[100]). The plan commits to promoting lifelong digital education for all citizens (EC, 2021[108]). Moving forward, it will be essential for Romania to test digital services and platforms on a representative group of citizens from all social demographics (e.g. with a specific focus on those who could face barriers, including people with disabilities, those with low literacy skills, etc.).

CSOs have also stepped in to assist in addressing these challenges. One example is the Foundation for Digital Education, which Logiscool Romania launched during the COVID-19 pandemic. The foundation provides access to programming courses and digital workshops for children in rural and disadvantaged communities (Business Review, 2021[109]). Furthermore, the Romanian National Coalition (Skills4IT) gathers different types of stakeholders through an open platform to organise coding classes, cybersecurity courses and other educational events (DSJP, 2022[110]). The Ministry of Education and the University of Bucharest are key partners, among others (DSJP, 2022[110]). The Orange Foundation runs a Digitaliada

programme in Romania, which also works to introduce digital and innovative work methods into the teaching, learning and assessment process in schools (DSJP, n.d.[111]).

Recommendations

To reach its ambitious goals on digitalisation, Romania could:

- Streamline existing online platforms for engagement with citizens and ensure that platforms which exist to share information or promote participation are easy to find, intuitive to use and accessible for all population demographics, especially marginalised groups.
- Clarify and promote different public bodies' roles regarding the digital agenda while encouraging senior public officials to delegate responsibilities and establish ownership of projects and tasks.
- Ensure that the National Council for Digital Transformation meets regularly and that stakeholders are given sufficient time to review proposed policies and initiatives and offer input.
- Commit to training or information days for all public officials so they are well-versed in the contribution that civil society can make to the digital agenda and know how to engage stakeholders proactively and systematically in related decision making.

To bridge digital divides, thereby strengthening online civic space, Romania could:

- Continue working towards universal connectivity across rural areas to ensure online civic space is equally inclusive for citizens living in both inside and outside urban areas and continue channelling Recovery and Resilience Facility (RRF) funding towards improving the digital skills of children and adults.
- Financially support CSOs undertaking ICT and digital literacy programmes.
- Test new digital public services and other e-government initiatives with representative groups of citizens to ensure that these platforms are user-friendly and all citizens can use them to engage with their governments, provide their opinions, and submit complaints where necessary

4.4.3. Protecting personal data and privacy

Drawing on the benefits of big data can enable governments to obtain detailed information about citizens and their needs, which can be used for better policy making and service design or delivery. Governments already collect, process and store personal data for a variety of reasons related to taxation, healthcare and education, for example. That said, this data and the combination of datasets in particular can reveal a great deal of personal information about individuals, providing insights into private spheres of life, such as membership in organisations, religious or social affiliations and sexual orientation. As with the protection of privacy more generally, personal data protection is a key component of protected civic space as it helps create an enabling and trustworthy environment in which citizens and civil society actors can operate freely and engage in activities without fear of intrusion or arbitrary interference in their activities or lives.

Legal frameworks

Article 28 of the constitution of Romania states that the confidentiality of letters and other mail, telegrams, telephone conversations and other means of communication is inviolable. Public authorities are obliged to respect and protect private and family life (Government of Romania, 1991[5]). Furthermore, the Civil Code stipulates that every person has the right to have his/her dignity, image and private life respected with nobody subjected to interference with his/her private life, domicile, residence or correspondence without consent (Government of Romania, 2009[112]). This includes intercepting private conversations, recording or using the image or voice of a person in private surroundings without consent, disclosing personal data

concerning a medical condition or treatment, and disclosing personal data such as residence or phone numbers without the person's consent (Government of Romania, 2009[112]). A person may petition a civil court to prevent privacy violations and to request compensation for damages (Government of Romania, 2009[112]).

The Penal Procedure Code details the conditions in which individuals may be subjected to surveillance or the interception of communications (Government of Romania, 2010[113]). Listening, tapping, storage or other kinds of interception or surveillance of communications and related data traffic are prohibited, except for the following cases: i) when participants in the communication carry out such operations; ii) when the participants in the communication previously gave their written consent; or iii) when the competent authorities carry out the operations under the conditions set out by the legal provisions in force (National Supervisory Authority for Personal Data Processing, 2004[114]). Electronic service providers must submit to courts or the competent judicial or national security authorities upon court order, specified traffic data, equipment identification data and location data (National Supervisory Authority for Personal Data Processing, 2004[114]). At the same time, in 2020, the High Court of Cassation and Justice ruled that the publication on a court's portal of personal data such as the domicile and the personal numeric code of a party is a violation of legal provisions concerning the protection of personal data (High Court of Cassation and Justice, 2020[115]). The Romanian Criminal Code states that unlawful privacy violations by recording images or private conversations in a house or room are punishable by imprisonment from one to six months or a fine (Government of Romania, 2010[113]). Furthermore, the unlawful disclosure, dissemination, presentation, or transmission of such conversations or images shall be punished with imprisonment from three months to two years or a fine (Government of Romania, 2010[113]).

As discussed above in the area of data protection specifically (see section on the GDPR restricting ATI), Romania has transposed the GDPR into national legislation, thereby replacing previous data protection legislation in place since 2001. In 2001, Romania also ratified the Council of Europe's Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data (Government of Romania, 2001[116]). The convention covers the automatic storage of data, carrying out operations on data, and the alteration, erasure, retrieval or dissemination of such data. It likewise sets safeguards against abusive processing of personal data and states that personal data revealing racial origin, political opinions, or religious or other beliefs, criminal convictions, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards. Appropriate security measures must be taken against accidental or unauthorised destruction or accidental loss as well as against unauthorised access, alteration or dissemination. While the GDPR is directly applicable in Romania, Law 190/2018 also serves to implement several provisions (Government of Romania, 2018[117]; Library of Congress, 2021[8]). Law 129/2018 outlines the establishment, organisation and functioning of the National Supervisory Authority for Personal Data Processing (Government of Romania, 2018[118]).

Institutional frameworks and constraints

The National Supervisory Authority for Personal Data Processing (ANSPDCP) and the National Authority for Management and Regulation in Communications (ANCOM) are the main public bodies with a mandate for data protection and privacy and ensuring open Internet and net neutrality. In particular, the ANSPDCP is the "guarantor of respecting the fundamental rights to private life and to the protection of personal data" (ANSPDCP, n.d.[119]). The authority is tasked with monitoring compliance with the GDPR and applying sanctions and corrective measures to public authorities or private data operators violating the GDPR (Library of Congress, 2021[8]). According to Article 7 of Law 129/2018 (Government of Romania, 2018[118]), the chairperson and vice-chairperson of the authority are appointed by a majority vote of the Senate, which is chosen by the Permanent Bureau, based on recommendations received from parliamentary groups in both houses of parliament. The chairperson of the authority exercises his/her powers upon request or *ex officio*; requests may be made by natural or legal persons (Article 12). As stated in Article 27, the ANSPDCP has its own budget, an integral part of the state budget. The budget is approved by the authority

itself, in consultation with the government, and then submitted for inclusion in the state budget. Objections to the draft budget prepared by the government are submitted to parliament for settlement.

Complaints submitted to the ANSPDCP must be processed within 45 days, though not necessarily finalised. However, the body must inform the data subject about the progress or outcome of the investigation within three months of its submission.[46] If a breach is found, the body can impose fines, suggest remedial action, or formally reprimand or sanction.[47] In the first 4 months of 2021, the ANSPDCP received 1 733 complaints, notifications and reports on security incidents, following which they opened 288 investigations (ANSPDCP, 2021[120]). In its 2020 annual report (ANSPDCP, 2020[121]), the authority indicated it had received a total of 5 480 complaints, referrals and notifications of security incidents, based on which 694 investigations were opened. As a result of the investigations, it issued 29 fines totalling RON 892 116 (approximately EUR 180 302), as well as 64 reprimands and 65 corrective measures (ANSPDCP, 2020[121]). The majority of cases involved infringements of the GDPR (which were also the subject of *ex officio* investigations), disclosing personal data without consent, the processing of images by video surveillance systems and the failure to ensure the security of data processing, among others. The authority also launched 398 *ex officio* investigations, resulting in 9 fines totalling RON 652 020 (approx. EUR 139 000), 9 reprimands and 18 corrective measures. In 2021, the latest report shows that the authority received 5 006 complaints and notifications about security incidents, based on which 691 investigations were opened. As a result, 93 warnings were given and 36 fines were imposed, totalling RON 371 132 (EUR 75 379) (ANSPDCP, 2021[122]).

Despite extensive data on the overall number of complaints, interviewees during the OECD fact-finding mission reported that there is no available breakdown of the types of complaints made annually.[48] In addition, the body faces capacity challenges. As stated on the website, it requires an "allocation of adequate material, financial and human resources for the exercise of our new specific tasks, for the effective application of the EU standards provided in the new adopted regulations" (ANSPDCP, n.d.[119]). The body should have 85 employees by law but currently has 34.[49] In addition, the budget has remained at the same level since 2017-18, despite the fact that its responsibilities have expanded over recent years (ANSPDCP, 2021[122]).

Civil society interviewees acknowledged the ANSPDCP's significant budgetary constraints but remarked that the authority also had opportunities to take more initiative. For example, it currently investigates low-level cases such as minor data breaches in the private sector or the use of closed-circuit television (CCTV) in the workplace, but often misses "the bigger picture" regarding more serious data protection concerns, including those related to misapplication of the GDPR, across the public and private sector.[50] One such case where civil society expected a more significant reaction from the ANSPDCP was regarding data collection during the 2022 census in Romania. Cybersecurity specialists interviewed by Europa Liberă Romania highlighted that methods used by the National Institute of Statistics to encrypt and anonymise personal data were outdated and did not offer sufficient protection to citizens. They also reported that insufficient data security is a widespread challenge for public bodies (Europa Liberă Romania, 2022[123]).

Furthermore, the Law on the National Interoperability Framework has raised concerns as it contains wide-ranging exceptions for political parties and public officials, allowing them to collect sensitive data for their own interests.[51] Romania's government cloud project has also faced criticism from some civil society actors. The project, which intends to bring Romania closer to EU targets on e-government, aims to provide universal access to public services online and create a centralised system for citizen interactions with the state (Euractiv, 2022[124]). According to Romania's commitments, a legislative framework for the project was to be adopted by the end of June 2022 (Euractiv, 2022[124]). Much of the criticism from civil society and other public bodies derived from the government's choice to delegate implementation and oversight of the public cloud to the Special Telecommunications Service and of cybersecurity to the SRI (Euractiv, 2022[124]). The APTI, representatives from the Open Government Partnership, and private sector IT companies alike voiced concern about the choice of responsible agencies and the ability of the SRI to ensure security of citizens' personal data (Euractiv, 2022[124]). The APADOR-CH has raised concerns

about the constitutionality of this choice, noting that security of the cloud cannot be ensured by the secret service and requires establishment of a new civil entity (APADOR-CH, 2022[125])[52]. The Government Emergency Ordinance 89/2022 regarding the establishment, administration, and development of infrastructures and cloud IT services used by public authorities and institutions was adopted in June 2022 (Government of Romania, 2022[126]) and Law 242/2022 on the exchange of data between IT systems and the creation of the National Interoperability Platform was adopted in July 2022 (Government of Romania, 2022[127]). The law on cyber-defence and security was adopted in December 2022, and was challenged by the Romanian Ombudsman for lacking clarity and expanding the powers of the Romanian Intelligence Service (SRI) without establishing clear limits (Romania Insider, 2022[128]).

Recommendations

To protect personal data and the right to privacy, thereby strengthening civic space online, Romania could:

- Ensure all groups or individuals have the same opportunities to participate online and take measures to counter potential concerns and instances of digital exclusion.
- Ensure that individuals better understand how their personal data is collected, stored, and used and that they have the right to access it, delete it and transfer it to the providers of their choice in line with the GDPR. Awareness-raising activities among citizens could be useful in this regard, to provide them with the tools needed to exercise their rights.
- Ensure that oversight bodies for data protection and privacy could thoroughly investigate complaints and appropriately sanction any instances of non-compliance with the legal framework governing personal data protection. Relatedly, oversight bodies could be strengthened with adequate human and financial resources to fulfil their role and to act proactively to strengthen privacy and personal data protection in Romania.
- Continue to monitor the law on national interoperability to ensure it will not allow sensitive data to be collected for personal or political reasons, rather than the public interest.
- Investigate how aggregated and merged datasets could infringe on citizens' right to privacy and take action to rectify any negative side effects of digitalisation, cloud and interoperability projects.
- Institutionalise mechanisms for input from civil society stakeholders on matters of public importance, including legislative proposals that may directly or indirectly involve data collection measures which could amount to surveillance.

4.5. Emerging technology and civic space

4.5.1. Use of AI in the public sector and its potential impact on civic space

Breakthroughs in the field of algorithms, machine learning and AI have led many governments to consider the potential of emerging technology in transforming the design and execution of public policies and services. However, if not employed correctly, AI can be detrimental to fundamental civic freedoms, particularly non-discrimination, thereby excluding and marginalising people (OECD, 2022[6]). For example, algorithmic processing can lead to unfair, inaccurate or biased automated decision making, which can be particularly detrimental when used to underpin or grant access to public services. This can be problematic in the absence of accessible oversight and redress mechanisms when mistakes occur.

The EC has addressed the need for countries to strive for the benefits of AI while also governing emerging risks in stating its ambition to develop "trusted AI based on truly European ethical and societal values" (EC-JRC, 2020[129]). The OECD has been closely following the use of AI in the public sector and launched the first set of intergovernmental policy guidelines on AI in 2019, through the OECD Recommendation of the Council on Artificial Intelligence (OECD, 2019[130]). Romania was one of the 42 countries (including all OECD Members) that adopted the principles (OECD, 2019[130]). They aim to promote AI "that is innovative and trustworthy and that respects human rights and democratic values" (OECD, 2019[130]). In short, the OECD recommends that AI should be designed to respect the rule of law with appropriate safeguards from human intervention, alongside strong accountability mechanisms around AI systems (OECD, 2019[130]).

4.5.2. Ongoing strategies and initiatives for AI

Romania has recognised AI's advantages and has several ongoing strategies and initiatives in this area. First, it has a broad National Strategy for Research, Innovation and Smart Specialisation 2021-2027, led by the Ministry of Research, Innovation and Digitalisation, which benefitted from an extensive consultation process which drew input from 150 stakeholders and experts and over 2 352 responses to an online questionnaire (Romanian Ministry for Research, Innovation and Digitalisation, 2021[131]). This strategy intends to stimulate collaboration between the public and private sectors on using science, technology and innovation to address economic and societal challenges and seize existing opportunities to be a recognised leader and create an environment that fosters talent, encourages entrepreneurship, and tackles national and international challenges (Romanian Ministry for Research, Innovation and Digitalisation, 2021[131]). Furthermore, regarding AI specifically, the Research Institute for Artificial Intelligence in the Romanian Academy has a research programme and reflection group which focuses on the societal impact of ICT and AI on humanity. The OECD Artificial Intelligence Policy Observatory (OECD.AI) dashboards note the main objectives of the programme are to:

- Draft adequate regulation and transpose EU directives on AI into Romanian legislation.
- Anticipate and prevent ethical challenges which may arise in the use of AI.
- Forewarn public officials and other stakeholders about "unavoidable changes" that could be triggered by AI (OECD.AI, n.d.[132]).

In 2020, Romania endorsed an EU-funded project to create an AI strategy for 2021-27 (JRC/OECD, 2021[133]). The EU Joint Research Centre (JRC)-OECD *National Strategies on Artificial Intelligence* report notes that Romania's forthcoming AI strategy will seek to develop education, skills and training in AI, increase AI research and development in the public and private sectors, and create working groups and platforms (JRC/OECD, 2021[133]). The strategy was originally intended to be published for public debate by the end of 2019 (Romania Insider, 2019[134]); however, interviewees noted that no public draft of the strategy was available as of December 2022. That said, a public consultation phase on the strategy has begun and has thus far received over 800 inputs,[53] which are currently under review by the Ministry of Research, Innovation and Digitalisation.[54] During the design and implementation phases of the strategy, Romania could take inspiration from other countries on prioritising civil society engagement in the process (Box 4.6).

Box 4.6. Involving citizens and civil society in policy making on AI

Germany

The Artificial Intelligence Strategy of the German Federal Government highlights the role of citizens and civil society in ensuring that AI development is "public good-oriented" (Government of Germany, 2020[135]). Germany has already began involving CSOs and other stakeholders in AI policy making, with its AI Observatory organising a workshop with experts from business, science, politics, and CSOs to discuss the potential and challenges of creating indicators to monitor and evaluate the use of AI. The strategy also stresses that the success of AI initiatives relies on strengthening "societal dialogue and opportunities for citizens to have a say, and using new forms of effective participation" (Government of Germany, 2020[135]). One example is the Civic Innovation Platform project, which aims to connect civil society actors and social partners around the country to share ideas and collaborate on projects.

Portugal

The strategy AI Portugal 2030 underlines the importance of public participation and multi-stakeholder development in AI policy making. In order to do so, Portugal recognises that inclusion and education to foster human capital are key, emphasising digital inclusion, women and minorities in science, technology, engineering and mathematics (STEM), and ICT competency. The strategy's main goal is to foster a collective process that mobilises all citizens (Government of Portugal, n.d.[136]). It states that an all-of-society approach is needed to encourage the population to participate in debates about AI and voice their priorities. It also notes that it is essential to champion diversity to ensure a human rights-based approach and to draw on collective intelligence.

Source: Government of Portugal (n.d.[136]), *AI Portugal 2030*, https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=%3D%3DBAAAAB%2BLCAAAAAAABACzMDQxAQC3h%2ByrBAAAAA%3D%3D (accessed on 9 June 2022); Government of Germany (2020[135]), *Artificial Intelligence Strategy of the German Federal Government*, https://www.ki-strategie-deutschland.de/files/downloads/Fortschreibung_KI-Strategie_engl.pdf (accessed on 9 June 2022).

Many other related projects are in operation at both the national and local levels. For example, regarding education and research, several workshops on AI have been organised by Romanian researchers working for the Eastern European Machine Learning (EEML) summer school (Government of Romania, n.d.[137]). The University of Bucharest runs a Recent Advances in AI conference, with the most recent in 2019 (University of Bucharest, 2019[138]). Furthermore, the city of Bucharest has a Bucharest.AI community, which adheres "to the European values of Artificial Intelligence (AI) ecosystems and aims to enrich the region with AI expertise and initiatives that benefit the society as a whole" (Bucharest.AI, n.d.[139]).

Recommendations

To promote ethical and people-centred AI and algorithmic decision making that does not restrict civic space, Romania could:

- Ensure that its upcoming AI strategy emphasises the potential risks to civic freedoms posed by the use of algorithmic decision making in the public sector and analyses whether there are gaps in existing legal frameworks around AI.
- Conduct human rights impact assessments on relevant policies and laws to identify the potential for bias in the application of algorithms and monitor their use in the public sector as this area develops, in consultation with the public and civil society, to ensure that civic freedoms are respected, and that people have access to effective and accessible oversight and redress mechanisms for potential violations.
- Ensure transparency and accountability regarding algorithmic and automated system decision making and develop both education and public communication initiatives on the use of automated decision making in the public sector.
- Systematically engage and consult with CSOs and citizens on the use of AI in policy making and service design and delivery.

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Notes

[1] The OECD defines misinformation as "false or inaccurate information not disseminated with the intention of deceiving the public" and disinformation as "false, inaccurate, or misleading information deliberately created, presented and disseminated to deceive the public" (OECD, n.d.[141]).

[2] *Ex officio* refers to instances where a public body can initiate actions on his/her own initiative, and not based on any individual request or complaint.

[3] Interview with media worker, April 2022; interview with CSO representative, May 2022.

[4] Interview with media worker, April 2022; interview with CSO representative, May 2022

[5] Information provided by the General Secretariat, December 2021.

[6] Interview with government body, February 2022.

[7] See http://dialogsocial.gov.ro/wp-content/uploads/2017/07/Web-Ghid-A4-19-pagini-4-iulie-cu-text.pdf.

[8] The RSF assigns points to countries from 0-100 (with 0 being the worst score and 100 being the best). The situation in countries is classified as "good" in the range of 85-100 points, "satisfactory" in the range of 70-85 points, "problematic" in the range of 55-70 points, "difficult" in the range of 40-55 points and "very serious" in the range of 0-40 points.

[9] The Freedom House Freedom in the World Index assigns 195 countries to free, partly free, or not free status. The category is determined by combining the overall score awarded for political rights with the overall score awarded for civil liberties, after being equally weighted.

[10] Freedom in the World uses a two-tiered system consisting of scores and status. A country or territory is awarded 0 to 4 points for each of 10 political rights indicators and 15 civil liberties indicators, which take the form of questions; a score of 0 represents the smallest degree of freedom and 4 the greatest degree of freedom.

[11] Interview with media worker, April 2022; interview with media worker, May 2022.

[12] Interview with media worker, April 2022; interview with media worker, May 2022.

[13] Interview with media worker, May 2022.

[14] Interview with media worker, May 2022.

[15] Interview with government body, February 2022.

[16] Interview with media worker, April 2022.

[17] Interview with CSO representative, September 2022.

[18] Interview with CSO representative, April 2022.

[19] Interview with government body, February 2022; interview with CSO representative, May 2022; interview with media worker, May 2022.

[20] Interview with CSO representative, May 2022.

[21] Interview with CSO representative, May 2022; interview with media worker, May 2022.

[22] Interview with media worker, April 2022; interview with government body, February 2022.

[23] Interview with CSO representative, May 2022; interview with media worker, April 2022; interview with media worker, May 2022.

[24] Interview with CSO representative, October 2022.

[25] Interview with CSO representative, October 2022.

[26] Interview with CSO representative, May 2022; interview with media worker, April 2022; interview with media worker, May 2022.

[27] Interview with media worker, May 2022; interview with CSO representative, May 2022.

[28] European Court of Human Rights, Gheorghe-Florin Popescu vs. Romania, Application No. 79671/13, Judgment of 12 January 2021, paras. 35-38; Monica Macovei vs. Romania, Application No. 53028/14, Judgment of 28 July 2020, paras. 88 and 96; and Ghiulfer Predescu vs. Romania, Application No. 29751/09, Judgment of 27 June 2017, paras. 52 and 61. See also Petro Carbo Chem S.E. vs. Romania, Application No. 21768/12, Judgment of 30 June 2020.

[29] Interview with media worker, May 2022; interview with CSO representative, May 2022.

[30] The new law replaced Law 571/2004, which was praised as the first of its kind in Europe.

[31] Interview with media worker, May 2022.

[32] Interview with media worker, May 2022.

[33] Interview with media worker, May 2022; interview with media worker, April 2022.

[34] Interview with government body, February 2022; interview with CSO representative, June 2022.

[35] Interview with media worker, May 2022; interview with media worker, April 2022.

[36] Interview with government body, February 2022; interview with government body, April 2022.

[37] Interview with government body, February 2022.

[38] Interview with government body, February 2022.

[39] Interview with government body, February 2022.

[40] Interview with government body, February 2022; interview with government body, April 2022.

[41] Interview with government body, February 2022.

[42] Interview with government body, February 2022.

[43] Interview with government body, February 2022.

[44] Interview with government body, February 2022.

[45] Interview with CSO representative, May 2022.

[46] Interview with government body, October 2022.

[47] Interview with government body, February 2022.

[48] Interview with government body, February 2022.

[49] Interview with government body, February 2022.

[50] Interview with CSO representative, May 2022.

[51] Interview with CSO representative, May 2022.

[52] The Romanian Ombudsman intended to take the emergency order regulating this law to the Constitutional Court, following a concerted advocacy effort by CSOs, but ultimately did not follow up on the request, on the basis that parliament may still change the draft law during the legislative approval process (Romanian Ombudsman, 2022[140]).

[53] Interview with CSO representative, October 2022.

[54] Interview with government body, February 2022; interview with government body, April 2022.

5 The enabling environment for civil society organisations in Romania

This chapter provides an overview of the enabling environment for civil society organisations in Romania. It examines key legal and policy frameworks and practices, including those governing the registration of associations, public utility status for CSOs and access to funding. It reviews challenges and opportunities related to CSO capacity and governance, providing concrete recommendations for the government on strengthening and supporting the sector in recognition of its positive role in society.

5.1. Introduction

The right to freedom of association for individuals and groups requires states to refrain from interfering with the rights and freedoms of civil society organisations (CSOs) and incorporates an obligation to create an enabling environment for such entities. This obligation includes guaranteeing the functioning of associations, according to the European Court of Human Rights (ECHR, 2005[1]), and guidance from the OSCE/ODIHR-Venice Commission's Joint Guidelines on Freedom of Association (Guiding Principle 2) (2015[2]).[1] These guidelines reiterate that states should ensure legal provisions concerning associations are well crafted, clear and precise; are adopted through a broad, inclusive and participatory process; and are subject to regular review (OSCE/ODIHR-Venice Commission, 2015[2]). Moreover, legal provisions concerning associations need to be interpreted and applied in a consistent manner to allow the effective exercise of the right to freedom of association. Creating an enabling environment for civil society organisations (CSOs) may also include simplifying regulatory requirements, ensuring that those requirements are not unduly burdensome, facilitating access to resources and taking positive measures to overcome specific challenges confronting disadvantaged or vulnerable persons or groups (OSCE/ODIHR-Venice Commission, 2015[2]).

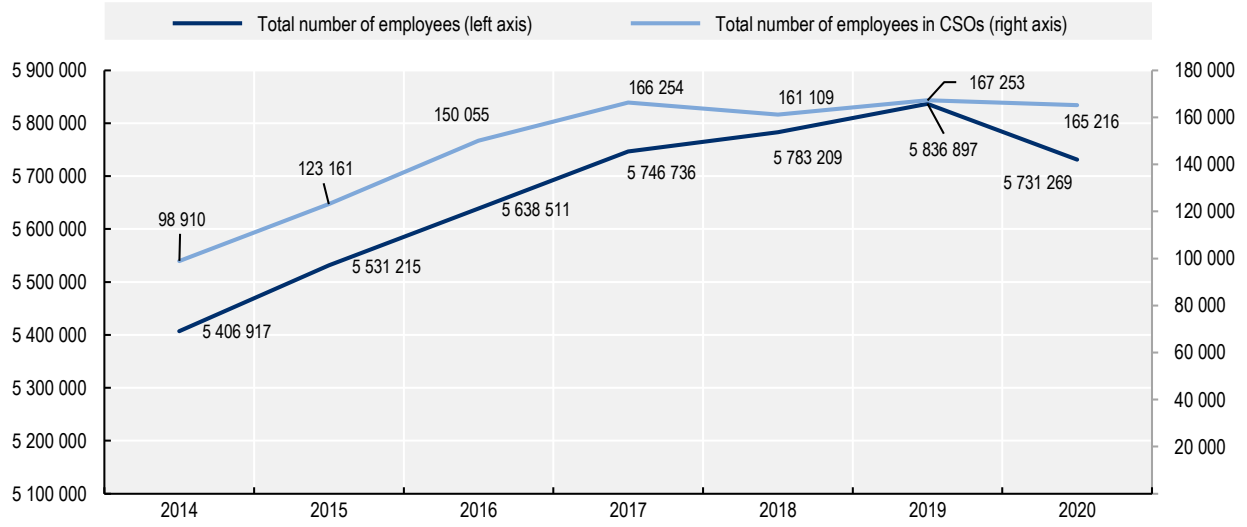
5.1.1. An introduction to the civil society sector in Romania

Overview of the CSO landscape in Romania

CSOs in Romania work in a variety of sectors and have played an important role in recent crises, such as the COVID-19 pandemic and the refugee emergency resulting from Russia's large-scale aggression against neighbouring Ukraine. Based on a World Bank study of 286 CSOs in Romania, their main areas of activity include sports and related activities, education, social assistance, financial activities, agriculture and animal care, consulting, health, culture and mass media, and trade and energy (World Bank, 2020[3]). Most CSOs are concentrated in cities, with fewer and smaller organisations active at local level. As in many OECD Members, local organisations appear more likely to encounter organisational and funding challenges, given that they have fewer resources, limited access to funds and less experience with bureaucratic procedures. In general, the civil society sector has remained relatively small compared to that of other European countries (Müller and Fernandes, 2021[4]).

