The Protection and Promotion of Civic Space

STRENGTHENING ALIGNMENT WITH INTERNATIONAL STANDARDS AND GUIDANCE

OECD

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Foreword

The OECD's work on civic space is anchored in the *OECD Recommendation on Open Government* and, as such, civic space is understood as an essential facilitator of open government reforms and good governance more broadly. Related activities were drawn together and branded as the OECD Observatory of Civic Space in 2019 to increase the visibility of current and planned work in this area. Since then, OECD Members have explicitly recognised the need to protect and promote civic space as part of Pillar 2 of the OECD Building Trust and Reinforcing Democracy Initiative on enhancing participation, representation and openness in public life.

Fifty-two OECD Members and non-Members voluntarily opted into participating in relevant sections of the 2020 OECD Survey on Open Government, which yielded the baseline of comparative government data that underpin this report. The OECD Secretariat benefitted from strong engagement from the Working Party on Open Government and the Public Governance Committee throughout this endeavour.

The report yields a vast evidence base on the status of civic space, with an emphasis on legal frameworks, policies, strategies and institutional arrangements, as well as challenges, implementation gaps and good practices, to offer a full and nuanced overview of the different dimensions of civic space. Key trends and recent developments in national and international standards feature alongside the governmental perspective. The report provides guidance on strengthening alignment with these standards and suggests associated measures to safeguard civic space. The findings of the report will serve as important guidelines for the future work of the Secretariat in this area.

The Public Governance Committee approved the chapters of this report in November 2022.

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Executive summary

Civic space is a cornerstone of functioning democracies. Defined as the set of legal, policy, institutional and practical conditions non-governmental actors need to access information, express themselves, associate, organise and participate in public life, civic space is anchored in international and national legal frameworks and benefits the whole of society.

Protected civic space facilitates participation in public affairs, which is a fundamental right, according to international standards (UNOHCHR). It allows citizens and civil society organisations (CSOs) to engage with governments, participate throughout policy- and decision-making cycles and provide oversight of government activities. By promoting and protecting civic freedoms (particularly freedoms of expression, peaceful assembly and association) and providing concrete opportunities for engagement, governments can in turn better align services, policies and laws to societal needs.

A thriving civic space emerges through the combined efforts of a range of stakeholders, including public institutions, the private sector, civil society and citizens. It requires constant attention as evidence shows that the same actors can also undermine it, both through action and inaction. Maintaining a healthy civic space, both on and off line, is a prerequisite for good governance and democracy. Countries that foster civic space at both the national and local levels are better placed to reap the many benefits of enhanced citizen engagement, strengthened transparency and accountability, and empowered citizens and civil society. In the longer term, a vibrant civic space can help to improve government effectiveness and responsiveness, contribute to more citizen-centred policies and programmes, boost social cohesion and ultimately increase trust in government.

This first OECD report on the protection and promotion of civic space aims to support Members and non-Members to raise standards and improve their policies by providing an exhaustive overview of the different dimensions of civic space and suggesting a wide range of measures to safeguard it. Based on government data from a survey of 52 central governments (of which 33 are OECD Members), it focuses on 4 key areas: the protection of civic freedoms; access to information as a right; media freedoms and civic space in the digital age; and the enabling environment for civil society. The report draws on international guidance and standards, as well as data and analysis from CSOs and other stakeholders.

Key findings

- The foundations for the protection of civic space in surveyed OECD Members are strong. Aspects of civic space have been strengthened in many of these countries in recent years by government initiatives, policies, laws, and institutions, coupled with powerful and dynamic civic activism, social movements, and public pressure. The necessary legal frameworks are well established. Governments are increasingly using digital tools and platforms to inform and engage with citizens and CSOs. Most surveyed OECD Members have independent public institutions that address complaints regarding civic freedoms, and almost half have institutions that specialise in discrimination cases and promoting equality.

- Exceptions, legal gaps and implementation challenges remain in OECD Members and other surveyed countries, partly due to external factors. Changing demographics, tensions related to immigration, polarisation due to mis- and disinformation, and threats such as COVID-19 are compounding challenges to civic space. When responding to the pandemic, many governments resorted to extraordinary tools, including invoking emergency powers that led to (temporary) restrictions on civic freedoms and a halt to participatory processes, with reduced democratic safeguards and oversight. Nonetheless, there has since been a clear trend towards ending these measures over time.
- Many of the OECD's 38 Members consistently occupy the top rankings of international indices related to civic space, while others score lower on specific aspects or across a range of indicators. About 20% of OECD Members are experiencing a decline in areas related to the protection of civic space. Research shows that all countries face at least some challenges in protecting their civic space, particularly for minorities and marginalised groups.
- With rising vilification, violence and harassment of journalists, media freedom has seen a significant decline around the world. Data show that the proportion of OECD Members where the situation is favourable for journalism has halved in the space of six years. Freedom of expression and other fundamental rights are also threatened by attacks against human rights defenders in some countries.
- Online civic space, which has vastly expanded governments' capacity to engage with citizens, is increasingly affected by the prevalence of mis- and disinformation and hate speech designed to exclude and silence people, especially women and minorities. There is an overwhelming trend in surveyed OECD Members to prohibit hate speech as a widely recognised form of discrimination; two-thirds have introduced reporting and complaint mechanisms and provide support for victims.
- Most surveyed OECD Members permit and facilitate peaceful assembly. But insufficient protection of protestors by law enforcement, as well as police violence used against protestors in some contexts, have raised concerns about respect for this right. Court decisions and legal changes have been introduced in some countries to reduce and control the use of force by police during protests.
- The enabling environment for CSOs is comparatively robust in surveyed OECD Members, where they are largely free to operate and criticise the government without fear of harassment. A majority have strategies to support their CSO sectors, including through funding. OECD governments also work extensively to protect the enabling environment for civil society in partner countries, with approximately half having a dedicated policy or strategy to promote CSOs as part of development co-operation.
- However, contrary to international guidance, CSOs must register to operate in many OECD Members and non-Members. Administrative procedures remain burdensome in some, and access to government funding is generally seen as a significant challenge. National security and counter-terrorism laws are having a tangible impact on the financial sustainability of CSOs via legal restrictions on access to funding, coupled with bureaucratic reporting requirements that can slow down or obstruct their work. Smear campaigns targeting CSOs and restricted space for those that engage on particular issues – such as the environment and migration – present ongoing challenges.
- CSOs, activists, and journalists are increasingly targeted by strategic lawsuits against public participation (SLAPPs) that aim to silence people who publicly criticise or investigate powerful individuals, companies or interest groups in respondents. Survey data suggests all countries could make greater efforts to assess the prevalence of SLAPPs in their jurisdictions and further protect civic space by introducing legislation to counter them.
- Strong oversight mechanisms help to protect civic space. However, basic disaggregation of data by public institutions that address complaints regarding civic freedoms remains rare, hindering the development of prevention and response initiatives targeting affected groups.

Key recommendations

Alongside a wide range of detailed policy measures for survey respondents to consider, this report proposes the following ten overarching high-level recommendations on protecting and promoting civic space:

- Protect and facilitate **freedom of expression**.
- Protect and facilitate **freedom of peaceful assembly** and the right to protest.
- Counter the **discrimination**, **exclusion and marginalisation** that disproportionately affect certain groups and hinder equal participation in public life.
- Safeguard and protect **human rights defenders, journalists, whistle blowers,** and other at-risk groups.
- Foster a **public interest information ecosystem** that protects independent media and promotes access to information.
- Protect **online civic space**, including by countering hate speech and mis- and disinformation.
- Respect **privacy** and ensure **personal data protection** to avoid arbitrary intrusion and interference in public life.
- Foster an **enabling environment for civil society organisations** that facilitates their positive contribution to society.
- Protect civic space both domestically as well as through development co-operation as part of a **coherent policy approach**.
- Systematically protect and promote civic space as a precondition for **citizens and stakeholders to engage** in public decision making to foster more open, transparent and accountable governance.

The report recognises the need for respondents to adopt a comprehensive, whole-of-government approach to protecting civic space that is co-ordinated across public institutions. A central conclusion of the report is that all countries would benefit from an ongoing review of the manner in which legal frameworks governing civic space are implemented at the national level, as part of reinforcing their democracies. In some countries, reviews of existing legislation could help ensure it is in line with international standards and does not restrict civic freedoms. Ongoing monitoring of civic space using disaggregated data to understand emerging challenges and gaps, and cross-government efforts to identify and reverse any negative trends, would also be beneficial. Even in mature democracies with a strong commitment to civic participation and a positive international standing in relation to civic space protection, a sustained effort is needed to maintain high standards.

1 Overview of the OECD's approach to the protection and promotion of civic space

This chapter introduces the concept of civic space and its significance as a precondition for democratic governance and inclusive citizen and stakeholder participation. It reviews the OECD's growing body of work on the protection and promotion of civic space. It provides an overview of the report, in addition to a summary of the methodology. Finally, it reviews the state of civic space in OECD Members and presents selected key findings from the report, in addition to ten high-level recommendations.

1.1. The importance of protected civic space

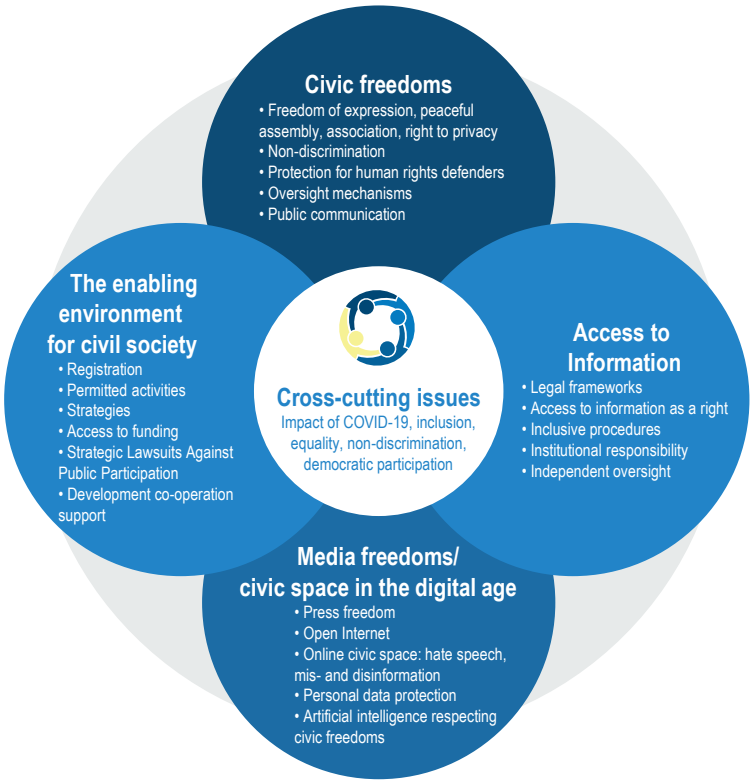
Protected civic space – defined in the OECD Survey on Open Government (hereafter "the Survey") as the set of legal, policy, institutional and practical conditions necessary for non-governmental actors to access information, express themselves, associate, organise and participate in public life (Figure 1.1) – enables collaboration between civil society, citizens[1] and governments. When the fundamental civic freedoms of expression, peaceful assembly, association and the right to privacy are protected, citizens can engage meaningfully in decision-making processes, evaluate outcomes and hold their governments to account. Protecting civic space is thus about fostering and promoting the necessary environment in which citizens and non-governmental actors can exercise their right to participate in public affairs (OHCHR, 2018[1]).

The protection of civic space comes in different forms in OECD Members, ranging from constitutional guarantees and legislation to specific policies and practices governing key areas of public life. A thriving civic space emerges through joint efforts by a range of governmental institutions and across the public sector to protect civic freedoms and foster substantive opportunities for civic engagement. However, while the essence of these rights remains static, their scope and implementation evolve and need to be recast over time. While societal change and technological innovation have invigorated civic space in many countries, they have also contributed to the emergence of new pressures and threats.

The acceleration of the digital transformation due to the pandemic, for example, presents a new set of opportunities as governments expand the scope of virtual participation for citizens. At the same time, this shift poses challenges to freedom of expression, as governments grapple with countering online hate speech and mis- and disinformation.[2] Traditional notions of freedom of assembly and association have become more complex with the global reach of today's online activism and the shift away from formal organisations towards informal social movements. Similarly, the right to privacy has to be balanced against governments' security imperatives and the growing pervasiveness of technology in everyday life. As always, context matters: countries where the rule of law and civic freedoms are respected, with strong oversight mechanisms and a long-standing commitment to democracy, are better equipped to provide an enabling environment for civic space and civil society than countries with less established institutions and protection mechanisms.

By promoting and protecting civic freedoms and providing concrete opportunities for collaboration with citizens and civil society, governments can better align services, policies and laws to societal needs. Ensuring a healthy civic space, both on and off line, is thus a prerequisite for more inclusive governance and democratic participation more broadly. Countries that commit to fostering civic space at both the national and local levels reap many benefits: higher levels of citizen engagement, strengthened transparency and accountability, and empowered citizens and civil society. In the longer term, a vibrant civic space can help to improve government effectiveness and responsiveness, contribute to more citizen-centred policies and programmes, boost social cohesion and ultimately increase trust in government. Crucially, in order to realise these benefits, sustained efforts are needed, coupled with ongoing data collection and monitoring to detect and counter any constraints, given the centrality of civic space to democratic life. Indeed, the degree to which a country protects its civic space is a strong gauge of the health of its democracy more broadly. See Figure 1.1 for an overview of the dimensions of civic space that are discussed in the report.

Figure 1.1. The dimensions of civic space



Source: OECD (n.d.[2]), "Civic Space", OECD, Paris, https://www.oecd.org/gov/open-government/civic-space.htm (accessed on 29 August 2022).

1.2. The role of civic space in strengthening democratic governance

The past decade has seen increasing international recognition of civic space as a cornerstone of functioning democracies and significant efforts to defend and support it. A range of international initiatives and declarations have elevated related concerns to the height of international policy debate in recent years (UN, 2020[3]; PACE, 2018[4]; UN, 2016[5]; 2021[6]). In 2020, the Secretary-General of the United Nations (UN) António Guterres launched a high-profile Call to Action for Human Rights with seven priority areas, including "rights in times of crisis" and "public participation and civic space" (UN, 2020[7]). The same year, the European Union (EU) released a European Democracy Action Plan to address growing challenges to democracy (EC, 2020[8]). The United States (US) President Joe Biden convened a Summit for Democracy in 2021 aiming to demonstrate how democracies can deliver on the issues that matter most to people, including civic freedoms and civic capacity. The Open Government Partnership (OGP), which gathers government leaders and civil society to promote transparent, participatory, inclusive and accountable governance, also launched a high-profile Call to Action to encourage its members to protect civic space and enhance citizen participation in 2021. Reinforcing democracy became a central priority for the OECD Public Governance Committee in 2021.

Such initiatives come as a response to concerns about a democratic backslide across the world in recent years that is affecting civic space and reshaping the contours of engagement between people and their governments. The Varieties of Democracy (V-Dem) Institute[3] noted in 2021 that while the world is still more democratic today than it was in the 1970s or 1980s, there has been a global decline of liberal democracy over the past decade (Alizada et al., 2021[9]). At the same time, low voter turnout and increasing apathy towards mainstream political parties in many established democracies are a sign of disengagement from

traditional democratic institutions. Indeed, data suggest that public satisfaction with the way that institutions are functioning is low. Results from the 2021 OECD *Drivers of Trust in Public Institutions* survey illustrate that governments could do better in responding to citizens' concerns and expectations (OECD, 2022[10]). The survey finds public confidence is evenly split between people who say they trust their national government and those who do not. Just under four in ten respondents, on average across countries, say that their government would improve a poorly performing service, implement an innovative idea or change a national policy in response to public demands. Only three in ten feel they have a say in what the government does (OECD, 2022[10]). Crucially, people's perception of opportunities for meaningful engagement is strongly associated with levels of trust in government. Complex and sometimes transboundary global issues are influencing the malaise, including economic and climate pessimism, concerns about disinformation, rising populism and political polarisation, coupled with increasing inequity and inequality across the globe. The challenge for democratic governments is to ensure that a greater number of people feel that political systems and institutions are meeting their needs and that their voices are valued and listened to.

By linking the protection of civic space with their public governance reform efforts, OECD Members are seeking to ensure more effective, inclusive and impactful civic participation in democratic processes and government decision making. Mindful of the challenges they face, OECD Members are thus working to strengthen their civic space as part of reinforcing and renewing their democratic institutions.

Box 1.1. The global decline in the protection of civic space

At the global level, the past two decades have seen restrictions imposed on civic space by governments (Figure 1.4). Data from the V-Dem Institute show that, in many countries, this shift is most evident in restrictions to freedom of expression and the media, freedom of assembly and association, and repression of civil society (Alizada et al., 2021[9]; Boese et al., 2022[11]).[1] Currently, an unprecedented number (35) of countries are seeing a decline in freedom of expression, for example, while only 10 are making advances, according to the institute (Boese et al., 2022[11]). This is a reversal of the trend a decade ago when more countries were advancing in this area than declining.

Evidence from a range of civil society organisations (CSOs), academics and international organisations shows that civic voices are being silenced in a variety of ways. These include: smear campaigns targeting CSOs; a rise in state surveillance of civil society; targeting of journalists and activists; onerous administrative procedures for the registration of CSOs; muzzling of watchdogs, journalists and human rights defenders[2] by both state and non-state actors; intimidation and violence from state security forces; harassment, criminalisation and prosecutions of CSOs and activists; and the use of overly broad counterterrorism or criminal laws to control civil society, according to civil society, academic, OECD and UN sources (Bossuyt and Ronceray, 2020[12]; Hossain et al., 2018[13]; UN, 2019[14]; Vosyliute and Luk, 2020[15]; OECD, 2020[16]). In some countries, organised crime and criminal gangs play a particular role in targeting, threatening and killing journalists to prevent them from reporting, particularly on issues related to politics, crime and corruption (RSF, 2021[17]; CPJ, 2021[18]; UNESCO, 2021[19]), necessitating dedicated protection programmes and initiatives from governments. Limits on access to information, censorship, arbitrary detentions of journalists and state-sponsored disinformation have also been reported by civil society groups (RSF, 2021[20]; Freedom House, 2021[21]; Frontline Defenders, 2022[22]; UNESCO, 2021[19]; 2022[23]; CPJ, 2021[18]). In 2021, a record 293 journalists were imprisoned worldwide, according to the Committee to Protect Journalists (2021[18]). A growing number of human rights defenders are being killed; at least 358 verified killings took place in 35 countries in 2021 alone, of which 250 occurred in Latin America, according to Frontline Defenders (2022[22]).

The onset of COVID-19 in 2020 exacerbated pressures on civic space as economies were brought to a standstill and governments introduced emergency measures to prevent the collapse of national health systems, which in some cases led to derogations of key civic freedoms. While most democracies introduced measures with time limits and with the necessary oversight, others did not, despite clear international guidance in this area (Section 2.1.5 in Chapter 2).

1. The V-Dem Institute reports that "freedom of expression and the media" make up eight out of ten indicators that have declined in the greatest number of countries in the past ten years (Alizada et al., 2021[9]).
2. Human rights defenders are defined in this report as all persons, who individually or in association with others, act to promote or protect human rights peacefully.
Source: Authors.

1.3. The OECD's work on the protection of civic space

The OECD's work on civic space and civil society stretches back over a decade.[4] The OECD Observatory of Civic Space was established in 2019 with the aim of gathering data and good practices on the legal, institutional and policy frameworks that OECD Members can implement to promote and protect civic space (Box 1.2) [GOV/PGC(2018)4/FINAL]. Since then, through both the observatory and other parts of the OECD Secretariat, the Organisation has engaged in the following range of activities, in line with increased demand and requests from OECD Members:

- **Civic space scans and open government reviews:** In-depth qualitative scans and chapters in open government studies have been completed or are ongoing in several OECD Members and non-Members including Brazil, Finland, Morocco, Portugal, Romania and Tunisia, providing specific guidance to governments on protecting their civic space at the national level.
- **Global analysis of civic space:** The present report is based on a 2-year data-gathering exercise from a total of 52 OECD Members and non-Members, yielding a vast evidence base on related initiatives, gaps and good practices. A follow-up survey will be repeated every three years.
- **Civic space standards:** In 2021, the OECD Development Assistance Committee (DAC), comprising 30 OECD members, adopted the DAC *Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance* [OECD/LEGAL/5021]. The standard includes pillars on protecting civic space (Pillar 1) and supporting and engaging with civil society (Pillar 2) in development co-operation. In June 2022, the *Recommendation on Creating Better Opportunities for Young People* [OECD/LEGAL/0474] was adopted by the OECD Council. It includes a provision on recognising and safeguarding youth rights and protecting civic space for young people with targeted measures for disadvantaged and under-represented groups.
- **Forum for dialogue and exchange:** The OECD continues to act as a convenor of dialogue on civic space, public governance and democracy, bringing together governmental and non-governmental actors at the highest levels for regular interaction, dialogue, consensus building and the development of standards.

Box 1.2. Civic space and the OECD Recommendation on Open Government

The OECD's civic space work is anchored in the *OECD Recommendation of the Council on Open Government* [OECD/LEGAL/0438] (hereafter "the Recommendation"). The Recommendation – the only legal instrument of its kind in this area – defines open government as "a culture of governance that promotes the principles of transparency, integrity, accountability and stakeholder participation in support of democracy and inclusive growth" (OECD, 2017[24]). Four of the Recommendation's provisions are particularly relevant to civic space:

- **Provision 1** recommends that Adherents take measures "in all branches and at all levels of the government, to develop and implement open government strategies and initiatives in collaboration with stakeholders".
- **Provision 2** focuses on the need to ensure the "existence and implementation of the necessary open government legal and regulatory framework" while establishing adequate oversight mechanisms.
- **Provision 8** recognises the need to grant all stakeholders "equal and fair opportunities to be informed and consulted" on governance issues and for them to actively engage in all phases of public sector decision-making and service design and delivery.
- Furthermore, the Recommendation calls for specific efforts to reach out to "the most relevant, vulnerable, underrepresented, or marginalised groups in society", while avoiding undue influence and policy capture, and to "promote innovative ways to effectively engage with stakeholders to source ideas and co-create solutions and seize the opportunities provided by digital government tools" (**Provisions 8 and 9**) (OECD, 2017[24]).

As such, the report presents numerous legal and policy initiatives, good practices and concrete policy recommendations and associated measures that could be considered by governments as they are directly relevant to implementing the Recommendation.

Source: Authors.

By integrating civic space into its public governance agenda in the context of the COVID-19 pandemic, the OECD is promoting an expansive and holistic understanding of open government that explicitly recognises that transparency, accountability, integrity and participation are only possible when the broader environment is conducive (Table 1.1). To take concrete examples, open data do not lead to transparency if citizens are unable to access, use and critique them; similarly, access to information yields little accountability if journalists are threatened or arrested for using it; and participation in public decision making is hindered if CSOs are struggling to operate, arbitrarily dissolved or drowning in red tape.

Table 1.1. Links between the OECD's open government principles and civic space

Civic space as an enabler of open government reforms			
Transparency	**Accountability**	**Integrity**	**Participation**
Targeted transparency initiatives,[1] proactive disclosure of information and data, and two-way communication to gather feedback and encourage dialogue facilitated by a free and open Internet, a healthy media ecosystem, a safe environment for journalists and bloggers, and an enabling environment for CSO and citizen participation are preconditions for government transparency.	Legal protections and functioning oversight mechanisms, as well as rule of law, are essential to ensure equal access to information and relevant policy discussions and decision making for CSOs and citizens, in addition to (hard) accountability[2] for violations of the right to participate and other civic freedoms.	Targeted transparency initiatives, and proactive disclosure of information and data facilitated by a healthy media ecosystem, protection for human rights defenders, activists and whistleblowers, and informed civil society and citizens are preconditions for the prevention of policy capture wherein public decision making is directed away from the public interest.	Protected civic freedoms (e.g. freedom of expression, association, assembly, privacy), non-discrimination, an enabling environment for CSOs, security and protection for activists and rights defenders, robust information ecosystems and inclusive and accessible opportunities are preconditions for effective CSO and citizen participation in governance and decision making.

1. Targeted transparency initiatives "have the fundamental characteristic of using information disclosure as a way of achieving a concrete public policy goal, such as improving public service delivery in healthcare, education and transportation, among other sectors" (Dassen and Cruz Vieyra, 2012[25]).
2. Hard accountability refers to measures that "explicitly name a means of enforcing or brokering compliance". In other words, there are consequences for failure to comply and the means to achieve relevant aims (Foti, 2021[26]).
Source: Based on Dassen, N. and J. Cruz Vieyra (eds.) (2012[25]), *Open Government and Targeted Transparency: Trends and Challenges for Latin America and the Caribbean,* https://publications.iadb.org/en/open-government-and-targeted-transparency-trends-and-challenges-latin-america-and-caribbean; Foti, J. (2021[26]), "Past due: Leveraging justice for 'hard accountability' in OGP", https://opengovpart.medium.com/past-due-leveraging-justice-for-hard-accountability-in-ogp-f3a66b913997; and unpublished OECD documents.

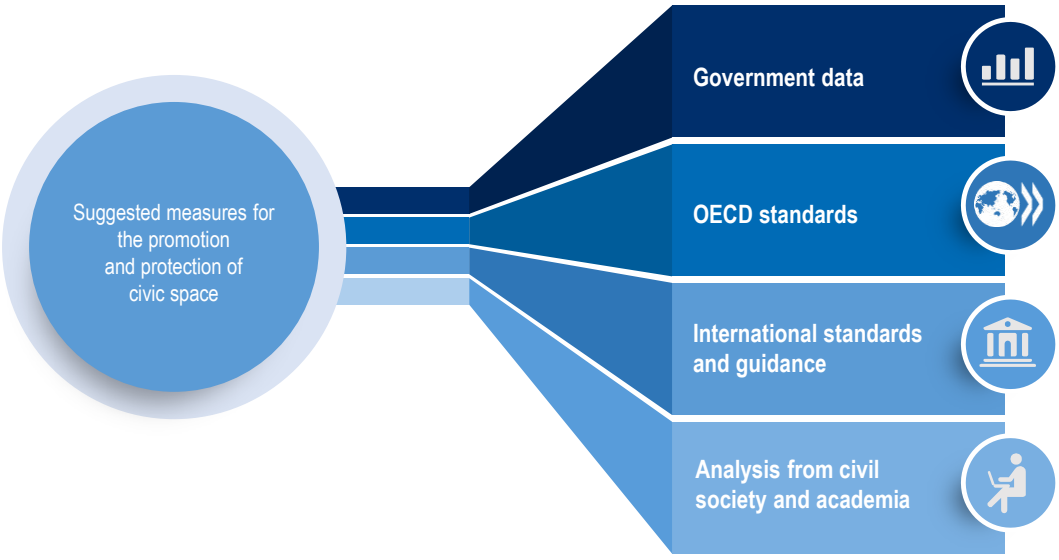
1.4. Aims and overview of this report

This first OECD comparative report on civic space is a central part of the work of the OECD Observatory of Civic Space. It aims to offer a baseline on the protection and promotion of civic space drawn from verified data collected through a survey of 33 OECD Members and 19 non-Members (Box 1.3) and complemented by a review of key trends and recent developments in government policies and practices in addition to international legal frameworks and standards (UN, 1966[27]; 2016[5]; 2021[6]; 2011[28]; 2020[29]).

The recommendations and suggested measures that are included in the report are drawn from a variety of sources, both descriptive (e.g. government data provided by respondents to the OECD Survey, analysis from CSOs and academia, good practices) and prescriptive (e.g. existing OECD standards, international standards). Sources are clearly identified throughout the text.

Data provided by governments include national laws, regulations, policies, strategies as well as good practices in the four areas assessed in the report. OECD standards cover a wide range of issues, including open government, policy coherence, gender equality, artificial intelligence and broadband connectivity, among others. The report draws on existing international guidance related to civic space to underpin related recommendations and associated measures, including UN standards, as well as guidance from regional human rights bodies and courts, such as the European Court of Human Rights or the Inter-American Court of Human Rights. Analyses from CSOs and academic institutions are considered where relevant, along with their insights into how they see civic space is protected in practice (Figure 1.2).

Figure 1.2. Data, standards and sources used in this report



The main aim of the report is to support OECD Members and non-Members to protect civic space by giving a full overview of the different dimensions of civic space and current practices and suggesting measures that could be considered to promote and safeguard civic space.

To do so, the report provides:

- **Comparative government data**, including on national legal frameworks, policies, strategies, institutional arrangements and actual practices on the promotion and protection of civic space.
- An overview of **existing OECD standards** on a variety of issues relevant to the protection of civic space.
- An overview of **existing guidance provided by international and regional human rights bodies** on issues relevant to the protection of civic space.
- An overview of **trends and patterns in OECD Members and selected non-Members**, in addition to regional analyses on Europe, Latin America and the Caribbean (LAC) and Africa.
- Highlights of **good and innovative practices**.
- An **evidence base** for any future OECD standards on civic space.

The report's added value is that it brings a government and a public sector implementation and reform perspective into ongoing debates on the promotion and protection of civic space, which are currently largely dominated by perception surveys, analyses from civil society and guidance from international organisations, such as the UN and other regional human rights bodies. This focus provides insights on key legislation, policies and public sector practices that help to foster and promote civic space. Furthermore, the report brings together government data (validated by the OECD) and compares them with non-governmental data, in addition to existing and agreed upon OECD and international standards, to provide guidance on strengthening alignment with these standards.

Countries that participated in the Survey were explicitly requested to provide data based on national legal frameworks that are applicable in normal circumstances, not emergency or temporary measures due to the onset of the pandemic. This is because, when the survey instrument was drafted in mid-2020, any emergency measures that negatively affected civic space were presumed to be of a short-term nature. Recognising that the medium- and long-term impact of COVID-19 on civic space has yet to be fully understood, the pandemic is discussed in a number of sections.

The report captures the evolving reality of the legal, policy and institutional frameworks and practices that surveyed governments have put in place in the four key areas detailed in Figure 1.1:

- **Chapter 2: Facilitating citizen and stakeholder participation through the protection of civic freedoms.** This chapter provides an overview of the status of freedom of expression, peaceful assembly, association and the right to privacy as cornerstones of democratic life. It discusses related legal protections and exceptions to the full enjoyment of these rights, followed by a review of implementation trends, challenges and opportunities, including in the context of COVID-19. It examines discrimination as an obstacle to equal participation in public policy making and reviews legal frameworks and practices protecting human rights defenders. Finally, it examines the types of mechanisms that exist to counter violations of civic freedoms, including oversight and complaints bodies and the role of public communication in promoting civic space.
- **Chapter 3: Protecting and promoting the right to access information as a core component of civic space.** This chapter provides an overview of the fundamental right to access information (ATI) as a key element of civic space and open government. It firstly outlines the role of access to information as a right, its intersection with other civic freedoms and how the right is protected and promoted through international treaties and conventions. The chapter then focuses on the legal framework for ATI, including constitutional recognition and ATI laws and how their various provisions can be more effectively implemented to foster civic space. Finally, it outlines trends, challenges and opportunities for strengthening the right to access information.
- **Chapter 4: Media freedoms and civic space in the digital age for transparency, accountability and citizen participation.** This chapter provides an overview of the status of press freedom and civic space in a digitalised world, including relevant legal frameworks. It discusses harassment and attacks targeting journalists and makes suggestions on building the necessary enabling environment for reliable, fact-based journalism. It considers the protection of online civic space for citizens and related challenges such as hate speech, mis- and disinformation. Finally, the chapter reflects on the importance of personal data protection for civic space and safeguarding civic freedoms in the context of increased use of artificial intelligence.
- **Chapter 5: Fostering an enabling environment for civil society to operate, flourish and participate in public life.** This chapter explores the measures OECD Members and non-Members can take to foster an enabling environment for civil society. It examines legal and regulatory frameworks governing the establishment and operations of CSOs, in addition to registration requirements and appeal mechanisms. It focuses on good practice in improving the enabling environment through government strategies to protect civil society and support recovery in the aftermath of COVID-19. It then discusses key challenges such as Strategic Lawsuits Against Public Participation (SLAPPs) and examines support for civic space as part of development co-operation. It also assesses key regional challenges and opportunities within the EU, the LAC region and Africa, providing proposals for consideration.

Chapters 2-4 address issues that are pertinent for citizens and CSOs, whereas Chapter 5 focuses largely on the conditions that are specific to organised civil society (see also Box 1.3). The themes of equality, inclusion, non-discrimination and democratic participation are addressed as cross-cutting issues throughout the report.

Box 1.3. Introduction to the methodology

The OECD Survey, on which this report is based, was primarily aimed at monitoring the implementation of the 2017 *OECD Recommendation of the Council on Open Government*. The Survey was sent to 67 OECD Members and non-Members in November 2020 (43 Adherents to the Recommendation and 24 non-Adherents). The data in this report are based on Section 3 ("Civic space as an enabler of open

government") of the Survey and complemented with data from Section 4 ("The open government principle of transparency").[1] Section 3 included 33 questions (and sub-questions yielding approximately 300 data points for the graphs and charts) for national governments, divided into 3 sections on civic freedoms, media freedoms and civic space in the digital age, and the CSO enabling environment, based on the OECD's analytical framework for civic space. Section 4 included 29 questions, divided into 3 sections on legal frameworks on ATI, implementation of ATI laws and institutionalisation and governance of ATI laws. Before launching the Survey, both sections were reviewed and commented on by a range of subject matter experts, both within the OECD and externally.[2]

A total of 52 central governments (of which 33 are OECD Members)[3] responded to the Survey between February 2021 and May 2022 (together referred to as "respondents"), and an OECD team validated the data over the same period. The main content for the report was developed between January 2021 and March 2022, followed by an extensive internal OECD review process. The report refers extensively to data from external sources such as CSOs and academia. Four CSOs – the Mo Ibrahim Foundation (MIH), Reporters Without Borders (RSF), the International Center for Not-for-Profit Law (ICNL) and the European Center for Not-for-Profit Law (ECNL) – contributed content, in addition to the EU Agency for Fundamental Rights (FRA).

Based on the Survey, the report conducts an exploratory analysis across a wide variety of themes, while acknowledging that complex implementation challenges cannot be grasped through a limited number of survey questions. Given these limitations, the Survey focused on *de jure* aspects of civic space and the responses provided by governments are complemented with data and desk research on implementation from independent sources such as CSOs, research institutions and UN bodies.

The recommendations and associated measures in the report are based on the Survey data in addition to OECD standards, relevant literature and international and regional human rights law and standards. The report draws on specific OECD legal instruments including the OECD Recommendations on: Open Government [OECD/LEGAL/0438]; Gender Equality in Public Life [OECD/LEGAL/0418]; Policy Coherence for Sustainable Development [OECD/LEGAL/0381]; Artificial Intelligence [OECD/LEGAL/0449]; Principles for Internet Policy Making [OECD/LEGAL/0387]; Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data [OECD/LEGAL/0188]; Enhancing Access to and Sharing of Data [OECD/LEGAL/0463]; Broadband Connectivity [OECD/LEGAL/0322]; on Creating Better Opportunities for Young People [OECD/LEGAL/0474] as well as the DAC Recommendation on Enabling Civil Society in Development Cooperation and Humanitarian Assistance [OECD/LEGAL/5021]. The report also draws on other OECD standards such as the OECD Policy Framework on Sound Public Governance (OECD, 2020[30]), the Good Practice Principles for Data Ethics in the Public Sector (OECD, 2021[31]), and the Principles of Good Practice for Public Communication Responses to Mis and Disinformation (OECD, 2022[32]).

The report provides a compendium of data and analysis on civic space. The majority of the respondents hail from Europe (23 respondents) and LAC (13 respondents), with a number of others located elsewhere, namely in Africa (3), Asia and the Pacific (6), Central Asia (2), the Middle East (3) and North America (2).

See Annex A for a more detailed overview of the methodology.

1. The four sections of the Survey on Open Government focus on: The governance of open government (Section 1); The open government principle of citizen and stakeholder participation (Section 2); Civic space as an enabler of open government reforms (Section 3); and The open government principle of transparency (Section 4).
2. The Observatory of Civic Space is guided by an advisory group comprising experts, funders and world-renowned leaders on the protection of civic space who provide substantive input to its work.
3. A total of 51 OECD Members and non-Members (of which 32 are OECD Members) responded to Section 3 and 51 OECD Members and non-Members to Section 4 (of which 33 are OECD Members) of the Survey, giving a total of 52 respondents overall.
Source: Authors.

1.5. The state of civic space in OECD Members: Selected key findings

Within OECD Members, the protection of civic space is complex and evolving. In some respects, the picture is mixed: while many OECD Members consistently occupy top rankings in related international indices, others score lower in particular areas or across a range of indicators.[5] Nevertheless, in many OECD Members, aspects of civic space have been strengthened in recent years by progressive government initiatives, laws and institutions, coupled with powerful and dynamic civic activism, social movements and public pressure. Grassroot social movements, mass protest movements, deliberative assemblies and local referenda are just some manifestations of a democratic revival in some countries (Youngs, 2021[33]).

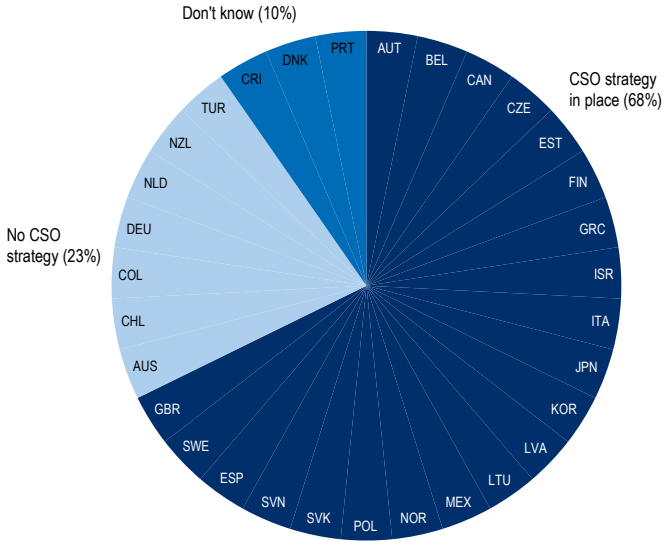
The legal bases for protecting civic space are generally strong in OECD Members. Relevant legal frameworks are for the most part far-reaching and applicable to anyone physically present in a country, even if irregularly (Section 2.1 in Chapter 2). Selected key findings of the report, based on the Survey, include the following:

- **Recognition of freedoms of expression, peaceful assembly and association:** All (100%) respondent OECD Members protect the freedom of expression of anyone on their territory and 91% protect peaceful assembly and freedom of association for anyone.
- **Development of protective institutional mechanisms:** Some 84% of respondent OECD Members have established independent public institutions that address human rights complaints, and many of these have set out the main elements of such institutions in their national constitutions.
- **Transparency and open data:** The right to access information has been enshrined in the constitutions of 70% of OECD respondents.
- **Proactive strategies in place:** 68% of respondent OECD Members have strategies in place to protect and promote the enabling environment for civil society on their territories and 48% as part of development co-operation (Figure 1.3).

Figure 1.3. Country strategies to protect and promote an enabling environment for civil society in OECD Members, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government

OECD



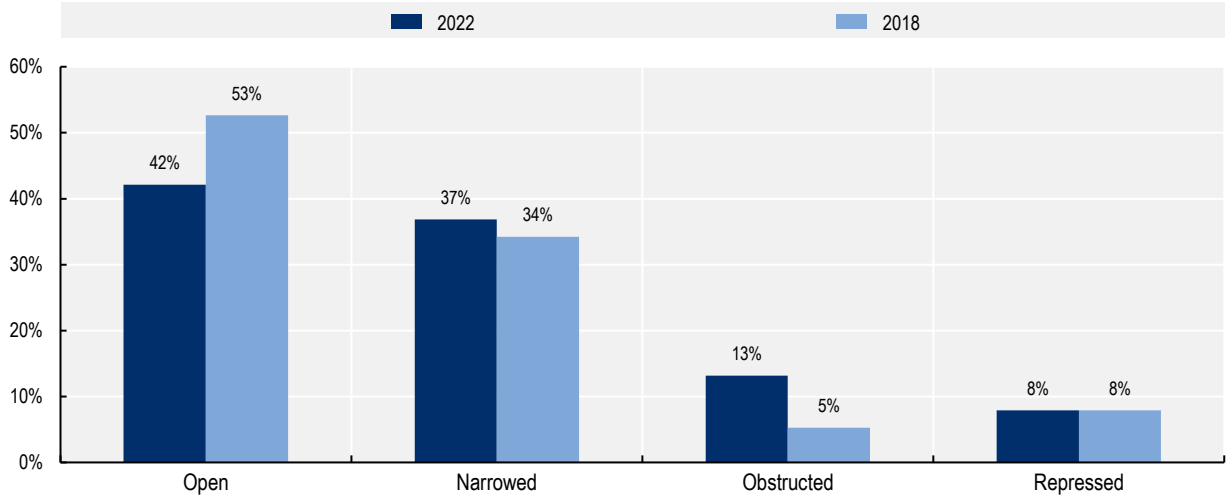
Note: The graph consists of 31 OECD Members. Data on Türkiye are based on OECD desk research and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

- **Existence and enforcement of anti-discrimination legislation:** Almost all respondents (91%) have laws protecting anyone from discrimination and 47% have established institutions that specialise in discrimination cases and in promoting equality. Protection against discrimination on the basis of ethnicity, gender, sex and sexual orientation is well established and a total of 94% have legislation protecting people from hate speech and 78% criminalise it, while at least 44% of OECD respondents have explicit measures in place to address online hate that targets women.

Despite these legal foundations, there are exceptions, gaps and implementation challenges. Non-governmental actors use a variety of methodologies to assess and rank the various dimensions of civic space. While these assessments generally suggest a strong performance among most OECD Members, they also point to challenges in different areas. Data from CIVICUS, for example, show a decline in 8 OECD Members with regard to freedoms of expression, peaceful assembly and association: in 2022, the organisation reported that civic space was "open" in 42% of all 38 OECD Members and "repressed", "obstructed" or "narrowed" in the remaining 58% (CIVICUS, 2022[34]) (Figure 1.4). In 2018 (the earliest year for which relevant data are available), these proportions were 53% and 47% respectively.[6]

Figure 1.4. CIVICUS Monitor of civic space, 2018 compared to 2022

Percentage of all OECD Members by CIVICUS category



Note: The CIVICUS Monitor assesses civic space within countries and over time, looking at the respect in policy, law and practice for freedoms of association, peaceful assembly and expression and the extent to which the state protects these fundamental rights. Several independent sources are combined and analysed resulting in a country rating. Each country's civic space is rated in one of five categories: open, narrowed, obstructed, repressed or closed. All 38 OECD Members are included in this graph. No OECD member was rated as closed.
Source: CIVICUS (2022[34]), CIVICUS Monitor Tracking Civic Space, https://monitor.civicus.org/ (accessed on 18 May 2022).

Echoing this broad trend of approximately 20% of OECD Members experiencing a decline in different areas, the V-Dem Institute's Liberal Democracy Index scores for OECD Members – measuring the overall health of democracy in the world – show a decrease "substantively and at a statistically significant level" in seven OECD Members between 2011 and 2021 (Boese et al., 2022[11]).[7] Drilling down, according to V-Dem's Civil Liberties Index, which is a component of the above index and includes a range of relevant indicators, including on media, freedom of expression and CSOs, there has been a statistically significant decline in eight OECD Members when the scores of 2021 are compared to 2011. Three OECD Members have noticeably improved their index ratings over the past decade.

One area of civic space where civil society has reported a significant decline is media freedom. The proportion of OECD Members where the situation is regarded as favourable for journalism has halved in

the space of six years (Section 4.3 in Chapter 4). This period covers the beginning of the COVID-19 pandemic and hence some of the impacts of the emergency measures are reflected in the results. It also coincides with increased vilification of and targeted violence against journalists, coupled with a rise in polarisation in many OECD Members (V-Dem Institute, 2021[35]). The year 2021 saw two journalists killed in European cities: Amsterdam and Athens.[8] In other areas, OECD research points to an emerging decline in the enabling environment for CSOs working with specific groups such as migrants or on specific issues such as climate change, in individual OECD Members (Box 1.1). However, these challenges can be observed in a very small number of Members and do not appear in global rankings and indices (Section 5.2.3 in Chapter 5).

1.6. Conclusion and recommendations

The foundations for the protection of civic space in OECD Members are strong. However, data indicate that there is backsliding in certain areas in some OECD Members alongside progress in others. Within countries, existing legislation and practices may have different impacts on some sections of the population (e.g. minorities or particular demographic groups), given systemic marginalisation and exclusion. Respect for civic space may vary across a country and across sectors, ministries and other public institutions. In many OECD Members and non-Members where parts of civic space are restricted, this may be the result of a backlog of needed reforms to adapt legal frameworks and practices to modern-day challenges, rather than deliberate attempts to impose limits. At the same time, OECD research indicates that it is necessary to go beyond international rankings to understand and protect civic space at the national level. Furthermore, research shows that all OECD Members and non-Members face at least some challenges in protecting their civic space, particularly for minorities and marginalised groups, and that ongoing monitoring using disaggregated data is essential (OECD, 2021[36]). For example, the recent OECD Civic Space Scans of Finland and Portugal show that even in OECD Members with a strong commitment to civic participation and an impressive international standing in relation to freedom of the press, rule of law and respect for civic freedoms, a sustained effort is needed to maintain high standards.

The report recognises the need to adopt a comprehensive and systematic approach to protecting civic space that is co-ordinated across public institutions as a cross-cutting policy challenge. In view of this, it suggests a whole-of-state and whole-of-society approach, providing recommendations and associated measures for the many different actors involved in protecting the fundamental rights that form the bedrock of societies in OECD Members, as a community of like-minded nations committed to “the preservation of individual liberty, the values of democracy, the rule of law and the defence of human rights” (OECD, 2021[37]). Furthermore, it should be noted that the subject of civic space is vast and this report aims to provide an accessible, but not exhaustive, baseline of data on its current status. Forthcoming publications from the OECD Observatory of Civic Space will continue to explore other emerging civic space issues in depth, with a focus on regional, national and local levels.

Key areas that require further attention in OECD Members, all discussed in this report, include:

- **Restrictions on freedom of expression, both on and off line**, including due to the criminalisation of defamation, insufficient freedom of expression safeguards in the context of countering terrorism, the prevalence of misinformation and disinformation as well as hate speech, and violence and harassment targeting journalists and human rights defenders.
- **Restrictions on freedom of peaceful assembly**, due to insufficient protection of protestors by law enforcement actors, as well as police violence used against protestors in a few OECD Members.
- A **lack of protection in practice for minorities** in some OECD Members.
- **Disruptive new digital technologies**, such as artificial intelligence, posing new risks to equal participation and non-discrimination.

- **Challenges for the CSO enabling environment**, including the use of SLAPPs, smear campaigns and restricted space for those that engage on particular issues such as the environment and migration, constraints on access to funding and onerous registration, reporting and accounting obligations, and restrictions on the activities that they are allowed to engage in.

Box 1.4 provides an overview of the OECD's ten high-level recommendations on the protection of civic space.

Box 1.4. High-level recommendations on the protection of civic space

- Protect and facilitate **freedom of expression.**
- Protect and facilitate **freedom of peaceful assembly** and the right to protest.
- Counter the **discrimination**, **exclusion and marginalisation** that disproportionately affect certain groups and hinder equal participation in public life.
- Safeguard and protect **human rights defenders, journalists, whistle blowers**, and other at-risk groups.
- Foster a **public interest information ecosystem** that protects independent media and promotes access to information.
- Protect **online civic space**, including by countering hate speech and mis- and disinformation.
- Respect **privacy** and ensure **personal data protection** to avoid arbitrary intrusion and interference in public life.
- Foster an **enabling environment for civil society organisations** that facilitates their positive contribution to society.
- Protect civic space both domestically as well as through development co-operation as part of a **coherent policy approach.**
- Systematically protect and promote civic space as a precondition for **citizens and stakeholders to engage** in public decision-making to foster more open, transparent and accountable governance.

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Notes

[1] For the purposes of this chapter and in line with the OECD Survey on Open Government, the term citizen is meant as an inhabitant of a particular place and not a legally recognised national of a state.

[2] 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.[39]).

[3] See https://www.v-dem.net/ for more information.

[4] In 2012, the OECD produced a guide on partnering with civil society as part of development co-operation (2012[38]).

[5] All but one of the top 31 countries in V-Dem's Liberal Democracy Index are OECD Members (Boese et al., 2022[11]). At the same time, the bottom 3 OECD performers rank 87th, 91st and 147th respectively.

[6] One OECD Member improved its score over this period.

[7] V-Dem's Liberal Democracy Index draws on 71 indicators on liberal and electoral democracy including 44 indicators that are broadly related to civic space: 6 on freedom of assembly, 9 on freedom of expression and alternative sources of information, 20 on equality before the law and individual liberty index, 5 on judicial constraints on the executive and 4 on legislative constraints on the executive. One country improved its ranking over the same period.

[8] Content provided by RSF for the report.

2 Facilitating citizen and stakeholder participation through the protection of civic freedoms

This chapter provides an overview of the status of freedom of expression, peaceful assembly, association and the right to privacy as cornerstones of democratic life. It discusses related legal protections and exceptions to the full enjoyment of these rights, followed by a review of implementation trends, challenges and opportunities, including in the context of COVID-19. It examines discrimination as an obstacle to equal participation in public policy making. It reviews legal frameworks and practices protecting human rights defenders. Finally, it examines the types of mechanisms that exist to counter violations of civic freedoms, including oversight and complaints bodies and the role of public communication in promoting civic space.

Key findings

- Civic freedoms are generally well protected by legal frameworks in OECD Members and non-Members that participated in the OECD Survey on Open Government. Freedom of expression is a right for anyone present in a country, including irregularly, in 96% of respondents, freedom of peaceful assembly in 88%, freedom of association in 82% and the right to privacy in 98% of respondents.
- While most legal exceptions to these rights in OECD Members are in line with international standards, some would benefit from further review to ensure that they do not restrict civic freedoms.
- In a context of growing anti-government protests, most surveyed OECD Members permit and facilitate peaceful assembly. But insufficient protection of protestors by law enforcement actors, as well as police violence used against protestors in some contexts, have raised concerns about respecting this right. Court decisions and legal changes have been introduced in some OECD Members to reduce and control the use of force by police during protests.
- Despite solid legal frameworks for civic space protection, civic freedoms that underpin democratic life are under pressure in some OECD Members. External data show that the majority (83%) of OECD Members are considered "open" in relation to freedom of expression for example, while 17% of OECD Members are not (Article 19, 2021[1]).
- Strong legal frameworks countering discrimination help to enable effective and equal participation and these are supported by affirmative action to support disadvantaged groups, found in 91% of OECD Members and 84% of all respondents. There is an overwhelming trend in OECD Members to prohibit hate speech (97% of respondent OECD Members, 90% of all respondents) as a widely recognised form of discrimination. Almost half of all respondents (46% of OECD Members, 49% of all respondents) have separate institutions that specialise in discrimination cases and in promoting equality.
- Strong oversight mechanisms are helping to protect civic space. A majority of respondents (84% of OECD Members, 90% of all respondents) have independent public institutions that address human rights complaints. However, basic disaggregation of data (e.g. by age or gender) by these institutions remains rare, hindering the development of prevention and response initiatives targeting affected groups.
- Over one-third of OECD Members are leading the way by ending emergency measures that were introduced in the aftermath of the COVID-19 pandemic and that affected civic space. As of March 2022, 11 OECD Members were under states of emergency, either due to the pandemic (8 OECD Members) or new emergency measures introduced as a result of the invasion of Ukraine (3 OECD Members).
- All respondents would benefit from an ongoing review of the manner in which legal frameworks governing civic freedoms are implemented at the national level, as part of measures to reinforce their democracies. Ongoing monitoring of civic space using disaggregated data to understand emerging challenges and gaps, and cross-government efforts to identify and reverse any negative trends, would also be beneficial.

2.1. The cornerstones of civic space: Legal frameworks governing freedoms of expression, association, peaceful assembly and the right to privacy

Freedoms of expression, association, peaceful assembly and the right to privacy are fundamental civic freedoms that enable effective civic participation.[1] These basic rights are an essential precondition for the good governance and development of any democratic society. They are also necessary to ensure the empowerment and well-being of non-governmental actors.

The protection of civic space requires that all people are able to freely express themselves in public, including to critique government decisions, actions, laws and policies, and to hold government actors to account without fear of repercussions. Freedom of peaceful assembly affirms the right of citizens and non-governmental stakeholders to come together to advance their common interests, including their legitimate right to exercise dissent through peaceful protest and public meetings. Similarly, freedom of association guarantees the right of individuals to form, join and participate in associations, groups, movements, and civil society organisations (CSOs), thereby fulfilling people's fundamental desire to defend their collective interests. Finally, the state's duty to protect citizens and stakeholders from abuses of their right to privacy is another prerequisite for a vibrant civic space, as it helps to create the conditions for people to inform, express and organise themselves without undue interference.