The sector is primarily volunteer-driven, a trend that has grown in the past five years with recent reports and surveys – based on limited numbers of respondents – indicating that roughly half of CSOs in Romania have no full-time employees (CMON, 2020[5]; Elbers and Grigore, 2019[6]; World Bank, 2020[3]). An earlier 2017 report with a wider scope published by the Civil Society Development Foundation indicated that 68% of CSOs in Romania had no employees at all. Based on fiscal data found on the website of the Ministry of Finance from 2021, one CSO's rough estimate surmised that this number may now surpass 70%. The above surveys from 2019 and 2020 indicate that among those that do employ staff, the vast majority of organisations are reported to have up to 10 employees on average, with very few (8-9%) employing more, and even fewer operating without engaging volunteers (CMON, 2020[5]; Elbers and Grigore, 2019[6]). At the same time, Figure 5.1 shows that employment figures in the CSO sector are relatively stable and have risen overall since 2014, compared with general employment figures, which have seen a downturn since 2019.

Figure 5.1. CSO employment in Romania, 2014-20



Note: The data cover "private administration organisations". This category of organisations is wider than those covered by the National Register and the types of entities listed on the website of the Ministry of Finance, as they include entities which are not obliged to submit annual fiscal statements.
Source: INSSE Data 2014-2020 from INS (n.d.[7]), *Homepage*, https://insse.ro/cms/ro (accessed on 26 October 2022).

There has been a noticeable increase in activism over the last decade, with the creation of many new CSOs. The sector has seen a shift from civic engagement based on personal or common interests (e.g. trade unions, interest groups) to broader issue-driven activism and civil society work on subjects such as corruption and the environment. Based on various reports and studies, certain "trigger events" have galvanised large groups of people, leading to protests and to the creation of new CSOs focused on specific problems (World Bank, 2020[3]; Volintiru and Buzașu, 2020[8]).[2] For example, in 2013, a draft law approving the Roșia Montană gold mining project led to pro-environment and anti-corruption protests; similarly, a deadly 2015 fire in the COLECTIV nightclub in Bucharest that revealed instances of local corruption led to the founding of several new civic technology organisations. In addition, the onset of COVID-19 resulted in the establishment in 2020 of new organisations working in the social, education and health sectors to combat the virus.

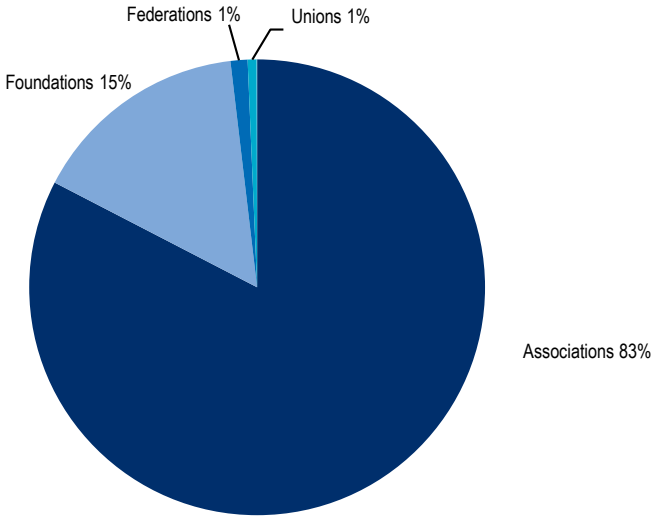
Overall, the sector has proven resilient and flexible when responding to societal challenges and recent health and humanitarian crises caused by the pandemic and war in Ukraine. During the pandemic, civil society, the private sector and other relevant stakeholders collaborated with the government to contain the virus's negative effects, especially in service provision and emergency relief (Buzaşu and Marczewski, 2020[9]). CSOs also co-operated with the business sector and media outlets (USAID, 2021[10]). During this time, new ad hoc coalitions and informal groups of CSOs advocated for a variety of human rights issues, including freedom of peaceful assembly, access to public data and personal data protection, access to education, support for vulnerable groups, environmental matters, health, human trafficking, gender, sexual education and culture. More recently, CSOs from a range of sectors have mobilised and continue to provide assistance to refugees arriving in Romania as a result of the war in Ukraine. At the same time, challenges remain, both in relation to pandemic responses and in general (World Bank, 2020[3]), especially for CSOs that started as movements or informal groups, rather than registered organisations. Further professionalisation, capacity building and training are still required, with the majority of CSOs surveyed by the World Bank in 2020 noting that training is especially needed in the areas of fundraising (73%), developing partnerships (57%), managing organisational culture (45%) and improving CSOs' public image (44%) (World Bank, 2020[3]).

According to the United States (US) Agency for International Development's 2021 Sustainability Index, the sustainability of the sector is still evolving (USAID, 2021[10]).[3] At the same time, this and previous indexes indicate that it has become more stable since 2019, before which it had experienced a decline for several years (USAID, 2021[10]). Perceptions of CSOs among citizens is relatively positive. A national survey conducted in 2021 by the Romanian Institute for Evaluation and Strategy (IRES) indicated that 25% of the Romanian population had high or very high trust in CSOs, a proportion that was higher than that of the presidential administration (22%), government (21%) or parliament (13%) (IRES, 2021[11]). Notably, the level of trust in CSOs was greater among the younger generation: 31% of respondents between the ages of 18 and 35 expressed high or very high trust in CSOs.

Available data on the sector

The National Register for Not-for-profit Legal Persons (hereafter "National Register") operated by the Ministry of Justice (https://www.just.ro/registrul-national-ong/) indicates that more than 120 000 CSOs are registered in Romania today. As of the end of September 2022, the register contained entries from 102 989 associations, 19 282 foundations, 1 497 federations, 763 unions and 36 foreign legal entities. Based on these numbers, Figure 5.2 shows that the majority of registered CSOs are associations (83%), followed by foundations (15%). Informal associations also exist but are often temporary in nature and small in size.

Figure 5.2. Types of registered CSOs in Romania, September 2022



Note: From the total of 124 010 CSOs registered in the Ministry of Justice's National Register, all entries marked as deleted ("radiate"), dissolved ("dizolvata") and in liquidation ("in lichidare") were removed.
Source: Ministry of Justice (n.d.[12]), *National Register for Not-for-profit Legal Persons*, https://www.just.ro/registrul-national-ong/ (accessed on 22 July 2022).

However, given the lack of consistent and uniform data gathering on the sector, it is unclear how many CSOs listed in the above registry remain active.[4] The most recent comprehensive conclusions as to the number of active CSOs in Romania date from a 2017 report issued by the Civil Society Development Foundation, which based its findings on numbers from 2015 (FDSC, 2017[13]). The report found that of 88 650 CSOs registered in the National Register in 2015, less than half (only 42 707) were active.

The Ministry of Justice publishes lists of all registered CSOs on a regular basis in the National Register. However, it does not provide an analysis of the data or other information relating to the sector that could

indicate the number of active CSOs. There are several government sources of data relevant to the CSO sector[5] – some of which are publicly accessible while others provide limited access. However, according to CSOs, their usefulness is limited, due to the difficulty of using raw data and the fact that relevant databases are not interoperable.[6] Moreover, while raw data are available in the National Register, it does not always reflect the data found in courts where CSOs register (see the section on streamlining the registration process for CSOs). Some relevant data breakdowns and analyses on the sector may be obtained – for a fee – from the Romanian National Institute of Statistics but CSOs expressed doubts about their accuracy.[7]

5.1.2. Strengthening partnerships with the civil society sector

While partnerships between CSOs and the state exist, they are largely ad hoc and often tied to certain sectors or ongoing events and challenges, such as the pandemic or the war in Ukraine (Box 5.1). A 2021 government analysis evaluating central and local public administration practices in decision-making processes noted that, while Article 51 of Government Ordinance 26/2000 requires structures be put in place to manage the relationship with associations, foundations and other similar entities listed in the ordinance, only 46.7% of responding institutions had implemented this provision (General Secretariat of the Government, 2021[14]). At the same time, during the OECD fact-finding mission, civil society representatives involved in partnerships with central and local government authorities reported that they were generally successful.[8]

Box 5.1. Examples of initiatives in Romania to enhance partnerships between government and civil society

Volunteering programme and follow-on initiatives

In recent years Romania has sought to enhance partnerships between government and civil society. Since 2020, the General Secretariat of the Government (hereafter "General Secretariat") has organised three annual editions of the Promoters of Volunteering programme to increase local authorities' support for volunteering. This programme aims to develop the operational capacity of CSOs by stimulating partnerships between civil society and local public administrations and encouraging joint activities and efforts at the central and local levels to benefit local communities.

In 2020, 12 non-governmental organisations (NGOs) from all national development regions were involved in the programme and over 400 representatives of public institutions and civil society participated in events. One year later, the programme was attended by 19 NGOs and all 4 associative structures of local public authorities, with over 600 representatives of public institutions and civil society participating in the events. In 2022, numerous activities took place to support partnerships in the education sector and ensure the implementation of key legislation and strategies. The programme has yielded a 2020 guide on optimising partnerships between public authorities and civil society and a 2021 handbook of good practices on the partnership between public authorities and CSOs (General Secretariat of the Government, 2020[15]; 2021[16]).

Pandemic support

In 2020, the Civil Society Development Foundation drafted a position paper for the government, following input from 130 organisations across the country, with a list of measures to support Romanian CSOs and their beneficiaries during the COVID-19 pandemic. The paper, which more than 550 organisations endorsed, called for measures such as the establishment of an emergency fund for CSOs providing support, tax exemptions, and other forms of subsidies and allowances (FDSC, 2020[17]). It served as the basis for a series of meetings with the prime minister on themes including the

environment, volunteering, education and children's rights, and more involvement by civil society in decision-making processes, on the basis of which the prime minister agreed to enhance participatory processes and decision making during the crisis. Interviewed CSOs viewed the pandemic as having improved co-operation with the state during the crisis but lamented the absence of consistent government efforts in this regard.[1]

In one notable example of collaboration, 788 CSOs self-organised via the votong.ro platform (Code for Romania, n.d.[18]), an organisation focused on enhancing digitalisation. Fourteen CSO representatives were selected to participate in Romania's Economic and Social Council, with the prime minister appointing all except for a representative of "Sex versus Barza", a CSO promoting sexual education. After an extensive appeal process involving public petitions and the media, the prime minister reconsidered his decision in January 2021 and appointed the NGO (Hot News Romania, 2020[19]).

Partnering to support Ukrainian war refugees

There have been numerous examples of effective co-operation between the administration and civil society to support the large numbers of Ukrainian war refugees arriving in Romania since February 2022.[2] For example, Code for Romania (https://code4.ro/ro/code-for-romania-war-task-force) partnered with the government, relevant United Nations (UN) agencies and the Romanian National Council for Refugees, to set up online platforms for refugees (https://dopomoha.ro/ro) for information sharing; management and distribution of aid; and access to medical treatment. The Coalition for the Rights of Migrants and Refugees (CDMiR) (https://cdmir.ro) was also, along with other stakeholders, involved in drafting action plans setting out measures to assist displaced persons from Ukraine in six thematic areas (employment, housing, education, health, children and youth, and vulnerable persons). The action plans were adopted by the government at the end of June 2022 by Emergency Ordinance 100/2022 (Official Gazette of Romania, 2022[20]).

1. Interviews with CSOs in September 2022.

2. Since 24 February 2022, the Office of the UN High Commissioner for Refugees (UNHCR) has recorded 1 391 826 border crossings from Ukraine into Romania as of 16 October 2022. For a similar time period, UNHCR specifies that 83 748 Ukrainian refugees have been recorded in Romania. See https://data.unhcr.org/en/situations/ukraine/location/10782.

Source: USAID (2021[10]), *Civil Society Organization Sustainability Index - Central and Eastern Europe and Eurasia*, https://www.fhi360.org/projects/civil-society-organization-sustainability-index-csosi; Code for Romania (n.d.[21]), *Code for Romania War Task Force*, https://code4.ro/ro/code-for-romania-war-task-force (accessed on 15 June 2022); General Secretariat of the Government (2021[16]), *Good Practice Manual on Partnership between Local Public Authorities and Non-governmental Organisations Working in the Field of Volunteering, 2nd edition*, https://sgg.gov.ro/1/wp-content/uploads/2016/04/Manualul-de-bune-practici.pdf; General Secretariat of the Government (2020[15]), *Guide on Partnership Optimisation between Public Authorities and the Associative Environment for Volunteering*, https://sgg.gov.ro/1/wp-content/uploads/GHID_FINAL.pdf; Hot News Romania (2020[19]), "The scandal in the Social Economic Council", https://www.hotnews.ro/stiri-esential-24495716-scandalul-din-consiliul-economic-social-dupa-presedinta-asociatiei-sexul-barza-fost-inlocuita-peste-noapte-guvern-persoana-care-nici-nu-candidase-reactia-adrianei-radu.htm (accessed on 29 July 2022); Code for Romania (n.d.[18]), *VotONG*, https://votong.ro/ro/; FDSC (2020[17]), "Non-governmental organisations need support measures to adapt and actively contribute to solving social problems caused by the Covid-19 pandemic", https://www.stiri.ong/assets/files/document_de_pozitie_ong-urile-au-nevoie-de-masuri-de-suport-in-contextul-covid-19_fdsc.pdf; Official Gazette of Romania (2022[20]), *Emergency Ordinance No. 100/2022 Approving and Implementing the National Plan of Measures on the Protection and Inclusion of Displaced Persons from Ukraine, Beneficiaries of Temporary Protection in Romania (Among Others)*, https://legislatie.just.ro/Public/DetaliiDocument/256915.

One way in which the government has sought to support the civil society sector is through the CONECT platform, on which CSOs can register to enhance co-operation and communication between them and public authorities (Box 5.2).

Box 5.2. Romania's CONECT platform

The General Secretariat manages the CONECT platform (http://conect.gov.ro), a "catalogue of non-governmental organisations for evidence, consultation and transparency". The platform aims, by its own account, to promote the activities of registered CSOs and help improve their volunteer work. Its targeted users are members of civil society in addition to officials in public institutions which deal with civil society relations, as well as those in charge of decisional transparency more generally. Overall, as indicated on the website, this platform aims to be a primary "source of information on active and relevant associations and foundations in Romania".

CONECT's stated objectives are to:

1. Provide information on and enhance consultation with NGOs.
2. Develop a resource regularly used by the public administration to communicate with as many civil society actors as possible.
3. Promote the activity of NGOs.
4. Provide information on the work of NGOs.
5. Create a framework for collaboration between NGOs and the public administration.

CSOs can register on the platform by filling in an online form and may then also sign an agreement wherein they permit their data entered on the platform to be made public and to be used by representatives of public authorities at the central and local levels. Organisations may sign up for a regular newsletter, informing them about developments relevant to the sector. The website also provides information on national and international funding opportunities for CSOs.

Some 125 organisations operating in the county of Bucharest have signed up. In other counties, the numbers are smaller, e.g. in Cluj (31 CSOs registered), Brasov (22 CSOs registered) and Iași (14 CSOs registered), which may suggest a lack of awareness of the site (Government of Romania, 2022[22]). Statistical images on the website indicate that most registered CSOs belong to the social sector.

During the OECD fact-finding mission, not all interviewed CSOs were aware of this website, with differing accounts of its usefulness and a lack of clarity as to its purpose and intended future development.[1]

1. Interviews with CSOs, July and October 2022.
Source: Government of Romania (2022[22]), CONECT.ro, http://conect.gov.ro/1/.

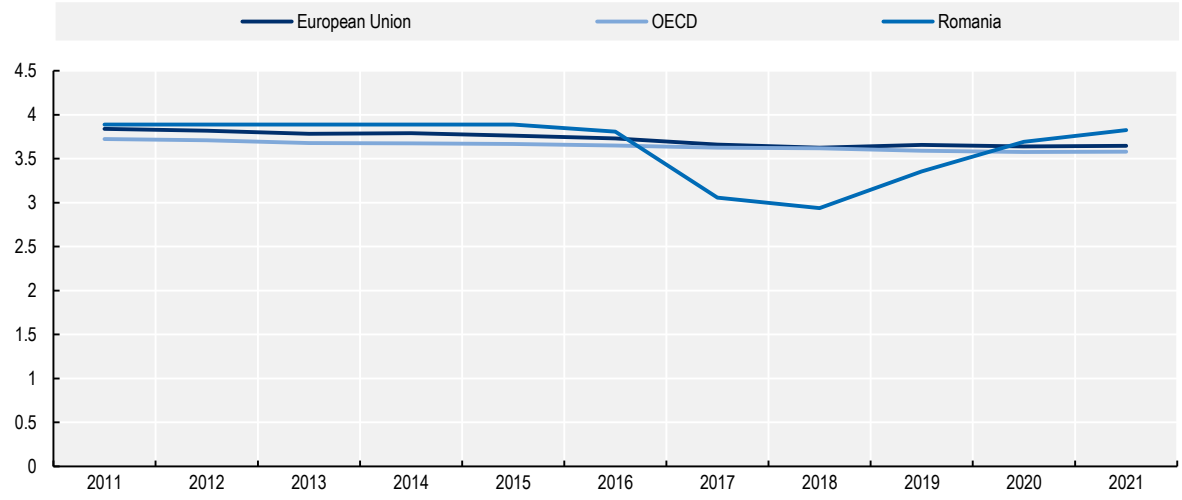
5.2. Key legal and policy frameworks governing freedom of association and their implementation

The enabling environment for CSOs is regulated by several key pieces of legislation governing operations, funding and fiscal matters, as well as various forms of stakeholder participation (for more information, see the section on citizen and stakeholder participation in Chapter 6). As already outlined in Chapter 3, freedom of association is guaranteed by Article 40 of the constitution, with Government Ordinance 26/2000 on Associations and Foundations providing further details on the founding, registration, funding and dissolution of CSOs and other matters pertaining to such organisations (Ministry of Justice, 2000[23]).[9] Associations which work on social inclusion and/or provide services or related work are considered to be social enterprises and are recognised as such[10] in line with the provisions of Law 219/2015 on the Social

Economy (Ministry of Justice, 2015[24]). A law on volunteering, Law 78/2014, generally regulates the participation of individuals in voluntary non-profit activities and state support at both central and local levels (Ministry of Justice, 2014[25]). While the above legislation is largely in line with international standards, some laws and regulations in the field are insufficiently detailed or outdated. For example, Government Ordinance 26/2000 dates back more than 20 years and needs reform (see sections on streamlining the registration process for CSOs and reviewing public utility status for CSOs below).

Empirical evidence confirms that the legal right to freedom of association as set out in the above legislation is broadly respected in Romania. However, the enabling environment is affected by the broader political situation. The V-Dem Institute Index on CSO Repression shows that, between 2011 and 2015, CSOs were almost always free to organise, associate, strike, express themselves and criticise the government without fear of government sanctions or harassment. However, cases remained where the government attempted to repress civil society via sanctions imposed on oppositional CSOs or burdensome registration procedures (V-Dem Institute, 2021[26]). In 2018, this culminated in a ranking that ranged slightly below three points. Rankings between two and three points are given where, in addition to the material sanctions outlined above, governments engage in "minor legal harassment", defined as detentions or short-term incarceration, and other measures which restrict the activity of CSOs. Since 2018, the situation has gradually improved and is now almost at the same level as in 2015. In 2021, Romania outperformed EU and OECD Members in this regard with a score of 3.83 out of 4, compared to 3.58 in OECD Members and 3.65 in EU member states (Figure 5.3).

Figure 5.3. V-Dem Institute CSO repression indicator in Romania, EU and OECD Members, 2011-21



Note: Responses to the question, "Does the government attempt to repress civil society organisations (CSOs)?" lead to four different rankings: 0 (severely), 2 (substantially), 3 (moderately) and 4 (no).
Source: V-Dem Institute (2021[26]), *Variable Graph*, https://www.v-dem.net/data_analysis/VariableGraph/ (accessed on 14 June 2022).

5.2.1. Streamlining the registration process for CSOs

Romania is among the 61% of European countries (both OECD and non-OECD) where associations can operate without being required to register, which allows informal entities to engage in activities and consequently strengthens civic space (OECD, 2022[27]). However, the majority of organisations do register so they can obtain the status necessary to enter into legal agreements, apply for grants and conduct other activities which are necessary to function.

An association wishing to acquire legal status is required to register in the Associations and Foundations Register located at the court registry in the district where it is headquartered, in line with Articles 5, 7 and

8 of Government Ordinance 26/2000.[11] In order to register, associations are required to submit relevant documents to the competent court, which then decides to accept or reject the application (Articles 9 and 10). This decision may be appealed (Article 11). The competent court is tasked with communicating copies of final court decisions on the establishment, modification, and termination of associations and their supporting documents to the National Register operated by the Ministry of Justice (see the section on streamlining the registration process for CSOs). No data are made available on the number of registration requests or denials and civil society representatives noted that data sent by courts to the ministry are not always accurate.[12]

In a positive step, reforms undertaken in 2020 simplified registration by substantially reducing the administrative steps and documents required to lower barriers for new CSOs (OECD, 2022[27]). CSOs no longer need to have their constituent documents notarised, for example, and initial funding required to establish a CSO was reduced for foundations and eliminated for associations.[13] Discussions on reforming the process have been ongoing since 2018, as outlined in more detail in Box 5.3.

Box 5.3. Recent reform initiatives concerning Ordinance 26/2000 on associations, foundations and federations

Between 2018 and 2020, the General Secretariat and the Ministry of Justice led a working group with the aim of amending and supplementing Government Ordinance 26/2000, particularly the establishment and operation of associations, foundations and federations. In 2020 and 2021, the General Secretariat carried out a series of pre-consultations with CSO representatives for the same purpose, asking for proposals on possible amendments to the ordinance (2020[28]; 2021[29]). The Ministry of Justice then initiated discussions with CSOs on amending relevant provisions and collecting and analysing information on the overall shortcomings of the ordinance. Two meetings with CSO representatives were held in June and July 2021, followed by further consultations. By September 2021, the ministry had discussed, online or in person, plans to modify the government ordinance with representatives of 52 CSOs and conducted a further debate that month which involved discussions with all interested CSOs.

During the above discussions, the most common concerns voiced by CSOs included the lack of a uniform registration practice by individual courts (Ministry of Justice, 2021[30]). Participants also noted data duplication in court registers and a register maintained by the Ministry of Justice. Other issues raised included the difficult and lengthy procedures to change a CSO's status or documentation and the requirement to include the governing board of an organisation in a CSO's statute (meaning that leadership changes also need to be reflected in the statute). Participants further noted that the obligation to inform courts about the entry or exit of members via updated membership lists was also unduly burdensome.

Simultaneously, in mid-2021, in the context of digital transformation of services in the justice sector, the Ministry of Justice announced its intention to reform the National Register. The plan was to link the register to information technology systems used by judges and clerks, as well as other relevant databases (e.g. from the Ministry of Finance), while also providing access to relevant open data. Furthermore, there was a recognised need to allow excerpts of the register to be created electronically and to facilitate the submission of relevant documentation online (e.g. changes in membership, registration and withdrawal documentation, information on management bodies and changes of address). In addition, the plan was for CSOs to be able to use the same simplified procedures as those used by companies to register their names and for their tax records, although the key strategic question of whether CSOs would be permitted to register with the Trade Register or whether they would continue to register with the competent courts was not resolved during the 2021 consultations. During the OECD

fact-finding mission, some interviewees reported that it would be easiest if non-profit organisations simply followed the Trade Register's existing procedures for registration, while others noted that the current system of registering with courts ensured a certain level of independence and neutrality and was thus preferable, albeit in an enhanced and more efficient form.

Since then, work on the draft amendments and on reforming the central register has stopped, initially due to a political crisis that led to a change of government in late 2021.[1] Moving forward, the intention is for the Minister of Justice to collaborate with the General Secretariat to develop draft legislation to modify or supplement existing legislation with a view to improving the registration process for CSOs. Key questions such as whether to keep the current judicial procedure – with reforms to ease pressure on the courts and reduce the length of the process – or to replace it will need to be answered as part of this process. Civil society representatives noted a lack of communication on the next steps in the reform process, as well as a lack of co-ordination between relevant public bodies.[2]

In November 2022, a new draft law (Senate of Romania, 2022[31]) was introduced by more than 30 members of the Romanian Senate. With the stated aim of reducing "bad faith" litigation, the draft act introduced individual liability for board members of CSOs for any damages caused to third parties during administrative proceedings initiated by CSOs against administrative acts, should the proceedings be unsuccessful. The draft act likewise added new requirements for CSOs wishing to appeal against administrative decisions before the courts, with retroactive effect, and limited the rights of members or management of previously dissolved associations to found new associations.

Following an open letter sent by a group of more than 300 CSOs (For the Citizen Group, 2022[32]) to members of the Senate who introduced the bill, asking them to withdraw their support for this legislative project, and constitutional and human rights concerns raised by the General Secretariat, numerous initiators complied with the letter's request and the draft law was withdrawn in mid-March 2023 (Senate of Romania, 2022[33]).

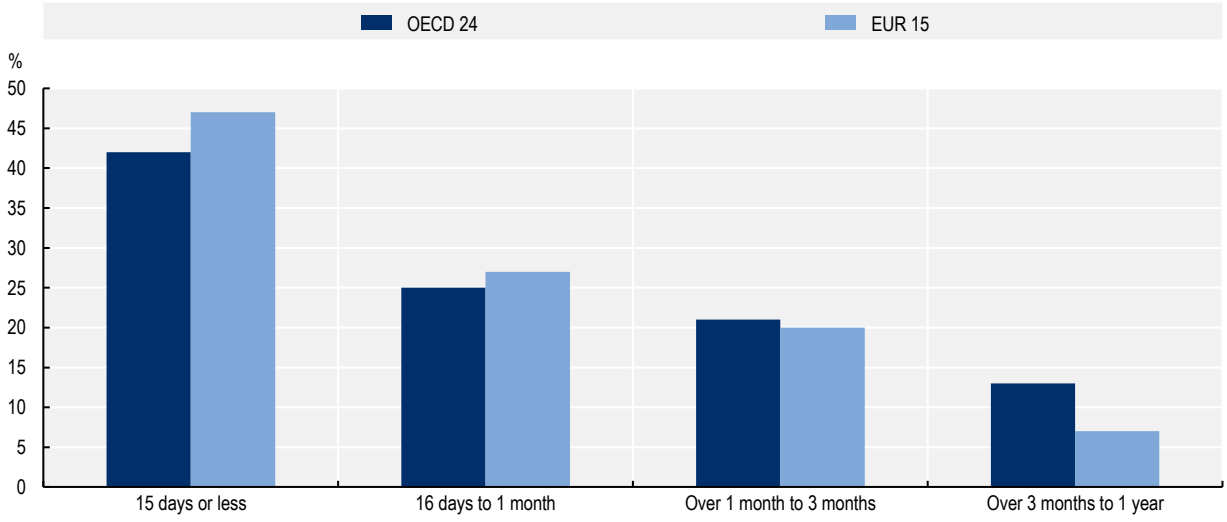
1. Interviews with government representatives, February-April 2022.
2. Interviews with civil society representatives, February-July 2022.

Source: General Secretariat of the Government (2020[28]), *Announcement of the Start of the Pre-consultation Session on the Appropriateness of Amending O.G. 26/2000 on Associations and Foundations*, https://sgg.gov.ro/1/08-07-2020-anunt-demarare-sesiune-de-pre-consultare-cu-privire-la-oportunitatea-modificarii-o-g-26-2000-cu-privire-la-asociatii-si-fundatii/; General Secretariat of the Government (2021[29]), *Announcement Regarding the Conduct of a Pre-consultation Session Regarding the Appropriateness of Amending O.G. no. 26/2000 on Associations and Foundations*, https://sgg.gov.ro/1/anunt-privind-derularea-unei-sesiuni-de-pre-consultare-cu-privire-la-oportunitatea-modificarii-o-g-nr-26-2000-cu-privire-la-asociatii-si-fundatii/; Ministry of Justice (2021[30]), "Simplification of associative life – analyzed by Secretary of State Mihai Pasca and 52 NGOs", https://www.just.ro/simplificarea-vietii-asociative-analizata-de-secretarul-de-stat-mihai-pasca-si-52-de-ong-uri/; Senate of Romania (2022[31]), *Legislative Proposal for Amending and Supplementing Government Ordinance 26/2000 on Associations and Foundations*, https://www.senat.ro/legis/lista.aspx?nr_cls=b758&an_cls=2022; For the Citizen Group (2022[32]), "Open letter to supporters of the legislative proposal for amending and supplementing Government Ordinance no. 26/2000 on associations and foundations (B 758/2022)", https://www.stareademocratiei.ro/2022/11/29/scrisoare-deschisa-catre-sustinatorii-propunerii-legislative-pentru-modificarea-si-completarea-ordonantei-guvernului-nr-26-2000-cu-privire-la-asociatii-si-fundatii-b-758-2022/.