The laws, policies and institutions that countries have in place are essential in establishing and protecting civic space. Legal and regulatory frameworks play a critical role in determining the extent to which all members of society, both as individuals and as part of informal or organised groups, are able to freely and effectively exercise their basic civic freedoms, participate in policy and political processes, and contribute to decisions that affect their lives without discrimination or fear.

An analysis of the data from the 2020 OECD Survey on Open Government (Annex A) shows that all 51 respondents to the civic space section of the Survey protect fundamental civic freedoms in national legal frameworks, case law (of higher courts) or by direct application of international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR) and the American Convention on Human Rights (ACHR). Some of the legally mandated exceptions or conditions to these rights would benefit, however, from further review and revisions to ensure their full compliance with international human rights standards, which are agreed-upon global standards that form the bedrock of democratic societies.

All survey data presented in this chapter pertain to the respondents to the civic space section (32 OECD Members and 19 non-Members) of the 2020 OECD Survey on Open Government (hereafter "the Survey"), except where explicitly stated (e.g. Figures 2.8 and 2.10).

With respect to the question of who may exercise the above-mentioned rights, relevant international human rights instruments do not distinguish between legally recognised citizens and non-citizens.[2] However, in some countries, national legal frameworks do distinguish between the two categories, affording fewer rights to those who are not legally recognised.[3] For example, Figure 2.1 on legal entitlement to civic freedoms shows that in 96% of respondents, including 100% of OECD Members, relevant legal provisions specify that anyone (meaning anyone physically present in a country, even irregularly) has the right to freedom of expression.

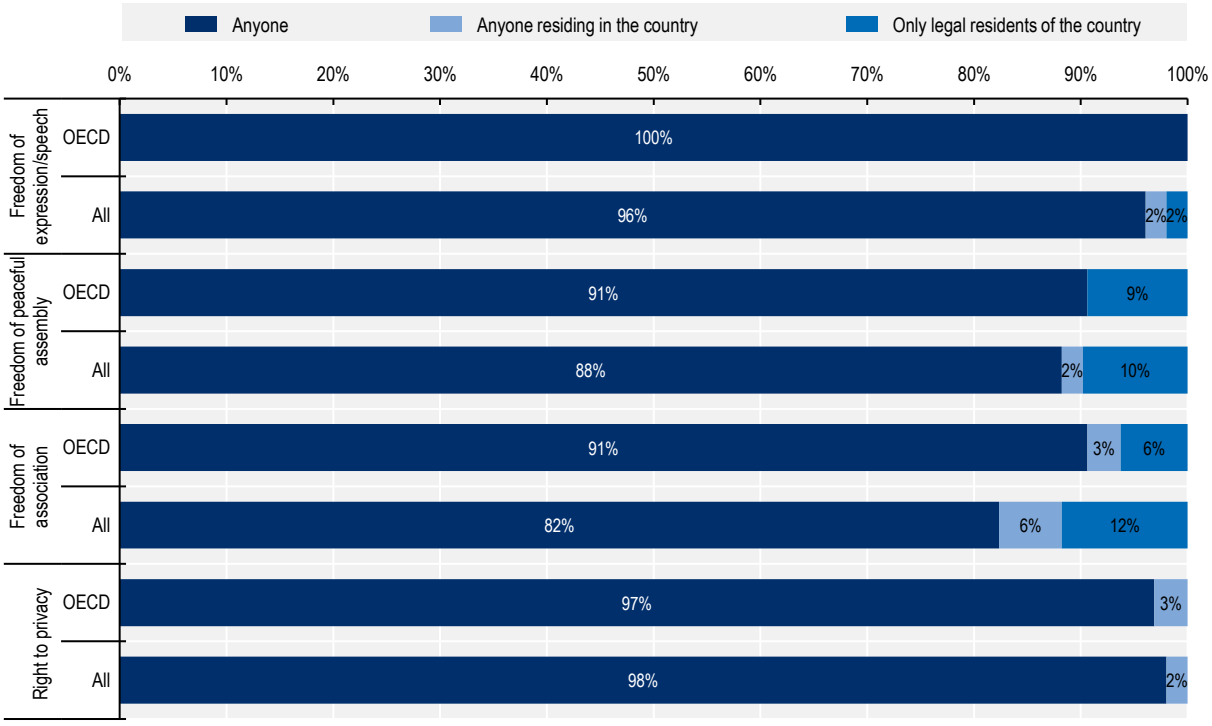
Similarly, 88% of all respondents, including 91% of OECD Members, grant the right to freedom of peaceful assembly to anyone, while **Italy**, for example, provides this right only to legally recognised citizens, **Lithuania** provides this right only to legally recognised citizens, European Union citizens, and foreign nationals with permanent residence in the country. **Panama** grants this right only to residents of the country. In **Mexico**, the right to freedom of peaceful assembly is only granted to legally recognised citizens where assemblies relate to the political affairs of the country.

In terms of the right to freedom of association, 82% of all respondents, including 91% of OECD Members, grant this right to anyone. While **Costa Rica, Lebanon, Panama** and **Portugal** grant this right to persons residing in the country, **Cameroon**, **Italy**, **Kazakhstan** and **Romania** only grant it to persons residing legally in the country. In **Mexico**, the right to freedom of association is only granted to legally recognised citizens for associations that focus on political affairs.

The right to privacy is likewise granted to anyone in 98% of all respondents and in 97% of OECD Members. In **Costa Rica**, the constitution grants the right to private life to anyone but indicates that certain aspects of this right, such as protection of privacy in the home (meaning that nobody may enter without permission, damage or destroy someone's home) and the inviolability of documents may only apply to persons residing in the country. In **Canada**, the Charter of Rights and Freedoms only protects individuals against search and seizure, but Canadian courts have applied the right to privacy broadly in all relevant cases, supported by privacy legislation at the federal and provincial levels.

Figure 2.1. Legal entitlement to civic freedoms in all respondents, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (32 OECD Members and 19 non-Members). Data on Canada, Guatemala and Slovenia are based on OECD desk research and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

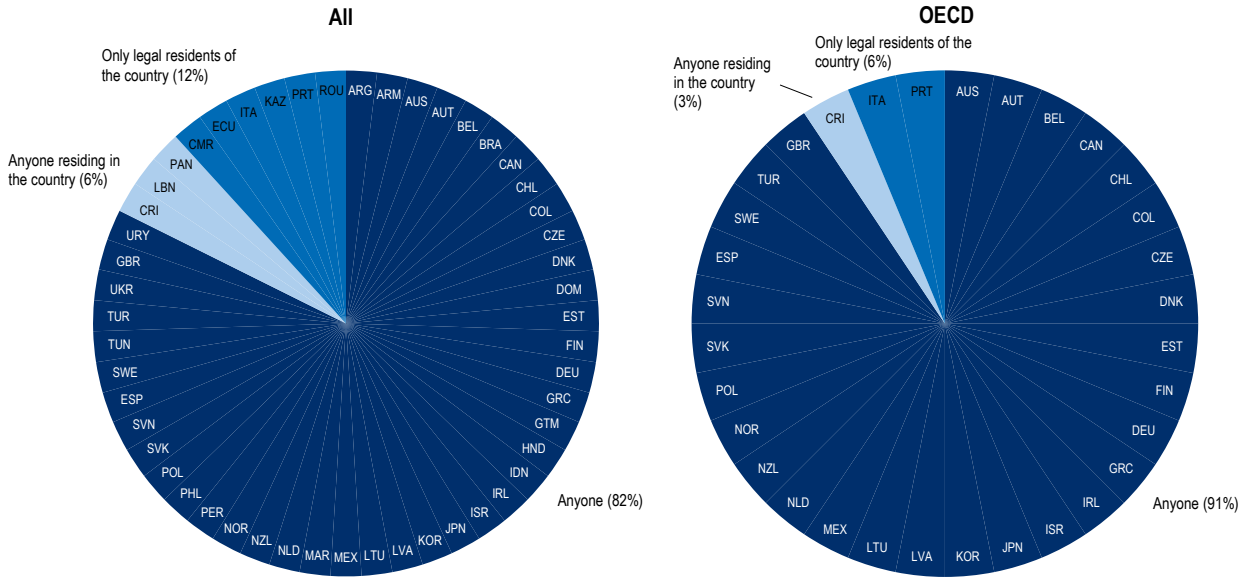
StatLink https://stat.link/szfqre

Of all the above rights, entitlement to freedom of association is the most limited with 18% of respondents granting freedom of association only to residents or legal residents (Figure 2.2). Some respondents, including **Cameroon, Costa Rica, Kazakhstan** and **Romania**, limit the general exercise of freedom of association. Others, including **Italy, Portugal** and the **Slovak Republic**, limit the right to found associations. In the **Czech Republic** and **Finland**, legislation prohibits certain public officials from joining

associations and only legally recognised citizens or foreigners residing in Finland may join associations "if the purpose of the association is to exercise influence over state affairs" (Finnish Associations Act, 1989[2]).

Figure 2.2. Legal entitlement to freedom of association, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (32 OECD Members and 19 non-Members).
Source: 2020 OECD Survey on Open Government.

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> ***Key measures to consider on legal frameworks protecting civic freedoms***
>
> *Expanding key civic freedoms to non-nationals, including stateless persons, refugees and migrants, would lead to greater compliance with existing international human rights guidance and would ensure that these groups of persons do not suffer discrimination with respect to the exercise of fundamental civic freedoms based on their status.*

2.1.1. Freedom of expression

The right to freedom of expression constitutes the foundation of every free and democratic state (UN, 2011[3]; European Court of Human RIghts, 1976[4]; IACHR, 1985[5]) and is one of the main prerequisites for an enabling environment for civil society. This covers the right to hold opinions without interference, as well as the freedom to seek, receive and impart information and ideas of all kinds, orally, in writing or in print.[4] Based on international human rights instruments, this right may be restricted where the restrictions are based on law and where it is necessary out of respect for the rights or reputations of others, for the protection of national security or of public order, or for public health or morals.[5] The advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and certain forms of hate speech are likewise prohibited in international human rights instruments.[6]

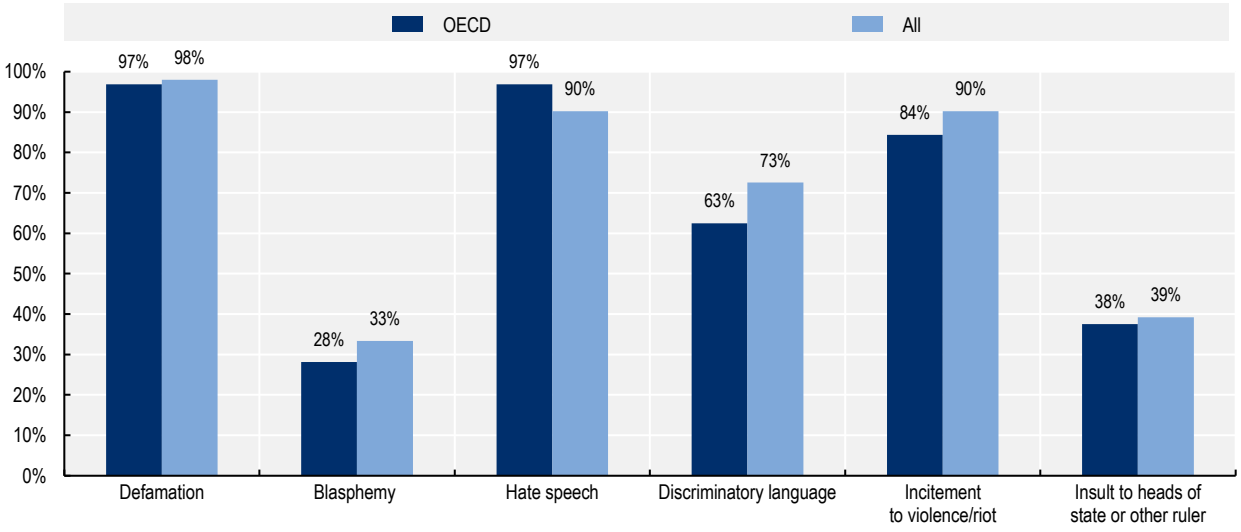
Legally mandated exceptions and conditions

Limitations on the right to freedom of expression may entail a wide variety of measures.[7] At the same time, restrictions must not jeopardise the right itself, according to guidance from the United Nations (UN) Human Rights Committee (UN, 2011[3]). In particular, freedom of expression is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference but also to those that offend, shock or disturb the state or any sector of the population (European Court of Human RIghts, 1976[4]; IACHR, 2009[6]).

There are several exceptions to freedom of expression that are common across respondents, including defamation, hate speech, incitement to violence and discriminatory language (Figure 2.3).

Figure 2.3. Legally mandated exceptions to freedom of expression, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (32 OECD Members and 19 non-Members). Data on Armenia, Chile, Guatemala, Honduras, Ireland, Netherland, Peru and Slovenia are based on OECD desk research for at least one category and were shared with them for validation. The data only include laws on national/federal level, countries with laws on state or regional level have been categorised as not having a particular exception. While laws in Belgium, Brazil and Colombia criminalise a lack of respect towards representatives or members of a religion, the countries maintained that such acts were different from blasphemy because these laws criminalise offending people associated with a religion, not the religion or God itself. For this reason, these countries were not included in in the category for blasphemy.
Source: 2020 OECD Survey on Open Government.

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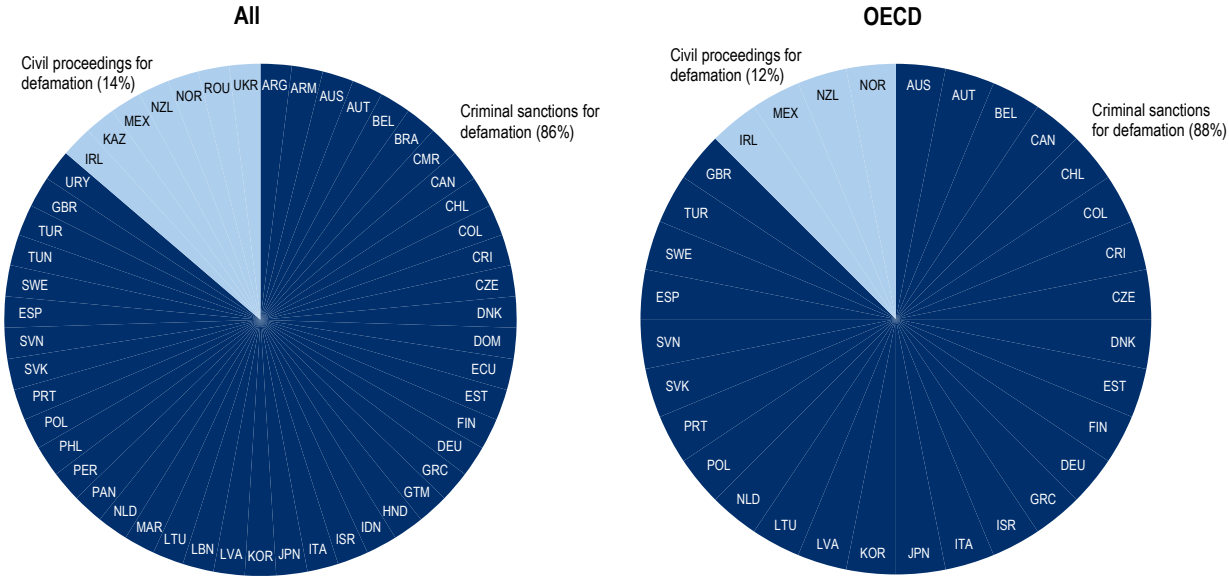
Defamation

Defamation, defined for the purposes of this report as a false statement, made in any medium (written or orally), which is presented as a fact and which causes injury or damage to the character of the person it is about, is a legally mandated exception to freedom of expression in 98% of all respondents, including 97% of respondent OECD Members (Figure 2.3). While in the majority of respondents a claim must generally be false to constitute defamation, in some respondents, including **Japan** and **Korea**, the law does not specify that a statement needs to be false to fulfil the legal requirements of defamation. Figure 2.4 illustrates that while 86% of all respondents have special provisions prohibiting all or certain forms of defamation in their criminal codes, 14% of all respondents, including **Mexico, New Zealand** and **Norway**

(OECD Members), and **Guatemala**, **Kazakhstan**, **Romania** and **Ukraine** (non-Members) foresee non-criminal remedies for defamation, such as civil lawsuits leading to damages.

Figure 2.4. Criminal and civil proceedings for defamation, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (32 OECD Members and 19 non-Members). Data on Ireland and Poland are based on OECD desk research and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

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Defamation laws generally aim to protect the reputation of individuals from false or offensive statements and are a balancing exercise between freedom of speech on the one hand and protecting personal reputations on the other. While the protection of a person's reputation may serve a legitimate interest, criminal sanctions can be viewed as having a greater potential to lead to limitations on civic space, such as censorship and self-censorship, compared with civil remedies, especially when criminal sanctions include prison sentences (UN, 2011[3]; Griffen, 2017[7]). If sanctions are overly broad, there is also a risk of them being abused, including by stifling information and legitimate reporting on matters of public interest. The European Court of Human Rights and the Inter-American Court of Human Rights (IACHR) have found that imposing excessively punitive sanctions, such as prison sentences in defamation cases, constitutes a disproportionate interference with individuals' freedom of expression.[8] International human rights bodies have thus called on countries to consider decriminalising defamation (CoE, 2007[8]), stressing that criminal law should only be applied in the most serious cases and that imprisonment is not an appropriate penalty (CoE, 2007[8]; UN, 2011[3]).

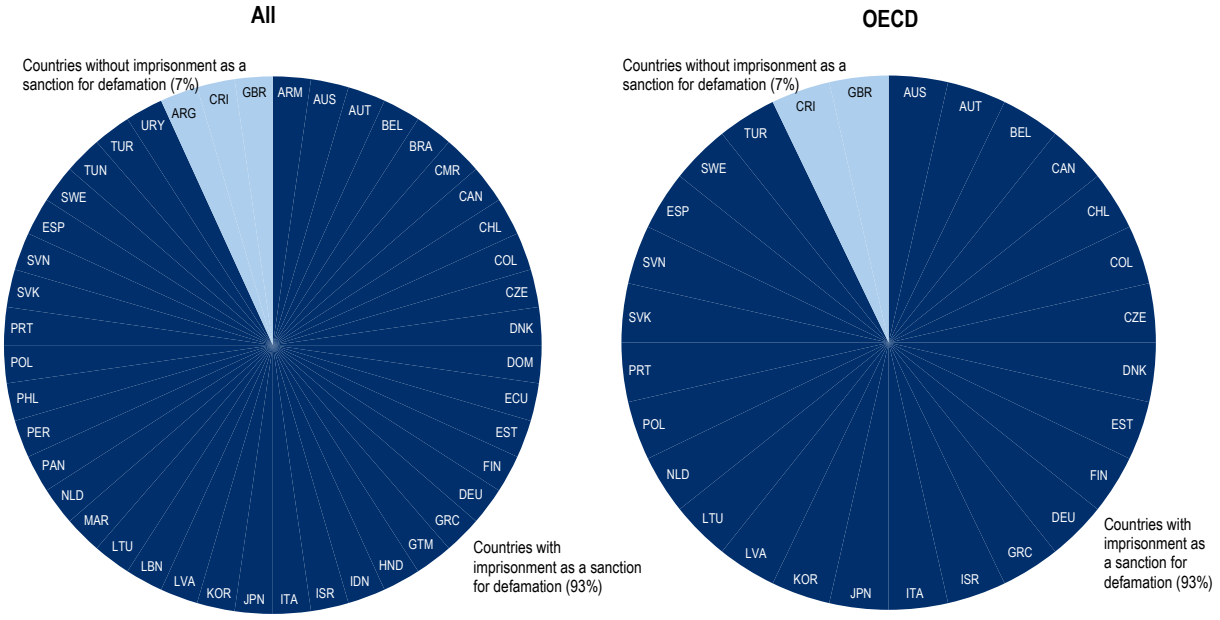
Thus, while international human rights law permits limitations on speech where necessary out of respect for the rights and reputations of others,[9] it is important that defamation laws are formulated carefully to ensure that they comply with the requirements of necessity and proportionality,[10] and that they do not serve, in practice, to stifle freedom of expression.[11] In its case law, the European Court of Human Rights has often referred to the public interest as a factor to be weighed against restrictions on freedom of expression, when considering whether a restriction is "necessary in a democratic society". In some cases, it has been ruled that prison sentences may not be imposed as a sanction for defamation in the context of

a debate on a matter of legitimate public interest (McGonagle, 2016[9]). Moreover, the court has ruled that a statement that harms or has a negative effect on the reputation of others does not amount to defamation if a sufficiently accurate and reliable factual basis proportionate to the nature and degree of the allegation can be established.[12]

Figure 2.5 illustrates that of the 44 respondents that criminalise defamation, 93% foresee prison sentences as a potential sanction. The percentage (93%) is the same for the 28 OECD Members. Prison sentences range from six months to up to two years in the **Czech Republic**, **Ecuador**, **Finland**, **Peru** and the **Republic of Türkiye** (hereafter referred to as **Türkiye**), up to three years in **Japan**, **Lebanon** and **Uruguay**, up to five years in **Canada** or even up to six years in **Indonesia**. In some respondents, committing defamation against heads of state leads to an aggravated punishment.

Figure 2.5. Imprisonment as a potential sanction for defamation, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: The graph only displays respondents that have criminal sanctions for defamation, as shown in Figure 2.4. "All" refers to 44 respondents (28 OECD Members and 16 non-Members). Data on Guatemala, Poland and Slovenia are based on OECD desk research and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/q7z4ib

Public interest as a defence in defamation cases has been introduced in defamation laws in some respondents, including in some states in **Australia** and the **United Kingdom** and **Uruguay**. These amendments aim to improve protection for journalists against defamation suits, allowing them to establish that the contents of their publication were in the public interest (Murray, 2021[10]). Public interest was also brought forward as a defence in recent court decisions in a number of OECD Members and non-Members, including **Argentina**, **Brazil** and the **United Kingdom** (Supreme Court of Argentina, 2020[11]; Sao of Brasil Court of Justice, 2016[12]; Supreme Court of the United Kingdom, 2020[13]; United Kingdom High Court of Justice, 2022[14]). In said cases, the respective courts dismissed libel or defamation claims as they found that the contents of the publications of both journalists and private persons and/or the fact that they involved people known for their involvement in public affairs were in the public interest. In the cases before UK

courts, the fact that the defendants had believed that relevant publications were in the public interest and that the defendants had behaved fairly and responsibly when publishing the information also played a role.

Moreover, the **Dominican Republic, Honduras, Lebanon**, **Lithuania, Morocco** and **Tunisia** have related provisions in their criminal codes or legislation on press, communication and information relating to the dissemination and intentional publication of false facts or news; in the cases of **Morocco** and **Tunisia**, this involves situations where there is a risk of disturbing public order or instilling fear.

Figure 2.3 illustrates that 39% of all respondents, comprising 38% of respondent OECD Members, also penalise insulting heads of state. Criminal provisions contain penalties that range from fines to prison sentences of up to six months, one year or even two years (**Spain**); three years (**Belgium** and **Portugal)**; or five years (**Germany**).

There is widespread agreement among international human rights courts and bodies that defamation laws should not offer special protection to the reputation and honour of heads of state or other rulers (CoE, 2007[8]; UN, 2011[3]; IACHR, 2000[15]). This is on the basis that, in any functioning democracy, it is important that the actions of public officials can be closely scrutinised by both journalists and the public and that the limits of acceptable criticism of public officials and politicians should be wider than for private individuals.[13] According to international guidance, the existence of such insults is, by themselves, not sufficient to justify the imposition of penalties; all public figures, including those exercising the highest political authority, are legitimately subject to criticism and political opposition. In practice, these laws are hardly implemented in OECD Members. For example, even though it remains a crime to intentionally insult monarchs or heads of state in OECD Members such as **Belgium**, **Italy**, the **Netherlands**, **Portugal** or **Spain**, there have been no prosecutions in the past decades (Venice Commission, 2016[16]).

Hate speech, discriminatory language, and incitement to violence

Figure 2.3 illustrates that 90% of all respondents and 97% of respondent OECD Members prohibit hate speech, defined for the purposes of this report as any kind of communication in speech, writing or behaviour that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are and aims to incite discrimination or violence towards that person or group, e.g. based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factors (Box 2.1 on hate speech legislation in OECD Members and Section 4.4.2 in Chapter 4). Figure 2.3 also shows that 73% of all respondents (63% of respondent OECD Members) ban discriminatory language. Further, 90% of all respondents and 84% of respondent OECD Members criminalise incitement to violence.[14] In some respondents, legislation also prohibits propaganda or agitation that threatens the constitutional system (e.g. **Australia**, **Kazakhstan**, the **Philippines**, **Türkiye**) or the dissemination of propaganda material from unconstitutional organisations (**Germany**).

Addressing hate speech remains a considerable challenge, given the need to balance a democratic society's requirement to allow open debate, freedom of expression and individual autonomy and development with the equally compelling obligation to prevent attacks on vulnerable communities and ensure equal and non-discriminatory participation of all individuals in public life (UN, 2019[17]).

A number of OECD Members have increased their efforts to combat hate speech in recent years, especially online (Section 4.4.2 in Chapter 4). At the same time, non-governmental sources have stressed that these types of laws can also constitute potential threats to civic space when definitions of hate speech are overly broad (Australian Hate Crime Network, 2020[18]; Global Network Initiative, 2021[19]; Article 19, 2020[20]).

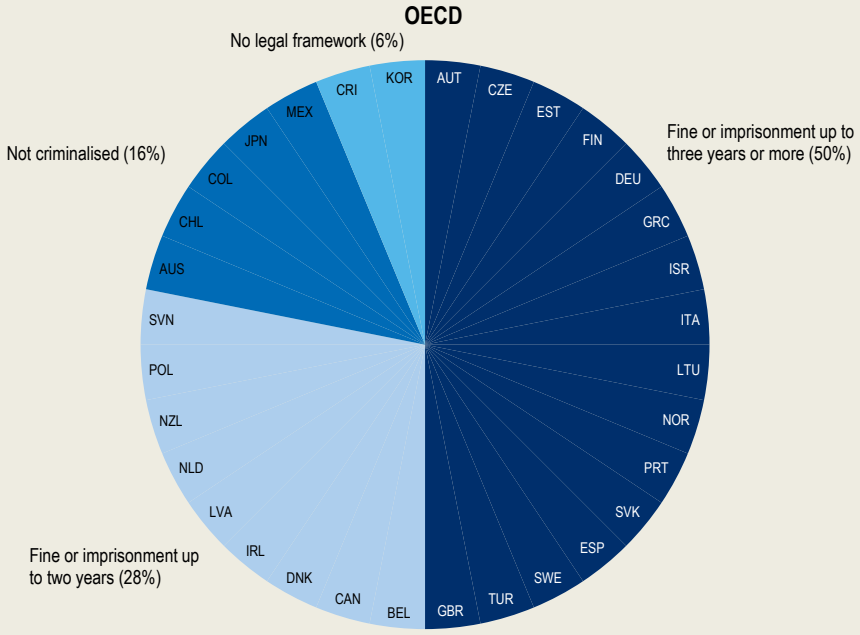
The UN Committee on the Elimination of Racial Discrimination (CERD) as well as the European Commission against Racism and Intolerance (ECRI) have emphasised that racist expression should only be criminalised in serious cases and that less serious cases should be addressed by means other than criminal law.[15] Thus, according to the CERD, speech that insults, ridicules or slanders persons, or that

justifies hatred, contempt or discrimination, may only be prohibited where it "clearly amounts to incitement to hatred or discrimination"[16] (CERD, 2013[21]; ECRI, 2015[22]; ECtHR, 2020[23]; UN, 2013[24]; 2019[17]).

Box 2.1. Hate speech legislation in OECD Members

Figure 2.6 illustrates that all OECD respondents, except **Costa Rica** and **Korea**, have a legal framework in place governing hate speech or similar actions, either explicitly or implicitly, both on and off line. The respective legal provisions are usually set out in criminal or anti-discrimination legislation. While in most cases, legislation does not mention online hate speech explicitly and rather speaks about general dissemination, which could also be off line, some OECD Members, such as **Australia, Chile, Germany, Italy** and **New Zealand**, have separate laws or regulations in place that *explicitly* address online hate speech.

Figure 2.6. Sanctions for hate speech in OECD Members, 2020



Note: The graph consists of 32 OECD Members. Data on Ireland and the United Kingdom are based on OECD desk research and were shared with them for validation. While Costa Rica has referred to Art. 13 of the American Convention on Human Rights as the legal basis for hate speech as an exception to freedom of expression, it has no national legislation on hate speech. Therefore, Costa Rica is categorised as a country with hate speech as an exception to freedom of expression in Figure 2.3 but with no relevant national legislation in Figure 2.6.
Source: Author's own elaboration based on the legal frameworks on hate speech provided by respondents to the 2020 OECD Survey on Open Government.

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Out of the 94% of respondent OECD Members that have national legislation on hate speech, 78% criminalise it, with varying sanctions. Figure 2.6 illustrates that in 28% of respondent OECD Members that have hate speech legislation in place, the punishment for such statements includes fines and imprisonment ranging from 1 month to up to 1, 1.5 or 2 years. In 50% of respondent OECD Members, the punishment is more severe and amounts to a minimum of 3, 4 or 6 months, or 1 or 4 years, and a maximum of 3, 4, 5 or even 8 years of imprisonment, including in cases where incitement is carried out via the media or otherwise published, where an organised group commits the act, or where incitement

leads to or involves violence, clearly endangers public order and safety or is otherwise of a serious nature. In **Greece**, in cases of imprisonment for at least a year, an additional legal consequence is the deprivation of a person's political rights from one to five years. **Australia, Chile, Colombia, Japan** and **Mexico** ban but do not criminalise hate speech. In **Japan**, the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behaviour against Persons Originating from Countries other than Japan focuses on awareness-raising, government measures and advice, but does not foresee any punishment for unfair discriminatory speech. In **Türkiye**, the requisite provision concerns discriminatory treatment based on hatred towards certain groups but lacks the element of inciting hatred or violence towards these groups.

There is thus an overwhelming trend in OECD Members to criminalise hate speech and provide prison sentences for serious cases involving incitement to hatred or violence, with aggravated prison sentences for cases of public incitement or serious violence against certain groups. This would appear to be largely consistent with the international standards set out above.

As a reaction to widespread public concerns, a number of OECD Members, including **France**, **Germany**, **Israel** and the **United Kingdom** have also adopted new legislation that increases pressure on social media companies to remove hate speech and other harmful content from their platforms within a particular period.[1] Demand for better moderation of harmful speech by both social media platforms and governments has increased just as new national regulations on content removal have been criticised by CSOs in some countries for being too broad and sometimes based on opaque and ambiguous criteria, posing a risk to freedom of expression.[2]

In countries where regulatory mandates are lacking, such as the **United States**, technology companies have developed their own strategies for identifying harmful material. In both scenarios, governments and companies have faced criticism for measures either being too vague or remaining insufficient (UN, 2021[25]; OECD, 2019[26]), as well as for a lack of transparency and consistency when it comes to enforcing rules on content moderation.[3] The OECD report *An Introduction to Online Platforms and Their Role in the Digital Transformation* notes that platforms responsible for carrying out filtering need sufficient clarity and guidance from governments in order to be able to comply with filtering requirements without obstructing freedom of expression (OECD, 2019[26]).

Civil society actors have also raised concerns about leaving human rights compliance in the hands of private sector companies, which are not viewed by them as being sufficiently accountable to take on the role of online regulators. Moreover, there are concerns about the public interest contrasting with the self-interest of the technology companies whose business models create incentives for gaining audiences' attention and which may promote sensationalist, scandalous and false information as a result (Smith, 2019[27]; Lanza, 2019[28]; Article 19, 2020[20]; Freedom House, 2020[29]). Chapter 4 (Section 4.4.2 on implementation challenges and opportunities for freedom of expression online) provides a detailed overview of government-led measures in OECD Members and beyond to combat online hate speech and/or harassment in OECD Members, including those related to content moderation, co-regulation with the private sector and self-regulation.

1. Even though France was not part of the Survey on Open Government, and the United States did not participate in the civic space section of the Survey, they are mentioned here as examples of countries that have adopted measures to counter online hate speech.
2. The German NetzDG Law, for example, has sparked controversies about the potential negative impacts of excessive regulations on online freedom of expression as social media platforms removed legitimate content under its provisions. Critics have expressed concerns that its provisions are too broad, which may incentivise social media platforms to over-regulate in order to avoid sanctions and thereby remove legal speech (UN, 2019[17]; Freedom House, 2020[29]).
3. In the United States, observers have claimed that content moderation policies to counter hate speech and algorithmic bias lead to the removal of comparatively mild content posted by people of colour, while other speech that appears more inflammatory remains (Angwin, 2017[30]; Freedom House, 2020[29]; Murphy, 2020[31]). In Mexico, a bill on hate speech in June 2020 was criticised by a coalition of CSOs for its vague language. CSOs argued in a position paper that only certain types of speech should be addressed through criminal law due to the potential harm to freedom of expression (Red en Defensa de los Derechos Digitales, 2020[32]).

Source: (OECD, 2020[33]); Article 19 (2020[20]), *The Global Expression Report 2019/2020*, https://www.article19.org/wp-content/uploads/2020/10/GxR2019-20report.pdf; United Nations (2021[25]), *Report of the UN Special Rapporteur on Minority Issues*, https://www.ohchr.org/EN/Issues/Minorities/SRMinorities/Pages/annual.aspx; Smith, R.E. (2019[27]), *Rage Inside the Machine: The Prejudice of Algorithms and How to Stop the Internet Making Bigots of Us All*, https://www.bloomsbury.com/uk/rage-inside-the-machine-9781472963888/; Freedom House (2020[29]), *Freedom on the Net 2020: The Pandemic's Digital Shadow,* https://freedomhouse.org/report/freedom-net/2020/pandemics-digital-shadow; United Nations (2020[34]), *Observations on Revised Draft (November 2019) of General Comment 37 on Article 21 of the ICCPR*; Lanza, E. (2019[28]), *Informe Anual de la Relatoría Especial para la libertad de Expresión*, http://www.oas.org/es/cidh/expresion/informes/ESPIA2019.pdf.

Blasphemy

Figure 2.3 shows that 33% of all respondents, comprising 28% of respondent OECD Members, have special provisions prohibiting blasphemy, defined for the purposes of this report as an action that shows a lack of respect for a God or religion. Some criminal provisions prohibiting blasphemy or religious defamation[17] can give rise to punishment for criticising or offending certain religions or their leaders by imposing either fines or prison sentences of usually up to six months; in some respondents, the prison sentences may run up to one or even three years.

Where expressions go beyond the limits of a critical denial of other people's religious beliefs and are likely to incite religious intolerance, the European Court of Human Rights has confirmed that states may legitimately consider them to be incompatible with respect for freedom of thought, conscience and religion, and take proportionate restrictive measures.[18] The Parliamentary Assembly of the Council of Europe (PACE) has also stated that as far as necessary in a democratic society, national law should only penalise expressions about religious matters that intentionally and severely disturb public order and call for public violence.[19]

At least two respondents have recently amended their legislation to repeal blasphemy or similar acts. In **Ireland**, the abolition of the blasphemy act followed a referendum held in 2018, while in **Denmark**, a provision on blasphemy – that included potential prison sentences – was abolished in 2017, following a prosecution brought in 2017.

> ***Key measures to consider on legal frameworks governing freedom of expression***
>
> *- Amending defamation laws to ensure that remedies for those whose reputation has been unfairly undermined take the form of a civil suit, not a criminal one and abolishing prison sentences as a potential sanction.*
>
> *- Reforming relevant legislation so that insults to heads of state are no longer considered an offence, and above all to remove prison sentences as a possible sanction.*
>
> *- Ensuring that criminal legislation on hate speech is not overly broad and contains the elements of incitement to hatred, violence or discrimination.*

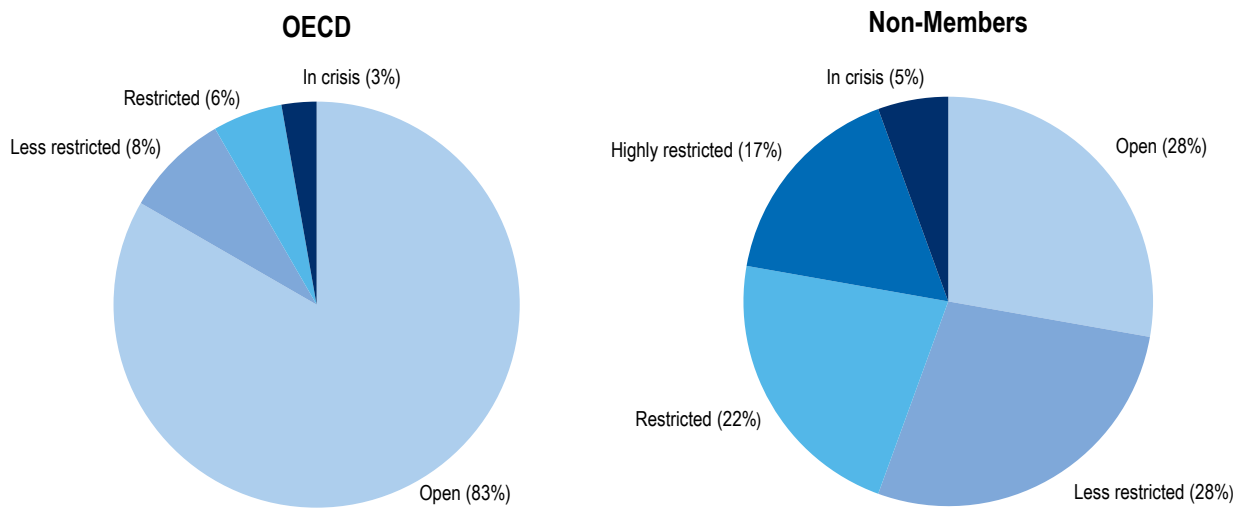
Implementation challenges and opportunities, as identified by CSOs and other stakeholders

At the global level, protection for freedom of expression is declining and this was exacerbated by the COVID-19 pandemic, according to CSOs. CIVICUS has documented that some governments took the pandemic as an opportunity to silence critical voices, enforce new regulations regarding censorship and detain activists, for example (CIVIVUS, 2021[35]). According to Article 19's *Global Expression Report* (2021[1]), many governments placed disproportionate restrictions on the media and repressed information during the pandemic. Two out of every 3 people, amounting to a total of 4.9 billion people globally, "are living in countries that are highly restricted or experiencing a free expression crisis", according to Article 19 (2021[1]).

Figure 2.7 provides an overview of freedom of expression rankings from Article 19 for 36 OECD Members and 18 non-Members that responded to the 2020 Survey on Open Government.[20] The data, which are based on factual information as well as expert assessment, demonstrate that the majority (83%) of OECD Members rank as "open", meaning it is possible for citizens to access information and distribute it freely, share their views both on and off line, and to protest in order to hold their governments to account. However, 3 OECD Members (8%) are ranked "less restricted", 2 OECD Members (6%) as "restricted" and 1 OECD Member (3%) is considered to be "in crisis". For non-Members, 28% rank as "open", while several countries are "less restricted" (28%), "restricted" (22%), "highly restricted" (17%) and 1 is considered to be "in crisis" (6%). Identified challenges range from the use of invasive tracking and surveillance tools against human rights defenders and journalists, as well as parliamentary and court shutdowns during the pandemic, to lesbian, gay, bisexual, transgender and intersex (LGBTI)-free declarations at the local government level affecting many citizens' ability to participate in public life, the erosion of the independence of government branches and threats against human rights defenders (Article 19, 2021[1]).

Figure 2.7. Article 19 freedom of expression ranking, 2020

Percentage of OECD Members and non-Members by Article 19 category



Note: "OECD" refers to 36 OECD Members, "non-Members" refers to 18 non-Members that responded to the OECD Survey on Open Government. No data were available for Luxembourg, Mexico (as Article 19 Mexico has its own methodology for tracking and measuring the state of freedom of expression in the country) and Panama. For more information on each country's ranking, consult the Article 19 *Global Expression Report 2021* (2021[1]).
Source: Article 19 (2021[1]), *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.

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Non-Members face greater challenges related to protecting freedom of expression, with several countries falling into the "restricted", "highly restricted" and "in crisis" categories. However, among non-Members, no one region is a particular outlier. Good practices can also be found in several countries, such as **Argentina, Armenia,** the **Dominican Republic, Peru** and **Uruguay,** all of which rank as "open" (Article 19, 2021[1]). For example, **Argentina** recognised the right to protest as a constitutional right in 2020 and many countries, including **Armenia** and **Tunisia**, saw "great advances" driven by protest movements, according to Article 19 (2021[1]).

As regards the implementation of defamation laws in practice, press freedom organisations and monitoring bodies have indicated that criminal defamation cases continue to be brought against journalists and human rights defenders in retaliation for unwanted investigations or commentary (Freedom House, 2021[36]; OSCE, 2017[37]). Research suggests that occasional convictions continue to take place in countries considered to be strong defenders of media freedom, including several OECD Members, such as **Greece** (OSCE, 2017[37]) and **Italy** (Borghi, R., 2019[38]). In some countries, an increasing trend was noted in recent years of convictions for defamation and related prison sentences (OSCE, 2017[37]). While the application of defamation laws protecting heads of state appears to be a dead letter in practice in most countries, they are still being applied in some, including **Germany**, **Poland** and **Türkiye** (POLITICO, 2021[39]; OSCE, 2017[37]).

In recent years, human rights groups and CSOs have also raised concerns about new anti-terrorism and security legislation having potentially negative effects on freedom of speech, including in the **Philippines** (McCarthy, 2020[40]; Amnesty International, 2020[41]) and **Türkiye** (ICNL, 2022[42]), given the broad definitions of incitement to terrorism in national laws (Section 4.4.2 in Chapter 4). When legal frameworks governing counter-terrorism are not clearly defined or are overly broad, this can have the effect of silencing speech and legitimate reporting by journalists. The Council of Europe Commissioner for Human Rights has stressed that anti-terror legislation should "only apply to content or activities which necessarily and directly imply the use or threat of violence with the intention to spread fear and provoke terror" (Mijatović, 2018[43]). Moreover, new legislation obliging online content service providers to delete unlawful or criminal content within a short time span, such as in **Germany,** has raised concerns regarding freedom of expression among CSOs, in the absence of sufficient safeguards to prevent the deletion of lawful content (Article 19, 2020[20]) (Section 4.4.2 in Chapter 4).

> ***Key measures to consider on implementation challenges relating to freedom of expression***
>
> *Protecting and fostering the implementation of freedom of expression laws as part of a vibrant "public interest information ecosystem". One way to achieve this is to ensure there is an independent and adequately resourced mechanism in place to monitor, identify and address de facto restrictions on freedom of expression involving affected stakeholders such as specialist CSOs and journalists.*

For key measures to consider on legal frameworks to counter hate speech and mis- and disinformation as threats to online civic space, see Section 4.4.2 in Chapter 4.

2.1.2. Freedom of peaceful assembly

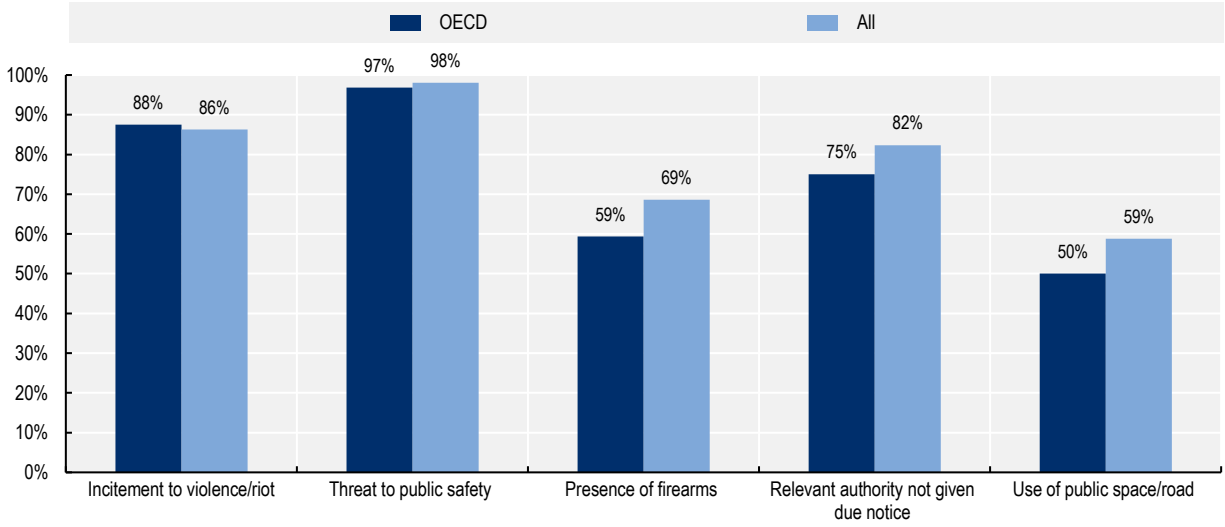
Similar to freedom of expression, freedom of peaceful assembly is recognised as a fundamental right in democratic societies[21] that is essential for the public expression of people's views and opinions.[22] In line with international guidance, people should, in principle, be able to exercise the right to peaceful assembly in all public spaces, and participants in such events should have sufficient opportunity to manifest their views effectively, within sight and sound of their target audience, or at whatever site is otherwise important to their purpose (UN, 2020[44]; OSCE/ODIHR/Venice Commission, 2020[45]). Moreover, the use of public space for assemblies is as legitimate as other uses of public space and assemblies may not be prohibited or dissolved due to traffic obstructions or inconvenience. International bodies have further stressed that restrictions on the right to freedom of peaceful assemblies should generally not be based on the contents of the messages that they seek to communicate.[23]

Legally mandated exceptions and conditions

Figure 2.8 shows that the right to freedom of peaceful assembly is limited by a variety of exceptions, exemptions or conditions in OECD Members and non-Members.

Figure 2.8. Legally mandated exceptions to freedom of peaceful assembly, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (32 OECD Members and 19 non-Members). Data on Austria, Colombia, Denmark, Guatemala, Honduras, Ireland, Netherlands, Norway, Slovenia and Sweden are based on OECD desk research for at least one category and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/tlcsi3

Incitement to violence and threat to public safety

Figure 2.8 shows that 86% of all respondents, comprising 88% of respondent OECD Members, prohibit incitement to violence, both generally and specifically in the context of assemblies. Further, 98% of all respondents and 97% of respondent OECD Members allow assemblies to be limited or banned if they constitute threats to public safety. As shown in Figure 2.8, 69% of all respondents and 59% of respondent OECD Members have laws that specify that firearms and other weapons may not be carried at public assemblies.[24]

As per international guidance, restrictions on freedom of peaceful assembly in cases involving incitement to violence or threats to public safety are considered legitimate. Freedom of peaceful assembly excludes gatherings where organisers or participants have violent intentions or otherwise reject the foundations of a democratic society, for example.[25] The European Court of Human Rights has also specified in its case law that the term "peaceful" includes conduct that may annoy or give offence to other individuals opposed to the ideas or claims that it seeks to promote, or that temporarily hinders, impedes or obstructs activities of third parties.[26] In practice, this means that assemblies are still regarded as peaceful even if their participants call for unpopular political or social ideas, including, for example, autonomy or secession from a state (ECtHR, 2001[46]), limitations on abortion (ECtHR, 1988[47]) or if they temporarily block traffic (OSCE/ODIHR/Venice Commission, 2020[45]).

There is no indication that any relevant legislation in respondents places the responsibility of guaranteeing public safety during assemblies on the organisers. While laws in a number of respondents, including **Cameroon**, **Latvia**, **Morocco**, the **Philippines** and **Tunisia**, stipulate that the organisers of assemblies are responsible for maintaining order and preventing any infringement of the law, the extent to which organisers are held liable for incidents occurring during assemblies depends on how these laws are implemented in practice. According to UN guidance, states are expected to provide adequately resourced police arrangements necessary for maintaining public order and safety and should not oblige assembly organisers to provide such services (Kiai and Heyns, 2016[48]).

Notification of assemblies and use of public spaces

Figure 2.8 illustrates that in 82% of all respondents and 75% of respondent OECD Members assembly organisers are obliged to notify the relevant authority in advance and, in some respondents, such as **Cameroon, Ecuador, Italy** and **Korea**, a failure of notification can lead to imprisonment. In **Israel**, it is a criminal offence to hold a meeting or a march without the required permit or to breach the conditions stated in the relevant license provided by authorities for an assembly.

In 59% of all respondents and 50% of respondent OECD Members, the use of public spaces to hold peaceful assemblies is restricted. In addition to provisions allowing changes to the place or time of an assembly by authorities where this is necessary to protect other interests, laws in certain respondents, such as **Armenia**, **Romania** and **Tunisia**, indicate public spaces where it is not permissible to hold assemblies, or where assemblies are only permissible in certain circumstances, e.g. close to borders, military installations or schools or in areas close to constitutional organs. **Germany** has a law outlining restricted areas around federal constitutional organs, stating that assemblies in these areas are only permissible insofar as they do not unduly restrict the work of these organs and access to them. In **Greece**, outdoor assemblies may be prohibited in a specific area, in case of threats involving a serious disturbance of social and economic life. On the other hand, **Kazakhstan** requires assemblies to be held in certain specialised locations. Other respondents, such as **Indonesia** and **Lebanon**, only allow protests to take place at certain times of the day (ICNL, 2021[49]; Right of Peaceful Assembly, 2021[50]).

International human rights bodies have highlighted that advance notification requirements for holding assemblies, while permissible to ensure their smooth conduct,[27] may not be used to stifle the freedom of peaceful assemblies and should never turn into *de facto* authorisation regimes.[28] According to international guidance, the failure to notify authorities of an assembly beforehand does not by itself justify an interference with the assembly; especially where assemblies remain peaceful, public authorities are required to exhibit a degree of tolerance.[29] Moreover, blanket restrictions on holding assemblies in certain locations should be avoided as they risk being disproportionate[30] and can only be justified if there is a real danger of disorder which other less stringent measures cannot prevent.[31] International human rights bodies also recommend avoiding designating perimeters around certain official buildings as areas where assemblies may not occur.[32] Rather, authorities are advised to justify any time, place and manner restrictions on assemblies on a case-by-case basis.[33]

In a significant development in **Brazil**, in 2021, the Supreme Federal Court ruled that meetings and demonstrations are permitted in public places regardless of prior official communication to authorities and that the state is obliged to compensate media professionals injured by police officers during news coverage of demonstrations involving clashes between the police and demonstrators (Supreme Federal Court, 2021[51]).

In **Canada**, certain court decisions in 2019 and 2020 came to the conclusion that measures regulating public space and health and safety matters did not infringe on the right to freedom of peaceful assembly. In other cases, courts concluded that based on the applicable provincial legislation, local police did not have the legal authority to establish a police perimeter, including baggage searches, around a public park where demonstrators were gathering, and found that the legal requirement to provide advance notice to the police of the time, location and/or route of a demonstration, with deviations leading to liability punishable by fines were not a justifiable limit to freedom of peaceful assembly (Court of Appeal Ontario, 2020[52]; Court of Appeal Québec, 2019[53]). In the **United Kingdom**, a Policing Bill introduced in 2022 allows the police to impose a start and finish time on public protests and set noise limits, which was criticised by CSOs for overly restricting people's ability to protest (Weakly, 2022[54]).

Key measures to consider on legal frameworks governing peaceful assembly

- Allowing peaceful assemblies to be conducted in all public spaces, so that participants have sufficient opportunity to manifest their views effectively, within sight and sound of their target audience, avoiding blanket restrictions and justifying any restrictions, for example for security reasons, on a case-by-case basis.

- Ensuring that legal frameworks do not provide for imprisonment as a potential sanction for a failure of notification of assemblies.

Implementation challenges and opportunities, as identified by CSOs and other stakeholders

In recent years, across the world, citizens have been utilising their civic freedoms to engage in mass protests, which have brought issues related to social and economic inequality, corruption, police accountability, violence and calls for greater civic rights to the centre of political debates in many countries. Indeed since 2017, three-quarters (74%) of OECD Members have experienced significant anti-government protests, some of which have occurred on multiple occasions, according to the Carnegie Endowment for International Peace (2021[55]).

Across all OECD Members and the non-Members that responded to the Survey, the Carnegie Endowment has documented more than 120 significant anti-government protests in its Global Protest Tracker, of which 14 or 37% involved 100 000 or more people taking part (Carnegie Endowment for International Peace, 2021[55]). Several respondents, namely **Chile**, **Lebanon**, **Korea** and the **United Kingdom**, have experienced protests involving 1 million people or more. Of these protests, 27 in OECD Members resulted in “significant outcomes”, such as a referendum, resignations, dismissals or impeachments of senior government officials or heads of state, a collapse of government or withdrawals of proposed legislation (Carnegie Endowment for International Peace, 2021[55]). More than 25 of these significant anti-government protests were COVID-19 related, meaning that people were voicing opposition to restrictions, lockdowns and vaccination passes. In addition to these outcomes, new forms of civic activism have emerged in the past years, with much more fluid and informal organisational settings and a focus on the new opportunities brought by technology and digital activism.