In the meantime, for entities which choose to register, challenges remain. While the process is free, many CSOs find it long and laborious and there is a consensus among both government and civil society representatives that it could be further simplified and enhanced using digital tools.[14] Furthermore, even though registration itself is not associated with direct costs, running costs related to fiscal obligations and the need to have certain documents checked by certified accountants pose financial burdens, particularly for smaller organisations. As far as the length of registration procedures is concerned, Romania features among 7% of European countries (both within the OECD and beyond) where such proceedings habitually take between 1 and 3 months to complete, illustrating that the process is comparatively slow. Government representatives noted that judges must verify that registering entities do not have a similar or the same name as an existing registered organisation, which often delays the process.[15] In comparison, 47% of European countries and 42% of OECD Members surveyed by take 15 days or less to complete CSO registration, while 27% of European countries and 25% of OECD Members take between 16 days and 1 month (OECD, 2022[27]) (Figure 5.4).

Figure 5.4. Average length of time between the submission of a registration request by CSOs and a decision by state authorities, in selected European countries and OECD respondents, 2022

Percentage of countries that provided data on this topic in the 2020 OECD Survey on Open Government



Note: The 15 European countries are: Austria, the Czech Republic, Estonia, Finland, Latvia, the Netherlands, Norway, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Ukraine and the United Kingdom.
Source: OECD (2022[27]), *The Protection and Promotion of Civic Space: The Global Context and the Way Forward*, OECD Publishing, Paris.

Recommendations

To enhance the transparency of the sector, Romania could:

- Restart discussions between the Ministry of Justice and civil society on making registration procedures for CSOs shorter, simpler, and less burdensome (e.g by enhancing the use of digital tools) and thus more supportive of the sector, followed by a plan of action and implementation thereof.
- Ensure that reliable, transparent, up-to-date, national-level data are available on the CSO sector and commit to removing obsolete or outdated information to support the sector.
    - Reinvigorate discussions on enhancing interoperability between the National Register and databases held by ministries (notably the Ministry of Finance) and the National Institute of Statistics so that the Register becomes a repository for CSOs and a source of up-to-date, reliable national statistics and data on the latest trends in civil society registration and activities.
        - This could include annual numbers on how many associations and similar entities apply for registration and how many of these applications are accepted/rejected, in addition to the status of registration requests.
        - Continually removing CSOs which have been dissolved or inactive would also make the data more accurate.
- In the longer term, consider creating a centralised CSO portal, in collaboration with civil society, which is connected to the updated National Register described above while also including more information on funding, participation, networking opportunities and other relevant events.

5.2.2. Reviewing public utility status for CSOs

Government Ordinance 26/2000 (Article 38) states that associations, foundations and federations may be granted “public utility” status (similar to charitable or public benefit status) by the government if they meet certain criteria. These concern their areas of focus and activities (which need to meet a general or group interest), the time the entity has been operating, and matters pertaining to patrimony, membership and employees, among others. Associations or foundations with public utility status have certain rights and obligations, as set out in Article 41 of the ordinance: they may obtain free use of public property goods and may mention their public utility status on documents while at the same time being obliged to maintain the level of activity and performance that supported their status. In addition, relevant changes to their statutes need to be communicated to the competent authority, and annual reports and financial statements must be published in Romania’s Official Gazette. Public utility CSOs must also communicate copies of their activity reports and annual financial statements to the Ministry of Justice.

Applications for public utility status are submitted to the General Secretariat, which forwards them to the competent specialised body of the central public administration. This body may then propose recognition of public utility status to the government, which decides whether to accept or reject the application. Draft decisions are published online and feedback is sought from citizens and CSOs. Public utility status is granted indefinitely but the government may withdraw it in cases where an association or foundation no longer fulfils the requirements set out in law, in accordance with Article 42 of the ordinance. In cases where recognition is denied or withdrawn, CSOs may initiate administrative litigation proceedings.

Increasing the value and benefits of public utility status

While countries are not obliged to provide CSOs with the opportunity to acquire public utility status, with related advantages such as tax exemptions or preferential access to funding of facilities, the possibility of obtaining such status and the benefits of assisting CSOs in this manner are recognised internationally (CoE Committee of Ministers, 2007[34]; OSCE/ODIHR-Venice Commission, 2015[2]). Moreover, these types of system pose mutual benefits for governments and CSOs – while they help governments achieve results in priority areas, they likewise support civil society in certain sectors and enhance the sustainability and recognition of the work of different organisations.

In Romania, the practice of applying for public utility status is underused, with numbers from 2021 showing only a very small fraction of the sector (155 organisations or approximately 0.13% of the total number of registered CSOs) making use of the system (Government of Romania, 2022[35]). The application process as outlined in Article 39 of the Ordinance is burdensome, requiring the respective CSO to submit extensive documentation to the competent ministry or specialised body of the central public administration. Such documentation includes copies of the organisation's statute, proof of legal personality and the creditworthiness of the respective entity, and information on the natural and legal persons that the organisations frequently co-operate with to achieve their objectives. The latter information includes names, personal identification numbers, and numbers of the identity documents of natural persons and the tax identification code of legal entities. Applicants also need to provide lists of their employees and copies of employment contracts, and "copies of collaboration conventions, qualifications, letters of recommendation and the like" (Ministry of Justice, 2000[23]).

Several interviewed civil society representatives questioned the usefulness of the existing system[16] given the obligations imposed on CSOs. Compared to this, benefits outlined in Article 41 of the ordinance, namely the right to be awarded the free use of public property goods and the right to mention an organisation's public utility status in all its documents, are not extensive. Thus, the overall burden of applying for and maintaining public utility status is widely viewed as outweighing its advantages.[17]

CSO interviewees noted that criteria for granting the status are not always clear and the process lacks a uniform approach. As a result, many interlocutors fear that the process may be overly subjective, with little information or oversight to evaluate whether organisations receiving this status fulfil the necessary requirements. Government representatives likewise acknowledged that abuses of the current system are possible.[18] The most recent OGP Action Plan, adopted by the government in July 2022 for 2022-24 (OGP, 2022[36]), includes a commitment to standardising administrative procedures related to recognition of public utility status for CSOs, as well as the creation of a digital tool to support decision making with regard to this status. The aim of this commitment is to develop a co-ordination mechanism within the General Secretariat to help public authorities manage the process of granting the status and optimise the interaction with CSO representatives in this respect.

Recommendations

To develop a system whereby CSOs operating in the public interest receive governmental support, Romania could:

- Build on the review of its public utility status system which was conducted when preparing the OGP Action Plan and in consultation with civil society representatives continue to explore whether and how this system can be made more useful, accessible and less burdensome for CSOs, e.g. by adding targeted benefits for those CSOs selected, making reporting requirements less burdensome and clarifying the criteria for selecting CSOs. Consideration may also be given to replacing the entire concept of public utility status with a different benefits system that builds on existing tax and other benefits and is more supportive of the CSO sector as a whole.
- Ensure that any organisations receiving public benefit status work on public interest matters, as part of relevant decision-making processes, and strengthen transparency in the system.

5.2.3. Improving access to funding for CSOs

Romania provides public funding to the CSO sector in line with specialised laws regulating conditions and procedures for public funding of activities of general interest, social assistance and cultural activities, respectively.[19] This follows a trend observed in many EU and OECD Members; all 23 European countries and 84% of 32 OECD Members that responded to the 2020 Survey on Open Government provide at least some public funding to CSOs (OECD, 2022[27]).

According to Article 46 of Government Ordinance 26/2000, associations may also receive funding from a variety of other sources, including membership fees, income from direct economic activities and other legal sources, donations, sponsorships, and resources from state and local budgets. Funds received by non-profit organisations, including associations, are considered non-taxable income, according to Article 15, para. 1d of the Tax Code (Ministry of Justice, 2015[37]). From a legislative point of view, there are few if any restrictions on the type of funding that CSOs may seek, which is in line with guidance from international human rights bodies (UN, 2013[38]; 2012[39]; CoE, 2007[40]).

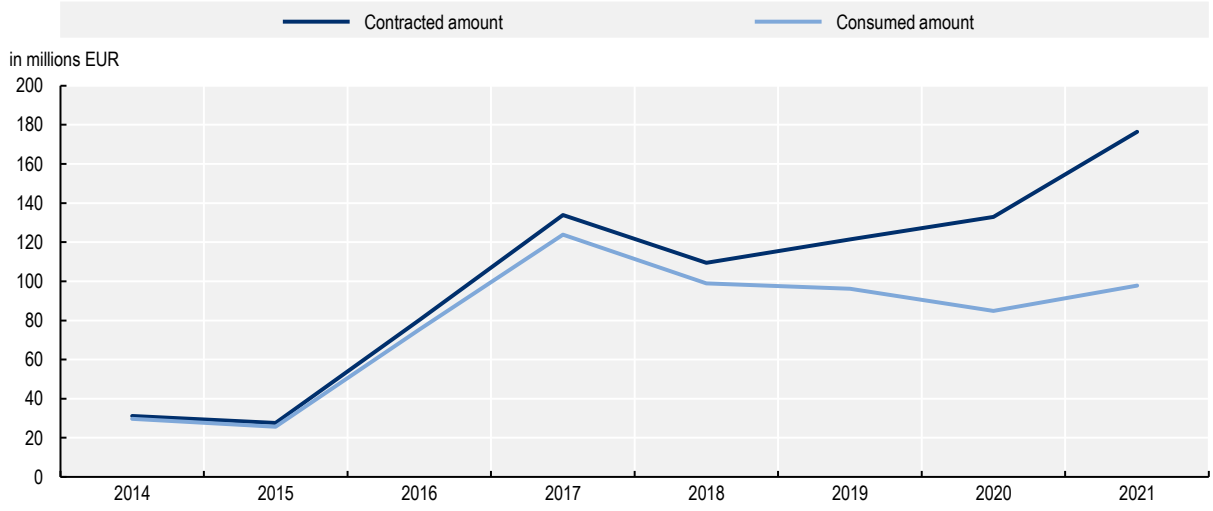
As in many OECD Members, Romania does not have a centralised authority in charge of distributing government funding for CSOs and there is no comprehensive overview of available funds (OECD, 2022[27]). Thus, eligible costs, selection criteria and procedures are specific to each public entity or ministry offering funding but, at the same time, the project proposal submitted by the respective body needs to comply with centralised requirements set out in Article 22 of Law 350/2005 on the Regime of Non-reimbursable Financing from Public Funds Allocated for Non-profit Activities of General Interest (Ministry of Justice, 2005[41]). Additionally, the law obliges authorities to develop an annual programme for the granting of non-reimbursable financing, including procedures and criteria for awarding contracts and transparency requirements for such contracts (Chapter II).

Whether originating from the state budget, EU funds allocated by the national administration or other international sources such as the European Economic Area (EEA) Financial Mechanism, funding is provided by the respective ministries' budgets and is usually attached to a specific project or grant. Ministries known for offering such grants include the Ministry of Education,[20] the Ministry of Culture,[21] the Ministry of Youth, and the Ministry of Labour and Social Protection.[22] The government Department for Interethnic Relations likewise offered grants amounting to RON 2.1 million (EUR 427 389)[23] in 2021 and the Ministry of Culture administered a cultural fund amounting to RON 3 million (EUR 610 470).[24] Between 2014 and 2021, the Ministry of Culture provided RON 32 million (EUR 6 512 329) in funding for cultural activities. To the extent possible, the General Secretariat monitors the type and amount of government

funding granted to CSOs. The information gathered in this manner, however, is not always up to date or received consistently from all public institutions, and a comprehensive overview does not exist.

In the absence of restrictions on foreign sources of funding for CSOs, international bodies are a common source of funding, including funds sourced from the EU budget (as opposed to EU funds administered nationally by the government).[25] The European Commission (EC) Financial Transparency System (EC, n.d.[42]) provides an overview of funding channelled to Romanian not-for-profit organisations in recent years.[26] The data shows that, from 2014 to 2021, the EC awarded EUR 812.85 million to organisations in Romania, with EUR 632.26 million of this amount being consumed (Figure 5.5.).

Figure 5.5. EU expenditure for NGOs and not-for-profit organisations in Romania, 2014-21



Note: These amounts represent funds under both direct and indirect management.
Source: EC (n.d.[42]), *Financial Transparency System*, https://ec.europa.eu/budget/financial-transparency-system/analysis.html (accessed on 25 July 2022).

The EEA likewise provides funding to Romanian CSOs via special programmes, both on its own and together with Norway, notably in the Active Citizens Fund administered by a consortium of six CSOs.[27] Similarly, other international foundations and organisations have programmes supporting CSOs, such as the Civitates network of foundations, the German Marshall Fund (via the Black Sea Trust), the Romanian-American Foundation, the Romanian United Fund and the Sigrid Rausing Trust.

Private donations from both businesses and individuals likewise play a considerable role in supporting the sector. Thus, a 2019 survey conducted by the University of Bucharest indicates that among 101 national and international CSOs operating in Romania, the main sources of income were individual donations (72%), membership contributions (38%), EU funding (38%), international donors (28%) and government funding (18%) (Elbers and Grigore, 2019[6]). Research conducted in 2019 by an Austrian foundation also confirmed that donations from individuals, funds from foreign foundations and funds from the private sector were the most frequent sources of funding (More-Hollerweger et al., 2019[43]). A 2020 World Bank report came to similar conclusions, noting that individual donations and corporate funding were the main sources for the CSOs surveyed, constituting 62.56% of the income of 286 organisations taking part in the study (World Bank, 2020[3]).

Notably, many international businesses have also initiated CSO support projects in Romania, such as the #ÎnStareDeBine programme supported by the international retail company Kaufland Romania and implemented by the Civil Society Development Foundation, which provides non-reimbursable grants on an annual basis.[28] Private individual donations to the sector are also common, utilising the multiple online

options for individuals wishing to support the sector. For example, the www.donatie.ro platform supported by, among others, the Association for Community Relations (ARC) and different telephony companies, facilitates short message service (SMS) campaigns and direct debits from individuals to different organisations, with RON 1 294 767 (EUR 26 338) donated by direct debit and RON 1 116 230 (EUR 227 239) donated by SMS in May 2022 alone. In addition, the peer-to-peer fundraising platform Galantom (https://raport.galantom.ro/) brings together volunteer fundraisers, donors and non-profit organisations, reporting a total of RON 16 512 935 (EUR 3 361 360) fundraised in 2020. Furthermore, smaller, non-commissioned donations to CSOs can be made via the Bursa Bine website (https://www.bursabinelui.ro), created by the Banca Comercială Română (BCR) in partnership with EuPlătesc (https://www.euplatesc.ro/platform). Similarly, the cost-free donation platform Pago (https://doneaza.pago.ro/) established the Civil Society Development Foundation and the Bucharest Community Foundation administer support for selected CSOs. Other general crowdfunding sites include www.consolid8.ro/. RoHelp (https://rohelp.ro/ro/) is one digital platform which allows individuals to support organisations involved in limiting the effects of the COVID-19 pandemic.

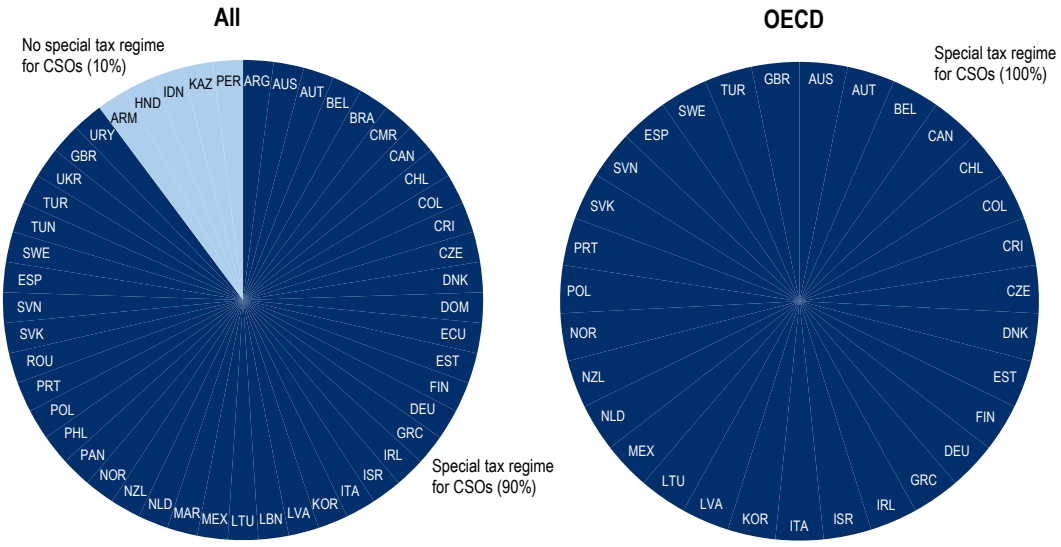
Sponsorships by individuals or legal entities concerning activities[29] conducted by non-profit legal persons, public institutions and authorities, television and broadcast companies (for broadcasts and programmes, books or publications) and natural persons are also possible by providing funds or material goods, according to Articles 1 and 4 of Law 32/1994 on Sponsorship (Ministry of Justice, 1994[44]). The Ministry of Finance oversees whether funds and material goods received in this way are used for their intended purpose. In accordance with the Tax Code, taxpayers may dedicate up to 3.5% of their income tax to support registered non-profit entities, an option often used to support CSOs working in the social sector. However, CSO interviewees noted that receiving such funds involves significant administrative work and is not always feasible for small organisations with limited capacity.

As regards income from economic activities, the provisions of Government Ordinance 26/2000 on economic activities of non-profits are somewhat unclear. Notably, Article 48 of the Government Ordinance only allows direct economic activities “if they are ancillary in nature and are closely related to the main purpose of the legal person” but does not specify when economic activities are considered ancillary and when not.

Government support for the CSO sector also extends to tax exemptions for economic activities which benefit organisations, although the process to benefit from such tax regimes is also considered burdensome.[30] Romania thus follows a majority trend, as it is among the 90% of 49 countries (100% of OECD Members) which responded to the 2020 Survey on Open Government and have tax regimes in place to support CSOs (Figure 5.6). However, as noted above in relation to public utility status, some CSOs raised concerns regarding a lack of transparency in the system, as it is not always apparent whether beneficiaries truly engage in public utility activities. CSOs are also exempt from income tax up to a certain amount or percentage[31] of earned income per fiscal year (Elsuwege and Chamon, 2019[45]) but interviewees indicated that only certain organisations benefit from these exemptions.

Figure 5.6. Countries with specific tax regimes to support CSO financial sustainability, 2022

Percentage of countries providing data on this topic in the 2020 OECD Survey on Open Government



Source: OECD (2022[27]), *The Protection and Promotion of Civic Space: The Global Context and the Way Forward*, OECD Publishing, Paris, https://doi.org/10.1787/d234e975-en.

Addressing uneven access to funding in practice

Generally, all categories of CSO, regardless of their activities, are affected by the difficulty of access to funding (Lambru and Dobre, 2020[46]). While Government Ordinance 26/2000 requires CSOs to have a stated mission and goals, few CSOs, aside from those which are well established, can organise their work based on well-outlined strategies, due to a lack of stable funding, which also impacts their ability to attract and retain staff.[32] Moreover, some government-managed funds such as the Romanian Social Development Fund, focusing on development programmes addressed to disadvantaged groups and isolated and poor communities, require previous experience with similar types of funding, which makes it difficult for newer or less experienced CSOs to access the funds.[33] Additionally, Article 4 of Law 350/2005 states that public non-reimbursable funding contracts will only be granted if beneficiary organisations contribute at least 10% of the total amount of funding from their own funds. This is difficult to achieve for smaller CSOs and may further exclude them from public funding.

For institutions which do provide public funding (such as the Ministry of Youth, Ministry of Labour and Ministry of Culture), the absence of criteria or strategic goals for the disbursal of funds is considered a challenge by government officials and CSOs alike.[34] Law 350/2005 sets out principles based on which non-reimbursable funding contracts may be awarded, including free competition, the effectiveness of use of public funds, transparency and equal treatment. However, although the law mentions that project evaluations should be based on criteria provided in law and specific criteria developed by the financing authority, interlocutors noted an absence of further clear practical guidance on the criteria on which awards should be granted.[35] Moreover, there is no evaluation after the completion of programmes to assess whether their objectives and purpose were met by individual civil society activities or projects. This absence of a clear strategy and *ex post* evaluation derives from a lack of capacity in many ministries and government agencies, as staff mostly do not have the skillset or time to implement projects and evaluate them, according to government interviewees.[36]

In order to assist organisations to obtain funding to develop their operational capacity, the General Secretariat created and updated a series of supporting materials.[37] These are published on its official website (https://sgg.gov.ro/1/), the OGP website and the CONECT platform (Box 5.2). They are also sent by email newsletter to interested organisations.

Noting a large dependency on EU and other international funding, both government and civil society representatives observed that procedures for participating in grant projects have become extremely complicated.[38] Competition for different programmes is high, with considerable resources needed to deal with bureaucratic procedures for registering CSOs and obtaining funds. Moreover, some EU programmes, such as the Citizens, Equality, Rights and Values (CERV) programme, which aims to protect and promote civic freedoms by supporting CSOs active in EU member states, require beneficiary CSOs to co-finance projects, which means not all CSOs can participate.

On the other hand, there have been cases of good co-operation among CSOs to allow smaller organisations to apply for national grants. For example, in recent years the Civil Society Development Foundation has administered numerous funding programmes in co-operation with other stakeholders, most recently the Conectare.Dezvoltare Acces call for projects initiated with the Enel energy company and the #ÎnStareDeBine programme funded by Kaufland Romania. The Association for Community Relations works to establish contacts between donors and CSOs within local communities, including via annual fundraising workshops, while also launching and administering grant projects itself.

To have a greater impact overall in spite of potentially limited financial resources, watchdog groups or platforms have been created to pool resources and help activists speak with one voice, such as the group NGOs for Citizens and a platform called Contract Romania (https://www.facebook.com/contractromania/). In Bucharest, the Bucharest Civic Network unites many informal civic groups in the city, supported by the Resource Centre for Public Participation (CeRe). However, the support which members of these coalitions provide to each other, along with some of the projects administered by larger organisations mentioned above, cannot replace the need for wider, more strategic and accessible government funding opportunities for the sector.

Ensuring the autonomy of CSOs

The autonomy of CSOs is a further area of concern, particularly for those engaging in oversight activities such as think tanks or watchdogs. These are particularly important in democratic societies because they provide independent data and analysis on issues of public interest, in addition to helping make the public sector more transparent and accountable by shining an independent light on spending and decision making. The autonomy of such groups is of particular concern in Romania, given perceptions of corruption (see Chapter 1).

According to CSO representatives, organisations seeking public funding tend to focus on topics that they know will garner support, shying away from programmes that might appear to criticise potential donors.[39] During the OECD fact-finding mission, several organisations expressed concerns regarding the criteria used and the transparency of the process of awarding public funds; a perception persists that awards are made to CSOs which are “closer” to the government, in terms of both activity and messaging.

Moving forward it is crucial to introduce reforms to funding mechanisms which ensure greater independence, transparency, accountability and fairness while supporting the sector and reinforcing its autonomy. Such reforms will contribute to a strong, vibrant and diverse civil society landscape that can critically assess the actions of the government and hold public officials to account with the ultimate objective of more effective policy making, service design and delivery.

Recommendations

To foster a system of open, accessible, sustainable and strategic funding for CSOs, Romania could:

- Enhance opportunities for government funding and ensure that such support is provided in an independent, transparent and uniform manner to increase sustainability, maintain the autonomy of the sector, and allow CSOs to develop long-term strategic goals and capacities, e.g. via a dedicated civil society fund.
- Ensure the distribution of government funds follows clear and transparent criteria which apply equally to all CSOs in an accessible, unbureaucratic and fair manner. Monitoring and reporting on the public funding provided to CSOs may encourage a more strategic approach to such funding mechanisms.
- Institutionalise independent oversight of the distribution of public funds, to build trust in the public system, in addition to conducting impact evaluations to ascertain the effectiveness of projects and whether they achieve their intended outcomes.
- Seek to facilitate access to a variety of funding sources, including by revising the system whereby taxpayers may dedicate up to 3.5% of their income tax to support non-profits to make it less burdensome and more transparent.
- Incentivise CSOs to engage in different economic activities which help fund their various non-profit activities. Relevant legal provisions would benefit from clarification of which kinds of activity are permitted and which are not.
- Facilitate funding for independent think tanks and watchdogs in Romania to strengthen transparency and accountability and to support their capacity to hold public officials to account.

5.2.4. Unlocking the potential of Romania's Open Government Strategy

Considering the aforementioned challenges to the enabling environment for CSOs, introducing a component on engaging civil society into the Open Government Strategy has the potential to result in shared wins for both government and civil society actors, as seen in other country contexts. Such strategies allow public officials to publicly recognise and appreciate the role in society played by different types of CSO and the value that their expertise can bring to policy making, service design and delivery. The OECD report, *The Protection and Promotion of Civic Space: Strengthening Alignment with International Standards and Guidance* (2022[27]), finds that 52% of all respondents to the 2020 Survey on Open Government (68% of respondent OECD Members) have civil society strategies in place to improve or promote the enabling environment for CSOs (2022[27]). Many of these strategies share several common characteristics (Box 5.4).

Box 5.4. Objectives and benefits of strategies to engage with civil society

The majority of countries with civil society strategies note that their main objective is to strengthen the state-CSO relationship, alongside supporting the development and independence of CSOs, contributing to UN Sustainable Development Goals (SDGs), promoting public discussion and debate, and improving the welfare of citizens through greater social cohesion (OECD, 2022[27]).

Czech Republic

The Czech Republic has several frameworks for stakeholder participation, including a Client-Oriented Public Administration 2030 Concept (Government of the Czech Republic, 2021[47]), a strategy for

co-operation between the public administration and CSOs in 2021-30 (Government of the Czech Republic, 2021[48]), and OGP National Action Plans (OGP, n.d.[49]).

The Czech Republic has identified several benefits of the multi-stakeholder experience, including the following:

- More effective and targeted policies and services which respond to need, leading to more efficient use of public resources.
- Co-ownership of the processes and results lead to improved quality and more impact.
- Shared efforts on ensuring the sustainability of projects and using lessons learned in the future.

In 2022, the government produced a methodology for the participation of non-governmental non-profit organisations (Government of the Czech Republic, 2022[50]), which provides guidance for involving CSOs in the policy-making cycle. The document advises public bodies to issue a call for consultation in the early phases, organise a workshop or roundtable for more detailed discussions, engage with existing advisory bodies or councils and make another call for comments on the finalised document or project proposal (Government of the Czech Republic, 2022[50]).

Estonia

The Estonian Civil Society Development Concept (EKAK) is a long-term document approved by parliament in 2002, following a multi-stakeholder consultation process involving hundreds of CSOs across the country. The document promotes the overall value of co-operation between public bodies and civil society (Network of Estonian Nonprofit Organisations, n.d.[51]). A joint committee comprising government and CSO representatives was established to elaborate related action plans and monitor their implementation. The committee meets at least twice a year and reports to the government every two years; parliament hosts a public discussion on civil society development every two years. Anchored by the strong foundation provided by the EKAK, supporting and partnering with civil society became a key priority of the Cohesive Estonia Strategy 2030, which aims to "make Estonia a more cohesive and inclusive society in the next decade" (Government of Estonia, 2021[52]). To achieve the strategy's objectives, the programme for community-led civil society 2022-25 calls upon the public administration, the National Foundation of Civil Society, and county development centres to work together to foster greater government-civil society collaboration and reach the goals set out in the strategy.