While in most OECD Members, citizens can hold non-violent demonstrations without fear of reprisal, organisations monitoring civic space have observed disproportionate limitations on the right to protest in past years in some countries. These have included situations where assemblies were not adequately policed and where participants were not protected (FRA, 2018[56]), as well as the excessive use of police force against protestors in some contexts, and a failure to protect participants and journalists covering the protests, according to multiple sources (Frontline Defenders, 2021[57]; 2020[58]; CIVICUS, 2020[59]; Narsee, 2021[60]; U.S. DoS, 2021[61]; 2020[62]; ENNHRI, 2021[63]). There have also been cases of fatalities and injuries following engagement by state forces in the context of demonstrations (ACLED, 2021[64]; Article 19, 2020[20]). Throughout 2019 and 2020, CSOs and monitoring organisations reported that protestors were met with detentions and the use of excessive force in at least 11 OECD respondents (Freedom House, 2021[36]; U.S. DoS, 2020[62]; 2021[61]; ENNHRI, 2021[65]; Article 19, 2020[20]; IACHR, 2018[66]). In Europe, detentions of protestors were documented in at least 16 EU Member states in 2020, while the use of excessive force was recorded in at least 10 EU Member states (Narsee, 2021[60]).

As a reaction to increased police violence during protests, recent court decisions and legal changes have been introduced in some Latin American countries to reduce and control the use of police force during protests, including in **Brazil**, **Chile**, **Colombia** and **Mexico** (Corte Suprema de Justicia, 2020[67]; IACHR, 2021[68]; Ministerio del Interior, 2021[69]). In **Mexico**, a law on the use of police force adopted in 2019 provides for adequate police training and the protection of protestors and permits the use of different levels of force during violent demonstrations. The Mexican National Human Rights Commission filed an Action of Unconstitutionality related to the law, arguing that it did not respect the principles of legality, necessity and proportionality and failed to provide the definition of methods, techniques and tactics of the use of force (Comisión Nacional de los Derechos Humanos, 2019[70]). Civil society groups have also criticised it for failing to specify the circumstances and manner in which certain weapons may be used during assemblies (Amnesty International, 2019[71]; 2019[72]).

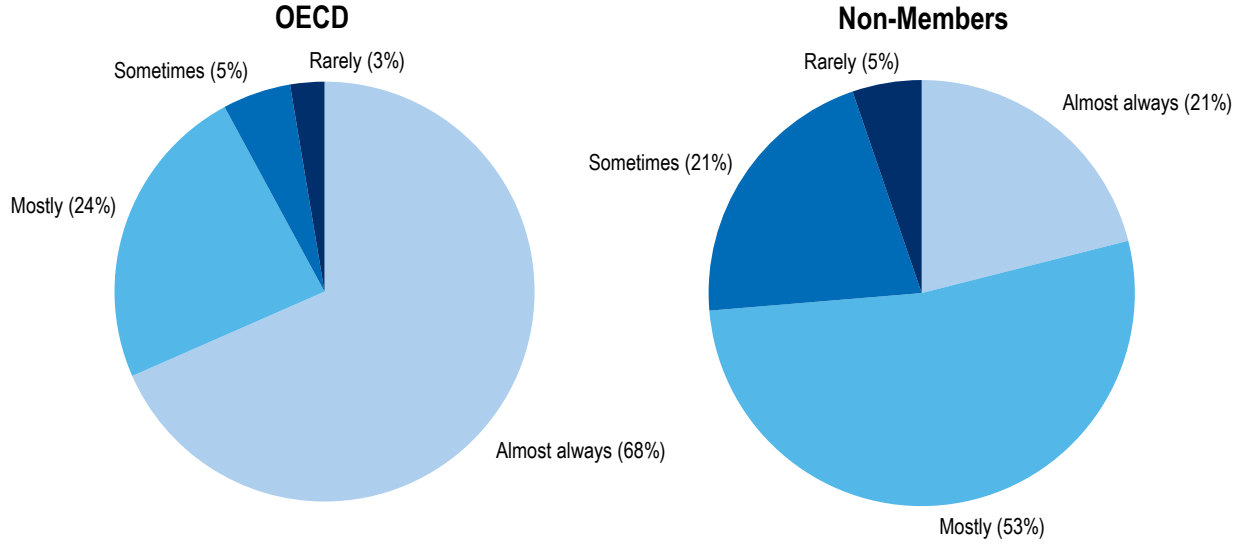
A decree passed in **Colombia** in 2021 permitted the military to police assemblies; this decree was suspended provisionally in July but CSOs have raised concerns that it is a temporary suspension and that potential threat to civic space thus remains (ICNL, 2021[73]). In **Peru**, a Police Protection Act adopted in March 2020 confirmed that the police was exempt from criminal liability and also expressly repealed provisions of the Law on the Use of Force by the Peruvian Police, which had established the principle of proportionality in the use of force by every police officer. According to the Office of the UN High Commissioner for Human Rights, this amendment contravenes applicable international standards (OHCHR, 2020[74]).

The V-Dem Institute's indicator on freedom of peaceful assembly, which is based on expert evaluation (Varieties of Democracy Institute, 2021[75]),[34] shows that in 68% of all OECD Members, state authorities almost always allow and actively protect peaceful assemblies, except in rare cases of lawful, necessary and proportionate limitations (Figure 2.9). However, there are some exceptions. For example, almost one-quarter (24%) of OECD Members mostly allow peaceful assemblies and only in rare cases arbitrarily deny citizens the right to assemble peacefully: 2 OECD Members (5%) sometimes arbitrarily deny citizens the right to assemble peacefully and 1 country rarely allows peaceful assemblies.

The situation is more challenging in non-Members where state authorities almost always allow and actively protect peaceful assemblies in 21% of respondents. In more than half (53%) of respondents, state authorities mostly allow peaceful assemblies, while in 21%, state authorities sometimes allow peaceful assemblies. In 1 country (5%), state authorities rarely allow peaceful assemblies.

Figure 2.9. V-Dem Institute indicator for freedom of peaceful assembly, 2021

Percentage of OECD Members and non-Members by V-Dem Institute category



Note: "OECD" refers to all 38 OECD Members, "non-Members" refers to the 19 non-Members that participated in the 2020 OECD Survey on Open Government. V-Dem asks: "To what extent do state authorities respect and protect the right of peaceful assembly?". Answers range from 1 to 4, with the least democratic response being "0" and the most democratic being "4". Responses range from:
0: Never. State authorities do not allow peaceful assemblies and are willing to use lethal force to prevent them.
1: Rarely. State authorities rarely allow peaceful assemblies but generally avoid using lethal force to prevent them.
2: Sometimes. State authorities sometimes allow peaceful assemblies but often arbitrarily deny citizens the right to assemble peacefully.
3: Mostly. State authorities generally allow peaceful assemblies but in rare cases arbitrarily deny citizens the right to assemble peacefully.
4: Almost always. State authorities almost always allow and actively protect peaceful assemblies except in rare cases of lawful, necessary and proportionate limitations.
For the purposes of data visualisation, the authors have designated categories to countries that scored within 0.5 of each of the 5 options (e.g. a score of 2.5 and above was equated to 3, while below 2.5 was equated to 2).
Source: V-Dem (2021[75]), *The V-Dem Dataset*, https://www.v-dem.net/vdemds.html.

> ***Key measures to consider on implementation challenges relating to peaceful assembly***
>
> *Actively facilitating the right to peaceful assembly, including by ensuring that law enforcement agencies involved in policing assemblies act in line with international guidance in respecting the rights of participants and bystanders. An emphasis on de-escalation tactics can help to ensure the avoidance of the use of force during protests or, where it is unavoidable, to ensure that it is tempered by strict operating procures and guided by the principles of proportionality, necessity, precaution, legality and accountability to avoid harmful consequences.*

2.1.3. Freedom of association

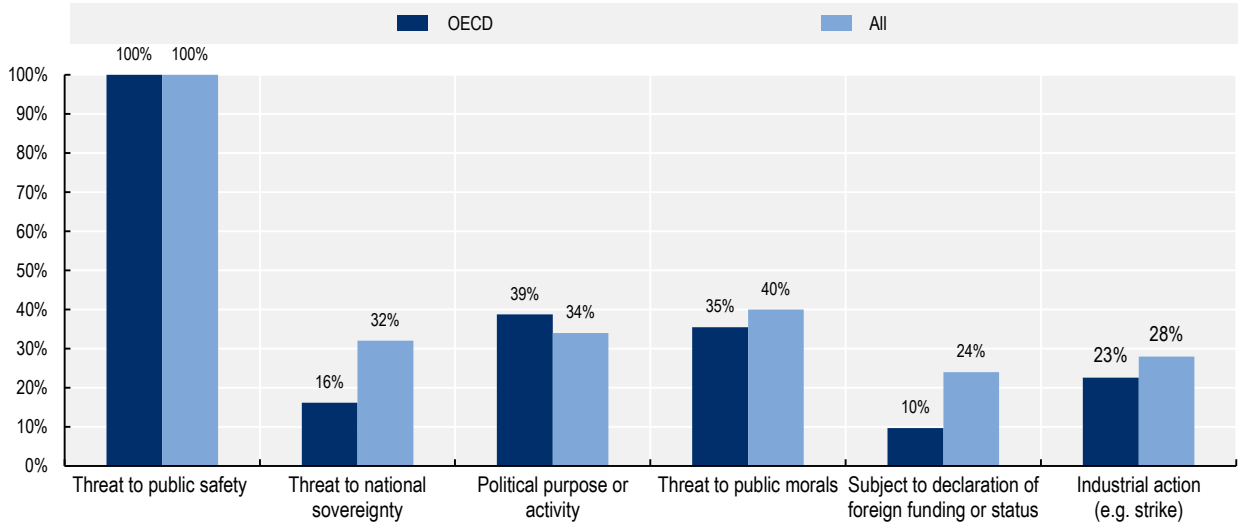
Associations are crucially important for the proper functioning of any democracy; indeed, the European Court of Human Rights has recognised that the participation of citizens in the democratic process is to a large extent achieved through people belonging to associations, in which they exchange with each other and pursue common objectives collectively.[35] The court has further found that the failure to respect formal legal requirements cannot be considered such serious misconduct as to warrant the outright dissolution of an association.[36] The Inter-American Court of Human Rights (IACHR) has also noted the right of individuals to associate freely, without interference from public authorities[37] and has found that the free and full exercise of this right imposes on states the duty to create an enabling environment in which associations can operate (this same principle has been confirmed in the OSCE/ODIHR-Venice Commission Guidelines on Freedom of Association).[38]

Legally mandated exceptions and conditions

Figure 2.10 illustrates a number of common exceptions, exemptions or conditions to freedom of association.

Figure 2.10. Legally mandated exceptions to freedom of association, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 50 respondents (31 OECD Members and 19 non-Members). Data on Austria, Canada, Colombia, Denmark, Ecuador, Germany, Greece, Honduras, Ireland, Italy, Korea, Lebanon, Mexico, Norway, Panama, Peru, the Philippines, Slovak Republic, Slovenia, Türkiye, Ukraine and United Kingdom are based on OECD desk research for at least one of the categories and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/spwdyv

Public safety, public order and national sovereignty

Figure 2.10 shows that, in all respondents, laws state that associations seen as posing a threat to public safety or public order[39] may face bans or other restrictions on their freedom of association rights. While most OECD Members have legal provisions that allow restrictions on freedom of association in the interests of national security, only 32% of all respondents and 16% of OECD Members have confirmed that such restrictions are also possible in the interests of protecting or maintaining national sovereignty.[40] In most cases, the relevant provisions link national sovereignty to interests set out in international instruments, such as national security and public safety and order.

The joint Organization for Security and Co-operation in Europe (OSCE), Office for Democratic Institutions and Human Rights (ODIHR) and Venice Commission Guidelines on Freedom of Association (2015[76]) have recommended a narrow interpretation of the legitimate aims justifying restrictions on freedom of association on the basis of national security and public safety.[41] At the same time, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has emphasised that the protection of national sovereignty is not, in itself, listed as a legitimate reason for limiting freedom of association in relevant international human rights instruments.[42]

Public morals

Legislation in 40% of all respondents and 35% of respondent OECD Members provides for limitations in cases where associations are seen as posing a threat to public morals (Figure 2.10). The joint OSCE/ODIHR-Venice Commission Guidelines on Freedom of Association (2015[76]) have recommended a narrow interpretation of the legitimate restrictions on freedom of association based on public morals.[43] Such threats should thus not be abused to discriminate against associations protecting and advocating for the rights of particular groups, for example, such as LGBTI groups.

Political purpose or activity

A political purpose or activity of associations may lead to limitations in 34% of all respondents and 39% of respondent OECD Members (Figure 2.10). While in most countries, associations generally have the right to criticise public policies, restrictions on the political engagement of CSOs are related to specific situations. Limitations can be: i) linked to CSO activities related to political parties and elections (registering a candidate for election; supporting candidates or an election campaign; direct or indirect financing of a political party or elections); ii) apply to a wider spectrum of public policy activities (in addition to election campaigning, lobbying for or against specific laws, engaging in public advocacy, pursuing interest-oriented litigation or engaging in the policy debate on any issue); or iii) be related to a specific legal status, e.g. with limitations for organisations with public benefit or charity status (for a detailed discussion, including country examples, see Section 5.2.2 on activities of CSOs in Chapter 5).

As far as an association's political activity and purpose are concerned, the joint OSCE/ODIHR/Venice Commission Guidelines on Freedom of Association (2015[76]) recommend that associations should have the right to participate in matters of political and public debate, while the Council of Europe's Committee of Ministers has stressed that associations should be allowed to support particular candidates or parties in an election or referendum, provided that they are transparent about it and that such support is covered by legislation on the funding of elections and political parties (CoE, 2007[77]).

Declaration of foreign funding

While the receipt of funds is regulated by law in most countries and is subject to conditions imposed through international anti-terrorism and anti-money laundering frameworks, only 24% of all respondents and 10% of respondent OECD Members acknowledged that receipt of foreign funds is subject to a declaration (Figure 2.10). Certain countries, notably **Israel**, **Morocco, Tunisia** and **Türkiye**, impose legal requirements or conditions on all associations receiving foreign funding, mostly involving additional reporting obligations, with sanctions imposed on associations for non-compliance (Section 5.4.1 in Chapter 5).

The UN Special Rapporteur on freedoms of assembly and association has highlighted the right of associations to seek, receive and use financial, material and human resources, whether domestic, foreign or international, for the pursuit of their activities, as these are essential to their existence and operations.[44] In addition, the Special Rapporteur, the IACHR and the OSCE/ODIHR/Venice Commission Guidelines on Freedom of Association (2015[76]) have noted with concern state legislation and practice restricting or blocking associations' access to resources on the grounds of the nationality or country of origin, and the stigmatisation of those who receive such resources (Section 5.4).[45] Guidance in this area aims to ensure that any such restrictions on associations are narrowly interpreted and applied, so that they neither completely extinguish the right to freedom of association nor encroach on its essence. In particular, as noted by the UN Human Rights Committee and the European Court of Human Rights, countries wishing to prohibit or dissolve associations should be able to demonstrate that such action is necessary to avert a real threat to national security or democratic order and that less intrusive measures would be insufficient to achieve this purpose.[46]

Industrial action

Figure 2.10 shows that 28% of all respondents and 23% of OECD Members confirmed that while industrial actions or strikes are permissible, constitutions, case law or labour laws set out specific safeguards or legal requirements or only permit certain kinds of strikes. In **Lithuania**, for example, the relevant service statutes prohibit certain public officials working in sectors providing urgent services, such as police officers or firefighters, from going on strike. In **Ukraine**, civil servants, members of the police and of the army are not allowed to organise or participate in strikes.

As per the case law of the European Court of Human Rights, complete bans on certain public officials exercising their right to strike require sufficient and solid justification, including for workers providing essential services.[47] At the same time, the court has found that a ban on the right to strike of law enforcement agents may be justifiable on public safety grounds and to prevent disorder, given that they are armed and that they need to provide uninterrupted service.[48] Similar considerations apply to members of the armed forces, provided that they are not deprived of the general right to freedom of association.[49]

> ***Key measures to consider on legal frameworks governing freedom of association***
>
> *- Applying a narrow interpretation of the legitimate aims justifying restrictions on freedom of association.*
>
> *- Ensuring that associations are free to seek, receive and use financial, material and human resources, whether domestic, foreign or international, in the pursuit of their activities and that any related restrictions are limited to those that are necessary to combatting criminal acts such as fraud, terrorism or money laundering.*

Implementation challenges and opportunities, as identified by CSOs and other stakeholders

Freedom of association is an essential element of civic space as it guarantees the right of citizens to actively participate in movements ranging from informal associations to registered organisations and allows them to safeguard and promote issues that affect their lives. Restrictions in practice to this right include, for example, denials or revoking of registration for CSOs, restrictions on their activities, an increase in Strategic Lawsuit against Public Participation (SLAPP) cases against CSOs, difficulties in accessing predictable and consistent public funding, and targeting of groups focusing on particular issues. For a more in-depth discussion on the implementation of freedom of association, see Section 5.2.3 on challenges for an enabling environment for CSOs and Section 5.4.2 on challenges for funding in Chapter 5.

2.1.4. Right to privacy

Privacy or private life is a broad concept that covers a person's physical and psychological integrity and may embrace multiple aspects of the person's physical and social identity.[50] As stated in international human rights instruments, interferences with this right are possible if they are not arbitrary or unlawful,[51] meaning that they need to be based on law,[52] be in accordance with international legal provisions, aims and objectives and be reasonable in particular circumstances.[53] The American Convention on Human Rights (ACHR) provides protection against arbitrary or abusive interference with persons' private life, and legitimate aims set out in the European Convention on Human Rights (ECHR) include national security or public safety, as well as the economic well-being of the country, the prevention of disorder or crime, or the protection of health or morals.[54] Notably, national sovereignty is not specified as a legitimate aim in itself.[55] The European Court of Human Rights has stressed the importance of striking a fair balance between the competing interests of the individual with regard to the right to privacy and of the community as a whole.[56]

The protection of personal data is of fundamental importance to a person's enjoyment of the right to a private life, which, as noted by the court, also extends to the collection and storage of private data by the state (Section 4.5 in Chapter 4).[57] Generally, according to the case law of the court, interference with individuals' right to private life are tolerable under the ECHR only where they are strictly necessary to safeguard democratic institutions.[58] International human rights bodies have found that relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted and must contain minimum safeguards against abuse.[59]

Legally mandated exceptions and conditions

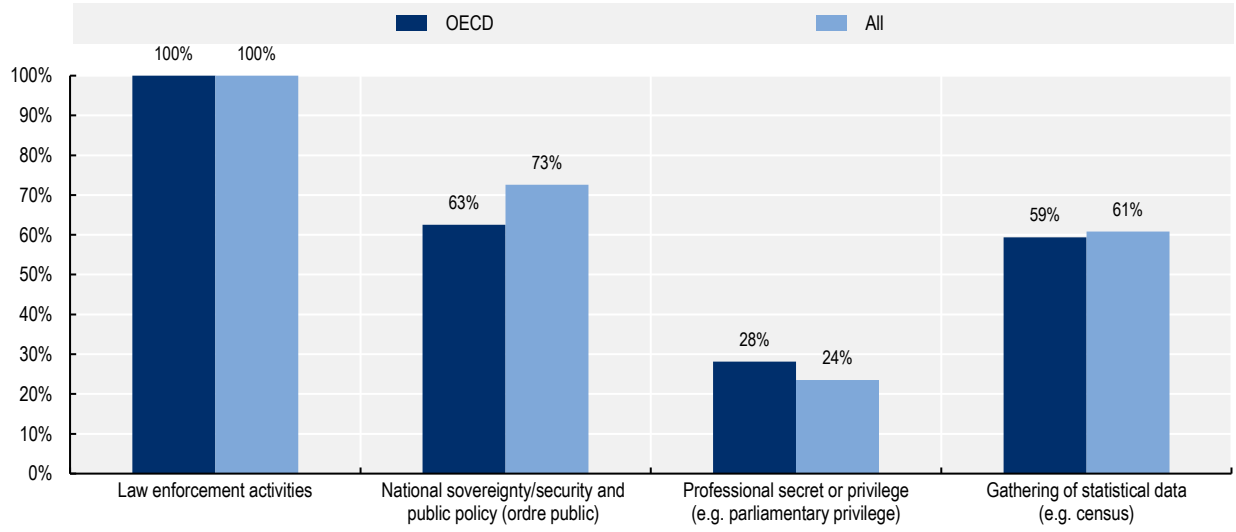
As with other civic freedoms, the right to privacy is limited by certain exceptions, exemptions or conditions in domestic laws, the vast majority of which are permissible under the international legal standards mentioned above. As can be seen in Figure 2.11, all respondents have confirmed that international instruments, constitutions, criminal procedure laws or privacy laws state that interference with this right is permissible in the context of law enforcement activities, for example. Figure 2.11 further shows that 73% of all respondents and 63% of OECD respondents place restrictions on the right in order to maintain national sovereignty or security, or public order.

Further, 61% of all respondents, comprising 59% of OECD Members, have data protection laws and laws on statistics that specify that private data may be requested, obtained and processed in the context of gathering statistical data. In addition, in certain respondents, such as **Austria**, **Canada** and **Ukraine**, legislation provides exceptions to the rights of individuals to access their own personal data to protect professional secrets or privileges, for example, if granting such access could put a trade or business secret at risk (Austria) or in cases where it could impact solicitor-client privilege, the professional secrets of advocates or notaries, or patent or trademarks legislation, among others (Canada); 24% of all respondents and 28% of OECD respondents have this exception.

Legislation has been passed in recent years in some respondents to strengthen state responses against terrorism and other crimes by strengthening wire-tapping and similar capacities, notably in **Australia** (UN, 2018[78]), **Germany** (Fischer, 2021[79]) and the **Netherlands** (Houwing, 2021[80]). This has raised concerns among CSOs and international human rights bodies as it may risk compromising individuals' privacy rights due to insufficient oversight mechanisms and safeguards to protect them. Similar considerations apply with respect to **Türkiye**, where following legal amendments in 2020, social networks are obliged to turn over user data to authorities, including for anonymous accounts if criminal cases are launched (Yackley, 2021[81]).

Figure 2.11. Legally mandated exceptions to the right to privacy, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (32 OECD Members and 19 non-Members). Data on Colombia, Guatemala, Ireland, Norway, the Philippines and Slovenia are based on OECD desk research for at least one of the categories and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/xhp40b

Key measures to consider on legal frameworks governing the right to privacy

Regularly reviewing whether interference with the right to privacy follows legitimate aims and is necessary and proportionate in that respect. Relevant legislation setting out exceptions to the right to privacy in a clear and comprehensive manner, particularly in the context of law enforcement activities or activities that protect national sovereignty or security, can help in this regard.

Implementation challenges and opportunities, as identified by CSOs and other stakeholders

One of the most contested aspects of the right to privacy is the intersection between privacy and state security interests, including surveillance. Human rights bodies and CSOs have repeatedly expressed related concerns in recent years (UN, 2020[82]; ECNL, 2020[83]; Article 19, 2020[20]). The UN Special Rapporteur on the right to privacy has expressed concern about the lack of detailed rules, procedures, guidance and independent oversight at both the national and international levels of surveillance practices, for example (UN, 2018[84]). This results in what he has described as a "patchwork quilt" of frameworks that do not adequately cover the use of surveillance by intelligence agencies, with more than 80% of UN members having no laws to protect privacy "by adequately and comprehensively overseeing and regulating the use of domestic surveillance" as of 2018 (UN, 2018[84]). Human rights bodies and CSOs have argued that the use of social media for such purposes is increasingly common. According to Freedom House, in 2019, at least 40 of the 65 countries covered by the Freedom on the Net Index (of which 15 are OECD Members) had instituted advanced social media monitoring programmes as part of ensuring security, public order or limiting disinformation (2019[85]). Within this context, many citizens are wary of both government and private sector activities related to surveillance. There is a perception of being monitored by governments among some CSOs in the EU, with 7% of CSOs responding to a survey by the EU Agency for Fundamental Rights (FRA) reporting being surveilled by law enforcement in 2020 (Section 5.6.4 in Chapter 5; for a discussion and key issues to consider related to privacy concerns see sections on personal data protection, artificial intelligence and civic space in Chapter 4) (FRA, 2021[86]).

More recently, concerns have also been raised about COVID-19-related surveillance impinging on people's right to privacy (Deutsche Welle, 2020[87]; Funk, 2020[88]; Freedom House, 2020[29]; UN, 2021[89]). The pandemic has resulted in a variety of means being used to track the spread of the infection, including: manual contact tracing; the use of Bluetooth, Global Positioning System (GPS) and cell tower tracking and bar and quick response (b/QR) codes and wearable technology; the use of cell tower and other data triangulation sources originally devised as counter-terrorist measures; mandatory check-ins with barcodes and QR codes and vaccine passports (UN, 2021[89]). The Special Rapporteur on the right to privacy has noted the danger of "surveillance creep" or the repurposing of data without permission. In a 2021 report on the pandemic, he noted that the actions taken by some governments had, whether knowingly or unknowingly, "crossed the line" in terms of human rights law and what is "appropriate and acceptable in democratic societies", with the surveillance methods being used for public health and intelligence gathering purposes becoming blurred and merging, potentially paving the way for the normalisation of intrusive measures (UN, 2021[89]).

Key measures to consider on implementation challenges relating to the right to privacy

- Strengthening mechanisms for the independent authorisation and oversight of state surveillance to ensure that intrusive and arbitrary measures do not become the norm.

- Establishing and maintaining, at a minimum, an independent external authority responsible for authorising and overseeing surveillance measures undertaken by law enforcement agencies to ensure that activists and CSOs conducting lawful activities are not arbitrarily affected. Greater transparency in this area and systematic human rights-based impact evaluations, undertaken with non-governmental actors, could also help to ease concerns about the arbitrary targeting of civil society.

2.1.5. COVID-19-related changes to legal frameworks in OECD Members

As a response to the outbreak of the COVID-19 pandemic in early 2020, most countries took immediate legal measures to protect citizens and communities, for which there was widespread public support. While such measures were deemed essential to limit and mitigate the effects of the pandemic and were widely supported by the public, they also restricted civic space, underpinning concerns about the risk of democratic backsliding as a result of the pandemic (Alizada et al., 2021[90]; OECD, 2021[91]). At the start of the pandemic, 21 OECD Members [60] out of 38 declared a state of emergency[61] to provide the executive with special powers to prevent the spread of the virus (V-Dem Institute, 2021[92]; ICNL, 2021[93]). By the end of June 2021, 12 of these OECD Members[62] were still operating under a state of emergency legislation, indicating a trend towards normalising legislative frameworks over time. The 17 OECD Members that did not declare a state of emergency opted to use other exceptional legal instruments or measures to address the pandemic, as discussed in Box 2.2. As of November 2022, only one OECD Member had emergency measures in place to address the COVID-19 pandemic. Three OECD Members had states of emergency in place, following the Russian Federation's invasion of Ukraine.