Source: OECD (2022[27]), *The Protection and Promotion of Civic Space: The Global Context and the Way Forward*, https://doi.org/10.1787/d234e975-en; Government of the Czech Republic (n.d.[53]), "State Policy with Respect to Non-Governmental Organisations 2015-2020"; Government of Estonia (2021[54]), *Civil Society Programme 2021-2024*, https://www.google.com/search?q=Estonia%E2%80%99s+Civil+Society+Programme+2021-2024&rlz=1C1GCEB_enFR980FR980&oq=Estonia%E2%80%99s+Civil+Society+Programme+2021-2024&aqs=chrome..69i57.851j0j7&sourceid=chrome&ie=UTF-8 (accessed on 22 July 2022); information provided by the governments of the Czech Republic and Estonia for the Civic Space Review of Romania; Government of the Czech Republic (2021[47]), *Client-Oriented Public Administration 2030 Concept*, https://www.mvcr.cz/clanek/koncepce-klientsky-orientovana-verejna-sprava-2030.aspx (accessed on 26 October 2022); Government of the Czech Republic (2021[48]), *Strategy for Cooperation between the Public Administration and CSOs 2021-2030*, https://www.vlada.cz/assets/ppov/rnno/dokumenty/BROZURA-FINAL-S-PRILOHAMI.pdf (accessed on 26 October 2022); OGP (n.d.[49]), *Czech Republic*, https://www.opengovpartnership.org/members/czech-republic/ (accessed on 26 October 2022); Government of the Czech Republic (2022[50]), *Methodology of the Participation of Non-governmental Non-profit Organizations in Consultations and in the Creation of State Administration Documents*, https://www.vlada.cz/assets/ppov/rnno/dokumenty/Metodika-participace-NNO_verze-po-verejnych-konzultacich_23_5_2022_final.pdf (accessed on 26 October 2022); Network of Estonian Nonprofit Organisations (n.d.[51]), *Estonian Civil Society Development Concept*, https://heakodanik.ee/en/estonian-civil-society-development-concept-2/ (accessed on 26 October 2022); Government of Estonia (2021[52]), *Cohesive Estonia Strategy 2030*, https://www.kul.ee/media/3635/download.

Romania's Open Government Strategy and its integrated component on engaging civil society will undoubtedly assist the government to adopt a less legalistic, more holistic approach to stakeholder participation, in addition to providing an overarching framework to address many of the challenges identified in this *Civic Space Scan*. The OECD fact-finding mission uncovered several barriers currently hindering the full potential of civil society in Romania, which were the topics of discussion at joint government-civil society workshops in September 2022 (see Chapter 2 on methodology) (OECD, 2022[55]). The ensuing process of designing, developing, implementing and monitoring the strategy – with an understanding that the collaborative process is as important as the strategy itself – will provide a crucial opportunity for close and meaningful co-operation between the government and civil society, and has the potential to lay the foundations of a partnership based on trust, a sense of inclusion and mutual ownership. Key areas for the strategy to tackle include overcoming mutual distrust, ensuring equal treatment of all citizens, strengthening the enabling environment for CSOs, introducing more transparent and responsive approaches to law and policy making, and fully leveraging the opportunities which citizen and stakeholder participation offer Romanian society (OECD, 2022[55]).

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Notes

[1] The OSCE/ODIHR-Venice Commission Guidelines on Freedom of Association provide assistance and guidance on implementing the right to freedom of association by showcasing international human rights standards and examples of states' good practice.

[2] In its 2020 Rapid Assessment of CSOs in the context of COVID-19, the World Bank differentiated between three categories of CSOs, namely established CSOs (trade unions, professional associations, social dialogue groups, so engaged in representing the interests of certain groups), emerging CSOs (operating on topics such as the environment, health, social services, civic and good governance, so mostly providing services) and new wave CSOs (working in areas such as civic tech, emergency services, urban development and as social innovators, and largely issue-driven) (World Bank, 2020[3]). The above assessment detected noticeable differences between the CSOs in the different categories, notably in areas of collaborative potential and funding: e.g. while the collaborative potential was high among established CSOs and new wave CSOs, it was seen as weak and often fragmented among emerging CSOs. Funding sources were also different, with established CSOs relying mostly on public funding and membership fees, emerging CSOs relying on public funding but also on European funds, and private and business donations, and new wave CSOs relying mainly on the private sector and international foundations.

[3] These findings were based on criteria, such as the legal environment for CSOs, their organisational capacity and financial viability, advocacy, service provision, sectoral infrastructure and public image, and the civil society sector.

[4] Interviews with the General Secretariat of the Government, September 2022.

[5] These include: the National Register at the Ministry of Justice (https://www.just.ro/registrul-national-ong/); the Ministry of Finance/National Agency for Fiscal Administration (ANAF) (Comunicate de presa https://www.anaf.ro, 52 774 entries for 2021), which does not fully correspond to the entities in the National Register; and the National Institute of Statistics (NIS) (https://insse.ro/cms/en) which follows its own classification and makes data available in its Statistical Register of Enterprises (REGIS) for larger categories of "private administration organisations", some of which are part of neither the National Register nor the ANAF data. Many ministries have also their own CSO databases, notably for social enterprises, social service providers, organisations offering educational or vocational training, and religious, cultural and sporting organisations, among others. These registries use different criteria and categories and are not updated regularly. Feedback from CSOs, January-October 2022.

[6] Interviews with CSOs, February-July 2022. Many CSOs view processes to collect relevant data as burdensome due to excessive bureaucratic requirements caused by a lack of communication among public entities which manage different databases. They pointed out that there is no common baseline for collecting and analysing relevant information, and no public body is mandated to conduct and publish data analyses on the sector.

[7] The source of this data is the Ministry of Justice register, coupled with fiscal information available from the Ministry of Finance. Interviews with CSOs, February-September 2022.

[8] Interviews with CSOs, February-July 2022.

[9] The government ordinance does not cover trade unions or religious denominations (Article 1, para. 3). While trade unions are regulated in the Labour Code and in Law 62/2011 on Social Dialogue, the rights and status of religious denominations or "recognised cults" are outlined in Law 489/2006 on Freedom of Religion and the General Regime of Religious Denominations.

[10] Following recent amendments in 2022, the social economy is defined as the set of private activities of an economic and social character which serve the general interest, the interests of a community and/or non-patrimonial personal interests, by increasing social inclusion and/or the provision of services and/or the execution of works (Article 2 of Law 219/2015). The sector consists of co-operatives, credit co-operatives, mutual associations, associations and foundations, mutual aid funds of employees and pensioners, agricultural co-operatives and societies, and any other entities which abide by the social economy principles set by this law (Article 3). Social enterprises are required to operate in the general interest, which is defined in Article 6, para. 1a, as "any activity in the economic, cultural-artistic, social, educational, scientific, health, sports, housing, environmental protection, maintenance of traditions, the ultimate purpose of which is to achieve the objectives set out in Article 5, para. 2". Article 5, para. 2, specifies that social economy has the following objectives: strengthening economic and social cohesion, employment and the development of social services.

[11] Other associative forms are regulated by special laws. Notably, Associations of owners (Law 230 of 6 July 2007) (associative structures set up for the administration and management of common property, which are overwhelmingly present in buildings made up of several individual properties); Associations in agriculture (Law 36 of 30 April 1991); and Associations of employees established on the basis of the Employees Shareholders' Program (Law 77 of 1 August 1994).

[12] Interviews with CSOs, February-July 2022.

[13] For associations, registration previously cost around EUR 40.

[14] Interviews with CSOs and government representatives, February-July 2022.

[15] Interviews with government representatives, February-April 2022.

[16] Interviews with CSOs, February-July 2022.

[17] Interviews with CSOs, February-July 2022.

[18] Interviews with government representatives, February-April 2022.

[19] Related laws on public funding of CSOs include:

- Law 34/1998 on the Granting of Subsidies to Romanian Associations and Foundations with Legal Personality, which Establish and Manage Social Assistance Units, foresees special funding by local and central public authorities for CSOs providing social assistance services to individuals in need.
- Government Ordinance No. 51/1998 on Improving the System of Financing Cultural Programmes, Projects and Actions, involves funding from public authorities from their own budgets, also for emergency cultural needs via special funds, and outlines the administration and funding of the state-funded National Cultural Fund.
- Law 350/2005 on the Regime of Non-reimbursable Financing from Public Funds Allocated for Non-profit Activities of General Interest, outlines the procedure that CSOs should follow when applying for state grants for their projects.

[20] The Ministry of Education provides funding for project work related to educational development. See https://www.edu.ro/educa%C8%9Bie-pentru-dezvoltare-durabil%C4%83 for more information.

[21] The Ministry of Culture has a special project management unit with its own website on types of grants and upcoming and pending projects; see https://www.umpcultura.ro/ctg_24_despre-noi_pg_0.htm.

[22] Further details on the Ministry of Labour's funding can be found on the ministry website at https://mmuncii.ro/j33/index.php/ro/proiecte-programe.

[23] The exchange rates listed in this section were calculated using the exchange rate from September 2022.

[24] Interviews with government representatives, February-April 2022.

[25] The EU assists entities in Romania in various ways, by supporting Romanian operational programmes co-ordinated by the Ministry of Investment and European Projects and funded by the European Structural and Investment Funds in selected areas. Support is provided at both the central and local levels, including in fields such as digitalisation, health, education, employment and social inclusion. For an overview of the different operational programmes, in addition to funding opportunities, see https://oportunitati-ue.gov.ro/cum-obtin-finantare/. Next to longstanding programmes, such as the Administrative Capacity Operational Programme (with a total eligible amount of EUR 850.43 million for Romania as of 12 July 2022; see www.poca.ro/) or the pending Recovery and Resilience Fund (see Chapter 4 for more details), 2021 and 2022 have seen numerous new projects in areas such as gender equality, citizen participation and youth empowerment. For further information on recent calls, see https://oportunitati-ue.gov.ro/category/stiri/.

[26] On the website, the EC specifies that, in the absence of a universally applied definition of NGO, it considers as NGO any non-profit, non-public law body (not-for-profit organisation or NFPO) independent of public authorities, political parties and commercial organisations. The NGO information that the EC has available is based on self-declarations by entities receiving EU funding through grant agreements or contracts directly managed by the EC. These self-declarations are mainly requested for statistical purposes and are not subject to a general validation by EC services.

[27] Following a recent additional allocation to support CSOs assisting Ukrainian refugees, the Active Citizens Fund (ACF) Romania has a total allocation of EUR 48 million, with an implementation period running from 2019 to 2024. The programme is part of the EEA and Norway Grants 2014-2021 and aims to strengthen civil society and active citizenship and empower vulnerable groups. In particular, the fund seeks to develop the long-term sustainability and capacity of the civil society sector. The consortium administering the fund is made up of: the Civil Society Development Foundation, the Romanian Environmental Partnership Foundation, the Resource Center for Roma Communities, the PACT Foundation and the Frivillighet Norge (association of NGOs in Norway). For more information, see https://activecitizensfund.ro.

[28] The *#ÎnStareDeBine* programme provides non-reimbursable grants totalling EUR 1 million to CSOs in Romania. Its aims are to support vulnerable groups and communities with initiatives in the fields of culture, sports or healthy living. For more information, see http://instaredebine.ro.

[29] According to Article 4 of Law 32/1994 on Sponsorship, non-profit legal persons may be beneficiaries of sponsorships if they carry out or plan to carry out any of the following activities in Romania: activity in the fields of cultural, artistic, educational, educational, scientific – fundamental and applied research, humanitarian, religious, philanthropic, sports, human rights protection, medical and sanitary, social

assistance and services, environmental, social and community protection, representation of professional associations, as well as maintenance, restoration, preservation and enhancement of historic monuments.

[30] Interviews with CSOs, February-July 2022.

[31] CSOs, trade unions and business associations remain exempt from income tax up to EUR 15 000 on earned income per fiscal year, or up to 10% of total tax-exempt income (whichever is lower).

[32] Interviews with CSOs, February-July 2022; OECD Public Consultation, https://engagement.oecd-opsi.org/engagement/processes/5/debate.

[33] Interviews with CSO, July 2022.

[34] Interviews with CSOs and government representatives, February-July 2022.

[35] Interviews with CSOs and government representatives, February-July 2022.

[36] Interviews with government representatives, February-April 2022.

[37] This includes reports on mechanisms for financing CSOs from public or private sources that are updated as needed (see reports from 2016 and 2020 respectively, at https://bit.ly/3raNNv9 and https://bit.ly/3ngofM0), as well as information on internal and external funding calls (see information on internal funding calls at http://conect.gov.ro/1/apeluri-interne/ and information on external funding calls at http://conect.gov.ro/1/apeluri-externe/). A guide to the transparency of non-reimbursable financing has also been developed (see http://ogp.gov.ro/nou/wp-content/uploads/2021/12/Ghid-privind-transparentizarea-finantarilor-23dec.pdf) (General Secretariat of the Government, 2021[56]). In addition, the General Secretariat of the Government held a series of workshops to improve the funding framework, in addition to analysing the administration's practices in the field, and has conducted awareness-raising on existing tools and guidance concerning funding options and the process of granting public funds. Certain central funding authorities have developed electronic tools for funding procedures to assist the application and reporting process, e.g. the administration of the National Cultural Fund at www.afcn.ro. At the local level, Bacău County Council operates a specialised online portal for the submission and evaluation of projects (https://portallegea350.ro), Harghita County Council runs an online platform for submission of grant proposals (https://programeproiecte.judetulharghita.ro/) and Cluj-Napoca City Hall allows the submission of proposals both in physical format and online.

[38] Interviews with government representatives and CSOs, February-July 2022.

[39] Interviews with CSOs, February-July 2022.

6 Citizen and stakeholder participation in Romania

This chapter assesses existing processes to involve citizens and stakeholders in law and decision making in Romania. It examines key legal and policy frameworks and institutions. It reviews perceptions of participatory practices and identifies opportunities and challenges to making stakeholder participation more effective, inclusive and impactful. It further reviews the potential for adopting new and more innovative approaches to citizen participation. Recommendations are provided on strengthening current practice.

6.1. Introduction

The OECD Recommendation of the Council on Open Government, to which Romania adhered in 2020, encourages governments to "grant all stakeholders equal and fair opportunities to be informed and consulted and actively engage them in all phases of the policy cycle and service design and delivery" (OECD, 2017[1]). The recommendation also notes the importance of governments making concentrated efforts to reach out to the most vulnerable, marginalised or underrepresented groups in society (OECD, 2017[1]) and defines different forms of involvement in the policy cycle and in service design and delivery, namely information,[1] consultation[2] and engagement.[3] Furthermore, governments are encouraged to explore and promote innovative ways – including using new digital and technological tools – to involve citizens of all demographics in public decision making (OECD, 2017[1]).

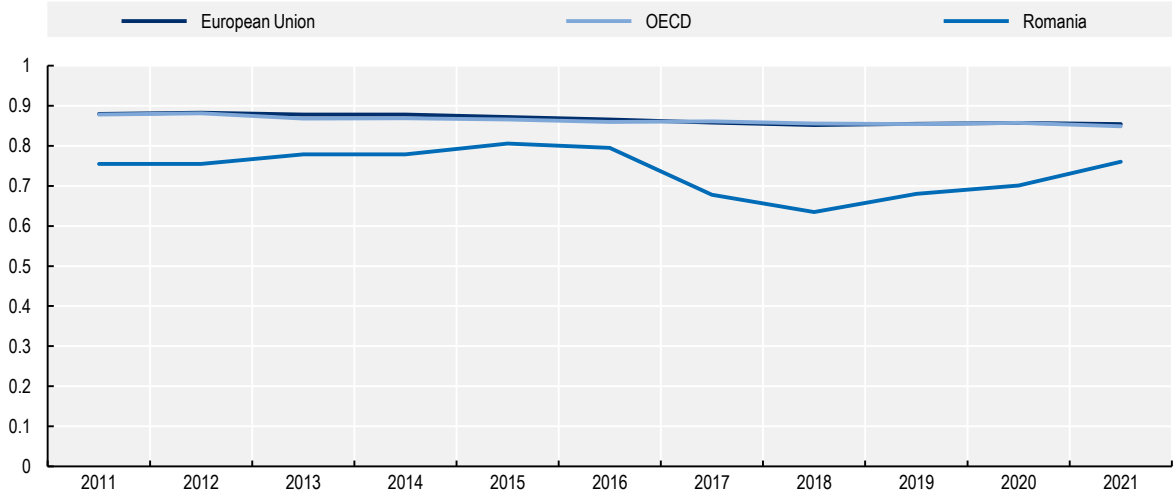
In addition, the Open Government Declaration, which Romania adopted as a member of the Open Government Partnership (OGP) from 2011, emphasises states' commitment to supporting citizen participation of all people, equally and without discrimination, in decision making and policy formation (OGP, 2011[2]). The declaration explicitly states the benefits of involving individuals, recognising that people's knowledge, ideas and ability to provide oversight help ensure the effectiveness of governments. OGP members commit to "making policy formulation and decision-making more transparent, creating and using channels to solicit public feedback, and deepening public participation in developing, monitoring and evaluating government activities", as well as to "protecting the ability of not-for-profit and civil society organisations to operate in ways consistent with [their] commitment to freedom of expression, association and opinion". The declaration likewise contains a commitment to "creating mechanisms to enable greater collaboration between governments and civil society organisations and businesses" (OGP, 2011[2]).

The participation of both individuals and groups such as civil society organisations (CSOs) in public decision-making processes lies at the very heart of open government, while their ability to do so is at the core of a healthy and vibrant civic space. By considering and using citizens' experience and knowledge, citizen participation helps public institutions tackle complex policy problems and leads to better policy results (OECD, 2022[3]). In the long term, effective participation can make government more effective, yield more people-centred policies, laws and programmes that focus on real needs, and ultimately help to increase trust in government (OECD, 2022[3]). As stakeholder participation is one of the core principles of open government, the contents of this chapter of the *Civic Space Review of Romania* are fully in line with the findings in the OECD's forthcoming *Open Government Review of Romania* (forthcoming[4]).

6.2. The general context for citizen and stakeholder participation in Romania

The Varieties of Democracy (V-Dem) Civil Society Participation Index, which measures the extent to which CSOs are routinely consulted by policy makers and includes other indicators, such as how widely citizens are involved in CSOs, shows that over the last decade Romania has had slightly lower scores than OECD Members and European Union (EU) member states on average. Despite a drop in 2016-20, Romania's score stood at 0.76 in 2021, compared to the average scores of EU member states and OECD Members, both at 0.85 (Figure 6.1).

Figure 6.1. V-Dem Civil Society Participation Index: Romania, EU member states and OECD Members, 2011-21



Note: V-Dem asks: "Are major CSOs routinely consulted by policy makers; how large is the involvement of people in CSOs; are women prevented from participating; and is legislative candidate nomination within party organisation highly decentralised or made through party primaries?" The scores range 0-1 (low to high).
Source: V-Dem Institute (2021[5]), *Variable Graph*, https://www.v-dem.net/data_analysis/VariableGraph/ (accessed on 14 June 2022).

Generally, legislation in Romania covers many different forms of citizen and stakeholder participation, ranging from voting in elections and referenda to taking part in citizen petitions and consulting citizens and CSOs in public decision-making processes. Numerous related policies, mechanisms and bodies are in place (see section on the key legal and policy frameworks and institutions governing participation). In addition, there have been some examples of successful involvement of citizens at the local level, notably via specialised online participation platforms (see section on strengthening participation at the sub-national level, below). Moreover, certain non-governmental initiatives have galvanised support for policy issues, such as the online petitions and campaigns platform Declic[4] (https://www.declic.ro/), which was established and is managed by citizens. The platform has had a positive effect on encouraging recent legal reforms, for example, with respect to changing citizens' voting age, making amendments to the Criminal Code to ensure accountability for crimes and introducing revisions to legislation on the judiciary.

In a technical sense, relevant laws and mechanisms for citizen and stakeholder participation are largely adhered to in Romania; however, there is room for improvement. Efforts tend to focus on organised stakeholders, such as CSOs, trade unions and other formalised actors, rather than ordinary citizens. In general, involving citizens in policy- and law-making processes is not a prevalent practice and is not part of Romania's administrative culture.[5] While the law does provide for citizen and stakeholder participation in public meetings, this does not happen very frequently in practice (for more information, see the section on participation in public meetings). Furthermore, interviews with both government and civil society representatives indicated that, in practice, consultations among CSOs on laws and policies are often insufficient.[6] In addition, the main law on consultations, Law 52/2003 (Government of Romania, 2003[6]), focuses mostly on consultations on draft legislation, not on citizen and stakeholder participation in the early stages of the policy- and decision-making process. Overall, participation processes are perceived as formalistic, with little focus on exploring additional, more innovative methods, uneven feedback mechanisms and limited understanding among public officials of the benefits.[7]

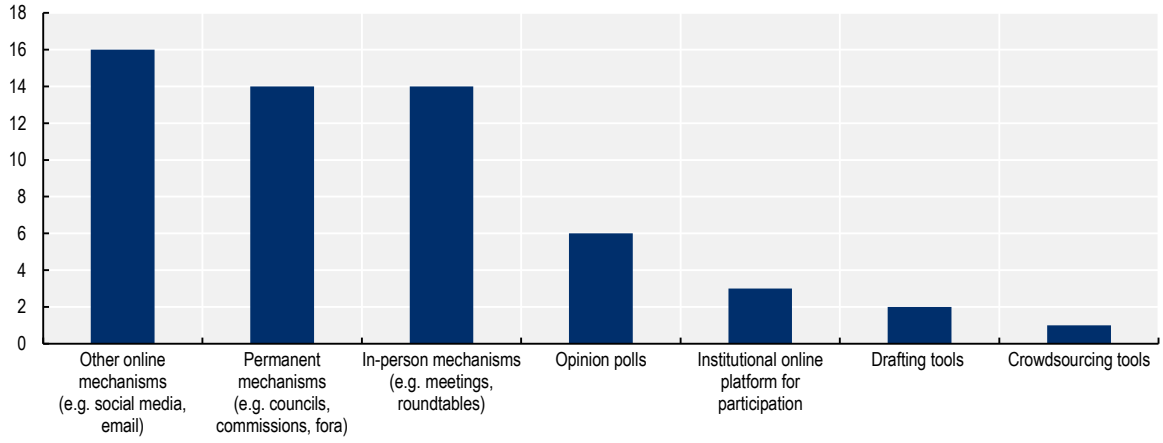
There is thus significant potential for Romania to seize opportunities identified in this *Civic Space Review,* the OECD *Open Government Review of Romania* (forthcoming[4]) and, crucially, the development of a

national Open Government Strategy to take a more citizen-centred and innovative approach to citizen and stakeholder participation with benefits for the whole of society. Cross-learning across government will be key to the process to further recognise, exploit and communicate the benefits of collaboration in the public sector.

6.2.1. Stakeholder perceptions of participation practice

In practice, public bodies in Romania use a range of mechanisms to engage with citizens and stakeholders during public decision-making processes. Figure 6.2 illustrates that in-person meetings and roundtable discussions, online communication via social media and permanent, institutionalised bodies (e.g. social dialogue commissions and councils) are the most popular.

Figure 6.2. In the past three years, through which means has your institution engaged citizens and stakeholders in policy- and decision-making processes?

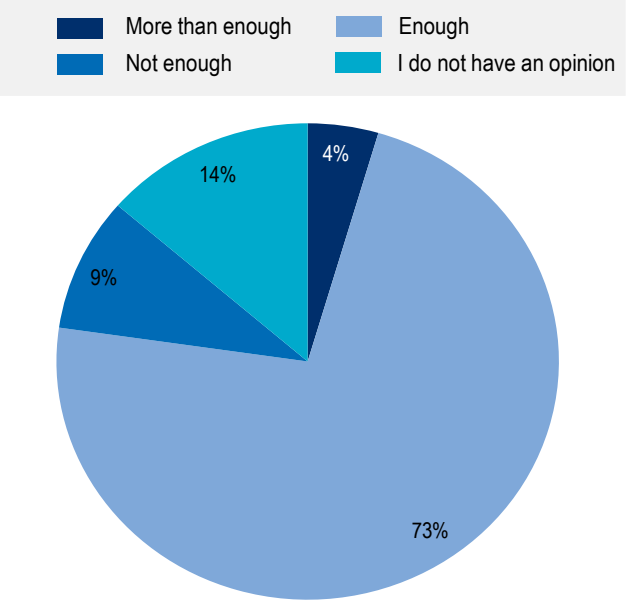


Note: The data is based on 20 responses from public institutions/ministries.
Source: OECD (2022[7]), "Survey on Open Government for Romanian Public Institutions", OECD, Paris, in OECD (forthcoming[4]), *Open Government Review of Romania*, OECD Publishing, Paris.

Figure 6.3 indicates that public bodies and ministries believe the extent to which they engage citizens and stakeholders is sufficient: 73% of respondents to the 2022 Survey on Open Government for Romanian Public Institutions said that they interact with citizens and stakeholders "enough" while only 9% said that interactions are "not enough" (OECD, forthcoming[4]). During the OECD fact-finding mission, it was noted, however, that many government interviewees appeared to see consultations and citizen participation as more of a burden or a legal duty than a useful tool for policy and law making or a way to enhance citizen-centred policy making and democratic governance more broadly.[8] In fact, the current approach has occasionally led to the adoption of draft laws or policies while public consultations were still ongoing (see section on improving participatory processes for greater impact), as reported by civil society.[9] A lack of understanding of the benefits of participatory processes and the potential advantages of improving them has in some cases led to a general lack of CSO interest in engaging with public officials. Overall, public officials and CSO representatives expressed feelings of mutual distrust during the fact-finding mission, and both groups lamented the absence of a clear path towards improved relations.[10] These attitudes have consequences for the effective implementation of legislation on citizen and stakeholder participation, most notably Law 52/2003.The short- and medium-term effects are that although the law is followed de facto, the actual benefits of citizen and stakeholder participation are neither seen nor gained, as stated by the General Secretariat in its 2021 analysis (General Secretariat of the Government, 2021[6]). It cited the lack

of a comprehensive approach to consultations in public institutions, bottlenecks and dysfunctions during consultations, and the failure to take up civil society suggestions, as reasons for this. Opportunities to introduce perspectives which are different from those of the government or parliament – by involving individuals who will be affected by new laws or policies and engaging with stakeholders who have in-depth, grassroots-level knowledge in key areas – therefore remain limited. The long-term effects of this approach, whereby the letter of the law is followed without achieving its actual purpose, are a lack of engagement and ownership of policies and services by citizens and civil society and low trust in public bodies. Ensuring better collaboration and fostering partnership in law and policy making, with civil society in particular, will require a change in the mindset of public authorities and necessitate a firm belief in the added value of citizen and stakeholder participation (for more on these matters, see the section on addressing obstacles to making participation more effective and inclusive, as well as Chapter 1).

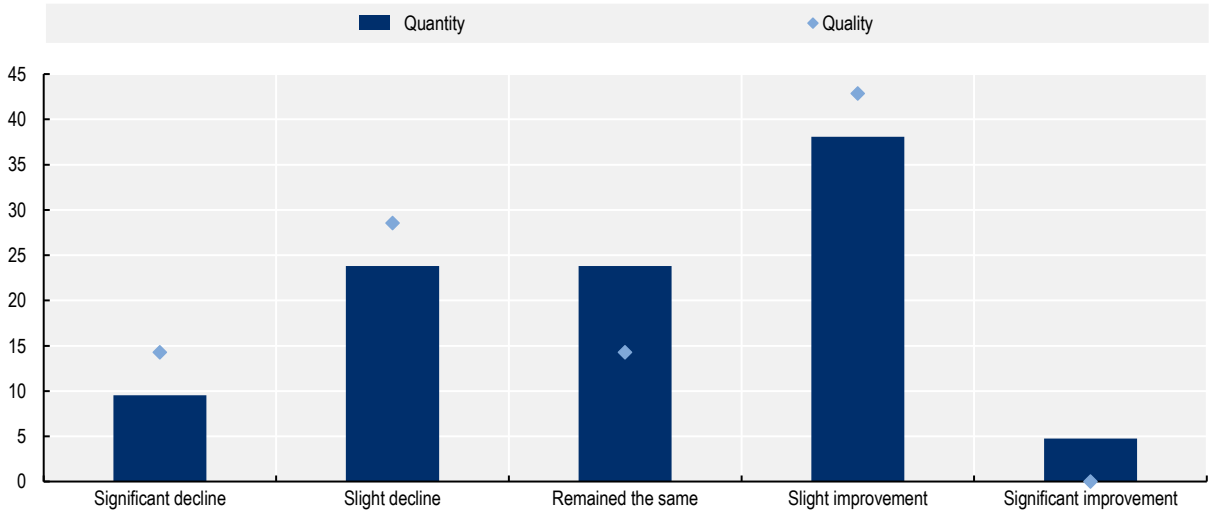
Figure 6.3. To what extent do you think your institution involves citizens and stakeholders?



Note: N=22.
Source: OECD (2022[7]), "Survey on Open Government for Romanian Public Institutions", OECD, Paris, in OECD (forthcoming[4]), *Open Government Review of Romania*, OECD Publishing, Paris.

Nevertheless, CSOs report improvements in both the quality and quantity of citizen and stakeholder participation over the past 3 years, with 38% of respondents to the Survey on Open Government for Romanian Public Institutions noting a slight improvement in the quantity and 43% observing a slight improvement in the quality of participation (Figure 6.4) (OECD, forthcoming[4]). There is therefore potential to build on perceived successes to further enhance CSOs' willingness to participate in these processes. That said, it is not an entirely positive picture, as almost a quarter (24%) of surveyed CSOs underlined a slight decline in quantity and 29% a slight decline in quality, suggesting that their experiences likely depend on their areas of work, as well as on the public bodies with which they interact. It could be beneficial for the government to conduct research focusing on the needs of different parts of civil society to better understand their experiences, in addition to championing public institutions which are performing well.

Figure 6.4. How would you describe the evolution of citizen and stakeholder participation in Romania in the past three years?



Note: No responses were received for the option "significant improvement" regarding the quality of opportunities to participate. N=21.
Source: OECD (2022[8]), "Survey on Open Government for Non-public Stakeholders", OECD, Paris, in OECD (forthcoming[4]), *Open Government Review of Romania*, OECD Publishing, Paris.

6.3. Key legal and policy frameworks and institutions governing participation

Romanian law covers numerous different forms of citizen and stakeholder participation and, in some cases, goes even further than other states by regulating matters such as public consultations and meetings. Democratic participation in public life is encouraged at the highest level in Romania, with the constitution guaranteeing: citizens' right to petition (Article 51); citizens' right of legislative initiative (Article 74); obligatory co-operation between the government and "social bodies" (Article 102, para. 2); and the existence of the Economic and Social Council, which Article 141 describes as an advisory body of parliament and government (Ministry of Justice, 1991[9]). Law 3/2000, on the other hand, details the procedure for initiating and organising a referendum, which may be held based on a proposal to revise the constitution, on removing the president from office and on matters of national or local interest (Library of Congress, 2021[10]).[11]

The constitutional right to petition under Article 51 allows citizens and legally established organisations to address petitions to public authorities, with procedural details reflected in Government Ordinance 27/2002 on the Regulation of the Activity of Solving Petitions (Ministry of Justice, 2002[11]). At the same time, the right of legislative initiative under Article 74 of the constitution provides citizens with a more direct means of engaging in public affairs by allowing 100 000 citizens to submit draft laws to parliament, provided these citizens are entitled to vote, that they come from at least one-quarter of the country's counties (plus Bucharest) and that in each of these at least 5 000 signatures are registered in support of the initiative. Citizens' initiatives may not, however, touch on matters concerning taxation, international affairs, amnesty or pardon. Law 189/1999 on citizen legislative initiatives (Ministry of Justice, 1999[12]) details the procedure and conditions for initiating and submitting a draft bill by citizens (Library of Congress, 2021[10]).

Law 52/2003 on Decisional Transparency in Public Administration and Law 367/2022 on Social Dialogue are among the central acts concerning stakeholder and citizen participation in policy- and law-making processes, which is the main focus of this chapter (Government of Romania, 2003[6]; Ministry of Justice, 2022[13]). Romania is one of few countries to have as anything like Law 52/2003 dedicated specifically to citizen and stakeholder participation in the policy-making process (OECD, forthcoming[4]). Based on

Article 2 of the law, authorities have a duty to inform the public and hold public consultations on all draft laws and regulations (Library of Congress, 2021[10]) (see sections on public consultations on draft acts and participation in public meetings below).

The general obligation to engage stakeholders and the wider public and to ensure their participation in public administration decisions, more specifically the drafting of legislation, is reflected in the basic "principle of transparency" set out in Article 8 of the Administrative Code of Romania, adopted through Emergency Ordinance 57/2019 (Ministry of Justice, 2019[14]). Under Government Decision 137/2020, the General Secretariat of the Government (hereafter "General Secretariat") is responsible for elaborating and implementing policies relating to open government, transparency and access to information of public interest, in addition to public consultations and increasing the operational capacities of non-governmental organisations (NGOs) (Ministry of Justice, 2020[15]).

Law 367/2022 on Social Dialogue (Ministry of Justice, 2022[13]) was adopted and entered into force at the end of 2022. Replacing and updating the previous Law 62/2011 of the same name, it regulates communication and the conclusion of agreements with so-called "social partners" (meaning trade unions or trade union organisations, employers or employers' organisations, as well as representatives of public administration authorities) on matters of common interest. Ministries and other public institutions involve these partners in decision-making processes on a regular basis via social dialogue bodies and commissions, thereby creating more permanent channels of participation which go beyond discussions on individual draft policies and laws.

Law 248/2013 on the Organisation and Functioning of the Autonomous Economic and Social Council outlines the independent nature of this body, providing impartial and neutral oversight of draft normative acts prior to their finalisation and adoption, and conducting research and monitoring tasks described in the law. The law likewise outlines the tasks and functioning of the council. Laws 350/2006 and 272/2004 respectively address the participation of young people and children in decision-making processes (see Table 6.1).

Table 6.1. Overview of selected legal frameworks regulating citizen and stakeholder participation in Romania, 2022

Law	Focus	Types of citizen/stakeholder participation
Constitution of Romania	Contains the fundamental principles which govern Romania, while outlining fundamental freedoms and the roles and competencies of different state bodies.	Right to petition, right of legislative initiative, obligatory co-operation between the government and "social bodies", the Economic and Social Council.
Law 52/2003 on Decisional Transparency in Public Administration	Establishes minimum procedural rules to ensure decisional transparency within central and local public administration authorities and other public institutions in relation to citizens and their legally constituted associations.	Public consultation processes for draft laws and other regulations at local and central levels, and citizen and stakeholder participation in public meetings.
Emergency Ordinance 57/2019 on the Administrative Code of Romania	Provides a framework for the organisation and functioning of public administration authorities and institutions, among others.	The general obligation of public authorities and institutions to inform and submit to public consultation, debate draft normative acts and allow citizen access to the administrative decision-making process, as well as data and information of public interest. Also describes the process of consultation between the central and local authorities.
Law 367/2022 on Social Dialogue	Regulates different forms of social partners, as well as the relationship between them and the state.	Participation in decision-making processes via social dialogue commissions (at the central and local levels) and the National Tripartite Council for Social Dialogue.

Law	Focus	Types of citizen/stakeholder participation
Law 248/2013 on the Organisation and Functioning of the Autonomous Economic and Social Council	Establishes the Economic and Social Council and outlines its organisation, composition and functioning, as well as its consultation procedure.	The procedure whereby public authorities and institutions consult the Economic and Social Council on draft normative acts.
Law 350/2006 on Young People	Provides a legal framework to ensure adequate conditions for the socio-professional integration of young people, according to their needs and aspirations.	The obligation for local public administration authorities to involve young people in their decision-making processes (Article 10).
Law 272/2004 on the Protection and Promotion of the Rights of the Child	Regulates the legal framework regarding the observance, promotion and guarantee of the rights of the child.	The requirement for local public administration authorities to involve the local community in a process of identifying community needs and resolving social issues affecting children (Article 114).

6.3.1. Public consultations on draft normative acts

Law 52/2003 outlines different forms and processes for citizen and stakeholder participation, notably public consultations on draft acts and participation in public meetings (Government of Romania, 2003[6]). This law does not apply in cases where the drafting of acts and meetings involves classified information,[12] information that needs to remain confidential in the interests of fair competition[13] or information on personal data (Article 6). According to Article 2, involvement in decision making and drafting of acts must follow certain rules. Namely, related sessions and debates organised by public authorities and institutions should be public and these debates and minutes of such events recorded, published and, in the case of minutes, archived. Where a public administration authority drafts a law or other regulation, Article 7 of the law stipulates key obligations for the relevant authority, which include:

- Publishing an announcement regarding the drafting of the act on its website (at least 30 working days prior to its endorsement by the competent public authorities).
- Displaying the announcement at its premises in a space accessible to the public.
- Forwarding the announcement to central or local media.
- Transmitting the act to all persons who have submitted an application to receive related information.

Article 7 states that the announcement should include the full text of the act itself, as well as supporting documentation, notably a "statement of reasons" (such as the reasons behind the draft act), an impact and/or feasibility study, and the time (at least ten calendar days) and manner in which interested persons may submit recommendations. In practice, draft acts are published online, on the websites of different ministries and municipalities (for further information, see Table 6.3), and most comments are likewise received online. The process is open, with no restrictions on who may provide input; the only limitation is that recommendations must be provided in writing. While the law foresees citizen participation, there are few cases of direct involvement of citizens in decision-making processes, at least at the central level (for examples of sub-national citizen platforms, see Box 6.1). A review of key ministry websites demonstrated that, in practice, regardless of the topic or complexity of a draft act, citizens and stakeholders are usually asked to submit their input within the minimum period of ten calendar days provided by law,[14] which can be a restrictive deadline.

Similarly, a 2021 analysis from the General Secretariat evaluating central and local administration practices in decision-making processes confirmed that, among public authorities surveyed, only 24% frequently organised public consultations beyond the 10-day term established by law (General Secretariat of the Government, 2021[16]). At the same time, this analysis identified a trend whereby in the 3 preceding years, only approximately 50% of the acts adopted had undergone public consultations; of the other acts adopted, fewer than 10% had been passed via emergency procedures, indicating that the application of such

procedures was not the reason for the low number of public consultations undertaken prior to legislation being passed.

Where public consultations do take place, legally established associations or other public authorities may request in writing that a public debate be held on a draft act (Article 7); in such cases, the competent public authority is obliged to organise such a debate within ten days of its being announced. Public debates follow special rules set out in Article 7, para. 10 of the law, based on which the initiating authority needs to publish information on the procedure of the debate and ensure all participants have had the opportunity to express their recommendations on the act in question. Debate minutes, as well as collected written recommendations, different draft acts, endorsement reports and the act's final version should be made publicly available on the website of the public authority within ten calendar days.

Law 52/2003 also applies to stakeholder participation at the local level, for county councils, local councils, mayors, institutions and public services of local or county interest (Article 4). Likewise, local administrations are stakeholders with respect to acts drafted at the central level and must be consulted, as set out in Article 86 of the Administrative Code. Based on this provision, central public administration authorities engaged in legal drafting are required to consult associative structures of local public administration authorities, including associations of Romanian communities, cities, municipalities and a union of county councils.

In the abovementioned 2021 analysis, the General Secretariat noted that while the current normative framework establishes legal mechanisms capable of stimulating participation and establishing a solid collaborative relationship with civil society, the use of such mechanisms fails to make a real contribution to improving the quality of public decision making (General Secretariat of the Government, 2021[16]). In this regard, it has identified as key challenges the need to improve the overall legal and procedural framework regarding the organisation of consultation processes and its lack of uniform application, noting discrepancies in how different public authorities interpret the law (General Secretariat of the Government, 2021[17]). To remedy this, and as required by Emergency Ordinance 16/2022, the General Secretariat released Methodological Norms on the Application of Law 52/2003 (Ministry of Justice, 2022[18]), which were adopted by the government at the end of June 2022 via Government Decision 831/2022 (Ministry of Justice, 2022[19]). This methodology aims to standardise the processes set out in law, while ensuring that not they do limit public entities' capacity "to establish additional activities to facilitate citizens' access to the processes of drafting normative acts and administrative decision-making" (Article 1, par 2). In addition to clarifying the responsibilities of key state actors, the methodology provides detail on the different steps and communication with respect to consultation proceedings, as well as organising, conducting and recording consultation events. Significantly, it states that all public institutions must provide feedback to participants and communicate the results of each participatory process. This exhaustive document includes seven annexes with templates for public consultation, meeting and debate announcements, for collecting, analysing and providing feedback to input received during such events and for the contents of annual reports.

Law 52/2003 thus provides a solid grounding for conducting public consultations on draft laws, with guidance explicitly allowing for more innovative and proactive approaches by public authorities, e.g. engaging in participatory processes that go beyond consultations, involving citizens as well as stakeholders, engaging them earlier in the drafting process and providing more time to give feedback beyond the minimum consultation periods set out by law. At the same time, elements of the law may hinder its effectiveness in practice and could be reviewed and amended. Thus, when a public consultation announcement is made, under Article 7, authorities are obliged to submit it to all persons having made a prior application to this effect, but not to others who might be affected or potentially interested.[15] This leads to limited public communication on new draft laws. Additionally, the law only requires public debates to be held if requested by a legally constituted association (which leaves open the question of whether informal associations may also make this request) or by another public authority and does not explicitly mention whether public authorities may do so of their own accord.[16]

The General Secretariat's 2021 analysis indicates that more than 50% of debates organised in the 3 preceding years were initiated by public authorities, while less than 10% were organised based on requests from citizens (General Secretariat of the Government, 2021[16]). Only 23% of CSOs surveyed for the analysis stated that they had requested a public debate in the 3 preceding years, with mixed results. The percentage of cases where such debates were always held, or where they were held most of the time, or rarely, or never, were roughly equal respectively (between 22% and 27% of the time for all categories).

Evidence suggests that, in practice, public debates on draft laws or other regulations are few and far between. Reports from public authorities on the implementation of Law 52/2003 indicate that the average annual number of such events is below 10 for most ministries and other government agencies; the Ministry of Agriculture and Rural Development (81 debates in 2021) and the Ministry of the Environment, Water and Forests (15 debates in 2021) alone reported a larger number.[17] In terms of participation in such debates, the 2021 government analysis notes that 53.3% of consulted public authorities responded that, on average, such debates were attended by fewer than 10 persons per consultation, due to short deadlines for consultation, which discouraged involvement by larger groups.

6.3.2. Participation in public meetings

In theory, public meetings can create spaces for general policy discussions (as opposed to public debates related to specific draft laws and similar acts) among public authorities, citizens and stakeholders (OECD, 2022[3]). As outlined in the *OECD Guidelines for Citizen Participation Processes*, public meetings often involve "gathering the public in face-to-face meetings with public authorities, in order to provide information and openly discuss topics of interest" (OECD, 2022[3]). These meetings allow public bodies to inform citizens and stakeholders about proposals and create a space "to have a loosely structured exchange and receive broad initial feedback" (OECD, 2022[3]).

In Romania, principles guiding participation of any interested person in public decision-making processes, notably in public meetings, are also set out in Law 52/2003 (Article 8) (Government of Romania, 2003[6]). This provision specifies that public institutions should post information on public meetings (including information on the time, date, venue and agenda) at the headquarters of the respective public authority and on its website, forwarding such communications to the media at least three days beforehand. In addition, the notice must be brought to the attention of persons and CSOs who have submitted written recommendations relating to the meeting's subject. The methodological norms (Ministry of Justice, 2022[18]) provide further details on announcing, organising and conducting such meetings, as well as reporting modalities. These public meetings are the mechanism whereby the authorities, mainly local authorities, conduct their decision-making processes, with decisions themselves being taken in meetings which are open to the public. When decisions are taken at the central level, notably by ministries or other central agencies, decisions are taken by adopting draft normative acts, which are then later adopted by the government. At the local level, based on Article 133, para. 1 of the Administrative Code, local councils hold ordinary meetings at least once a month, when convened by the mayor, but may also have extraordinary meetings (Article 133, para. 2); the same mechanism applies to county councils. For further details, see the section on strengthening participation at the sub-national level.

During relevant meetings, the official who chairs the event is required to give persons and CSOs attending on their own initiative an opportunity to express their views (Article 9). Meeting minutes are published on the website of the organising authority and displayed on its premises, along with information on any votes by participants during the meeting (excluding secret ballots) (Article 11). Recordings may be made public on request, in line with relevant access to information legislation. Where citizens' or organisations' written recommendations are not taken into consideration, competent public authorities are obliged to justify their decision in writing. Administrative complaints may be filed in the event of any breach of rights (e.g. individuals not being allowed to attend public meetings or participate in law-making processes).[18]

Priority access to such meetings is granted based on "the interest of legally constituted associations in relation to the subject of the public hearing", as established by the meeting's chair (without limiting access to media representatives) (Article 8, paras. 3 and 4). While it is understandable that space may at times be limited, this could effectively exclude members of the public, informal groups or CSOs. It may be worthwhile considering other less subjective access regulations; in any event, the size of a meeting room is best suited to the estimated audience size, in other words to the public interest that a certain topic may generate.

At the same time and despite the legal framework in this area, annual reports from public authorities on the implementation of Law 52/2003 indicate that, at the central ministerial level (as opposed to the local level), such public meetings do not occur very frequently and in some cases not at all. Romania could rethink the existing format, to explore ways of making relevant processes more open, less structured and more adapted to seeking input from a wide array of citizens and stakeholders, in line with guidance in the *OECD Guidelines for Citizen Participation Processes* (2022[3]). Notably, such meetings could take the form of open meetings or town hall meetings (which could be streamed online) which do not seek to gather input on a particular issue but rather constitute a means for public authorities to engage with the public directly, understand the needs of citizens and inform them of actions taken as well as upcoming decisions.

6.3.3. Social dialogue commissions and other forms of consultative bodies

Law 367/2022 on Social Dialogue establishes the general framework for informing and consulting social partners on matters of common interest (Ministry of Justice, 2022[13]). The law mentions different social dialogue bodies, namely the National Tripartite Council for Social Dialogue[19] (Title IV) and social dialogue commissions at the central and local (county and municipality) levels (Title V). These commissions function within ministries and other public institutions, but also at the local county level. The commissions are of an advisory nature and must be consulted on any legislative or other initiatives in the economic or social sphere. Their work aims to ensure permanent and regular exchange of information between different stakeholders on matters in the field of interest of the administration or social partners (Article 90). The new Law 367/2022 retains the main titles of the previous Law 62/2011, although the numbering has been updated after some titles were repealed. For example, under Title V on social dialogue commissions at the central and local levels, changes have been made which seek to ensure more frequent meetings.

While this form of consultation allows for close co-operation with public officials, it may, however, limit collaboration with formalised groups, such as trade unions, employer associations and particularly CSOs. During the OECD's public consultation for this report (see the section on methodology underpinning the *Civic Space Review of Romania* in Chapter 2), CSOs indicated that the practice of selecting civil society members for such bodies was not sufficiently transparent.[20] It is therefore important that, where they exist, such structures are open about their selection processes and criteria, and do not remain the only or main avenues for collaboration with civil society. In this regard, Romania could take inspiration from the Public Policy and Civil Society Councils in Brazil and Chile, which allow for multi-level participation at national and sub-national levels (Box 6.1).

Box 6.1. Public Policy and Civil Society Councils and other forms of participation in Brazil and Chile

Brazil's Public Policy Councils and National Policy Conferences

In Brazil, Public Policy Councils are created based on a law, decree or other regulation and are embedded in decision-making processes and systems of public authority. These councils are highly institutionalised, are made up of government and non-governmental representatives from civil society, and have policy and "control" functions in certain policy areas where they may allocate and steer public funds. These councils likewise have vast territorial coverage due to their multi-layer dimensions, with sub-national and federal representations for each policy area. The councils may be consultative (merely providing opinions or informal input), participatory (with stronger involvement in decisions and control of authorities' actions) or deliberative (co-creating proposals with public authorities and participating actively in the policy process).

National Policy Conferences, on the other hand, share certain common characteristics (IPEA, 2013[20]; Gurza Lavalle, 2011[21]; Pogrebinschi, 2014[22]). Most notably, these conferences start at the municipal level, with meetings held in several cities simultaneously which are open to everyone; a report is then issued with proposals and delegates are elected to represent the municipality in the State Conference. The State Conference then also involves deliberation, proposals and the election of delegates. Finally, state delegates in the National Conference vote on a final report with proposals directed at public bodies. Final decisions are taken by the National Conference although consensus is prioritised. The aim of these conferences is to influence policies or legislation at the federal level so policies and services reflect the needs of the entire country.

Citizen participation in Chile, including Civil Society Councils

Law No. 20.500 on Associations and Citizen Participation in Public Management in Chile (Library of Congress, 2011[23]) emphasises the state's duty to recognise people's rights to participate in its policies, plans, programmes and actions and prohibits conduct intended to exclude or discriminate against people in the exercise of their right to participation without a justified reason. The law enshrines the state's obligation to regulate the specific modalities of participation and publish relevant information about its policies, plans, programmes, actions and budgets in a timely, complete and accessible manner. Likewise, public authorities are required to report on the implementation of the law annually and in a decentralised manner. Following a recent presidential order, public bodies are required to have citizen participation units with at least one staff member devoted exclusively to this work and to provide contact details on public websites, allowing people to express their opinions on matters within the competency of each body. Each body should keep its institutional website updated with information on the formal and specific modalities of participation. At the local level, mayors and municipal councils are required to hold referenda on matters concerning plans related to urban planning. There are also dedicated forms of citizen participation in environmental matters and for Indigenous persons.

Based on the law, public authorities are also obliged to have consultative Civil Society Councils (COSOC), formed in a diverse, representative and pluralistic manner by members of non-profit associations (and including marginalised groups and reflecting gender equality in membership). The mandates of these councils are related to the legal competencies of public authorities, and they operate on a periodic basis, whenever they are convened by the respective authorities.

Source: Gurza Lavalle, A., J. Voigt and L. Serafim (2016[24]), "What do councils do and when? Decision-making standards for participatory institutions and their effects", https://doi.org/10.1590/00115258201687; CLP (2019[25]), *Participação Social: Por que ela é importante para a gestão pública?;* Gurza Lavalle, A. (2011[21]), "Após a participação: nota introdutória", https://www.scielo.br/j/ln/a/ycYffsZN8gX9pnFdt7TSnZp/?lang=pt; IPEA (2013[20]), *Ampliação da Participação na Gestão Pública: um estudo*

sobre conferências nacionais realizadas entre 2003 e 2011; Pogrebinschi, T. (2014[22]), "Turning participation into representation, innovative policy making for minority groups in Brazil", https://doi.org/10.2307/j.ctv16755q8.11; OECD (2022[26]), *Open Government Review of Brazil: Towards an Integrated Open Government Agenda*, https://dx.doi.org/10.1787/3f9009d4-en; Library of Congress (2011[23]), *Law 20.500 on Associations and Citizen Participation in Public Management*, https://www.bcn.cl/leychile/navegar?idNorma=1023143; email correspondence with the government of Chile, October 2022.

The Economic and Social Council, composed of representatives from employer organisations, trade unions, and non-governmental associations and foundations, is an advisory body to the parliament and government but has a somewhat different focus to the bodies described above. Established under Law 248/2013 on the Organisation and Functioning of the Economic and Social Council (Ministry of Justice, 2013[27]), the council does not advise government or parliament in matters pertaining to their daily work but is rather an autonomous body which provides opinions on draft acts prior to their adoption, in addition to other research and monitoring tasks described in the law. The government, parliamentary deputies and senators are obliged to consult this body on draft acts which regulate matters falling into certain categories set out by law. The council has up to ten working days to provide its input; beyond this time frame, the initiator of a draft act may proceed with its adoption. It is noticeable in this context that, while legislation such as Law 52/2003 provides stakeholders and citizens with a minimum of ten days to submit input, Law 248/2013 includes an upper limit of ten days for providing input, which would seem to place it at a disadvantage.

There are many other examples of consultative bodies. For example, Law 202/2002 on Gender Equality provides for central and local commissions on equal opportunities for women and men that are responsible for gender mainstreaming in national policies and include public officials alongside representatives from trade unions, employer organisations and CSOs (Ministry of Justice, 2002[28]). Additionally, many public institutions have specialised advisory councils to deal with specific themes or topics, such as sustainable development, fiscal administration, Roma community issues, persons with disabilities and digital transformation. In practice, Romania thus has numerous consultative bodies in ministries and local administrations. Some of these bodies are chaired by ministers or other heads of authorities; the setup, composition and procedure differ depending on the needs of the individual public authority (see Table 6.2). At times, these bodies create working groups to address specific issues.

Table 6.2. Overview of selected consultative bodies in Romania and their roles, 2022

Body	Composition	Areas of competency
Economic and Social Council	Representatives of employer organisations, trade unions and non-governmental associations and foundations	Advises the government and parliament on draft normative acts in various areas set out in Law 248/2013[1]
Advisory Council for Sustainable Development[2]	Representatives of academia, researchers, universities, scientists, civil society, the business community and social partners	Supports the government (via the Prime Minister's Office) in the implementation of the National Strategy for Sustainable Development
Advisory Council of the National Agency for Fiscal Administration	Representatives from business communities and academia	Supports decision making and operational processes of the National Agency's management, e.g. related to revenue collection, simplification of administration and digitalisation
Consultative Council of the National Agency for Roma	Representatives of Roma CSOs	Participates in strategic and policy discussions on matters relating to the situation of Roma
Disability Analysis Council[3]	Representatives of public authorities, both central and local, and CSOs (including the National Council for Disabilities, an umbrella organisation for other CSOs), among others	Advises the National Authority for the Rights of Persons with Disabilities by issuing opinions on draft laws and other regulations, reporting on discrimination against persons with disabilities and proposing measures to improve their living conditions
National Commission on Equal Opportunities for Women and Men	Representatives of ministries and other specialised central public bodies, trade unions and employers, and NGOs with recognised activity in the field	Works in co-ordination with the National Agency for Equal Opportunities between Women and Men and co-ordinates the activity of county commissions and of the municipality of Bucharest in the field of equal opportunities for women and men

Body	Composition	Areas of competency
National Council for Digital Transformation[4]	President of the Authority for Digitalisation and representatives of the private sector and civil society	Collaborates in various areas, including the government cloud, electronic identity and digital transformation
National Tripartite Council	Representatives of employer and trade union confederations and of public authorities, as well as a representative of the National Bank of Romania and the President of the Economic and Social Council	Debates and analyses draft government programmes and strategies and supports the implementation of strategies, programmes, methodologies and standards in the field of social dialogue

1. According to the law, these areas involve economic, financial and fiscal policies, labour relations, social protection, wage policies and equal opportunities and treatment, as well as agriculture, rural development, environmental protection and sustainable development. Other areas mentioned in the law are consumer protection and fair competition, co-operation, liberal professions and self-employment, citizens' rights and freedoms, health policies, and policies in the fields of education, youth, research, culture and sport.
2. More details on the Advisory Council for Sustainable Development can be found at https://bit.ly/3nk2Rp1.
3. Further information on the Disability Analysis Council can be found at http://conect.gov.ro/1/wp-content/uploads/2021/07/Consiliul-de-analiza-a-problemelor-persoanelor-cu-handicap.pdf.
4. More information on the National Council for Digital Transformation can be found at https://www.adr.gov.ro/cntd/.

Based on feedback received from government representatives, most ministries and local authorities co-operate well with their respective social dialogue commissions when preparing draft laws or policies. These commissions have existed for more than ten years and co-operation between authorities and the bodies represented in the commissions is generally smooth and marked by mutual trust. At the same time, some interlocutors said the respective commissions advising their ministries were not very active and rarely opposed or criticised draft laws or policies.[21]

Regarding the Economic and Social Council, government and civil society representatives alike agreed that this form of civil society involvement and oversight generally works well.[22] However, some CSOs reported obstacles to the effective functioning of the council, notably lack of time given for review, regardless of the length or complexity of a draft act. In situations where numerous draft acts are pending before the council, responding may become a challenge, especially as the council has no full-time employees and works mostly with scanned documents, which cannot be searched or edited.[23] The ten-day review period set out in law is considered too short, especially if more than one act is under review at the same time, and opinions of the council are not always taken into account prior to sending a draft act to parliament, sometimes without providing reasons.[24] Moreover, Law 248/2013 is considered unclear with respect to the question of how civil society members of the council are appointed and dismissed. For example, 13 of the 15 members were replaced in 2018 in what some observers felt was an opaque process (Romania Insider, 2018[29]).