In the majority of OECD Members, emergency measures translated into extensive law-making powers for the executive, sometimes with limited or near to no external and above all parliamentary scrutiny, which was exacerbated by the fact that numerous parliaments were hampered by government lockdowns, and there was frequently no opportunity for remote voting or debate on new laws, practices or technologies being put in place (Murphy, 2020[94]). In a number of OECD Members, the permissible duration of states of emergency and executive ruling by decree is limited and states of emergency may only be extended with the approval of, or upon the initiative of, parliament (though there are also examples where this is within the powers of the government) or become invalid if parliament does not approve them or convert them into law at a later date. In certain countries, parliaments reacted to initially wide and unchecked government powers by later passing legislation foreseeing greater oversight and control powers for parliaments.

Based on some of the above laws and practices, concerns have been raised by civil society and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association about the legality of pandemic-era laws, notably in cases where parliaments were weakened by the inability to meet and debate in person, or where laws were drafted and passed by accelerated procedure (UN, 2020[95]). Such circumstances meant that there was little time for parliamentary scrutiny or for a proper assessment of the impact of such laws on key civic freedoms, as well as in cases where rules were adopted and applied on the basis of weak or non-existent underlying legislation. This lack of oversight and scrutiny, and the fact that some countries have extended or reintroduced emergency measures several times, has given rise to a certain amount of legal uncertainty, particularly regarding the application of relevant laws and the long-term consequences of such measures (Grogan, 2022[96]).

In some cases, emergency legislation has been transformed into ordinary statutory law and remains in force. In countries where states of emergency were already in place even before the pandemic, these situations have now existed for many years, raising concerns about fewer checks and balances in place in the long run. There have also been notable examples of good practices in the context of the pandemic. A 2020 OECD report *Legislative Budget Oversight of Emergency Responses* during the pandemic found that one-quarter of parliaments in the OECD had set up special COVID-19 committees or cross-party working groups to consider emergency responses as they were implemented (2020[97]). Positive practice can be seen in **Finland**, with the standing practice of requiring real-time constitutional and parliamentary scrutiny of government regulations as both constitutional requirements and mandated under the Emergency Powers Act. Further good practice is evidenced in **Sweden**, with the establishment of a commission of inquiry comprising independent experts and reviewing actions taken across central, regional and local governmental levels, and with the further constitution of a cross-party parliamentary commission to review the actions of parliament during the pandemic (Grogan, 2022[96]). Special oversight committees

were also established in the parliaments of **Chile**, **Israel** and **New Zealand**, among others, to monitor and report on government actions at certain stages during the pandemic; the respective reports were also published.

> ***Key measures to consider on COVID-19-related changes to legal frameworks***
>
> *Ensuring that any emergency measures restricting civic space are limited in duration, approved by parliament and overseen by independent institutions, that such measures are subject to judicial review, and that individuals can seek remedies for rights violations through the courts. Further, civic freedoms that are affected by emergency measures should be reinstated.*

Box 2.2. Contribution from the International Center for Not-for-Profit Law (ICNL)

Emergency measures in response to COVID-19

ICNL has tracked over 130 measures adopted by OECD Members in response to COVID-19 that affect human rights and civic space (ICNL, 2021[93]). Under international law, states may take steps during emergencies that restrict certain rights and freedoms; however, they must ensure that such steps are necessary, proportionate and otherwise consistent with international legal obligations (UN, 2018[98]). This box identifies the impacts that emergency measures have had on civic freedoms, discusses positive practices in the deployment of these measures and concludes with recommendations for governments.

In March 2020, nearly every OECD Member formally declared a state of exceptional crisis circumstances due to the COVID-19 pandemic.[1] Some countries, like **Estonia** and **France,** relied on constitutional provisions to activate emergency measures; others triggered emergency procedures via a national law, as was the case in **Japan** under the Act on Special Measures. In some notable cases, parliaments reviewed and renewed states of emergency for limited periods at regular intervals – an approach promoting oversight and the deployment of emergency authorities only as necessary. In **Portugal,** for instance, the state of emergency was reviewed, debated and extended by parliament for 15-day periods and was eventually allowed to lapse.

Impact of emergency measures on civic freedoms

Within the framework of emergency declarations (Section 2.1.5), OECD Members have taken emergency measures in response to COVID-19 that have led to significant restrictions on civic freedoms, including freedom of peaceful assembly, expression, access to information and privacy.

Freedom of assembly

Most OECD Members prohibited public assemblies or capped attendance at such assemblies. Authorities in **Israel**, for example, prohibited participation in protests and demonstrations taking place more than two kilometres from one's residence. Countries' emergency measures also conferred expansive power to local authorities to restrict assemblies, as in **Korea**, where authorities were granted the power to restrict or prohibit assemblies or any other large gathering of people.

In many instances, limits on public gatherings have operated as blanket restrictions. Some OECD Members have positively departed from this approach, however. In **Denmark**, the law restricting gatherings under the pandemic exempted opinion-shaping assemblies, including demonstrations and political meetings. In **Germany**, the constitutional court ruled that health concerns linked to COVID-19 did not furnish grounds for a general ban on demonstrations. In **France**, the highest administrative court issued a ruling allowing demonstrations to resume where specified conditions were met, including that health protections were respected and the events were declared to authorities in advance.

Freedom of expression and access to information

Several OECD Members have enacted or deployed measures to crack down on the sharing of information about the pandemic. Under a March 2020 law enacted (and later withdrawn) in **Hungary**, anyone who “distorted” or published “false” information on the pandemic could face five years in jail. In **Türkiye**, fines were imposed on media outlets presenting critical coverage of official COVID-19 responses, and hundreds of people were arrested for publishing "provocative" posts about the coronavirus outbreak on social media. In the United States state of Texas, individuals were arrested for allegedly publishing false reports about coronavirus.

The right to access to information (ATI) has also been impeded by COVID-19 responses. In some OECD Members, such as **Colombia** and **Hungary**, authorities extended deadlines for responding to information requests, while in **Mexico**, a declaration suspended such deadlines altogether. Similarly, in the **US**, some state and local jurisdictions suspended deadlines for responding to public record requests or indicated that they planned not to respond to such requests during the pandemic.

At the same time, other OECD Members responded to the pandemic by actively sharing information. Scotland (United Kingdom) publicly shared its decision-making framework for determining the measures needed to curb the pandemic. **Portugal** developed a website, an application and a mass media campaign presenting information on the pandemic and government actions to address it. According to **Ireland**’s Freedom of Information website, officials were obliged to comply with the Freedom of Information Act, notwithstanding the pandemic. **France**, **Germany**, **Italy**, **Romania** and **Sweden** undertook steps to make information about the pandemic available to people with disabilities, while **Austria** published its COVID-19 measures online in 14 languages.

The right to privacy

Many OECD Members deployed surveillance measures and authorities to respond to the pandemic in a way that significantly interferes with the right to privacy. The state of Western Australia allowed authorities to install surveillance devices in homes and directed people to wear monitoring devices to ensure compliance by those required to isolate. In **Poland**, the government launched a cell phone application (app) using facial recognition technology that allows police to monitor individuals’ compliance with quarantine measures. In **Mexico**, authorities required telephone companies to provide access to cell phone antennas, so that officials could monitor the movements of persons in Mexico City and assess compliance with isolation instructions.

Other OECD Members, in contrast, prioritised privacy and transparency in deploying surveillance technology to curb the spread of COVID-19. In **Norway**, authorities worked with a private company to develop an app that warns users if they have had contact with someone infected by COVID-19. Though the app shares movement data with the authorities, the data are anonymous, the use of the app is voluntary, users receive clear information about the purpose, storage and nature of the data collected and users can delete their data at any time. Similarly, in the **Netherlands**, a law regulating the use of a COVID-19 app prescribes how data may be processed by the app and how they will be used. The law also provides that the use of the app must be voluntary and makes it illegal to force anyone to use the app.

ICNL recommendations for governments

In deploying emergency measures to respond to the COVID-19 pandemic and other future crises in the future, the ICNL encourages governments to:

- Limit emergency measures in duration to a maximum of 30 or 60 days and make them subject to extension only upon legislative approval.
- Include reasonable exceptions for restrictions on assembly and movement.

- Disseminate accurate information about COVID-19 and responsive measures through a variety of platforms and in multiple languages.
- Publicise official documents describing their responsive measures, mandate proactive disclosure of official information and establish systems for individuals and groups to request information from public bodies.
- Prioritise privacy, transparency, public consultation and narrow limits when using digital surveillance technology based on personal data.
- Establish procedures to review emergency measures affecting civic freedoms in consultation with civil society, and to relax and remove these measures as soon as they are no longer necessary under the prevailing circumstances.

Protections for civic freedoms are essential to empowering civil society and ensuring a robust recovery from COVID-19. Emergency measures should be rights-respecting, time-limited and maintained only so long as they are necessary. Governments must work with civil society and affected communities to ensure that civic space is restored after the pandemic and preserved in future emergencies.

1. These were variously identified as “states of emergency”, “states of crisis”, “states of catastrophe” or “states of danger”.

2.2. Discrimination as an obstacle to effective and inclusive civic participation

Equality and non-discrimination are cross-cutting themes in the OECD’s civic space work, as both are essential preconditions for inclusive, responsive and effective democratic participation on an equal basis with others. For the purposes of this report, discrimination is defined as “the unjust or prejudicial treatment of different categories of people”. Discrimination can affect citizens’ trust, in addition to their ability and willingness to engage with state institutions if they feel undervalued, excluded, unprotected or threatened. As such, all forms of discrimination can affect individuals’ ability or willingness to freely express themselves or to assemble and influence public decision making.

Discrimination covers a wide spectrum, from unintentional unequal treatment or micro-aggressions to forms of indirect discrimination,[63] direct discrimination, overt harassment and verbal and physical attacks. Numerous international instruments and national laws protect individuals from discrimination and promote general principles of equal treatment for all. General international human rights instruments ensure human rights and freedoms for all individuals, without distinction or discrimination of any kind or on any ground[64] (ECtHR, 2013[99]; IACHR, 1969[100]; UN, 1966[101]; ACHPR, 1986[102]).

At the same time, the UN Human Rights Committee has observed that unequal treatment does not constitute discrimination if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose legitimate under the International Covenant on Civil and Political Rights (ICCPR). Regional human rights courts in Europe and the Americas have provided similar definitions and differentiations in relation to discrimination, as has relevant EU law.[65] Additionally, the UN Human Rights Committee has recognised that the principle of equality sometimes requires state parties to take affirmative action to diminish or eliminate conditions that cause or help to perpetuate discrimination. It notes that where general conditions of a section of a population prevent or impair their enjoyment of human rights, the state should take specific action to correct those conditions. This may involve granting temporary preferential treatment to this section of the population in specific matters, as compared with the rest of the population. The UN Human Rights Committee emphasises that as long as such action is needed to correct discrimination, it is a case of legitimate differentiation.[66]

International instruments adopted to combat racial or gender discrimination, or discrimination based on disability provide for exceptions in various situations mentioned in the Survey on Open Government, primarily with respect to situations where states distinguish between citizens and non-citizens or on the basis of nationality,[67] or where state measures aim to achieve substantive equality between men and women or other groups.[68]

Box 2.3. Exclusion and levels of trust

2021 OECD Survey on Drivers of Trust in Public Institutions

The 2021 OECD Survey on Drivers of Trust in Public Institutions finds that low levels of trust in government and public institutions are often related to perceptions of vulnerability and being left behind economically, socially and politically. People's personal financial concerns, perceptions of relatively lower status in society and feeling excluded from government decision making thus negatively influence trust in government.

As regards the correlation between socio-economic status and levels of trust in governments, the trust survey illustrates that people with higher levels of education or higher levels of income also tend to have higher trust in their national government. While the average level of trust for those with the highest levels of education (university level/tertiary) is 48.0%, the level of trust for those with medium levels of education (upper secondary education, i.e. high school) is 39.9%.

The survey also finds a correlation between social status and levels of trust in government. People who report a lower perceived social status (measured as reported position in society, relative to others) also report a lower level of trust in the national government. On average across OECD Members, the trust gap between those who consider themselves to have a relatively higher social status and those with a low social status is around 22.9 percentage points, a value much higher than the difference between actual reported income or education.

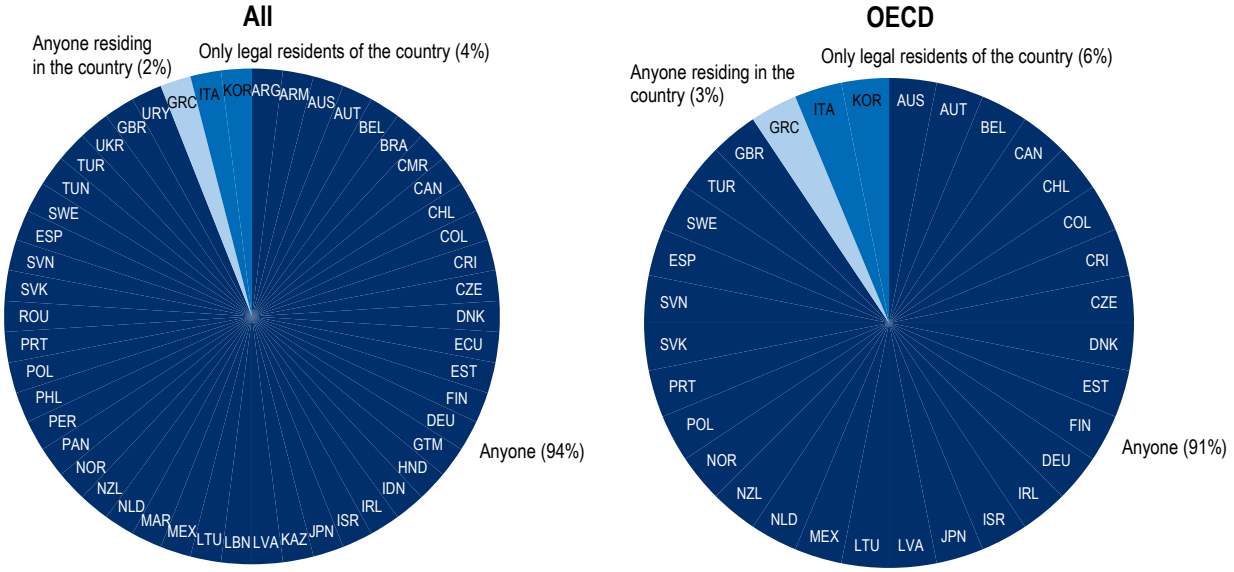
Source: OECD (2022[103]), *Building Trust to Reinforce Democracy: Main Findings from the 2021 OECD Survey on Drivers of Trust in Public Institutions*, Building Trust in Public Institutions, OECD Publishing, Paris, https://doi.org/10.1787/b407f99c-en.

2.2.1. National legal frameworks governing discrimination

Legislation in all respondents to the OECD Survey on Open Government explicitly states that all persons are equal in law and protected from different forms of discrimination in international, constitutional and national legal frameworks. As illustrated by Figure 2.12, in 94% of all respondents and 91% of OECD respondents, relevant legislation protects anyone (meaning anyone physically present in a country, even irregularly) from discrimination. This corresponds to only three respondents not affording this right to anyone.

Figure 2.12. Legal entitlement to protection against discrimination, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



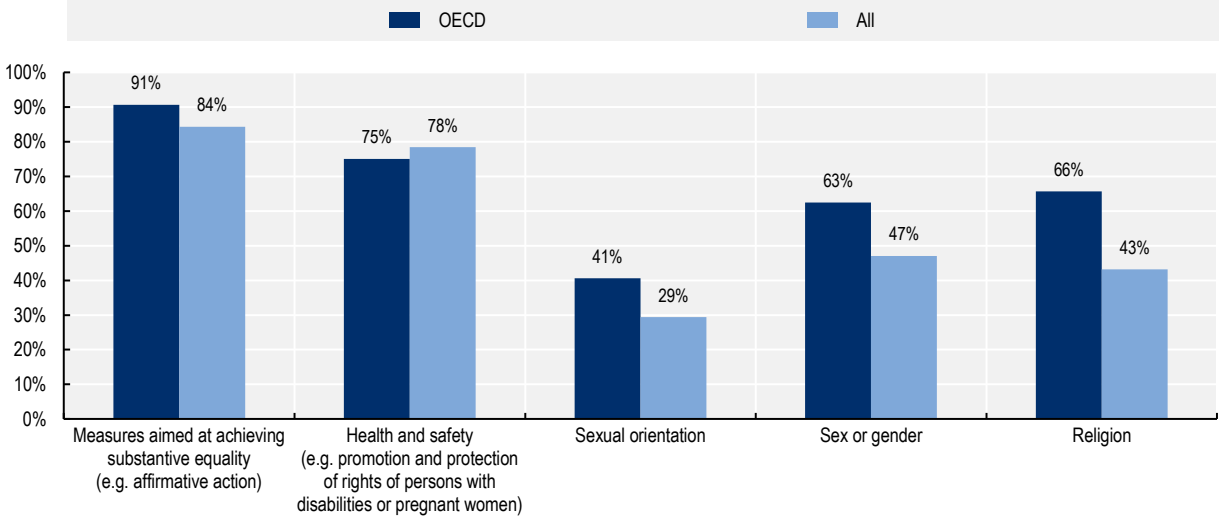
Note: "All" refers to 50 respondents (32 OECD Members and 18 non-Members). Data on Morocco and Slovenia are based on OECD desk research and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/jr1n57

In line with international guidance, in domestic legislation, exceptions, exemptions and conditions to protection from discrimination are found in a variety of areas (Figure 2.13).

Figure 2.13. Legally mandated exceptions to protection against discrimination, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (32 OECD Members and 19 non-Members). Data on Brazil, Colombia, Denmark, Dominican Republic, Guatemala, Honduras, Ireland, Korea, Mexico, Poland and Slovenia are based on OECD desk research for at least one of the categories and were shared with them for validation. Data on religion in all EU Member states are based on OECD desk research and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/d5nx39

Figure 2.13 shows that 84% of all respondents and 91% of OECD respondents state in their constitutional and/or anti-discrimination legislation that measures aiming to achieve substantive equality or protection (e.g. affirmative action) for disadvantaged groups will not be considered discrimination. Health and safety concerns, including the promotion and protection of persons with disabilities or pregnant women, or cases where occupational requirements or reasonable justifications allow distinctions based on disability, are also explicitly mentioned in constitutional, anti-discrimination or labour legislation in 78% of all respondents and 75% of OECD respondents.

Most respondents' constitutions permit differences in treatment between citizens and non-citizens or nationals and non-nationals based on reasonable grounds, or more specifically for certain rights, e.g. regarding the right to vote, be elected to or hold public office, different forms of political participation or certain aspects of freedom of association. Furthermore, 43% of all respondents and 66% of OECD respondents allow differences in treatment on religious grounds if these are reasonable and justifiable, notably in the employment sector in cases where a religion is considered a genuine occupational requirement (Figure 2.13). Likewise, 47% of all respondents and 63% of OECD respondents have legal provisions allowing differential treatment based on sex or gender or to accelerate gender equality.

Figure 2.13 also shows that laws in 29% of all respondents and 41% of OECD respondents, foresee affirmative action for persons based on their sexual orientation and do not consider this kind of distinction to be discrimination. For example, **Belgium** includes a number of protected characteristics in its national legislation, including sexual orientation. Similarly, in **Canada**, the law permits measures aimed at the promotion and protection of the rights of vulnerable or marginalised groups, where this is, among others, because of their sexual orientation or gender. In **Chile**, legislation allows distinctions, exclusions or restrictions based on protected grounds, including sexual orientation, that are reasonable and states that these shall be considered justifiable in the legitimate exercise of another fundamental right, in particular private life, religion or belief, education, freedom of expression, freedom of association, right to work or economic development.

Overall, there is a trend towards making anti-discrimination legislation more comprehensive and in recognising different groups that are affected. In recent years, many EU member states have rendered their laws more comprehensive, in the field of ethnic or racial discrimination, for example (EC, 2019[104]). **Ireland** formally recognised Travellers as an ethnic group in 2017, meaning that they are covered under that ground, as well as under the separate ground of being part of the Traveller community, under relevant anti-discrimination legislation. Some legislative improvements in EU countries likewise aim to enhance equal treatment of persons with disabilities, with laws and high court decisions attesting to a wide interpretation of the definition of disability (EC, 2019[104]). **Uruguay** also adopted a law in 2018 promoting employment opportunities for persons with disabilities. In 2018, **Tunisia** passed a law on eliminating all forms of racial discrimination.

Countries in Latin American and the Caribbean have adopted more gender-responsive legal frameworks in recent years. These include raising the legal age for marriage and passing legislation that protects women against more types of violence, including femicide, as found by the *SIGI 2020 Regional Report for Latin America and the Caribbean* (Box 2.4) (OECD, 2020[105]).[69] Legal frameworks have also been strengthened to promote women's political participation at the national and local levels (OECD, 2020[105]),[70] in particular via political electoral laws aiming to promote gender parity (UN Women, 2021[106]).

Key measures to consider on legal frameworks to counter discrimination

- Regularly reviewing policies and legislation and their effects, to assess and remedy potentially negative consequences for individuals' right to protection from discrimination, and to ensure that such frameworks are in line with international guidance.

- Institutionalising the monitoring of discrimination, including discriminatory violence, targeting at-risk groups to monitor trends and develop evidence-based, well-resourced strategies to counter it.

- Adopting comprehensive regulatory or voluntary measures to promote diversity in parliamentary and executive bodies, as well as the public sector, including through affirmative action, parity laws, targets, disclosure requirements and other guidance so that the conditions that perpetuate discrimination are diminished. Considering penalties for non-compliance can be important to ensure the effectiveness of such measures.

Box 2.4. Discrimination and violence targeting women's civic rights

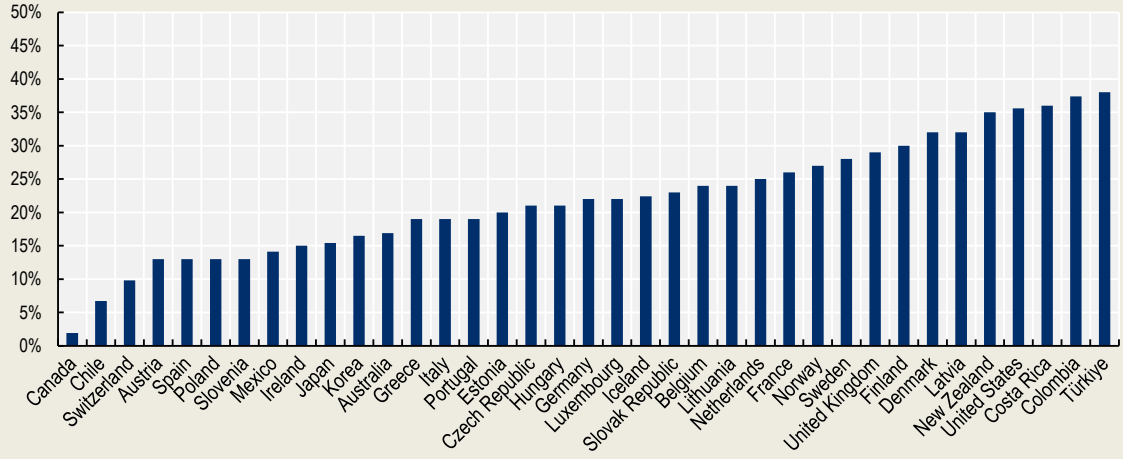
Despite significant progress in OECD Members in recent decades, so-called "traditional" values about women and their place in society, women's economic dependence on men and gender stereotyping remain central barriers preventing women's equal engagement in public life, often reducing women's opportunities to engage in civic activism (OECD, 2019[107]).

While there has been increased high-level attention on promoting gender equality in recent years with a majority of OECD Members introducing gender equality strategies, the overall trend across the OECD indicates that countries continue to address equality issues as part of social policy. This often results in limited opportunities to influence a whole-of-government response to gender equality needs, the absence of systematic collection of gender-disaggregated data across policy sectors and very limited mandates for the centre of government to support gender mainstreaming (OECD, 2019[108]).

Across OECD Members, an average of 22% of women experience violence throughout their lifetimes, rising to 30% or more in 8 OECD Members (OECD, 2019[109]) (Figure 2.14).[1]

Figure 2.14. Prevalence of violence against women during their lifetimes, 2019

Percentage of OECD Members based on data from the OECD International Development Statistics, 2019 or latest available year



Note: The graph consists of 37 OECD Members.
Source: OECD (2019[109]), "Violence against women", https://data.oecd.org/inequality/violence-against-women.htm.

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has highlighted that women's rights to freedom of peaceful assembly and of association are mediated through their access to and safety in public spaces, noting that a significantly greater proportion of women than men report altering or limiting their activities and travel outside their homes due to the risk and occurrence of sexual harassment in the street and on public transport, and a heightened risk after dark (UN, 2020[110]). In EU member states, 83% of women aged between 16 and 29 limit where they go or avoid certain places to protect themselves (FRA, 2021[111]). However, the UN Working group on the Issue of Discrimination against Women in Law and in Practice has found that only very few states have enacted laws prohibiting sexual harassment in public places (UN, 2014[112]).

Oppression, harassment, intimidation and violence against women in the private sphere as well as in public can create obstacles to women's participation in collective actions. Any type of gender violence can instil fear and humiliation and impede meaningful access to public spaces for association and assembly. Moreover, in recent years, a global trend of growing hostilities and attacks targeting women activists worldwide has been observed, including in OECD Members (CIVICUS, 2021[113]). A renewed emphasis on anti-feminist narratives has been fuelling efforts to weaken hard-won progress and has resulted in women facing violations of their rights to peaceful assembly and association, both on and off line (UN, 2018[114]; 2020[110]).

Despite this, women activists and feminist protest movements have achieved significant visibility in recent years in national, regional and transnational movements, with, for example, #MeToo, #WhyLoiter, #NiUnaMenos (the intergenerational *Marea Verde* [Green Wave] movement in Argentina) and the "Rapist in your path" performance protests in Argentina, Bolivia, Brazil, Chile and Peru. A wide range of issues is animating these protests, including: the failure to effectively tackle violence against women and gender inequality more broadly; reproductive rights; climate justice; and corruption.

1. The "Violence against women" indicator presents data on: Attitudes toward violence: the percentage of women who agree that a husband/partner is justified in beating his wife/partner under certain circumstances; Prevalence of violence in the lifetime: the percentage of women who have experienced physical and/or sexual violence from an intimate partner at some time in their life; Laws on domestic violence: whether the legal framework offers women legal protection from domestic violence.
Laws on domestic violence are presented as values ranging from 0 to 1, where 0 means that laws or practices do not discriminate against women's rights and 1 means laws or practices fully discriminate against women's rights; see (OECD, 2019[109]).
Source: OECD (2019[107]), *SIGI 2019 Regional Report for Eurasia*, https://doi.org/10.1787/f6dfa21d-en; OECD (2019[109]), "Violence against women", https://data.oecd.org/inequality/violence-against-women.htm; United Nations General Assembly (2020[110]), *Rights to Freedom of Peaceful Assembly and of Association,* http://undocs.org/A/75/184*;* EU Agency for Fundamental Rights (2021[111]), *Crime, Safety and Victims' Rights – Fundamental Rights Survey*, https://fra.europa.eu/en/publication/2021/fundamental-rights-survey-crime; United Nations General Assembly (2014[112]), *Report of the Working Group on the Issue of Discrimination Against Women in Law and in Practice*, https://undocs.org/en/A/HRC/26/39; CIVICUS (2021[113]), "Called a prostitute by the prime minister, a Slovenian journalist tells her story", https://globalvoices.org/2021/03/09/called-a-prostitute-by-the-prime-minister-a-slovenian-journalist-tells-her-story/; Nazneen, S. and A. Okech (2021[115]), "Introduction: Feminist protest and politics in a world in crisis", https://doi.org/10.1080/13552074.2021.2005358.

2.2.2. Implementation challenges and opportunities, as identified by CSOs and other stakeholders

At the global level, UN human rights bodies have consistently lamented the ongoing harmful exclusion and differential treatment of different groups including: women (UN, 2018[114]), Indigenous people (UN, 2018[116]; 2015[117]; 2020[118]); older persons (UN, 2021[119]); LGBTI persons (UN, 2020[120]); persons with disabilities (UN, 2016[121]); migrants (UN, 2021[122]); and systemic discrimination against certain identifiable groups of people on the basis of their race, colour, descent or national or ethnic origin (UN, 2020[123]; 2019[124]; FRA, 2020[125]), among others. Individuals can be discriminated against based on one or on multiple grounds, leading to layers of inequality and cumulative disadvantages, as well as to structural discrimination characterised by discriminatory practices that are embedded in and have become

commonplace throughout society. This can act as a direct obstacle to the inclusive participation of under-represented and marginalised groups in policy and decision making. Although discriminatory practices are illegal in most respondents, significant implementation challenges remain. Victimisation surveys show that while attitudes towards some groups have improved over time, significant prejudice against certain groups remains. While legal protection for gender equality and the rights of LGBTI people has grown in respondents over the past decade (OECD, 2019[126]) for example, there is still work to be done (Box 2.5). Attitudes towards migrants and ethnic and other minorities have become more polarised and discriminatory attitudes prevail in several countries (OECD, 2020[127]; Eurobarometer, 2019[128]). A survey by the EU Agency for Fundamental Rights (FRA) (2017[129]) found that almost one in four migrants and ethnic minorities in the EU felt discriminated against due to their ethnic or migrant background. Furthermore, 30% of people of African descent have experienced racist harassment, with rates varying from 21% in the **United Kingdom** to 63% in **Finland** (FRA, 2018[130]). Another survey by the FRA from 2021 found that 22% of persons who consider themselves to be part of an ethnic minority in the EU were stopped by the police in the 12 months before the survey, as opposed to 13% of people who do not consider themselves to be part of such a minority (FRA, 2021[131]). In the context of the COVID-19 pandemic, human rights groups (Human Rights Watch, 2021[132]; Pew Research Center, 2020[133]; Stop AAPI Hate, 2021[134]) and UN human rights bodies (UN, 2020[135]; 2020[123]) have noted a rise in racially motivated discrimination around the world, including against people of Asian descent and migrants (UN, 2021[122]).

In the **United States**, about three-quarters of people of African and Asian descent and 58% of Hispanics say they have experienced discrimination due to their race or ethnicity, at least from time to time. According to one study, the majorities of both Black and White populations say Black people are treated less fairly than White people by the criminal justice system (87% of Black people vs. 61% of White people) and in dealings with police (84% vs. 63%) (Menasce Horowitz, 2019[136]). Across Latin America, 21% of Latin Americans feel discriminated against, with the highest rates in **Brazil** (39%), **Chile** (34%), **Bolivia** (33%) and **Argentina** (28%) (Latinobarómetro, 2021[137]). Significant gaps between Indigenous and non-Indigenous populations regarding socio-economic factors such as life expectancy, education, unemployment rates, income and mortality rates show the extent to which structural discrimination is embedded in these societies (ECLAC, 2016[138]; 2020[139]).[71]

Civil society representing the rights of certain groups can also be affected. Despite historic legal successes in many countries in recent years, CSOs advocating for LGTBI rights continue to face challenges in some countries, for example. Research indicates that such associations have increasingly been targeted by restrictions and smear campaigns. UN Special Rapporteurs (UN, 2014[140]; 2020[141]), the European Commission (EC) (2020[142]; 2021[143]; 2021[144]), the European Parliament (2022[145]) and the Council of Europe Commissioner for Human Rights (Mijatović, 2020[146]) have all raised concerns about the ability of CSOs protecting and advocating for the rights of LGBTI persons to freely exercise their right to freedom of association in recent years. In several countries, public authorities or politicians have stigmatised LGBTI activists by using offensive language under the guise of protecting minors and families (ILGA, 2020, pp. 145-163[147]). Even in countries where public authorities are supportive, LGBTI activists may experience threats and reprisals from third parties.

In its most extreme form, discrimination can lead to hate speech or hate crimes against targeted persons or groups. The OSCE/ODIHR hate crime data for 2021 reports 7 203 incidents of hate crimes, including based on racism, xenophobia, gender, disability or religion in 14 countries (OSCE, 2021[148]). However, research indicates that the majority of hate crimes are not reported and, in many countries, data are not published or disaggregated by different bias motivations (FRA, 2018[149]).

Practices adopted by countries to counter terrorism since the early 2000s have also had a disproportionate impact on individuals who experience stereotyping and discrimination due to race, ethnicity, religion and/or their migration status, including in OECD Members (ENAR, 2019[150]; Saferworld, 2021[151]). The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has raised concerns about discriminatory and racial profiling (CERD, 2020[152];

Choudhury, 2021[153]; Ní Aoláin, 2019[154]; UN, 2017[155]), which describes the practice by law enforcement authorities of undertaking arbitrary stops, searches, identity checks, investigations and arrests among specific – often minority – groups. In 2021, the FRA noted that discriminatory ethnic or racial profiling remained a persistent challenge in EU member states (2021[131]).

While all OECD Members collect information on some diversity proxies, such as country of birth, only a few gather additional information on race, ethnicity or Indigenous identity (Balestra and Fleischer, 2018[156]). The collection of data can help to improve understanding of the life experiences of disadvantaged or marginalised population groups to improve their well-being, thereby assisting government officials in understanding and developing initiatives to counter exclusion.

Box 2.5. Recent legal changes for LGBTI persons and persistent challenges in the law

Over the last two decades, OECD Members have introduced legislative reforms to provide greater protection to LGBTI persons (OECD, 2020[157]). A few OECD Members have initiated legal reforms to enhance the protection of intersex children in recent years. In 2021, non-consensual cosmetic surgeries performed on intersex children were outlawed in **Germany** and parliaments in **Austria** and **Belgium** adopted resolutions on the protection of intersex children from non-consensual and medically unnecessary treatments, while a similar ban was announced by the government in **Finland** (ILGA-Europe, 2022[158]).

The recognition of civil partnerships or same-sex marriage for LGBTI persons is another area where positive developments took place (ECRI, 2020[159]; ILGA, 2020[147]). Since 2001, an increasing number of countries have extended the definition of marriage to include same-sex couples, making same-sex marriage lawful in 28 countries worldwide (ILGA, 2020[147]). Since 2019, same-sex marriage was also legalised in **Chile** and **Ecuador**.

In 2019, a decision of the **Spanish** Constitutional Court found in favour of transsexual minors regarding their ability to have their gender identity legally recognised. The Constitutional Court of **Lithuania** ruled in 2019 that the constitution, while not specifically mentioning sexual orientation as a protected ground, nevertheless also covered sexual orientation, based on the principles of protection of personal dignity and equality before the law (EC, 2019[160]). This appears to follow a wider European trend of recognising sexual orientation as a protected characteristic (EC, 2019[104]), and a worldwide trend of passing legislation that allows same-sex marriages (Council on Foreign Relations, 2021[161]; BBC News, 2021[162]; CNN, 2021[163]). In **Uruguay,** comprehensive legislation for transgender persons, protecting their right to gender identity was adopted in 2018.

Several OECD Members and non-Members have also passed or enhanced legislation that legally recognises different non-binary genders (ILGA, 2021[164]). In addition, a number of OECD Members and non-Members, including **Brazil**, **Chile and Germany**, in addition to several territories, provinces and regions of **Australia**, **Canada**, **Spain** and the **United States**, have banned different kinds of "conversion therapy" for LGBTI persons, a discredited practice involving a wide array of measures attempting to alter a person's sexual orientation (Stonewall, 2021[165]). In the **Netherlands**, legislation was amended in 2020, obliging all Dutch schools to ensure that LGBTI youth are respected and protected (ILGA, 2021[164]). More than one-third of OECD Members have launched initiatives to create LGBTI-inclusive environments in schools (OECD, 2020[157]).

Persistent challenges

However, despite significant progress, LGBTI persons are still discriminated against in explicit and non-explicit legal provisions. While in some respondents discrimination against homosexuals persists in law, in others, new legislation has been adopted, restricting the rights of transgender and intersex persons.

Laws limiting sex education curriculums and laws prohibiting the promotion of homosexuality, in addition to laws restricting marriage and adoption for LGBTI people, are also in place in a number of OECD Members.

A recent review in the **United States** concluded that an unprecedented number of states have enacted anti-LGBTI measures into law, for example (Human Rights Campaign, 2021[166]). In its 2020 Annual Report, the Council of Europe's Commission against Racism and Intolerance (ECRI) also noted that new restrictive legislation had likewise been adopted in certain European countries that made it impossible for transgender and intersex persons to legally change their gender (ECRI, 2020[159]). In July 2021, the EC launched legal proceedings against **Hungary** and **Poland** for what it described as "violations of fundamental rights of LGBTI people" (EC, 2021[167]). A law in **Lithuania** outlaws the propagation of same-sex relations on the basis that they adversely affect minors (ILGA, 2021[164]). In three respondents to the OECD Survey on Open Government, homosexuality is criminalised and can be penalised with imprisonment of up to three of five years.

Source: OECD (2019[126]), *Society at a Glance 2019: OECD Social Indicators,* https://doi.org/10.1787/soc_glance-2019-en; Eurobarometer (2019[128]), *Special Eurobarometer 493. Discrimination in the EU (including LGBTI)*, https://data.europa.eu/data/datasets/s2251_91_4_493_eng; EU Agency for Fundamental Rights (2013[168]), *European Union Lesbian, Gay, Bisexual and Transgender Survey: Results at a Glance,* https://fra.europa.eu/sites/default/files/eu-lgbt-survey-results-at-a-glance_en.pdf; OECD (2020[157]), *Over the Rainbow? The Road to LGBTI Inclusion*, https://doi.org/10.1787/8d2fd1a8-en; International Lesbian, Gay, Bisexual, Trans and Intersex Association (2020[147]), *State-Sponsored Homophobia 2020: Global Legislation Overview*, pp. 145-163, https://ilga.org/state-sponsored-homophobia-report; Government of Italy (2020[169]), *Decreto Tavolo LGBT,* http://www.pariopportunita.gov.it/wp-content/uploads/2020/05/Decreto-Tavolo-LGBT.pdf; OCSE (2019[170]), *2019 Hate Crime Data*, https://hatecrime.osce.org/infocus/2019-hate-crime-data-now-available.

Key measures to consider in addressing implementation challenges for combatting discrimination

- Recognise social and economic inequalities that lead to disenfranchisement and mistrust as potential obstacles to effective civic participation and raise awareness on the negative impact of discrimination on social cohesion, civic participation and the exercise of civic freedoms.

- Envisage developing institutionalised, inclusive, targeted and accessible processes that allow under-represented and marginalised persons and groups to participate in policy and decision making; support the capacities of representative organisations and mechanisms in all stages of the policy-making cycle to benefit from their insights and expertise, while avoiding policy capture.

- Enhancing data collection in order to assess the well-being of minority and marginalised populations and to develop targeted non-discrimination policies, laws and programmes.

- Enhancing oversight over and training of law enforcement and other public bodies, to ensure that cases of racial profiling, harassment and systemic discrimination against certain groups are met with swift and decisive responses that demonstrate the state's willingness to provide remedies for such actions.

2.3. Protecting the physical safety of human rights defenders

Human rights defenders (HRDs) play an essential role in democratic societies in promoting and protecting human rights and drawing public attention to violations when they occur (Section 4.3 in Chapter 4; Box 4.1; Section 4.2.2 in Chapter 4; and Box 2.6). While this often brings them gratitude and recognition, this type of work can also expose them to harm, ranging from stigmatisation and public harassment to violent attacks and even killings.

The UN General Assembly considers any person promoting, protecting or realising human rights to be an HRD (UN, 1999[171]); thus, this distinction is related more to persons' actions than to their professional, societal or other backgrounds (IACHR, 2017[172]). Common areas of engagement for HRDs range from

promoting and protecting key human rights such as the right to life, freedom from torture or ill-treatment, freedom from discrimination or environmental and land rights, to education, housing, property or healthcare rights. They may also defend the rights of categories of certain persons, such as women, children, refugees and internally displaced persons, Indigenous communities, LGBTI persons, persons with disabilities or other minorities.

According to the ICCPR (Articles 2, 6) and guidance in the non-binding UN Declaration on Human Rights Defenders (Articles 1, 2, 5, 12 and 13), states have a responsibility and duty to effectively protect everyone who, through peaceful means, reacts against or opposes violations of human rights and fundamental freedoms. States also have a duty to protect the right to life and are obligated to enact a legal framework and other measures to ensure the full enjoyment of that right. This requires them to take special protective measures for persons in vulnerable situations who are at risk due to specific threats or pre-existing patterns of violence and must create and maintain a safe and enabling environment for defending human rights.

Though the work of HRDs is recognised as necessary and important in many countries where they operate, there are numerous examples in OECD Members and beyond where HRDs are targeted and harassed, both on and off line (Freedom Online Coalition, 2019[173]), including via Strategic Lawsuits against Public Participation (SLAPPs) and other lawsuits (Section 5.2.3 in Chapter 5). Public smear campaigns in the media often demonise and stigmatise HRDs, leaving them vulnerable to a variety of attacks. The perpetrators of such acts are often powerful interest groups, large businesses or criminal organisations (Forst, 2019[174]; OHCHR, 2004[175]; BHRRC, 2022[176]). States and their representatives may have HRD programmes or laws in place, but a variety of challenges, such as a lack of resources, remote territories, an absent rule of law, overly bureaucratic regulations, negative public perceptions of certain HRDs and scant political stability and accountability, mean that, at times, they are unable to adequately protect them.

2.3.1. National legal frameworks and related programmes to protect human rights defenders

Recognising the high number of killings and dangers faced by HRDs on their territories, certain countries, such as **Brazil**, **Colombia, Honduras** and **Mexico**, have passed legislation and adopted action plans reaffirming respect for the human rights of HRDs and establishing special protection mechanisms for them (Government of Colombia, 2018[177]; Government of Honduras, 2015[178]; Ministry of Human Rights, 2018[179]; Government of Mexico, 2012[180]). These include, among others, special units within the executive providing individualised protection measures, general monitoring and centralised early-warning systems that identify risks in a timely manner, as well as rapid-response structures, state bodies streamlining prevention and protection measures, financial trust funds and legal remedies. In addition to laws, some countries, such as the **Netherlands** and **Sweden**, have provided special support programmes for at-risk individuals or CSOs (Government of Sweden, 2019[181]; 2020[182]). **Armenia**'s recently adopted national strategy for human rights protection also envisages drafting legislation to protect HRDs (Government of Armenia, n.d.[183]). **Mexico** gathers data on the number of journalists, HRDs and trade unionists assisted by public security institutions (INEGI, 2022[184]).

These countries remain the exception, however. The majority of countries, both within the OECD and beyond, have not passed laws or policies dedicated to HRDs specifically. In these countries, HRDs are, as other individuals, protected by the general laws of the state, including criminal legislation, that apply to all individuals and the usual human rights protection mechanisms found in many countries. Crucially, whether or not the specialised laws or mechanisms provide sufficient and effective protection for HRDs often depends on the overall rule of law situation in a given country, including the resources, political will and effectiveness of law enforcement, the independence and effectiveness of courts, the stability of state institutions in general, and how freely the media and CSOs operate as a whole (Lawlor, 2020[185]). Moreover, it is essential that these mechanisms are organised in a manner that allows for timely and unbureaucratic support for HRDs in need of help.

Protection for human rights defenders in third countries

A number of OECD Members have also introduced guidelines, policies or programmes to help protect HRDs in other countries.[72] Notably, **Canada** and **Norway** have issued guidelines to support and protect HRDs internationally, through monitoring, advocacy and financial assistance (Government of Canada[186]; Government of Norway, 2010[187]). At the regional level, the EU has passed guidelines for enhancing support to HRDs as part of its human rights external relations policy, encouraging EU missions to adopt a proactive approach towards HRDs and to periodically report on threats or attacks (EU, 2008[188]). The EC also provides aid directly to HRDs via a special financial instrument, allowing it to do so without informing the government of the country in question or demanding its prior consent (EU, 2018[189]). In addition, the EU has installed the Human Rights Defenders Mechanism (ProtectDefenders.eu[190]) that includes the possibility to relocate HRDs at risk, monitor the situation of HRDs and provide training, financial support and capacity building.

The possibility of relocation of threatened HRDs in third countries is provided by countries such as **Germany**, the **Netherlands** and **Norway** (ENNHRI, 2020[191]; Institut fur Auslandsbeziehungen[192]; Justice and Peace, n.d.[193]; Government of Norway, 2010[187]). The **Netherlands** also provides financial support for at-risk HRDs (Government of the Netherlands[194]). Likewise, the **United States** government provides emergency assistance for HRDs who are threatened (US Government[195]).

Beyond financial assistance and relocation possibilities, many OECD Members also engage in public diplomacy efforts, including by encouraging host governments to engage constructively with HRDs and consider their concerns. The *EU Guidelines on Human Rights Defenders* recommend increasing public recognition of HRDs through publicity and in-country visits, sending observers to trials of HRDs and visiting them in custody, issuing public statements and discussing HRD cases during high-level visits (EU, 2008[188]).

Box 2.6. National legal frameworks to protect whistleblowers

For the purposes of this report, a whistleblower is defined for this report as an employee who discloses "to competent authorities in good faith and on reasonable grounds wrongdoing of whatever kind in the context of their workplace". The activities of whistleblowers can help report information on threats or harm to the public interest deriving from both the private and public sectors (CoE, 2014[196]; OECD, 2016[197]). The right to impart information, as part of the right to freedom of expression, can also cover the reporting of wrongdoing or other information in the public interest.[1] At the same time, such actions are likely to place these persons at risk; as they can be subjected to harassment, intimidation, investigation and prosecution (Kaye, 2015[198]). Therefore, international guidance urges countries to introduce appropriate measures to protect whistleblowers against unjustified treatment (UN, 2003[199]), as well as reporting channels, and to guarantee prompt investigations and guarantees of confidentiality (CoE, 2014[196]). There is an additional obligation for EU countries to transpose the 2019 Whistleblower Protection Directive, on the protection of persons who report breaches of EU law, into national legislation (EU, 2019[200]).

In order to provide effective protection, whistleblower legislation should have a broad scope and provide adequate protection mechanisms against retaliation as a consequence of the act of whistleblowing, and sanctions and remedies (OECD, 2012[201]). Such mechanisms can include protection at the workplace but also external protection via different state and independent bodies for whistleblowers, as well as reporting procedures within and outside the workplace (Transparency International, 2018[202]).

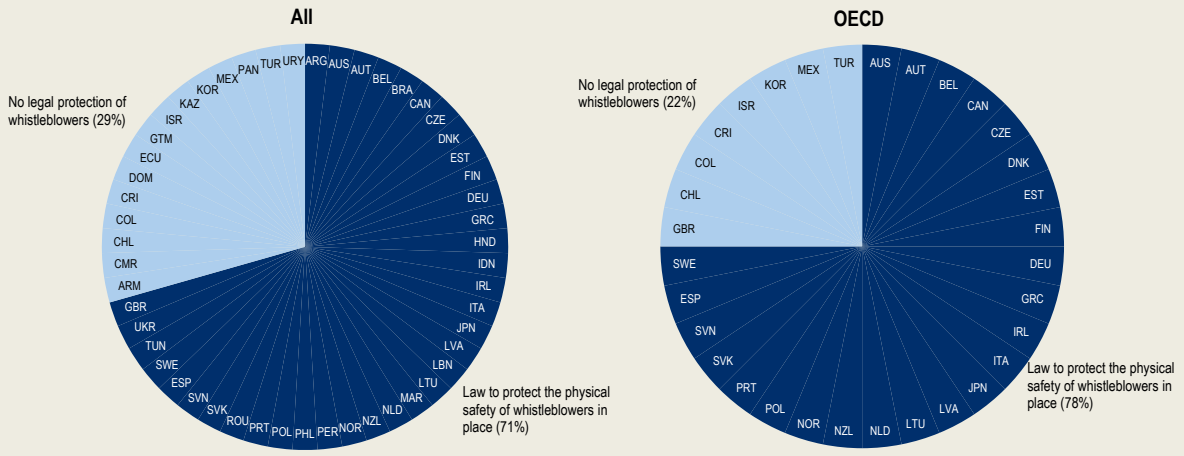
Figure 2.15 illustrates that in 71% of all respondents and 78% of OECD respondents, whistleblowers are either protected by legislation or draft laws are pending (this includes cases of countries transposing the EU directive, which, however, only obliges member states to pass whistleblower legislation

concerning areas covered by EU law). The majority of OECD Members have legislation providing whistleblower protection in both the public and private sectors, which in most cases include procedures for disclosure of information on misconduct by the whistleblower to different bodies both within the workplace and beyond, mechanisms to protect whistleblowers from reprisals, and sanctions or damages for whistleblowers. Non-Members have confirmed that they have similar legislation that explicitly protects whistleblowers. In countries where there is no special legislation in place, laws on witness protection can protect whistleblowers in their roles as witnesses or defendants in ongoing criminal proceedings.

The 2016 OECD report *Committing to Effective Whistleblower Protection* (2016[197]) highlighted that relevant protection frameworks tend to be fragmented and ad hoc. While most OECD Members provide legal protection to whistleblowers in laws on anti-corruption, competition, companies, employment, public servants or in criminal codes, dedicated laws offer more legal clarity and streamline the processes and mechanisms involved in disclosing wrongdoing (OECD, 2016[197]). A 2022 Council of Europe report evaluating whistleblower legislation noted some good practices, notably laws giving special whistleblower centres, law enforcement authorities or national human rights institutions, among others, powers to investigate reprisals, make recommendations to employers to remedy detrimental treatment, make submissions on behalf of a whistleblower to the competent courts and provide free legal aid (Myers, 2022[203]).

Figure 2.15. Laws to protect whistleblowers, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (32 OECD Members and 19 non-Members). Data on Argentina, Austria, Belgium, Cameroon, Czech Republic, Denmark, Ecuador, Finland, Germany, Greece, Ireland, Korea, Lithuania, Norway, the Philippines, Poland, Portugal, Slovenia, Spain and Uruguay are based on OECD desk research and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

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1. According to the case law of the European Court of Human Rights, there are six criteria that whistleblowing needs to fulfil in order to be protected by the right to freedom of expression/information under Article 10 of the ECHR (CoE, 2017[204]).

> ***Key measures to consider for the legal protection of human rights defenders***
>
> *Taking measures to decrease risk to the life or physical integrity of individuals, including by enacting legislation criminalising violence against individuals, in addition to legislation that explicitly protects the rights of HRDs, in line with national needs; consider backing up laws by effective law enforcement structures and redress mechanisms for victims.*

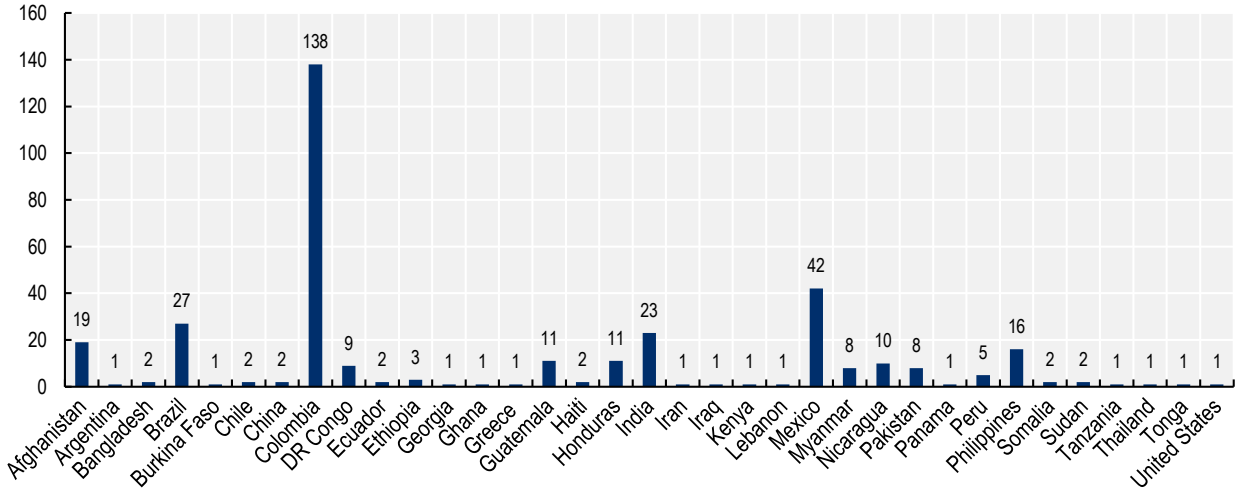
2.3.2. Implementation challenges and opportunities, as identified by CSOs and other stakeholders

According to the global watchdog Frontline Defenders, at least 358 HRDs were killed worldwide in 2021 (Frontline Defenders, 2022[205]), with 59% of killings targeting HRDs working on land, environmental or Indigenous peoples' rights. Between 2015 and 2020, a total of 1 323 HRDs have been killed, according to the UN Special Rapporteur on the situation of human rights defenders (Lawlor, 2020[185]).