Similar consultative bodies exist in other OECD and non-OECD Members, such as France[25] and Morocco.[26] Notably, the French Economic, Social and Environmental Council (CESE) may, following reforms in 2021, receive petitions and organise public consultations with citizens selected by lot,[27] either on its own initiative or on the initiative of the government or either chamber of parliament. The CESE may involve citizens in its committees; hybrid working groups can be formed from time to time, comprising both members of organised civil society and citizens selected by lot.

Recommendations

To enhance the effectiveness of the legal, policy and institutional frameworks regulating citizen and stakeholder participation in decision-making processes, Romania could:

- Consider reviewing Law 52/2003 to amend provisions on the sharing of draft acts with stakeholders and on public debates for draft acts. Such a review should be conducted in consultation with a wide array of civil society stakeholders. In addition:
  - The law could stipulate that public authorities should facilitate more awareness raising and outreach to the public (beyond persons who have submitted a prior request) and involve a wider variety of interest groups (beyond legally constituted associations that make such a request).
  - The minimum time periods for consultation could be amended and deadlines for feedback adapted to the length and complexity of individual draft acts while ensuring that minimum periods set out in the law are adhered to in practice.
  - As Law 52/2003 only permits written feedback on draft acts, more dialogue-based communication (both online and offline) could tap into additional knowledge sources.
- Establish clear and binding standards and ensure the full implementation of existing regulations on citizen and stakeholder participation, such as Government Decision 831/2022.
- Evaluate the purpose, composition and functioning of consultative bodies created by Law 367/2022 and similar entities, to see whether this system adequately facilitates input from a variety of different stakeholders. In this context, consideration may be given to amending the law to ensure that social dialogue commissions represent diverse interests and that their composition can be altered to promote more active and dynamic membership.
- Review Law 248/2013 with a view to strengthening the functions and capacities of the Economic and Social Council by allowing it more time to provide feedback on draft normative acts and clarifying appointment procedures of civil society members to the council.
  - The criteria for the dismissal of members should be set out in the law, following clear and transparent criteria and processes.
  - Consideration may be given to allocating permanent staff to the council, with adequate payment and to help it fulfil its mandate, and to expanding its mandate to include an ability to organise public hearings, in line with mandates of similar bodies in other countries.
- Review provisions on access to public meetings and explore ways of making such meetings more open and flexible, as a means of seeking input from a wide array of stakeholders, as well as from citizens to better understand their priorities and needs.

6.4. Making participatory practices more effective and inclusive

The following provides an overview of four key areas where there is potential to strengthen current citizen and stakeholder participation practices: by improving participatory processes for greater impact; strengthening participation at the sub-national level; creating opportunities for more inclusive dialogue involving underrepresented and marginalised groups; and reducing the use of emergency measures in law making.

6.4.1. Improving participatory processes for greater impact

Participatory processes that involve both citizens and stakeholders in public policy and law making are useful tools to strengthen the quality of laws and policies. When undertaken in a meaningful way, participation helps to make decision-making processes more transparent, thereby increasing trust in public institutions. In order to implement Romania's commitments to open government and ensure greater involvement of citizens and stakeholders, it is important for state actors to actively seek to make existing practices more effective. In general, the overall approach needs to be re-evaluated, based on a broader understanding of the nature and benefits of stakeholder participation, to embrace a more collaborative, democratic culture of public governance, complete with a clear government-wide vision as to why greater involvement of citizens and stakeholders in public decision making is needed. This will necessitate a significant shift across the public sector and more outreach to citizens and civil society, coupled with a more open, less legalistic approach, under the umbrella of a coherent and forward-looking government policy agenda.

With respect to regular consultation processes, government and civil society counterparts noted the following as the main obstacles to more effective and impactful participation: [28]

- A lack of capacity in certain parts of the public administration fuelled by frequent rotation of staff. This has reduced the ability of ministries and public bodies to develop and implement a long-term vision regarding participation.
- A lack of awareness among, and little training for, public officials on how to conduct effective public consultations and effectively involve citizens and CSOs in decision making.
- A lack of capacity within civil society, with few training and other support options offered.
- Short consultation deadlines, meaning that if citizens/CSOs do not check relevant websites regularly, participation opportunities may easily be missed; additionally, these deadlines are rarely extended in consultations concerning potentially complex or lengthy draft legislation.
- A limited pool of involved stakeholders; typically, the same organisations are consulted for many years, with other affected or interested stakeholders welcome but not actively sought.

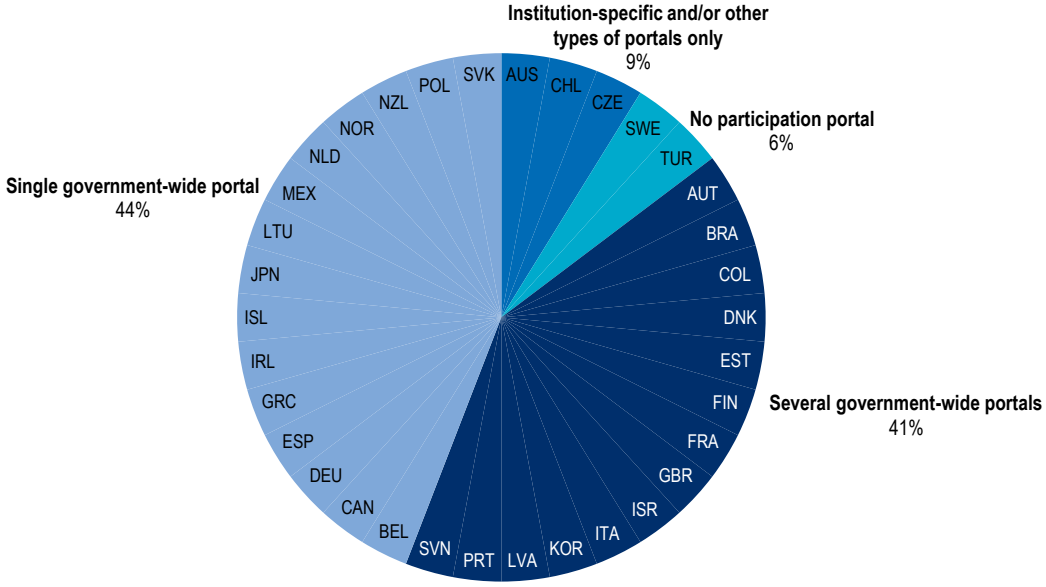
That said, the Romanian government has initiated programmes and training opportunities, and drafted methodologies and guidance documents, to address some of the above concerns. These include the recently adopted Methodological Norms on the Application of Law 52/2003 (Ministry of Justice, 2022[18]) and *A Guide to Innovative Approaches to Citizen Engagement in the Decision-making Process*, prepared based on collaboration with the OECD Observatory of Public Sector Innovation (OPSI) (General Secretariat of the Government, 2021[30]).[29]

However, the resources of the General Secretariat are limited and are hampered by frequent staff turnover within government structures and restructuring of ministries and other public institutions after changes in government. As a result, there is often a loss of institutional memory on progress and learning. In this context, opening public decision-making processes to stakeholders and the wider public will require a clear and sustained commitment from top levels of government, protected from political cycles and institutional changes.

Enhancing online participation portals

Participation portals are increasingly used by governments to consolidate sources of information from across the government, communicate updates of interest to citizens, garner feedback and respond to citizens. Government-wide portals have the advantage of providing a "one-stop shop" for citizens to learn about past, current and future opportunities for participation (OECD, 2021[31]). According to the results of the 2020 OECD Survey on Open Government, 44% of OECD Members have a single government-wide portal, while 41% have several, and 9% have an institution-specific portal (Figure 6.5).

Figure 6.5. Availability of government-wide portals to facilitate citizen and stakeholder participation, 2020



Note: N=34.
Source: OECD (2020[32]), "2020 OECD Survey on Open Government", OECD, Paris.

In Romania, information on draft laws and other important policy matters has so far mostly been published via institution-specific portals, namely the websites of individual ministries and other government agencies. Central public bodies for the most part have separate websites related to "transparency of decision-making" (pertaining to the implementation of Law 52/2003) where they post draft acts for consultations, publish annual reports on implementing the law and provide other relevant information. Some specific online platforms also exist, such as the Unique Register of Transparency of Interests (RUTI, n.d.[33]) (see Chapter 5) which allows registered CSOs to engage and communicate with public decision makers. In addition, the Public Procurement Electronic System (SEAP) publishes open calls for public-private partnerships (SEAP, n.d.[34]). Overall, three different kinds of portals are in use: ministry/agency websites; sub-national websites; and the E-Consultare centralised platform (Table 6.3).

Table 6.3. Online portals in Romania

	Information on pending consultations	Information provided	How to provide input	Where to send input
Ministry/agency websites	Available on separate webpages with lists of pending consultations	Name and at times purpose of the draft normative act,[1] information on where to send input and by when	Citizens or stakeholders may submit written comments within specified deadlines[2]	Written comments[3] may be sent to the respective ministry/agency via email[4]
Sub-national (municipality) websites	Available sporadically, in different places on sub-national websites	Information provided on issues in different parts of the websites	Citizens and stakeholders may submit written comments via e-platforms or e-forms utilised by larger municipalities	Mostly electronic means of communication used
Centralised platform (E-Consultare)	Available for different initiating authorities	Links provided to relevant ministry/agency websites	Citizens or stakeholders may submit written comments via e-forms	Electronic communication used

1. In some cases (e.g. the Ministry of Transport and Infrastructure), a summary of the key issues is also at hand.
2. At times, the deadlines are specified; at times they are not.
3. Some ministries (e.g. the Ministry of Transport and Infrastructure) have an online e-consultation form for citizens and stakeholders to submit their input, in addition to accepting input by post, fax and by deposit at ministry headquarters.
4. On some websites, individual contact details are listed; on others, there are centralised email addresses for input in the context of consultation procedures.

The Romanian government launched the E-Consultare platform in 2016, with a new version containing new functions launched in 2019 (Box 6.2) as a promising first step in centralising public consultation opportunities on one platform.

Box 6.2. Romania's E-Consultare platform

The Romanian government launched a new online consultation platform called E-Consultare (http://e-consultare.gov.ro/w) in 2019, which replaced and combined previous websites which focused on online consultations, debates and public consultations launched by the European Commission (Government of Romania, n.d.[35]). The website contains data on draft acts initiated by the public administration, including ministries and other central-level public bodies.

Individuals and CSOs wishing to comment on a draft law or other act can find basic draft information on the website, such as the name and email address of the relevant initiating body and competent official, as well as relevant documentation and a deadline for submitting opinions or suggestions. Comments may be posted via a contact form; the information is then transmitted directly to the competent ministry or state agency. When public institutions decide to hold a debate during the consultation period, relevant information is displayed next to the proposed draft law or regulation, specifying the date, time, location and topic of the public debate. Users can receive updates on the latest draft regulations undergoing public consultation if they subscribe to the platform's weekly newsletter. Between March 2019 and late January 2022, 5 169 draft acts were published through the E-Consultare platform, 59 of which were discussed in public debates. Some 112 public institutions were monitored, and 999 suggestions or proposals were submitted (General Secretariat of the Government, 2022[36]).

The platform is currently administered by the General Secretariat, which updates it by manually scanning the websites of potential initiating public bodies on a weekly basis and transferring the information (Government of Romania, n.d.[35]). The recently adopted Methodological Norms on the Application of Law 52/2003, as well as changes made to the Methodological Norms of Law 544/2001 in 2022, require the General Secretariat to further develop the site and adopt rules for publication of updated draft laws and supporting documentation, as well as produce annual reports on the platform (Ministry of Justice, 2022[18]).

The portal is easy to use and understand and provides a good overview of pending draft acts. Published user numbers indicate it is a useful communication and consultation tool for many. However, interviews during the fact-finding mission also indicated that there is work to be done to communicate – with both government and civil society representatives – on the website's functions.

Source: Government of Romania (n.d.[35]), *E-Consultare*, http://e-consultare.gov.ro (accessed on 22 July 2022); General Secretariat of the Government (2022[36]), *Summary of the Operationalisation of the E-Consultation Platform January 2020-2022*, http://e-consultare.gov.ro/w/wp-content/uploads/2022/01/RAPORT-E-CONSULTARE-2020-2022.pdf; Ministry of Justice (2022[18]), *Methodological Norms on the Application of Law 52/2003 on the Transparency of Decision-making in Public Administration*, https://legislatie.just.ro/Public/DetaliiDocumentAfis/256872.

This platform has the potential to help Romania harmonise practices among public institutions, facilitate more interactions with citizens and stakeholders, and simplify access to participatory opportunities. That said, the government has noted the difficulty of ensuring uniform use of the platform by central and local public administration authorities and considers this an obstacle to more effective participation (General Secretariat of the Government, 2021[17]). Moreover, because the website is updated manually (although on a regular basis), it is not always accurate.

Currently, the General Secretariat is taking considerable steps to update the platform and extend its functionality within the framework of Romania's Recovery and Resilience Plan. Important first steps in terms of corresponding legal provisions have been taken with adoption of Government Decision 831 (Ministry of Justice, 2022[19]). According to this decision, all public institutions under the scope of Law 52/2003 must publish on the platform an announcement about the purpose of a draft act as well as related public meetings (Art. 6). Additionally, all public institutions are required to upload their annual reports on the implementation of Law 52/2003 to the platform (as well as their own website) each year (Art. 11). These reports must follow a standard reporting model, thereby potentially facilitating data collection by the General Secretariat as well as providing clear and consistent information for interested citizens and stakeholders.

Moving forward, the General Secretariat is improving platform functionality to make it a "one-stop" portal for decision-making transparency (Art. 12) that allows for the above requirements. These improvements are ongoing until the end of 2023. Additional planned modifications include the possibility for individual public bodies to upload draft acts subject to consultation, thus eliminating the old practice of General Secretariat staff uploading acts to the platform. Furthermore, the platform will evolve to include updates on the implementation of legislation related to access to information (Art. I and III, Government Decision 830).

As part of implementing these reforms, consideration may also be given to further technological upgrades which would reflect functions seen in other countries' participation portals. For example, Romania could take inspiration from more dynamic platforms, such as the Decidim project, which began in Spain[30] and is now used by cities and municipalities globally (Decidim, n.d.[37]). This platform allows citizens to participate in decision making by debating proposals online regarding policy matters. In some cities, such as Barcelona, citizens are involved on a regular basis in decisions above a certain funding limit. Another example from Spain is the CONSUL project, initially launched by Madrid City Council and since adopted by governments around the world (CONSUL, n.d.[38]). This platform prioritises user experience and goes beyond mere consultation, with a citizen proposals module which allows individuals to submit, support and vote for initiatives. It benefits from open-source code, and so is free for any government or CSO to use and propose improvements (CONSUL, n.d.[38]).

Recommendations

To develop the E-Consultare platform into a more interactive one-stop-shop for participation, Romania could:

- Increase uptake and impact of the platform by ensuring a higher level of awareness. This could be done by increasing communication efforts and undertaking a campaign with the public and CSOs. Links to the platform could feature on ministry and other public authority websites, to encourage use.
- Engage in regular reviews of the platform's design and functionality to enhance its participatory capacity and collect data on traffic to understand and grow overall use by CSOs and the wider public.
  - In this regard, the General Secretariat could use data they already collect on the numbers of draft normative acts posted by year and the number of recommendations received per individual piece of legislation, to obtain a better overview of the site's utility.
- Consider creating and consulting small focus groups of CSOs and citizens who have visited the platform to enable them to share their views and improve user experience.
- Take inspiration from more dynamic platforms such as the Decidim and CONSUL projects to improve the current platform and promote greater interaction with citizens by allowing them to submit, support and vote for initiatives, similar to platforms used in other countries, and to permit public online discussions with officials on matters of public interest.
- Consider – in the medium term – combining the platform with functions for exercising the right of access to information and petition, thereby making it the first central-level platform integrating all essential open government areas online in one place. This "open government portal" could help in mapping and navigating to existing central portals in related areas, such as RUTI on lobbying activities and SEAP on public procurement.

Improving planning and communication before, during and after citizen and stakeholder consultations

The quality and impact of public consultations depends in large part on the manner in which citizens and stakeholders can participate. Public communication on relevant engagement mechanisms is key; to ensure a wide range of perspectives and inputs are gathered, stakeholders first need to know that these processes are ongoing. For this reason, information on consultations should be disseminated through a multi-channel approach to reach all societal demographics.

In Romania, most public consultations take place online (see section on public consultations on draft normative acts). Usually, information provided includes the draft act and related documents,[31] along with the necessary announcement regarding the consultation deadline but with little additional information or instructions. CSO representatives interviewed during the OECD mission noted that information provided on the circumstances, scope and aims of draft acts is often insufficient and not always spelled out in accessible, clear language[32]; for the most part, relevant government websites do not include information on government contact points and how to reach them in the event of queries.

In this respect, more training for public officials on how to plan, manage and communicate public consultations is key. Such training could firstly focus on emphasising the added value of such processes, before providing public officials with concrete tools for their implementation. The National Institute of Administration, which is responsible more broadly for training public officials, could consider developing training modules on how to communicate and engage with stakeholders and citizens. It is welcome that

the methodology on implementing Law 52/2003 now requires a descriptive paragraph to be added to announcements regarding new laws, outlining the solution proposed by the law, the expected impact and other relevant information (Ministry of Justice, 2022[18]).

The 2022 OECD working paper, *Accessible and inclusive public communication: Panorama of practices from OECD Members* (Cazenave and Bellantoni, 2022[39]), builds on the *OECD Report on Public Communication: The Global Context and the Way Forward* (2021[40]) and provides guidance on: adapting public communication to the needs and expectations of citizens to guarantee equal opportunities; ensuring inclusivity in the digital age; promoting training and capacity-building in public administration on interacting with stakeholders; and evaluating public communication in a systematic way. For example, publishing information in an informative, clear and to-the-point style, with a particular emphasis on short, well-structured content that uses simple vocabulary, is advisable. Online content must be easy to find on public websites. Some good practices have emerged from the United Kingdom, which has developed guidance for government officials on how to convey different content in a user-friendly manner.[33]

Participatory processes yield the best results when they are planned and targeted, with a clear idea of their purpose. Thus, before engaging with citizens and stakeholders, an internal planning process may help clarify the information being sought, and how to communicate desired outcomes accordingly. In this context, Romania could consider guidance from the OECD on strengthening relevant participatory processes (Box 6.3).

Box 6.3. Learning from the *OECD Guidelines for Citizen Participation Processes*

The *OECD Guidelines for Citizen Participation Processes* (2022[3]) note that citizens should only be engaged if the following conditions can be guaranteed:

- Citizens can assist in solving a problem.
- Citizens will have a concrete influence on the outcome, meaning public officials will act on their input.
- There is a high-level commitment to taking citizen perspectives into account.
- Adequate human and financial resources are available to implement a meaningful process.
- The time frame allows for genuine changes, meaning that a decision has not been taken before the process begins.

A ten-step plan developed by the OECD for this purpose is outlined in Table 6.4. It addresses different planning stages that should take place before, during and after participatory processes. It emphasises that planning contributes greatly to successful consultations, deliberative processes, participatory budgeting and other forms of citizen participation, which includes several steps relating to the focus of consultations and why they are necessary, as well as who needs to be included and in what ways (all of which could be deliberated when seeking to change consultation processes in Romania). Good communication and feedback mechanisms and an evaluation afterwards are also important. The OECD guidelines provide a list of resources that may provide further practical guidance in annexes to the document.

Table 6.4. Ten-step path of planning and implementing a citizen participation process

	Step	Description
1	Identifying the problem to solve and the moment for participation	The first step when planning a citizen participation process is to identify if there is a problem that the public can help solve, which then needs to be defined and framed as a question. Citizens can be actively involved in any of the stages or throughout the policy cycle: when identifying the issue, formulating policy, making decisions, implementing policy or evaluating it.
2	Defining the expected results	A clear understanding of the expected outcomes or results is needed to define desired inputs or contributions from citizens and the impact they will have on the final decision.
3	Identifying the relevant group of people to involve and recruiting participants	Different types of group can be involved in a participation process, such as a broad group of citizens, a representative group of citizens, a particular community based on geography or other demographic characteristics, as well as stakeholders ranging from NGOs to businesses and academia. Different strategies may be employed to recruit them – an open call, a closed call or a civic lottery.
4	Choosing the participation method	Public officials can analyse existing citizen participation methods and their characteristics to help choose the most applicable in any given situation. These include information and communication, open meetings/town hall meetings, civic monitoring, public consultation, open innovation, citizen science, participatory budgeting and representative, deliberative processes.
5	Choosing the right tools	Digital tools enable citizens and stakeholders to interact and submit input in different ways. These should be chosen to facilitate the participation method. Policy makers should keep in mind existing "digital divides"; plan for technical, human and financial resources needed to deploy digital tools; and choose tools which are transparent and accountable.
6	Communicating the process	Public communication can help every step of the way – from recruiting citizens to ensuring the transparency of the process to extending the benefits of learning about a specific policy issue to the broader public. Constant, clear and understandable communication that uses plain language is most effective.
7	Implementing the participation process	There are general considerations which concern the implementation of any participatory process: preparing an adequate timeline, identifying the needed resources, ensuring inclusion and accessibility, and considering a citizen's journey through a participatory process.
8	Using citizen input and providing feedback	The input received as part of the participatory process should be carefully and respectfully considered and used as stipulated in the beginning – with clear justifications if any input or recommendations are not used or implemented. Communicating to participants about the status of their input and the ultimate outcome of their participation helps to close the feedback loop.
9	Evaluating the participation process	Through evaluation, the quality and neutrality of a participatory process may be measured and demonstrated to the broader public. Evaluation also creates an opportunity for learning by providing evidence and lessons for public authorities and practitioners about what went well and what did not.
10	Cultivating a culture of participation	A shift from ad hoc participation processes to a culture of participation can be supported by embedding institutionalised participation mechanisms, multiplying opportunities for citizens to exercise their democratic "muscles" beyond participation, and protecting a vibrant civic space.

Source: OECD (2022[3]), *OECD Guidelines for Citizen Participation Processes*, https://doi.org/10.1787/f765caf6-en.

Recommendations

To improve planning and communication around public consultations, in line with OECD guidelines, Romania could:

- Devote more time and attention to planning, focusing on the purpose, modalities and desired end-results of consultations, to achieve more successful outcomes.
- Include accessible, clear instructions, in plain language, for citizens and stakeholders to convey the purpose of consultations, key questions up for debate and the kind of information the relevant public authority is seeking.
- Consider holding public debates and meetings online or in hybrid mode to allow as many interested parties as possible to participate, and live stream them on institutional websites and social media platforms where relevant.
- Add a summary or breakdown of the main elements of relevant acts, also in plain language, on government websites.
- Include information on contact points for each published act and how they may be reached.
- Train public officials in communicating with the public. For this purpose, consideration may be given to developing a special training module on how to communicate and engage with stakeholders and the wider public, as part of overall training provided by the National Institute of Administration for public officials, as also recommended in the forthcoming OECD *Open Government Review of Romania* (forthcoming[4]).
    - As regards training, public officials would benefit from structured guidance on:
        - Gathering and addressing recommendations received during public consultations.
        - How to provide feedback to citizens and stakeholders in a transparent and informative manner (see section on introducing transparent and responsive feedback and evaluation mechanism).

Involving citizens and stakeholders in decision-making at an earlier stage

When conducting public consultations or engaging in other forms of participatory process, it is essential that the voices of citizens and stakeholders are truly heard and evaluated. This requires inviting inputs when changes to a draft policy or draft act are still possible and realistic. In Romania, while public institutions may consult with the advisory and working bodies that they collaborate with regularly at the initial stage of drafting policies or legislation, in practice,consultations usually happen at the end of the law-making process, once a final draft has been prepared and is ready for adoption. This is contrary to the ten steps of the OECD guidelines outlined above (Table 6.4). The 2021 General Secretariat analysis evaluating central and local public administration practices in decision-making processes indicates that only 27% of the public authorities surveyed always organise some form of pre-consultation session, with 18% doing this most of the time and the remaining 55% organising such pre-consultations sometimes or never (General Secretariat of the Government, 2021[16]). Generally, there are few public debates or consultations on laws or policies before they are drafted, although some notable exceptions include areas such as education reform and digital authentication tools, as well as online discussion platforms in certain municipalities (see Box 6.4 for good practices).

As a result, citizens and stakeholders have very little influence on the agenda-setting and conception stages of law and policy making. Exacerbating matters, while they are consulted on draft legislation in line with the law, there is also little clarity on how their input is reflected. This tendency to conduct consultations towards the end of the law-making process is similar to practices observed in many OECD Members

(OECD, 2021[31]). However, this form of consultation leads to limited outcomes, as it focuses on testing ideas already developed rather than seeking early advice from the end users of the policy, based on their needs.

That said, there are some positive examples of more inclusive, early participatory processes taking place prior to the drafting of legal acts that Romania could build on (Box 6.4).

Box 6.4. Good practices: Examples of effective public consultations in Romania

Public officials in Romania have undertaken several successful countrywide consultations with a variety of stakeholders in recent years, to gather opinions and comments from different social partners and other stakeholders on matters such as education and digitalisation.

Educated Romania project

The Presidential Administration held consultations with social partners and key stakeholders throughout development of the Educated Romania project, which launched in 2016.[1] The first phase (2016-17) comprised a variety of activities including: a series of eight consultations on the country's vision and objectives for education and research; the development and dissemination of an online questionnaire; and 35 consultation events organised by experts and stakeholders (President of Romania, 2022[41]). During the second stage (2017-18), seven working groups – composed of both public officials and stakeholders including academics and CSOs – were established on subjects such as enhancing teaching careers and professionalising education management, as well as making early childhood education accessible to all and achieving equity in the education system. In the third phase (2018-21), the documents developed in previous stages were launched for public consideration, leading to numerous debates, events, studies and projects. At the same time, via an EU-funded project, a series of public policy briefs was developed in co-operation with the OECD covering priority topics, namely: 1) teaching careers; 2) educational management; 3) fairness; and 4) early education (President of Romania, 2022[41]).

Overall, 67 NGOs, activist groups and public bodies organised 80 events under the project framework. Throughout the process, 12 470 citizens were consulted.

European electronic identification (eIDAS)

The European Digital Identity Wallet is a service which will enable citizens and organisations to use identity data and credentials related to their identity and to use them for authentication purposes, online and offline (ADR, 2021[42]). Romania sought input from a range of subject-specific stakeholders around this initiative. In 2020, public debates on eIDAS were organised by the Ministry of Internal Affairs, for example. The following year, the Authority for the Digitalisation of Romania (ADR) put the eIDAS Regulation to a public debate (ADR, 2021[42]) which included the establishment of an online consultation platform in 2022 (ADR, 2022[43]). The ADR explicitly recognises that Romania's position "must be correlated to the concrete and specific needs" of diverse stakeholders affected, who were asked to submit recommendations and suggestions regarding the proposed regulation (ADR, 2021[42]).

1. The national project initiated by the President of Romania aims to improve overall education and "to support the repositioning of society on values, the development of a culture of success based on performance, work, talent, honesty and integrity". For more information, see the project website at http://www.romaniaeducata.eu/de-ce-avem-nevoie-de-romania-educata/.

Source: President of Romania (2022[41]), *Commitments - Educated Romania*, https://www.presidency.ro/en/commitments/educated-romania (accessed on 13 July 2022); President of Romania (2022[44]), *Educated Romania*, http://www.romaniaeducata.eu/ (accessed on 13 July 2022); ADR (2021[42]), "ADR puts up for public debate the proposal to amend the European Electronic Identity Regulation (eIDAS)", https://www.adr.gov.ro/adr-pune-in-dezbatere-publica-propunerea-de-modificare-a-regulamentului-pentru-identitatea-electronica-europeana-eidas/ (accessed on 13 July 2022); ADR (2022[43]), "The Authority for the Digitisation of Romania launched the online platform for public consultation on the European digital wallet", https://www.agerpres.ro/economic-intern/2022/03/02/autoritatea-pentru-digitalizarea-romaniei-a-lansat-platforma-online-de-consultare-publica-pe-tema-portofelului-digital-european--876174.

Recommendations

To encourage public consultations during the priority- and agenda-setting phases of policies and laws, Romania could:

- Foster participation early in the policy cycle by consistently involving citizens and stakeholders in discussions on available policy solutions to public challenges before the drafting of normative acts commences.
- As part of an envisaged cross-governmental community of practice on open government, consider establishing a sub-group on citizen and stakeholder consultation and engagement.
  - This sub-group could be tasked with identifying and championing good practices and discussing how consultation processes may be enhanced. This community of practice could be open to CSOs and sub-national governments to encourage a broad exchange of experiences among all relevant actors and learning from best practices.
- Foster clear and sustained commitment from the highest levels of government to the goal of opening up decision-making processes and institutionalise these processes to protect them from political cycles.
  - For example, the General Secretariat could be granted additional human and financial resources to oversee the implementation of these processes across public administration.

Introducing transparent and responsive feedback and evaluation mechanisms

Participation processes are more useful where adequate mechanisms are in place to collect inputs and assess and incorporate them into draft acts as relevant. Moreover, for those participating in consultations and similar processes, it is crucial to see whether and how their comments and concerns were addressed. A lack of transparent feedback may lead to consultation fatigue as well as a reduced sense of ownership and loss of trust in the process and the relevant public institutions. In Romania, while Law 52/2003 requires public bodies to publish information on input received from stakeholders during public debates, in addition to the improved versions of draft acts (Government of Romania, 2003[6]), it does not detail the manner in which feedback should be provided.

Article 7 of Law 52/2003 stipulates that all proposals, suggestions and opinions or recommendations received must be recorded in a register, along with the date of their receipt and contact details for the persons submitting the input (Government of Romania, 2003[6]). Input must be taken into account before a final version of the draft normative act is submitted to the respective public authorities for endorsement. Each public administrative authority is required to designate a contact point responsible for the relationship with civil society.

In its 2021 analysis (General Secretariat of the Government, 2021[16]), the General Secretariat noted that most respondents had a person or structure in place to engage with civil society. In practice, the above structures or contact points may overlap with similar structures which public authorities are obliged to set up to enhance collaboration with associations, foundations and similar entities under Government Ordinance 26/2000 on Associations and Foundations (Ministry of Justice, 2000[45]). With respect to the functioning of these types of structure in practice, 47% of institutions surveyed by the General Secretariat answered that they did not encounter any problems, while 29% noted challenges due to overlaps in respective officials' work tasks with other fields of activity and the remaining respondents noted other challenges such as: insufficient technical staff, lack of staff training and lack of prioritisation of such matters by management. At the same time, only a third of public authorities surveyed (33%) confirmed they had a register to record feedback from public consultations.

Law 52/2003 specifies that after consultations, improved versions of draft acts must be published (in various stages of elaboration) along with other documentation regarding consultations and/or debates.[34] However, crucially, Article 7 does not go into detail on whether feedback reports for participants in consultations are required. While annual reports prepared by some ministries and other public bodies on implementing Law 52/2003 indicate that, in some cases, reasons are provided when recommendations are rejected,[35] other authorities do not provide such information. In some instances, the reasons for not taking up civil society proposals into final legal or policy documents are not explained, even in situations where responsible authorities have sent a draft act to parliament that was quite different from what had been discussed and agreed during consultations.[36]

Moving forward, this situation may be improved by Article 4 of the Methodological Norms on the Application of Law 52/2003, which outlines different steps that must be taken by an initiating authority when conducting public consultations (Ministry of Justice, 2022[18]). One of these steps includes informing participants about how the proposals, suggestions and recommendations made by stakeholders during the process have been incorporated, by recording and publishing the special register containing the different types of input received. Annex 3 to this methodology provides a template which public authorities are required to follow in collecting and analysing proposals received. This template includes a column for justifications where recommendations are not taken on board.

According to Article 13 of Law 52/2003, public authorities are required to publish on their websites annual reports on decisional transparency and to display these reports on their premises or present them during public meetings (see the chapter on monitoring and evaluation in the OECD *Open Government Review of Romania*).[37] In practice, implementation of the annual reporting requirement varies greatly, with not all public authorities publishing reports on their websites every year. Thus, in some cases, the latest annual reports are from 2021, while in others, they date to 2020 or 2019.[38] Annex 7 of the methodology on implementing Law 52/2003 provides a template for the structure and contents of these annual reports.

Generally, reports list the annual number of draft acts consulted upon, the number of recommendations received and the number of public debates held, among others, but do not go into detail as to how many or what kind of recommendations were received for which specific act or how many provoked changes, in addition to any reasons for rejecting them.[39] Closing the feedback loop is considered by the *OECD Guidelines for Participatory Processes* as essential; it pushes authorities to remain accountable to participants and the broader public. If they do not receive proper feedback, there is a risk of participants becoming frustrated and less likely to participate in the future or to trust government efforts in establishing such processes (OECD, 2022[3]).

Based on these reports, among others, the General Secretariat monitors and evaluates how public authorities and institutions implement legislation on access to information and transparent decision making. It also bases public policies and government decisions on improving consultation processes in public institutions on the data, and has organised training and information sessions and issued recommendations to ministries and other government agencies on strengthening consultation processes.[40] In this sense,

these reports serve as important sources of information to measure the openness of public administration more broadly, which is discussed in further detail in the OECD *Open Government Review of Romania* (forthcoming[4]).

Because the above annual reports are limited to general statistics, their findings do not lend themselves to a comprehensive analysis. The evaluation section for such reports is a good start but it remains to be seen whether this template will result in public authorities engaging in more in-depth reflections which go beyond a simple positive or negative evaluation of the process. It may be useful to eventually expand the current short statistical reports into more extensive evaluative analyses, with greater emphasis on the topics of consultations, including what worked well and what did not. A community of practice on open government, with, for example, cross-governmental discussion boards, could also prove useful alongside these annual reports, as such platforms allow for an exchange of experiences (OECD, forthcoming[4]). This might make it easier for oversight bodies such as the General Secretariat to identify trends and potential areas for reform.

Recommendations

To enhance transparent and responsive feedback on and evaluations of consultations, Romania could:

- Revisit the process of collecting information for annual reports on the implementation of Law 52/2003 to see how key public institutions, mainly ministries and similar government agencies, could better retain information which will help them evaluate and assess public consultation procedures and make necessary improvements. While Annex 7 to the methodology adopted by Government Decision 831/2022 provides a good model for comprehensive and transparent reporting, the next step is analysing the information collected and seeking ways of enhancing consultation with citizens and stakeholders.
- Strengthen monitoring and evaluation by providing guidance and tools at the institutional level to collect qualitative and quantitative data on the quality of processes.
    - Data collection methods targeting those who join participatory processes are highly relevant. This could include information gathered through interviews and surveys, on how much feedback was received on different acts and the responses to that feedback, among others.

6.4.2. Strengthening participation at the sub-national level

At the sub-national level, Romania has two tiers of government: counties and a municipal level composed of communes, towns and municipalities. Both tiers have self-governing bodies, namely county councils and local councils, with counties co-ordinating the activities of communal, town and municipality councils. National government may issue legal acts to which adherence by local authorities is compulsory. The central government appoints a prefect in each county and, as a representative of the government at the sub-national level, this person has the right to control the legality of acts issued by the local authorities (SNG-WOFI, 2022[46]).

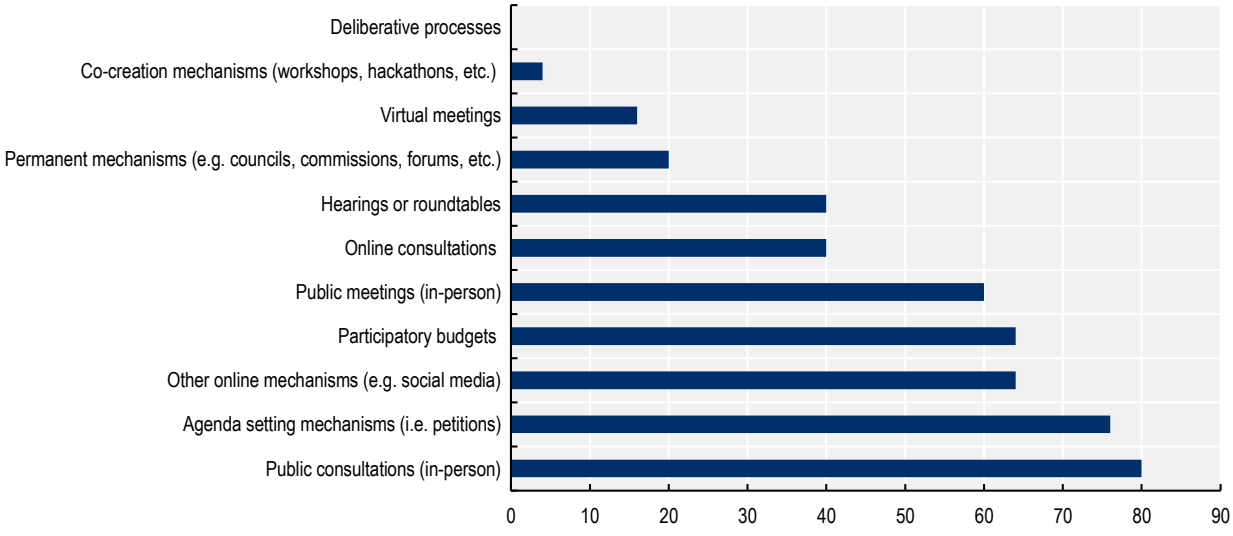
Public bodies at the sub-national level are often at the forefront of open government reforms and more innovative forms of citizen and stakeholder participation. This is unsurprising given they are often the closest point of contact with government for many citizens. Furthermore, citizens are more likely to be directly affected by the policies and service delivery in their own communities and thus have more incentive to be involved in the public decision-making process. This is central to the OECD's concept of an open state, when public institutions beyond the central level – including the sub-national level of government and other branches of the state – pursue an open government agenda. The OECD *Open Government*

Review of Romania (forthcoming[4]) discusses in more detail the potential for Romania's move from open government to an open state.

As discussed in the section on key legal and policy frameworks and institutions governing participation, Law 52/2003 (Article 4) applies equally to national and sub-national authorities (Government of Romania, 2003[6]). Moreover, the Administrative Code contains specific principles for the general organisation and functioning of local public administration, including the principle of "citizens' participation in resolving issues of particular local interest" (Article 75) (Ministry of Justice, 2019[14]). Thus, based on Article 138 of the code, meetings of local councils are public and resident citizens have the right to attend and access draft decisions and minutes. The ways that "interested persons" may participate in such meetings is regulated by the respective local council's rules of procedure.

During consultations on draft acts prepared at the central level, associative structures of local administration authorities (namely associations of Romanian communities, cities and municipalities, and a union of county councils) are not given much time to provide input, based on Article 86 of the code: the consultation period starts at least 15 working days before the act's adoption and associative structures have a minimum of 10 working days to submit their input. These time periods may be reduced further in urgent cases, which limits the ability of local-level structures to impact pending draft acts. During the OECD fact-finding mission, interlocutors noted that in practice, communication between central and local levels works well at times but that there are instances when feedback provided by local counterparts is not sufficiently taken into account in the final text of a draft act.[41]

Figure 6.6. Diversity of mechanisms for citizens to interact with Romanian sub-national authorities



Note: N=25, multiple selection possible.
Source: OECD (2022[7]), "Survey on Open Government for Romanian Public Institutions", OECD, Paris, in OECD (forthcoming[4]), *Open Government Review of Romania*, OECD Publishing, Paris.

Data collected by the OECD suggests that bodies at the sub-national level use diverse tools to interact with citizens. As shown in Figure 6.6, public in-person consultations are the most common way to interact with citizens (used by 80% of respondents to the Survey on Open Government for Romanian Public Institutions), followed by agenda-setting mechanisms (76%), participatory budgets (64%) and public meetings (60%). In addition, several Romanian municipalities implemented good practices such as online platforms for agenda setting or participatory budgets which could inspire other municipalities or counties, presenting an opportunity for cross-municipality and cross-government learning and building on success

(Box 6.5). The OECD recognises this diversity as beneficial and as presenting a positive foundation on which to build more ambitious open government agendas. However, in order to do this, public authorities could move beyond the sole use of consultations (online or in-person) to more innovative and impactful approaches including co-creation mechanisms or deliberative processes.

Box 6.5. Good practices in participation at municipal level

Priority setting in the municipality of Iași

Iași municipality created their online Collaborative Solutions Platform (https://solutiicolaborative.ro/team), used by local citizens to decide on municipal priorities in seven strategic areas of development: public spaces, mobility, education, health and environment, good governance and digitalisation, public order and security, and culture (Iași City Hall, n.d.[47]). In each of these areas, multidisciplinary teams work on citizen-friendly solutions. Once adopted, solutions are implemented, as appropriate, in mixed formulas by CSOs, private actors and local authorities. By mid-2022, 1 139 citizens were involved in the platform, a total of 566 problems had been identified and 4 533 votes were cast (Iași City Hall, n.d.[47]).

Participatory budgeting in the municipality of Suceava

The municipality of Suceava's e-portal (https://eportal.primariasv.ro/dm_suceava/servicii.nsf) allows citizens to submit electronic petitions and take part in participatory budgeting processes. The platform website states that the participatory budget serves as a "framework of a partnership relationship between the public administration and the citizens, in order to actively involve them, through ideas, suggestions, proposals, to improve the quality of life at the level of the local community". Citizens may submit any project of local interest via the website (Suceava City Hall, n.d.[48]).

Youth participatory budgeting in the city of Cluj-Napoca

The Com'ON Cluj-Napoca project aims to involve young people – and especially those who may not be traditionally inclined to participate in public decision making – in "the generation, development, [and] collection of community initiatives" supported by public funds (Com'ON Cluj-Napoca, n.d.[49]). The process begins with a call for the creation and submission of initiatives and looks for informal groups and micro-communities of young people in the city aged between 14 and 35 to vote on and implement these projects. The first cycle took place in 2015 and saw 248 informal groups propose 437 eligible initiatives. In that year, a total of 48 609 votes were cast by 18 782 persons (Com'ON Cluj-Napoca, n.d.[49]). The project has continued since, with the most recent cycle implemented between 17 May and 20 November 2022, with an overall message focused on well-being, more specifically on quality of community life.

Digital platforms in the municipality of Timișoara

The municipality of Timișoara initiated a digital platform called Decidem Timișoara (https://decidem.primariatm.ro/), through which citizens can organise themselves democratically by presenting proposals, participating in meetings and debates, encouraging discussions on the decision-making process, making decisions through various forms of voting and monitoring the implementation of decisions (Timișoara City Hall, n.d.[50]). The main means of participation are working groups in which experts, citizens and municipal officials co-ordinate activities and hold consultations on key municipal projects. Debates are held in public spaces to discuss essential topics for the city's development (Timișoara City Hall, n.d.[50]).

Source: Suceava City Hall (n.d.[48]), *ePortal*, https://eportal.primariasv.ro/dm_suceava/servicii.nsf (accessed on 13 July 2022); Timișoara City Hall (n.d.[50]), *Decidem Timișoara*, https://decidem.primariatm.ro/ (accessed on 13 July 2022); Iași City Hall (n.d.[47]), *Collaborative Solutions Platform*, https://solutiicolaborative.ro/team (accessed on 13 July 2022); Com'ON Cluj-Napoca (n.d.[49]), *About*, https://www.comoncluj.ro/rules (accessed on 28 October 2022).

To facilitate interaction between public authorities and citizens, some municipalities have prepared guidelines for public officials which outline the benefits of participatory decision making while providing specific ideas on organising meaningful processes and increasing administrative transparency (Box 6.6). The existing guidelines could be enriched by the methodology, good practices and principles included in the *OECD Guidelines for Citizen Participation Processes* (2022[3]). However, evidence from the OECD fact-finding mission suggests that most sub-national authorities do not have a dedicated officer or administrative support in charge of designing and implementing participatory processes. In most cases, interviewees said that involving citizens in participatory processes can be perceived as an additional "legal burden" for sub-national public officials.

Box 6.6. Guidelines from city halls in Romania on promoting transparency and citizen participation

Good practice guide on transparency in local public administration in Deva

In a project co-financed by the European Social Fund 2014-2020, Deva City Hall published a *Guide to Good Practice on Transparency in Local Public Administration* in 2019, which also focused on preventing and combatting corruption among public officials (Deva City Hall, 2019[51]). The document recognises the importance of establishing guidelines for conduct in the areas of ethics, transparency and efficiency in decision-making processes, in addition to the carrying out of administrative tasks. It notes that transparency can ensure greater operational efficiency across public administration, increase the overall quality of public policies and services, and ultimately increase public trust among those who use these services (Deva City Hall, 2019[51]). The guide moreover links transparency to citizen participation and recommends that, based on Law 52/2003, public officials proactively share information on policy making and hold consultations at different stages of the policy cycle. It also underlines the value of taking different perspectives into account to gain a complete understanding of policy issues. Lastly, the guide emphasises that consultations organised exclusively at the beginning of the policy stage can remain superficial or overly formal, while those held too late can lead to input not being reflected and unresolved disagreements between public officials and stakeholders (Deva City Hall, 2019[51]).

Methodology for operationalising participatory governance in Timișoara

In 2020, Timișoara City Hall introduced a regulation to foster participatory governance in the wider municipality (Timișoara City Hall, 2021[52]). Several CSOs were involved in its development and there was a public debate on it (Debanat.ro, 2021[53]). In addition, the city hall organised an online meeting and invited citizens and CSOs to send in proposals, suggestions and opinions regarding a draft version of the regulation (Timișoara City Hall, 2021[54]). Following this input, the draft methodology was updated to highlight the positive benefits of open and participatory governance for both the public sector and wider society and to adhere more strongly to the values of the Open Government Partnership. The document likewise emphasises the importance of access to information and transparency, and of using new technologies to reach more citizens (Timișoara City Hall, 2021[52]). Furthermore, it underlines the need to protect civic space as an essential element of both a democratic society and good governance. It also advises that digital technologies should be used in a transparent, accountable and participatory

manner to streamline government processes and foster citizens' interest in public decision making (Timișoara City Hall, 2021[52]).

Source: Deva City Hall (2019[51]), *Guide to Good Practice on Transparency in Local Public Administration*, http://www.poca.ro (accessed on 13 July 2022); Timișoara City Hall (2021[54]), *Public Debate*, https://www.primariatm.ro/2021/10/27/dezbatere-publica-8/ (accessed on 13 July 2022); Timișoara City Hall (2021[52]), *Methodology for Operationalising Participatory Governance*, https://www.primariatm.ro/administratie/consiliul-local/proiecte-de-hotarari/?uid=235CD6DE73B431F3C22587740022A67D (accessed on 13 July 2022); Debanat.ro (2021[53]), "The municipality of Timișoara is thinking about implementing participatory governance", https://debanat.ro/2021/10/municipalitatea-din-timisoara-se-gandeste-la-implementarea-guvernarii-participative_349387.html (accessed on 13 July 2022).

Recommendations

To enhance citizen and stakeholder participation at the sub-national level, Romania could:

- Ensure that the good practices being implemented by Romanian municipalities, such as participatory budgeting, are disseminated across the country as models, through a network or community of practice on open government.
  - This could be part of a broader effort to create synergies among local authorities (as well as with other levels of government) in pursuit of an open state. Further recommendations are included in the OECD *Open Government Review of Romania* (forthcoming[4]).
- Ensure the overall quality of participation initiatives by increasing awareness of relevant existing guidance elaborated by the General Secretariat and municipalities, and by making sure public authorities close the feedback loop, ensuring greater transparency on how recommendations are adopted (or not).
- Establish closer means of collaboration between central and sub-national authorities and stakeholders, for example by involving local structures at an earlier stage and throughout the policy process, to ensure that a local perspective is taken into account at national level.
- Encourage public officials in municipalities and counties to move beyond consultations towards more impactful and engaging mechanisms, including by experimenting with innovative methods such as digital platforms, deliberative assemblies and others.

6.4.3. Creating opportunities for more inclusive dialogue with citizens and CSOs, involving underrepresented and marginalised groups

Seeking to move beyond involving people who typically engage in participation processes (more active, better educated, self-selecting citizens and CSOs) is key and requires targeted strategies and initiatives. Engaging individual citizens is as important as engaging organised stakeholders and, while the difference between these groups can be blurred at times, both can enrich discussions and contribute varied inputs from a diverse range of perspectives (OECD, 2022[3]). As noted by the *OECD Guidelines for Citizen Participation Processes*, some types of participation are better suited to CSOs than citizens, while others can be adapted to both types of participant (OECD, 2022[3]).

When seeking to involve citizens in decision-making processes, special efforts may be needed to motivate them to participate. Generally, citizens may be under the impression that they do not have an impact on decisions or the expertise to adequately contribute: clear messaging on the types of contributions sought can help address these concerns. Analysis from the General Secretariat evaluating central and local public

administration practices notes that among public authorities surveyed in 2021, only 16% had developed programmes or pilot projects to improve collaboration with citizens (General Secretariat of the Government, 2021[16]). This demonstrates that overall, there is potential for Romania to create and offer more opportunities for citizens to advocate for themselves on an individual as well as a collective level.

Targeted outreach to the public and underrepresented groups is essential to gathering a plurality of views. Vulnerable or otherwise underrepresented groups (see section on equality and non-discrimination in Chapter 3) often do not have equal access to opportunities to participate or are less able or willing to participate for a variety of reasons, ranging from a lack of education and awareness to a lack of trust in public authorities. Public institutions thus have responsibilities to these communities and are encouraged to make extra efforts to counteract their disadvantaged position (OECD, 2017[1]). Perceptions of "procedural justice" or fairness – in terms of being listened to and views being taken on board – are central, to avoid exacerbating existing societal inequalities.

Moving forward, it is essential that Romania actively seeks to engage underrepresented groups in discussions of draft laws and policies, with a view to more cohesive and inclusive policy making and as a way of building trust at local and national levels. This principle is reflected in the OECD Recommendation of the Council on Open Government (OECD, 2017[1]), which stresses how important it is for governments to make efforts to reach out to the most vulnerable, marginalised or underrepresented groups in society. Currently, there is a perception among CSOs representing vulnerable, discriminated or other excluded groups, notably the Roma community, persons with disabilities, and lesbian, gay, bisexual, transgender and intersex (LGBTI) groups, of not having equal access to all ministries or other public authorities.[42] Targeted outreach to such groups, in addition to other minorities, women, youth, the elderly and rural communities, could help in this regard. Romania could learn from the Finnish example of engaging youth and marginalised groups in decision making around issues that particularly affect them (Box 6.7).

Box 6.7. Climate policy case study in Finland

The Climate Change Act entered into force in Finland on 1 July 2022, replacing a previous act adopted in 2015 (Finnish Ministry of the Environment, 2022[55]). The new act includes climate change policy-planning provisions and sets national climate objectives, including emission reduction targets by 2030 and 2040. It also outlines obligations for authorities in monitoring progress (Finnish Ministry of the Environment, 2022[55]).

During the reform process, Finland demonstrated a significant commitment to involving citizens in public decision-making processes, with a particular emphasis on groups which could be more affected than others, for example youth and the Indigenous Sámi population. There were two open, online hearings on climate policy, regional meetings around the country and dialogues (https://www.sitra.fi/en/timeout/). One online hearing saw over 16 000 participants join the debate. Specific hearings for Sámi youth and a digital jury for young people were staged, both in 2020. There were also surveys and web questionnaires on social media, such as Instagram. Youth groups were invited to test the survey questions to ensure accessibility and it was possible to answer in six languages. Some 2 500 answers in 5 languages were received in response to a survey.

Source: Email received from Finland, 4 May 2022; Finnish Ministry of the Environment (2022[55]), *The Reform of the Climate Change Act*, https://ym.fi/en/the-reform-of-the-climate-change-act (accessed on 12 July 2022).

The government could consider disseminating targeted invitations by high-ranking figures including named invitations to relevant participatory processes. Such outreach could also be communicated in minority languages to ensure maximum awareness and inclusivity. It is positive that at the local level, Article 94 of the Administrative Code already foresees the use of minority languages by local public administration in

areas where members of national minority communities make up more than 20% of inhabitants; where their percentage is lower, local authorities may decide to do this of their own accord. Travel by government officials to different parts of the country to engage communities in person can also be helpful.

It is important to create safe spaces for debate during consultation events, both online and offline, to ensure that people from relevant groups can speak their minds without fear or stigma. Notably, it may be helpful to place emphasis on non-digital means of conducting public consultations, to avoid excluding individuals or groups who are not online (see the section on bridging the digital divide by enhancing information and communication technology (ICT) literacy in Chapter 4). In particular, poor and marginalised groups and persons of a certain age may experience difficulties in engaging via online tools and it is important that their perspectives are sought and taken into account; non-digital channels of communication can be explored for this purpose, in close co-operation with representatives of these groups.

In addition, informal opportunities for dialogue and recognition can help to raise awareness of underrepresented groups. The Resource Centre for Public Participation (CeRe) hosts an annual Public Participation Awards Gala, as part of which it rewards citizens and organisations which successfully pressure public bodies to take action and highlights "the most interesting advocacy or public consultation initiatives" (CeRe, n.d.[56]). The General Secretariat could consider hosting a similar annual event to recognise outstanding contributions from CSOs and citizens to policy making, including underrepresented groups, as well as to celebrate instances of public officials or bodies making particular efforts in their participation and outreach efforts.

Capacity among public officials is widely recognised as a challenge.[43] The provision of training courses and capacity-building events can be a way of ensuring that both public officials and non-governmental stakeholders embody open government principles. Such training is widely available in countries adhering to the OECD Recommendation of the Council on Open Government (OECD, 2020[32]). In particular, 78.9% (30 respondents to the 2020 Survey on Open Government) offer training on access to information, followed by training on open government data (73.7%, 28) and citizen and stakeholder participation (63.2%, 24). While the number has been growing, for the time being only 36.8% (14) of respondents have dedicated training on open government. Similarly, the provision of guidelines and toolkits in certain areas is widespread, for example on open government data (34, 89.5%) and citizen and stakeholder participation (31, 81.6%). Integrated resources on open government, however, are available only in 13 responding countries (34.2%).

Recommendations

To enhance inclusion and ensure that all individuals and groups in Romania have equal access to public authorities and decision-making processes, Romania could:

- Explore ways to foster more citizen participation alongside engaging CSOs and other organised groups, as both have unique and useful insights.
  - In line with the OECD *Guidelines for Citizen Participation Processes* (2022[3]), public authorities should decide with whom to engage at which stage of decision making and adapt the participatory process design accordingly, to ensure the necessary conditions for different stakeholders are met.
- Conduct more inclusive outreach on participation opportunities among the general public and specific, targeted outreach among vulnerable, marginalised or particularly affected groups, with an emphasis on delivering communications in minority languages (including at the central level) and in accessible formats (including non-digital).

- This may include targeted outreach to regions, municipalities or persons with specialised expertise.

- Ensure that public officials in ministries and relevant public bodies are explicitly tasked with enhancing participation practices, and have the skills and resources to do so, to make them more inclusive. High-level support from senior managers will be essential in this regard.

6.4.4. Reducing the use of emergency ordinances

An additional cross-cutting area that requires attention is the use of emergency ordinances. In cases where an emergency or exceptional circumstances require immediate solutions to avoid prejudice to the public interest, Article 7 par 13 of Law 52/2003, based on relevant provisions of the constitution, stipulates that the adoption of a draft act may take place, using a fast-track procedure without need for public consultation (Box 6.8).

While it is important for states to be able to pass emergency legislation rapidly in a crisis situation, as evidenced since the start of the COVID-19 pandemic, international guidance suggests that such actions need to be limited to what is necessary and proportionate under the circumstances, need to be temporary in nature and subjected to regular parliamentary and court scrutiny (ELI, 2020[57]). Sparing use is also advised because such emergency mechanisms essentially circumvent existing checks and balances in the law-making process, especially commitments to involve stakeholders (ELI, 2020[57]). Moreover, where emergency ordinances are frequently adopted, they risk compromising the quality and foreseeability of legislation, given the lack of parliamentary oversight and input by other stakeholders (ELI, 2020[57]).

Box 6.8. Regulation by emergency ordinance and its effects on citizen and stakeholder participation

In line with Article 115 of the constitution, the government may adopt emergency ordinances only in extraordinary circumstances, where regulation cannot be postponed and in cases of urgency (Ministry of Justice, 1991[9]). Such ordinances enter into force only after they have been submitted for debate to both parliamentary chambers and after they have been published in the Official Gazette. Article 115 further outlines specific legal areas (e.g. constitutional laws or where constitutional rights, freedoms and duties are affected) that should never be regulated by emergency ordinance.

In practice, the number of such ordinances passed each year in Romania (around 100) indicates this provision is interpreted quite broadly (Venice Commission, 2019[58]). Civil society actor interviewees noted a high frequency in this respect, with some estimating that in the first 6 months of 2022, the government identified no fewer than 100 urgent situations and that in the vast majority of such cases, there were no public debates before emergency ordinances entered into force.[1]

Even before the COVID-19 pandemic, it was not unusual for key pieces of Romanian legislation to be adopted via emergency ordinance. Notable examples of this are Emergency Ordinance 78/2004 on the Establishment of the National Agency for Roma (Ministry of Justice, 2004[59]) and Emergency Ordinance 57/2019 adopting the Administrative Code (Ministry of Justice, 2019[14]). Controversial legislation amending laws on the judiciary was also passed via emergency ordinances in 2018 and 2019.[2]

In early March 2022, the government adopted Emergency Ordinance 16/2022, amending Law 52/2003, citing security challenges “in the immediate vicinity of Romania’s borders” (Ministry of Justice, 2022[60]), which specified that where the government considers that the public interest demands it, laws or ordinances may be passed by urgent procedures without parliamentary oversight or public

consultations. Since March 2022, a related complaint submitted by the People's Advocate has been pending with the Constitutional Court, in which the court is asked to review whether the emergency situations in which the ordinance applies are sufficiently defined (People's Advocate, 2022[61]).

More recently, in late September 2022, the government adopted Decision 1173 (Ministry of Justice, 2022[62]) adding a new Annex 6 to its earlier decision 561/2009 regulating government procedures for the elaboration, approval and presentation of draft acts and public documents. Annex 6 seeks to clarify the circumstances in which emergency ordinances may be adopted, the manner in which their impact will be assessed, and the procedures for their preparation and approval, based on existing legislation and case law from the Constitutional Court.

1. Interviews with civil society representatives, February-July 2022.
2. Notably, Emergency Ordinance 77/2018 supplementing Article 67 of Law 317/2004 on the Superior Council of Magistracy; Emergency Ordinance 90/2018 on some measures for the operationalisation of the Section for the Investigation of Criminal Offences within the judiciary; Emergency Ordinance 92/2018 for amending and completing some normative acts in the field of justice; Emergency Ordinance 7/2019 on certain temporary measures relating to the admission contest to the National Institute of Magistracy, the initial professional training of judges and prosecutors, the graduation examination of the National Institute of Magistracy, the internship and the capacity examination of trainee judges and prosecutors, as well as for the amendment and completion of Law 303/2004 on the status of judges and prosecutors; Law 304/2004 on the judicial organisation; and Law 317/2004 on the Superior Council of Magistracy; and Emergency Ordinance 12/2019 amending and supplementing some normative acts in the field of justice were all adopted to amend different laws on the judiciary.
Source: Ministry of Justice (1991[9]), *Constitution of 21 November 1991*, https://legislatie.just.ro/Public/DetaliiDocumentAfis/47355; Venice Commission (2019[58]), *Opinion on Emergency Ordinances GEO No. 7 and GEO No. 12 Amending the Laws of Justice (Romania)*, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)014-e; Ministry of Justice (2004[59]), *Government Emergency Ordinance 78/2004 for the Establishment of the National Agency for Roma*, https://legislatie.just.ro/Public/DetaliiDocumentAfis/56035; Ministry of Justice (2019[14]), *Government Emergency Ordinance No. 57/2019 on the Administrative Code*, https://legislatie.just.ro/Public/DetaliiDocumentAfis/215925; Ministry of Justice (2022[60]), *Government Emergency Ordinance 16/2022 for the Amendment of Article 7 para.13 of Law 52/2003 on the Transparency of Decision-making in Public Administration*, https://legislatie.just.ro/Public/DetaliiDocumentAfis/252298; People's Advocate (2022[61]), *Exception of Unconstitutionality lodged on 24 March 2022 with the Constitutional Court*, https://avp.ro/wp-content/uploads/2022/03/Ecx-OUG-16-2022.pdf; Ministry of Justice (2022[62]), *Decision 1173/2022 for Completing the Regulation on Procedures, at the Level of the Government, for the Elaboration, Endorsement and Presentation of Draft Public Policy Documents, Draft Normative Acts, as well as Other Documents, for Adoption/Approval*, https://legislatie.just.ro/Public/DetaliiDocument/259551; ELI (2020[57]), *ELI Principles for the COVID-19 Crisis*, https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Principles_for_the_COVID-19_Crisis.pdf; EC (2022[63]), "2022 Rule of Law Report: Country Chapter on the Rule of Law Situation in Romania", https://ec.europa.eu/info/sites/default/files/52_1_194026_coun_chap_romania_en.pdf.

The frequent use of emergency ordinances in law making means that, in practice, consultations take place on some but not all draft acts. Thus, according to the General Secretariat, in cases where draft acts are passed using this type of urgent procedure, 80% of public institutions responding to a survey noted that less than 10% of these types of draft act were submitted for consultation (General Secretariat of the Government, 2021[16]) . This may have potentially serious consequences for the quality of such laws, and also for the transparency of the law-making process and legal certainty. During the OECD fact-finding mission, several civil society interviewees noted that many important and fundamental matters are regulated by emergency ordinances or similar regulations.[44] The European Commission's recent rule of law report on Romania likewise noted the effects that regular use of emergency ordinances may have on the stability and predictability of legislation, referring to reports indicating that not all draft emergency ordinances presented substantiated reasons to justify extraordinary situations (EC, 2022[63]). Similarly, the Council of Europe's Venice Commission noted in 2019 that routine use of emergency powers in Romania affected the quality of legislation due to the lack of consultation with stakeholders, disturbed legal certainty, weakened external checks on government and disregard for the principle of the separation of powers (Venice Commission, 2019[58]).

As long as there are no clear and transparent criteria in Romanian law defining what constitutes an emergency situation, this practice will continue to raise concerns regarding the foreseeability and legality

of normative acts. The new government decision (Decision 1173), with its reiteration of what is set out in the constitution, and its overview of what the Constitutional Court has said on the matter, provides guidance in this regard but it remains to be seen whether on its own, without additional clear regulations, it will help to change existing practice in relation to emergency ordinances.

Recommendations

To reduce the use of emergency ordinances, Romania could:

- Envisage further reforms to ensure that they are only used in exceptional cases and that parliamentary oversight and stakeholder and citizen consultation remain the norm.
  - For example, as a means of enhancing legal certainty, the government could define narrow criteria for instances where the use of such ordinances is legitimate in both the constitution and Law 52/2003. This could involve establishing a crisis protocol which defines priorities in cases of emergency and related steps to avoid arbitrary use of such ordinances.
- Initiate an internal review process to assess whether parliamentary oversight mechanisms outlined in Article 115 of the constitution are functioning in practice.

6.5. Adopting new and innovative approaches to citizen and stakeholder participation in Romania

6.5.1. Promoting innovation and cross-government learning on participation

The last few decades have witnessed a transformation of citizen and stakeholder participation practices in many countries through new forms of dialogue and innovations, many of which have been introduced as a response to declining citizen trust in traditional institutions and processes (Kamlage and Nanz, n.d.[64]).

In Romania, as discussed above, pockets of good participatory practice can be found at national and local levels. However, a 2021 analysis by the General Secretariat evaluating central and local public administration practices in decision-making processes shows that only 18% of surveyed public authorities had taken steps to implement innovative practices to stimulate public participation, including the live transmission of meetings, establishment of working groups including CSOs and other stakeholders or the introduction of forms for collecting opinions and recommendations (General Secretariat of the Government, 2021[16]). Overall, public bodies remain hesitant to move beyond established practice to experiment with different participation methods emerging around the globe and to engage citizens at large.[45] There has so far been no emphasis on co-creation, meaning the joint preparation of laws and policies by public bodies and civil society stakeholders. An upcoming report on *Strengthening the Innovative Capacity of the Government of Romania* prepared by the OECD Observatory of Public Sector Innovation (OPSI) notes that while there have been some positive attempts to change this, innovation strategies are currently not being implemented consistently or in a comprehensive, long-term manner (OECD, forthcoming[65]). Reasons for this include, among others, a preference to maintain the status quo in public policy making (rather than take risks and engage in radical change), coupled with hierarchical and multi-layered decision-making processes and a lack of capacity within the public sector which is exacerbated by frequent staff changes.

Instead of being required to adhere to relevant legal frameworks alone, public officials could be afforded the freedom, or even be incentivised, to try new methods, whether in person or through the use of digital tools. Training may usefully be offered to encourage this, including new methods of participation. As illustrated by the 2020 OECD Survey on Open Government (2020[32]), this would be in line with practice in

many OECD Members: 59% of OECD respondent countries hold training for public officials on citizen and stakeholder participation, including advisory mechanisms, consultation mechanisms and co-creation mechanisms.[46] As mentioned above, creating a platform or community of practice for exchange and cross-learning between public bodies could allow officials to report on what works and what could be improved in the future. Indeed, during the fact-finding mission many government representatives noted with regret the absence of co-operation and communication mechanisms across the public sector, where ministries and other public institutions share experiences and lessons learnt in the field of citizen participation.[47]

Adopting practices that encourage and facilitate more innovation will necessitate a significant cultural shift within the public sector (OECD, 2014[66]). Senior officials could delegate authority to those implementing participatory practices and facilitate the use of different methods, in addition to providing the necessary budgets and allowing adequate time for consultations. Romania could take inspiration from France in this regard (Box 6.9).

Box 6.9. Centre of Citizen Participation in France

The Inter-Ministerial Directorate for Public Transformation (DITP) is the public institution in charge of the open government agenda in France, with a specific emphasis on citizen participation. In 2019, it created the Centre of Citizen Participation (*Centre interministériel de la participation citoyenne*) to centralise and foster related expertise by providing the following:

- **A physical space**: The centre provides a physical space open to public institutions, civil society and citizens alike. Public authorities can use this space to organise meetings and other activity with citizens and stakeholders.
- **A centre of expertise:** The centre provides public officials and civil society with technical support and guidance to implement participatory processes. Public officials have access to knowledge resources, examples and templates to organise participatory mechanisms, as well as ready-to-use digital tools. Dedicated teams support the organisation of participatory processes by other public institutions and provide related training for public officials and other interested stakeholders.
- **A digital platform for participation**: The DITP established a centralised platform for participatory opportunities at the national level (https://www.participation-citoyenne.gouv.fr/). This platform allows citizens to easily find opportunities and monitor the impact of their participation. It also allows public authorities to provide feedback and communicate on their participatory opportunities via a simple and harmonised platform.
- **A community of practice**: The DITP created a digital hub to group communities of practice working on open government and state modernisation. With more than 50 different communities, this hub allows public officials to discover and join groups which interest them on a wide range of subjects (e.g. participation, digital services, collective intelligence, design thinking, etc.).

Source: OECD (2022[26]), *Open Government Review of Brazil: Towards an Integrated Open Government Agenda*, https://dx.doi.org/10.1787/3f9009d4-en.

Romania could draw on the co-creation process it undertakes as part of the elaboration of the OGP National Action Plans (OGP, n.d.[67]). Although the latest Independent Reporting Mechanism report on Romania's 5th Action Plan 2020-2022 (OGP, 2021[68]) found some weaknesses in the Romanian process, including "low levels of civil society involvement and a weak exchange of ideas", the design of such a participatory process has value as a model for decision making in other policy areas.

E-democracy is a useful way to gauge citizens' opinions or involve the population in policy issues. Online methods of participation can expand the reach of government communication and foster a multi-channel approach to ensure all social groups participate on an equal basis. However, digital conversations should not replace more traditional forms of participation in consultations and consultative bodies, which allow for long-term, direct and high-quality interaction with public bodies. It is thus important to ensure that a variety of consultation tools, both digital and non-digital, are available to people (see section on bridging the digital divide in Chapter 4).

At the European level but also globally, a variety of increasingly popular e-democracy initiatives are taking place[48] (ELF, 2017[69]) which allow citizens to make informed choices on matters of public policy. Some of these, such as public consultations via platforms such as E-Consultare and citizens' legal initiatives, already exist in Romania and could be developed further. Other forms of digital democracy may be considered for the future, though the need for, and benefits of, such mechanisms will depend on the issue at hand. For this reason, Romania could continue exploring, experimenting and supporting collaboration with digital ecosystems including public innovation laboratories, civic technologies (CivicTech) and GovTech.[49] The General Secretariat could lead by example in this area by promoting new forms of participation and communicating learning on what works best. Regular impact evaluations of such efforts, in relation to participants' own perceptions of inclusion and their sense of their opinion being valued, would help to shed light on how to improve such practices.

Furthermore, as the 2020 OECD report *Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave* (2020[70]) finds, many governments have been embracing innovative ways of engaging citizens through mechanisms such as citizens' assemblies, juries, panels and other representative, deliberative processes, to better understand priorities and concerns (OECD, 2020[70]). These types of process involve gathering a randomly selected group of people who are broadly representative of a community and who spend time learning from experts on a policy problem and collaborating to form collective recommendations for policy makers (OECD, 2020[70]). The benefits of representativeness and deliberation are manifold, often leading to better policy outcomes, as they result in well-thought-out public judgment rather than public opinions and empower ordinary citizens to make their voices heard and to engage with governments continuously. Furthermore, evidence shows that these processes have helped public authorities make difficult decisions on a wide range of policy issues, especially those affected by political stalemate (OECD, 2020[70]). Such processes have the potential to target and address a rising trend of citizen malaise with democratic institutions. Romania could take inspiration from countries that have undertaken deliberative practices, at both the national and local levels (Box 6.10).

Box 6.10. Examples of innovative citizen participation at the local and national levels

The Citizens' Assembly, Ireland

Representative citizens' assemblies have become a central feature of policy making in Ireland in recent years, with a number of notable successes in tackling complex policy issues. A Citizens' Assembly met 12 times over 3 years (2016-18) to consider a range of issues including making Ireland a leader in combatting climate change, responding to the challenges and opportunities of its ageing population and lifting the constitutional ban on abortion, among others. In January 2023, an assembly on biodiversity loss submitted its recommendations to the government. Further assemblies on the future of education and on drug policy are planned.

Permanent Citizens' Assembly in Paris, France

In 2021, Paris became the first city to establish a permanent Citizens' Assembly composed of ordinary citizens with the aim of advising elected officials. The 100 participants are randomly selected to broadly

represent the Parisian population. The assembly's members evaluate public policies; engage with elected officials, academics, activists and experts; submit proposals on priority issues; and decide on focus areas for Paris' annual participatory budget.

Citizens' Panel in Lublin, Poland

Lublin is the second city in Poland, after Gdańsk, to benefit from citizens' panels, three of which have been held so far to deliberate on issues of importance to its citizens. One such panel on improving air quality took place in December 2018 and consisted of 60 panellists and 36 hours of discussion over 6 days. The deliberations yielded 55 recommendations for the city on reducing smog.

Citizens' Assembly on Human Rights, Bosnia and Herzegovina

In 2022, a citizens' assembly on human rights took place in Bosnia and Herzegovina involving 57 randomly selected citizens in Sarajevo and Teslić. Over a period of two weeks, these groups of citizens deliberated on how to eliminate discrimination in the country's political and electoral system. Discussions were co-ordinated by independent facilitators and experts in the field of human rights, electoral law and constitutional law.

More information on citizens' assemblies and other forms of direct citizen participation can be found in the OECD's 2020 publication, *Innovative Citizen Participation and New Democratic Institutions* (2020[70]).

Source: OECD (2021[71]), *Better Governance, Planning and Services in Local Self-Governments in Poland*, https://dx.doi.org/10.1787/550c3ff5-en; OECD (2020[70]), *Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave*, https://dx.doi.org/10.1787/339306da-en; City of Paris (2022[72]), *Une Assemblée citoyenne pour faire entendre votre voix*, https://www.paris.fr/pages/assemblee-citoyenne-20187 (accessed on 10 July 2022); Citizens Information (2022[73]), *Citizens' Assembly*, https://www.citizensinformation.ie/en/government_in_ireland/irish_constitution_1/citizens_assembly.html (accessed on 10 July 2022); Bürgerrat (2022[74]), "A citizen's assembly on human rights", https://www.buergerrat.de/en/news/a-citizens-assembly-on-human-rights/.

Recommendations

To promote more citizen participation, innovation and cross-government learning, Romania could:

- Foster innovation and experimentation in the public sector with new participatory methods and practices (e.g. representative deliberative processes, participatory budgeting).
- Encourage a more open, experimental approach by incentivising new practices (e.g. through promotions, terms of reference and awards).
- Initiate projects to pilot innovative approaches such as deliberative assemblies, co-drafting and co-creation. The sub-national level could become a laboratory to spur innovation and increase the impact of participation initiatives with learning replicated at the national level as part of an open state approach (see OECD *Open Government Review of Romania* (forthcoming[4])).
- Continue exploring and experimenting with digital democracy approaches, by testing new tools and supporting collaboration with digital ecosystems including public innovation labs, CivicTech and GovTech.
- Consider using deliberative processes to engage representative groups of citizens to solve complex policy dilemmas that require whole-of-society insights (e.g. responses to climate change) as well as value-based issues (e.g. Roma rights).

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Notes

[1] *Participation via information*: An initial level of participation characterised by a one-way relationship in which the government produces and delivers information to stakeholders. It covers both on-demand provision of information and "proactive" measures by the government to disseminate information.

[2] *Participation via consultation*: A more advanced level of participation that entails a two-way relationship in which stakeholders provide feedback to the government and vice-versa. It is based on the prior definition of the issue for which views are being sought and requires the provision of relevant information, in addition to feedback on outcomes of the process.

[3] *Participation via engagement*: When stakeholders are given the opportunity and necessary resources (e.g. information, data and digital tools) to collaborate during all phases of the policy cycle and in service design and delivery.

[4] By its own account, the platform has led to the withdrawal of certification for illegal timber products and has had a positive impact on the conservation of the Nera River. Individuals may create their own petitions and seek support via this platform, which according to Declic's website has already organised more than 100 online campaigns, with support from over 800 000 Romanian citizens to date.

[5] In a 2021 analysis evaluating central and local public administration practices in decision-making processes, the General Secretariat of the Government (hereafter "General Secretariat") noted that in 76% of cases, decision-making processes took place at the initiative of public institutions, with only 20% of such processes based on proposals from civil society, experts or academics (General Secretariat of the Government, 2021[16]).

[6] Interviews with government and civil society representatives, February-July 2022.

[7] Interviews with government and civil society representatives, February-July 2022.

[8] Interviews with government representatives, February-July 2022.

[9] Interviews with civil society representatives, February-July 2022.

[10] Interviews with government and civil society representatives, February-July 2022.

[11] As Romania has ratified the International Covenant on Civil and Political Rights (ICCPR), it is obliged to adhere to the provisions of this instrument, including Article 25 on the right to public participation, providing every citizen with the right and opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives.

[12] This relates to information pertaining to national defence, national security and public order, the country's economic and political strategic interests and classified deliberations of authorities.

[13] This includes information on the values, deadlines, and technical and economic data of commercial or financial activities, provided that their publication violates the principle of fair competition.

[14] Interviews with government and civil society representatives, February-July 2022.

[15] Draft acts relevant to the business environment are automatically shared with businesses and other entities operating in that sector (see Article 7, para. 3, of Law 52/2003).

[16] However public debates are at times held by authorities of their own accord or at the request of other public bodies, according to the annual reports on implementation of Law 52/2003, e.g. the Ministry of the Environment, Water and Forests and the Ministry of Justice both indicated they had organised public meetings *ex officio* in 2021, while the report from the Ministry of Transport and Infrastructure indicated this for 2020.

[17] The majority of reports reviewed covered the period 2019-21.

[18] People whose rights under the law have been violated may file administrative complaints in accordance with Law 552/2004 on Administrative Litigation; these complaints will be dealt with via an emergency procedure (Article 14 of the Law 52/2000). Public officials who do not allow persons access to public meetings or who prevent the involvement of interested persons in the process of drafting normative acts of public interest can be subjected to disciplinary liability. At the same time, individuals who violate the applicable rules when participating in a public meeting may receive a warning by the chairperson of the session and may, if this is not heeded, ultimately be removed from the meeting (Article 16 of Law 52/2000).

[19] The National Tripartite Council for Social Dialogue is an advisory body made up of representatives of employers' and trade union confederations, government representatives (ministries and other state structures), as well as a representative of the National Bank of Romania, the President of the Economic and Social Council and other members as agreed (Article 76 of the law). The Tripartite Council is chaired by the Prime Minister, with the Minister of Labour and Social Protection as his/her deputy (Article 77). As set out in Article 78 of the law, the main responsibilities of the National Tripartite Council include debating and analysing draft government programmes and strategies, and developing and supporting the implementation of strategies, programmes, methodologies and standards in the field of social dialogue, among others.

[20] OECD online public consultation with CSO stakeholders, November 2021-January 2022.

[21] Interviews with government representatives, February-April 2022.

[22] Interviews with government and civil society representatives, February-July 2022.

[23] Interviews with civil society representatives, February-July 2022.

[24] Online public consultations with CSO stakeholders, November 2021-January 2022.

[25] The French Economic, Social and Environmental Council (CESE) is a constitutional consultative body mandated to advise the government and parliament on draft laws and other statutory instruments, elaborate reports about economic, social and environmental issues, and receive citizen petitions. It is composed of 175 members representing trade unions, companies, associations and environmental organisations. For more information, see https://www.lecese.fr/en.

[26] The Moroccan Economic, Social and Environmental Council is an independent constitutional institution which provides advice to the government and the two Houses of Parliament. It is composed of 105 members, involving experts as well as representatives of trade unions, professional organisations and

associations, civil society, and certain designated institutions and bodies (including those active in areas such a planning, banking, education and science, social security etc., and the Ombudsman Institution). For more information, see https://www.cese.ma/.

[27] In mid-September 2022, the French president announced a citizens' convention on the following question: "Is the framework for end-of-life support adapted to the different situations encountered or should possible changes be introduced?" The organisation of the convention was entrusted to the Economic and Social Council, which mandated HarrisInteractive, a research and polling institute, to draw lots from randomly generated telephone numbers (85% mobile phones and 15% landlines) and make phone calls to identify 150 volunteer citizens representative of the diversity of French society.

[28] Interviews with government and civil society representatives, February-July 2022.

[29] The *Guide to an Innovative Approach to Citizen Involvement in Decision-making* aimed at supporting central public authorities in managing the necessary innovative processes for interaction with civil society to streamline participatory processes. Based on questionnaires completed by 45 public institutions and 70 CSOs, the guide provides a summary and analysis of the existing domestic legislative framework on participation and involvement of citizens in public decision making and showcases international trends and relevant good practice from other countries. This publication additionally contains numerous proposals for enhancing citizen participation, notably involving stakeholders in consultations at an early stage, extending deadlines for feedback as needed and increasing new platforms for consultation, such as online or hybrid consultations. Other recommendations include the creation of a single national digital tool centralising the expertise of NGOs for use by public institutions and establishing an independent support structure with theoretical and practical skills, institutional memory, and the resources needed to perform certain tasks and solve problems as needed.

Another useful tool published in 2019 is the *Good Practice Handbook on Promoting a Proactive Approach to the Principles of Transparent, Open and Participatory Governance* (Government of Romania, 2019[75]). This handbook describes standards containing the relevant principles of participation, with reference to key documents adopted internationally by the OECD, as well as other organisations such as the United Nations, the Council of Europe, the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation (OSCE/ODIHR), the OGP and the EU. It likewise provides examples of participation mechanisms and local models from different states.

[30] Decidim was set up by Barcelona City Council to create a "technologically mediated citizen participation process around the Municipal Action Plan, with three major goals: making a process that is transparent and traceable, expanding participation through the digital platform and integrating face-to-face and digital participation".

[31] Annex 1 to the methodological norms outlines the contents of the announcement, which shall include a descriptive paragraph outlining the identified problem, the solution proposed by the act, the expected impact and other relevant information, as well as related documentation. This shall involve (as applicable): the draft act itself, the substantiation note or explanatory memorandum, a statement of reasons, the "approval report" outlining the necessity of adopting the proposed draft act, certain research studies (impact/feasibility study, etc.) and the raw data on which these were based, among others.

[32] Interviews with government and civil society representatives, February-July 2022.

[33] For further information, see information provided by the UK Government Digital Service on "Content design: planning, writing and managing content", https://www.gov.uk/guidance/content-design/writing-for-gov-uk (published in 2016, updated in 2022).

[34] In the case of debates, this includes the written recommendations collected.

[35] Notably, the annual reports prepared by the Ministry of Development, Public Works and Administration (2021), the Ministry of the Environment, Water and Forests (2021), the Ministry of Justice (2021), and the Ministry of Transport and Infrastructure (2020) included this information.

[36] Interviews with government and civil society representatives, February-July 2022.

[37] At a minimum, these reports are required to include the following:

- the total number of recommendations received
- the total number of recommendations included in the draft normative acts and in decisions taken
- the number of participants in public meetings
- the number of public debates organised on draft normative acts
- the status of cases where the public authority was sued for not complying with provisions of Law 52/2003
- public authorities' assessment of the partnership with citizens and legally constituted associations
- the number of meetings with non-governmental actors and the reasons for restricting access.

[38] This was observed, e.g. in the case of the reports from the Ministry of Economy (2020), at http://www.economie.gov.ro/transparenta-decizionala/rapoarte-de-aplicare-a-legii-52-2003#; the Ministry of Education (2019), at https://www.edu.ro/legea-52; the Ministry of Health (2020), at https://www.ms.ro/wp-content/uploads/2021/02/Raport-MS-2020.pdf; and the Ministry of Transport and Infrastructure (2020), at http://www.mt.gov.ro/web14/despre-noi/interes-alte-informatii-rapoarte.

[39] This information is at times published on the webpage of the respective consultation procedure.

[40] Background information received from the General Secretariat for the Civic Space Review of Romania.

[41] Interviews with government and civil society representatives, February-July 2022.

[42] Interviews with civil society representatives, February-July 2022.

[43] Interviews with government and civil society representatives, February-July 2022.

[44] Interviews with civil society representatives, February-July 2022.

[45] Interviews with government and civil society representatives, February-July 2022.

[46] The 2020 OECD Survey on Open Government asked: "Does your central/federal government offer training for civil servants on any of the following?" Out of 32 OECD respondent countries, 19 selected "citizen and stakeholder participation (e.g. advisory mechanisms, consultation mechanism, co-creation mechanisms, etc.)".

[47] Interviews with government representatives, February-July 2022.

[48] These include e-consultations (obtaining the opinion of specific stakeholders in a manner which is not legally binding), e-collaboration (stakeholders may submit proposals on a certain draft policy or law and can thus shape policies), e-referenda (a legally binding decision-making process whereby specific audiences or the general public may take decisions mandatory for implementation) and e-citizens' initiatives (inviting the government or legislature to propose regulation on a particular matter).

[49] CivicTech is any technology that enables communication, engagement and participation with citizens, or aims to improve the relationship between the government and citizens. In addition, many CivicTech tools may be used by citizens or stakeholders themselves, independently of government. GovTech refers to the use of technology to increase the efficiency of internal operations across public administration by, for example, introducing new tools or digitalising processes (Apolitical, 2019[76]).

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The *Civic Space Review of Romania* provides an in-depth analysis of national legal frameworks, policies, institutions, and practices relevant to civic space protection. It reviews strengths and areas for improvement, and providing guidance on a wide range of issues. The Review assesses four key dimensions of civic space: civic freedoms, media freedoms and online civic space, the enabling environment for civil society organisations, and citizen participation in policy and decision making. The findings and recommendations offer a blueprint for a more transparent, responsive, participatory, and accountable governance in Romania that informs and engages citizens and empowers stakeholders to achieve shared objectives together.

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