In a call for action in 2020, the UN Secretary-General highlighted how threats to HRDs have become part of a wider attack on civil society and how HRDs and journalists, especially women, have experienced increasing threats (2020[206]). The UN Special Rapporteur on the situation of human rights defenders has emphasised that "[t]here is no more direct attack on civil society space than the killing of human rights defenders" (Lawlor, 2020[185]) and that killings are frequently preceded by death threats and aggressive on- and offline smear campaigns aimed at discrediting their work (Lawlor, 2020[185]).

Latin America, in particular, is the most affected continent with 250 killings of HRDs in 2021, making up 70% of the global total (Frontline Defenders, 2022[205]). In **Colombia,** the government-appointed Ombudsman for Human Rights recognises the critical situation for HRDs in the country, which has been further aggravated by the COVID-19 pandemic (Government of Colombia, 2020[207]). To address the situation, the National Protection Unit, established in 2011, provides risk assessments and recommends suitable protection measures for HRDs at risk and promotes strategies for effective investigation, prosecution, punishment and reparation (Government of Colombia, n.d.[208]). The mechanism had 1 141 HRDs placed under protection at the end of June 2020 (Government of Colombia, 2020[209]). Despite these efforts, 138 HRDs lost their lives in 2021, down from 177 in 2020, according to Frontline Defenders (Figure 2.16).

Figure 2.16. Reported killings of human rights defenders worldwide, 2021



Source: Frontline Defenders (2022[205]), *Global Analysis 2021*, https://www.frontlinedefenders.org/en/resource-publication/global-analysis-2021-0

Other Latin American countries that are particularly affected include **Brazil**, **Guatemala**, **Honduras** and **Mexico**, despite all having taken measures to protect HRDs. As a measure to improve the situation for HRDs in **Mexico**, the government enacted a law in 2012, establishing the Protection Mechanism for Human Rights Defenders and Journalists (Government of Mexico, 2012[180]). The mechanism was funded by a trust fund and includes elements of risk assessment and preventive and protection measures ranging from courses to improve personal security, observers to accompany HRDs and journalists under threat and the provision of technical security equipment to urgent measures such as evacuation, temporary relocation and bodyguards. The trust fund was reportedly terminated in 2020, generating uncertainty about the future of this mechanism. According to Frontline Defenders (2022[205]), 42 HRDs were killed in Mexico in 2021, more than doubling since the previous year.

Asia and the Pacific, and the Middle East and North Africa are the second and third most affected regions respectively. In Europe, national human rights institutions (NHRIs) have reported that HRDs are increasingly exposed to hate speech and attacks. NHRIs in Europe have noted cases ranging from violent physical attacks, threats and hate speech to public criticism of HRDs by the authorities. In some countries, they point to a less favourable environment for HRDs in recent years and some stress-specific obstacles for those supporting LGBTI+ people and migrants (ENNHRI, 2021[63]).

A number of actions can be taken by countries to protect HRDs including: enhancing support to existing general human rights and HRD-specific protection mechanisms; taking appropriate preventive measures to assist HRDs such as providing police protection or evacuation; establishing early-warning and rapid-response mechanisms to respond to threats; providing public support to HRDs by explicitly recognising the important role that they play in society; and adopting a zero-tolerance approach to any form of harassment, threats or attacks. Furthermore, monitoring and regular publishing of comprehensive, standardised, disaggregated data and analysis on cases of violence and killings can help to increase awareness.

> ***Key measures to consider on implementation challenges relating to the legal protection of HRDs***
>
> *Supporting HRDs, including those operating in non-Members, via public recognition of their work, practical support (e.g. protection mechanisms, funds, visas, asylum, shelter and security) and diplomacy, as needed, and ensure that programmes and initiatives are adequately funded, resourced and evaluated to assess their ongoing impact.*

2.4. Institutional protection: Mechanisms to counter violations of fundamental civic freedoms

State protection of civic freedoms is only effective if there are accessible mechanisms in place to counter violations of rights, both in law and in practice. These may include administrative proceedings, aimed at protecting individuals and organisations from the excessive use of powers that interfere with the exercise of their human rights and freedoms. In addition to these proceedings, a number of OECD Members, including **Denmark**, **Estonia, Norway** and **Portugal,** have administrative bodies such as police complaints bodies that deal more specifically with human rights violations. **Japan** has a human rights office under the auspices of the Ministry of Justice and **Colombia** has prosecutors under the Prosecutor-General's Office specialised in human rights complaints. Among non-Members, **Brazil, Ecuador** and **Panama** also have special prosecution sections or units dealing with human rights matters.

Among OECD Members, **Austria, Israel, Mexico, Portugal** and **Türkiye** have specialised complaints bodies located within their public administrations for anti-discrimination complaints and **Costa Rica** has a similar body for complaints relating to the human rights of women. **Lithuania** and **Mexico** have similar government authorities that deal with complaints concerning journalistic ethics and violations of the right to private life of individuals (usually in the context of data protection). Similarly, among non-Members,

Argentina has government bodies addressing complaints on discrimination issues, while the public administration in the **Dominican Republic** has a special mechanism for complaints concerning gender-based violence, and **Morocco** and the **Philippines** likewise have government bodies responsible for privacy complaints (Figure 2.17).

Although the court system is not always accessible or responsive to the specific legal and justice needs of people, it remains the main avenue for justice in cases of rights violations in all OECD Members. Different legal systems, for instance civil law versus common law countries, allow for different systems for the protection of rights within the justice systems. In certain OECD Members, however, notably in **Austria**, **Chile**, **Germany, Israel,** the **Slovak Republic**, **Spain** and **Türkiye**, constitutional courts are competent to review human rights complaints of individuals, provided that remedies have been exhausted before ordinary courts. **Chile** also allows special human rights complaints before appeals courts. In **Canada, New Zealand** and **Norway**, special human rights tribunals deal with complaints concerning discrimination. Likewise, in certain non-Members such as **Argentina** and **Ukraine**, special human rights complaints can also be made to the highest court. In addition, regional and international tribunals, as subsidiary bodies for the protection of human rights, play a substantial role. Notably, when states fail to provide effective protection, as set out in regional and international human rights treaties and only once all the national mechanisms for the protection of human rights have been exhausted.

2.4.1. Independent oversight and complaint mechanisms

Aside from bodies of the executive and courts, publicly funded independent oversight mechanisms are fundamental to protecting civic space. Many of these independent public institutions have individual complaints mechanisms set out in law (OECD, 2018[210]) (Box 2.7). Once an individual has submitted a complaint, these institutions review the case. In case the institution concludes that a human rights violation or case of abuse of powers has taken place, it may engage in different kinds of actions to resolve the case, depending on its respective mandate. In some countries, such institutions have additional power to take cases to court or to issue sanctions.

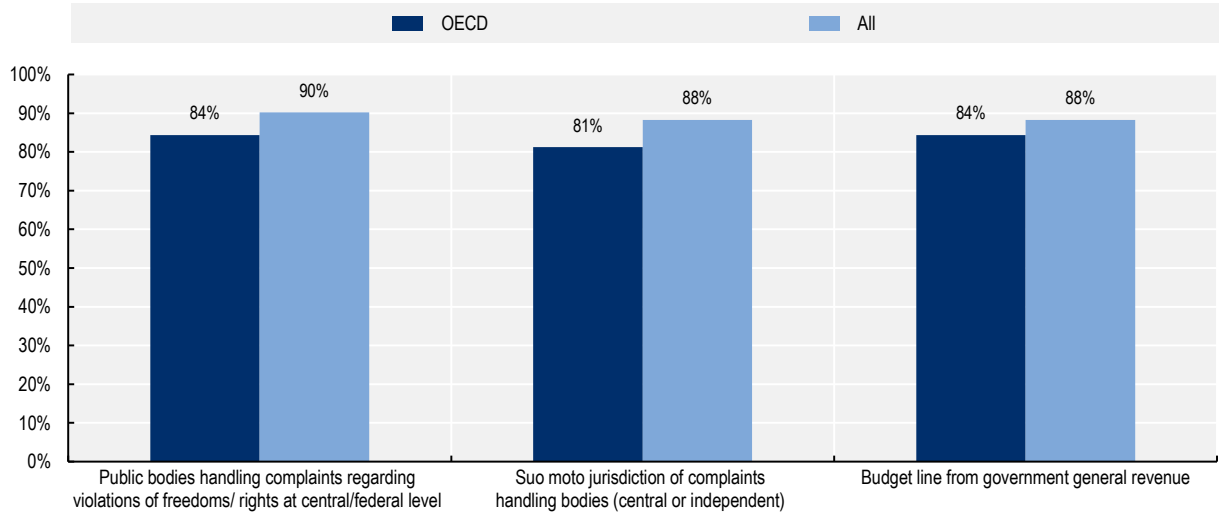
Figure 2.17 shows that 90% of all respondents and 84% of OECD respondents have established independent public institutions that address human rights complaints such as an NHRI, including ombudsperson offices. All respondents have passed specific legislation establishing human rights complaint or oversight mechanisms, while many also have set out the main elements of such institutions in their constitutions. In 88% of all respondents and 81% of OECD respondents, the independent public institution may initiate human rights investigations of its own accord (*suo moto*), regardless of whether an individual human rights complaint was received or not. This is crucial to ensure complete and consistent human rights protection in a country, as, in this way, human rights protection mechanisms can engage proactively in a given situation and do not depend on individuals to review alleged human rights violations that have come to their attention, especially in sensitive matters where individuals may fear negative consequences if they lodge a complaint. This role has been recognised in relation to ombuds institutions by the European Commission for Democracy through Law (Venice Commission), which has advised that ombudspersons should have discretionary power to investigate cases on their own initiative (CoE, 2019[211]).

As specified in the UN Principles relating to the Status of National Institutions (Paris Principles) sufficient funding is essential to ensure the smooth functioning of such institutions. Figure 2.17 illustrates that, in 88% of all respondents and 84% of OECD Members that have an independent public institution in place, government revenues are the main funding source, with a separate budget line to ensure a degree of financial independence from the government. To further ensure their financial independence from governments, certain OECD Members and non-Members, such as **Armenia,** the **Dominican Republic** and **Panama**, have also introduced special safeguards to protect NHRIs from unforeseen or unjustified budget cuts.

Disaggregation of data by such institutions in published reports facilitates their work; 53% of respondents declared that they undertook some data disaggregation, at least with respect to the nature of the complaints and the respondent administrative body. Only a small minority of these respondents confirmed that the data are disaggregated by age or gender, however. This kind of disaggregated data can provide valuable information on vulnerable and marginalised groups and help track discrimination and structural inequalities, providing the basis for evidence-based policy making. When collected regularly and disaggregated, such statistics allow policy makers to monitor trends and track progress in achieving goals towards equality, not only in relation to groups such as the elderly, men and women but also in relation to other potentially disadvantaged groups, such as minority communities or persons with disabilities.

Figure 2.17. Independent oversight and complaint mechanisms, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (32 OECD Members and 19 non-Members). For the sub-question "Budget line from government general revenue", "All" refers to 48 respondents (30 OECD Members and 18 non-Members). Data on Austria, Guatemala, Ireland, Slovenia and Türkiye are based on OECD desk research for at least one of the categories and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

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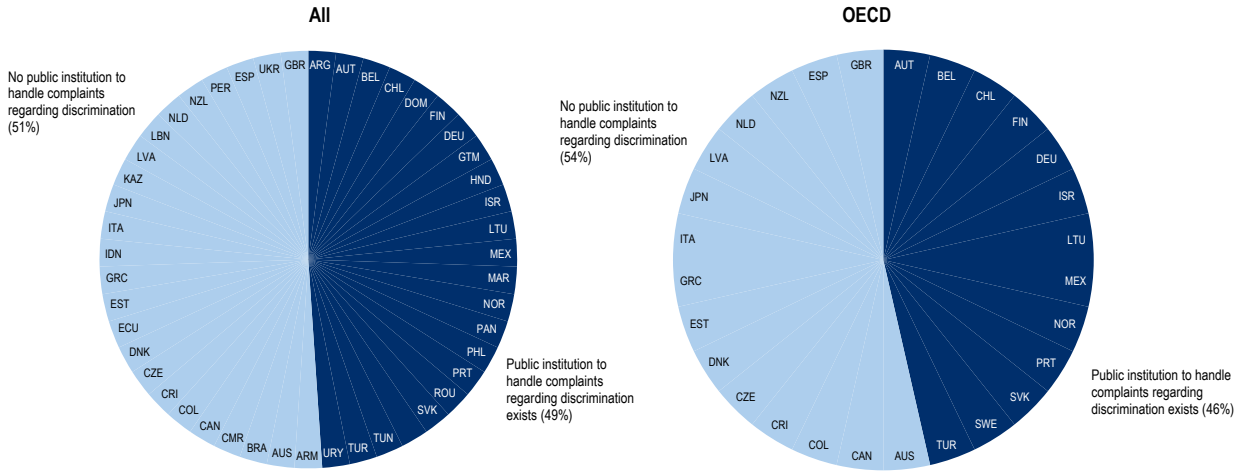
Figure 2.18 shows that 49% of all respondents and 46% of OECD respondents have separate oversight institutions that specialise in discrimination cases and promoting equality.

Figure 2.18. Institutions that specialise in discrimination cases, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 47 respondents (28 OECD Members and 19 non-Members).
Source: 2020 OECD Survey on Open Government.

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Box 2.7. Good practices in securing the independence of complaints/oversight mechanisms

The role of human rights complaints and/or oversight mechanisms is to examine complaints or other information to establish whether certain acts, laws or other regulatory acts have violated the human rights and fundamental freedoms of individuals. Part of a proper examination of such complaints necessarily involves a review of state actions, primarily actions of public administrations and other decision-making bodies affecting individuals or groups of individuals and their rights.

The independence of such public bodies is best achieved when the procedure for the appointment of the leaders or members of NHRIs is described in an official act outlining the specific duration of their mandates. The Venice Commission has recommended that the term of office of an ombudsman should be longer than the mandate of the appointing body and that, preferably, the term of office should be limited to a single term, or at a minimum, renewable only once (2022[212]).

The national laws of many OECD Members, such as **Austria**, **Chile**, the **Czech Republic**, **Estonia**, **Finland** and **Spain** and non-Members, such as **Argentina**, **Armenia**, **Cameroon**, **Morocco**, and the **Philippines**, indicate the specific duration of the relevant institution's mandate. Some OECD Members, namely **Austria,** the **Czech Republic, Portugal**, the **Slovak Republic** and **Türkiye,** and non-Members, such as **Argentina**, **Cameroon**, the **Dominican Republic** and **Romania**, seek to further strengthen the independent nature of such institutions by allowing the incumbent individual or members of a body to be re-appointed only once.

The manner in which the heads or members of such institutions are appointed and dismissed is also of consequence for their independence. The Paris Principles specify that appointment procedures should ensure the pluralist representation of social forces involved in the promotion and protection of human rights but note that government departments, if included, should only have an advisory capacity (ENNHRI, 1993[213]). In this context, Council of Europe and EU bodies have emphasised that the

selection and appointment process should be competency-based, transparent and participatory (CoE, 2019[211]), and that ombudspersons should preferably be appointed by a qualified parliamentary majority (CoE, 2016[214]).

In many OECD Members, the heads or members of NHRIs are appointed via a majority of the members of parliament. A number of OECD Members such as **Colombia, Mexico, Portugal, Slovenia, Spain** and **Türkiye,** as well as **Argentina, Armenia** and the **Dominican Republic** even require a qualified majority. In **Peru**, the process of nominating potential candidates for the head of an institution is initiated via an open call to the public and, in **Türkiye**, anyone matching the requisite eligibility criteria may apply. In **Uruguay**, certain CSOs may propose candidates to parliament, while in **Ecuador**, the same generally applies to CSOs and citizens. In **Mexico**, the competent senatorial committee conducts extensive consultations with social and human rights organisations prior to compiling a list of candidates.

In many respondents, relevant legislation also specifies the circumstances in which the respective head or members of the institution may be removed, which is in line with Council of Europe recommendations requiring an objective and impartial dismissal process with clearly defined terms set out in legislation]) (CoE, 2021[215]). In **Chile** and **Estonia**, the head or member may only be removed by decision of the Supreme Court.

Furthermore, it is crucial to create the necessary enabling environment for such institutions by providing state protection and support, including legal provisions granting staff functional immunity and guaranteeing the inviolability of relevant premises, in addition to ensuring that they do not face any form of reprisal or intimidation, including political pressure, harassment or unjustifiable budgetary limitations, as a result of activities undertaken in accordance with their respective mandates. Given that such institutions usually exercise a form of "soft power", it is also advisable to ensure that relevant laws oblige public bodies to co-operate with them.

Source: Council of Europe (2016[214]), *Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors*, https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset_publisher/aDXmrol0vvsU/content/recommendation-cm-rec-2016-4-of-the-committee-of-ministers-to-member-states-on-the-protection-of-journalism-and-safety-of-journalists-and-other-media-; ENNHRI (1993[213]), *UN Paris Principles and Accreditation*, http://ennhri.org/about-nhris/un-paris-principles-and-accreditation/; Council of Europe (2019[211]), *Principles on the Promotion and Protection of the Ombudsman Institution (the Venice Principles)*, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e.

Key measures to consider on legal frameworks governing independent oversight and complaint mechanisms

- Establishing and adequately resourcing independent public institutions that have a mandate to address human rights complaints and affording suo moto *powers to such institutions.*

2.4.2. Implementation challenges and opportunities, as identified by CSOs and other stakeholders

More than half of the NHRIs or ombudsman offices worldwide reporting to UN human rights bodies in 2020 stated that they had adequate legislative frameworks and that they were receiving adequate financial resources that allowed them to work independently and efficiently (UN, 2017[216]). At the same time, some NHRIs in OECD Members have raised concerns about their ability to function independently from the executive.

In 2021, NHRIs in Europe, including those in **Belgium**, **Denmark**, **Finland**, **Germany**, **Ireland**, **Norway**, **Slovenia**, **Spain** and **Türkiye**, reported good co-operation with national authorities (ENNHRI, 2021[63]). Nevertheless, some NHRIs also highlighted issues with regard to the amount of time taken to implement their recommendations, including in **Belgium**, the **Czech Republic**, the **Slovak Republic**, **Slovenia** and

Ukraine. The effectiveness of consultations with governments was also raised in the **Czech Republic, Germany, Hungary, Luxembourg** and the **Slovak Republic,** including the absence of regular consultations with national governments in **Germany** and **Greece.**

Regional networks of NHRIs have also reported challenges due to negative public discourses, budget cuts, reprisals and intimidation against NHRIs in recent years, including in **Ecuador, Guatemala**, **Mexico**, the **Philippines** and **Poland** (GANHRI, 2020[217]; Rindhca, 2021[218]; International Ombudsman Institute, 2020[219])**.**

> ***Key measures to consider on addressing implementation challenges relating to independent oversight and complaint mechanisms***
>
> *Ensuring that independent public institutions addressing human rights complaints are functionally and financially independent from the executive. In particular, adequate and consistent funding is crucial for such oversight institutions and their ability to effectively respond to allegations of human rights abuses and fulfil their core mandates.*

2.5. The role of public communication in promoting civic space

Governments are increasingly aware of the role that effective public communication plays in: raising awareness among citizens, CSOs and other stakeholders about the public administration's activities; promoting opportunities and avenues for engagement and collaboration with the government; facilitating public feedback on policies and services; and informing citizens regarding feedback and complaint mechanisms. Understood as the government function to deliver information, listen and respond to citizens in the service of the common good and of democratic principles, public communication is key to building a more informed and active citizenry.[73] In this sense, it is a key component of a healthy information ecosystem and essential for encouraging democratic engagement (OECD, 2021[220]). Ultimately, public communication demonstrates openness and in doing so, contributes to building public trust, restoring public confidence among prevalent perceptions that citizens have little influence over policy making and improving citizen compliance with and support for public policies, services and reforms (OECD, 2020[221]; 2021[220]).

In relation to civic space, governments can commit to strengthening their communication with citizens and CSOs on individual rights, opportunities to participate in public decision making, as well as broader issues such as the CSO enabling environment. Such communication can benefit from being based on audience insights, including the public's preferences regarding different channels of information. Governments can also use online platforms to sustain an effective two-way dialogue with citizens and stakeholders that fulfil their duty to inform the public about individual rights (e.g. the right to assemble peacefully), related obligations (e.g. the need to inform the police of the time and location of an assembly) and complaint mechanisms (e.g. how to lodge a formal complaint in the event of excessive use of force by police during a protest), in addition to seeking feedback on new policies, bills, programmes and services.

Many governments already undertake initiatives to communicate with citizens and stakeholders on these issues and do so using a range of channels, including online portals, information offices, social media and helpline/messaging services. Both OECD and non-Members alike have developed good practices in the area of government communication on civic space matters. Table 2.1 highlights some examples.

Table 2.1. Information provided by governments on civic freedoms, 2020

Freedom/right	Good practices
Freedom of expression	**Canada** shares information specifically on freedom of speech in an online webpage, which also provides updates on how Canada is strengthening this right at home and globally (Government of Canada, 2022[222]). **Kazakhstan** has an Open Dialog Portal that includes a blog platform where public officials at both the national and subnational levels can share information on civic freedoms (Government of Kazakhstan, n.d.[223]). **Tunisia**'s High Commission for Human Rights and Fundamental Freedoms provides citizens with information on their civic rights and offers a helpline service (Tunisian High Commission for Human Rights and Fundamental Freedoms, n.d.[224]).
Freedom of assembly	**Germany** has a specific webpage for the right to assembly, noting its importance for liberal democracy and outlining the relevant legal provisions underpinning the right (Government of Germany, n.d.[225]). **New Zealand**'s Human Rights Commission has a variety of tools, research and resources on citizens' rights, including the freedom of assembly (New Zealand Human Rights Commission, n.d.[226]).
Freedom of association	**Chile** has an active Observatory of Citizen Participation and Non-Discrimination that promotes the development of policies and initiatives that strengthen citizen engagement and communicates widely through social media (Government of Chile, n.d.[227]). **Mexico**'s National Human Rights Commission offers information on freedom of association, assembly and demonstration, among others, and encourages citizens to associate to express ideas and make demands (Mexican National Human Rights Commission, n.d.[228]).
Right to privacy	**Belgium** has an online portal on the right to privacy, which informs citizens of ways to protect their data and the security of their devices (Government of Belgium, n.d.[229]). The **Latvian** Ombudsman also has a webpage, which details the right to private life and gives citizens several contact options, including an in-person office and a helpline (Latvian Ombudsman, n.d.[230]).
CSO enabling environment	**Argentina's** National Centre for Community Organisations has a number of quick-access webpages with information on registration, CSO data, virtual advice and other publications and relevant materials (Government of Argentina, n.d.[231]). **Estonia** has a CSO portal that offers a helpline and allows individuals and organisations to ask for advice from the conception to the dissolution of a CSO (Government of Estonia, n.d.[232]). **Morocco**'s General Secretariat of the Government provides information on the legal and regulatory frameworks that govern associations, as well as instructions on how to appeal for public generosity (Moroccan General Secretariat of the Government, n.d.[233]).

Source: 2020 OECD Survey on Open Government.

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Notes

1. For the purposes of this report, the term civic freedoms refers to the freedom of expression, peaceful assembly, association and the right to privacy.

2. See Articles 17, 19, 21 and 22 of the ICCPR (which grant the rights to privacy, freedom of expression, of peaceful assembly and freedom of association respectively to "everyone"), Articles 11, 13, 15 and 16 (which likewise grant the rights to privacy, freedom of thought and expression, to peaceful assembly and freedom of association respectively to "everyone") of the ACHR and Articles 8, 10 and 11 of the ECHR, which also grant the rights to privacy, freedom of expression, freedom of peaceful assembly and freedom of association respectively to "everyone".

3. Unless otherwise stated, in line with the OECD Survey on Open Government (see glossary), and for the purposes of this report, the term citizen is meant in the sense of an inhabitant of a particular place and not as a legally recognised national of a state.

4. See Article 19 of the ICCPR, with the same concept also found in Article 10 of the ECHR and Article 13 of the ACHR, which speaks of "freedom of thought and expression".

5. See Article 19, para. 3, of the ICCPR and Article 13, para. 2, of the ACHR. Article 10, para. 2, of the ECHR contains similar exceptions but additionally allows restrictions in the interests of territorial integrity, and for the prevention of disorder or crime or of the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

6. See Article 20, para. 2, of the ICCPR and Article 13, para. 5, of the ACHR, which speaks of incitement to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, colour, religion, language or national origin, which shall be considered as offences punishable by law. See also the case law of the European Court of Human Rights, notably E.S. v. Austria, No. 38450/12, Judgment of 25 October 2018, para. 43, stating that expressions that seek to incite or justify hatred based on intolerance do not enjoy the protection afforded by Article 10 of the ECHR.

7. See some examples for these listed in European Court of Human Rights, Wille v. Liechtenstein, No. 28396/95, Grand Chamber, Judgment of 28 October 1999, para. 43.

[8.] See European Court of Human Rights, Fatullayev v. Azerbaijan, No. 40984/07, para. 103, where the court found that the imposition of a prison sentence in such cases was compatible with Article 10 of the ECHR only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in cases of hate speech or incitement to violence. See also, in this context, IACHR, Judgment in the case of Ricardo Canese v. Paraguay, 31 August 2004, paras. 105-106.

[9.] See Article 19, para. 3, of the ICCPR, Article 10, para. 2, of the ECHR and Article 13, para. 2, of the ACHR.

[10.] See Council of Europe (2007[8]), para. 17, where states are called upon to define the concept of defamation more precisely in their legislation so as to avoid an arbitrary application of the law.

[11.] See UN Human Rights Committee (2011[3]), para. 47; European Court of Human Rights, Cumpănă and Mazăre v. Romania, No. 33348/96, Judgment of 17 December 2004, para. 116, where the court found that the imposition of prison sentences in a defamation case will, by their very nature, have a chilling effect on the exercise of freedom of expression. See also IACHR, Judgment in the case of Kimel v. Argentina, 2 May 2008, para. 76, noting that a broad definition of the crime of defamation could be contrary to the principle of minimum, necessary, appropriate, and last resort or ultima ratio intervention of criminal law.

[12.] See European Court of Human Rights, Reznik v. Russia, No. 4977/05, Judgment of 4 April 2013, para. 46.

[13.] See European Court of Human Rights, Lingens v. Austria, No. 9815/82, Judgment of 8 July 1986, para. 42, where the court noted that unlike private individuals, politicians inevitably and knowingly lay themselves open to close scrutiny of their every word and deed by both journalists and the public at large and must consequently display a greater degree of tolerance. See also IACHR, Case of Herrera-Ulloa v. Costa Rica, Judgment of 2 July 2004, para. 128.

[14.] While hate speech relates to speech with reference to a person or a group and aims to incite discrimination or violence towards that person or group based on who they are (e.g. due to their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor) incitement to violence relates to any act inciting or instigating a person or a crowd to the use or threat of violence against others.

[15.] See, in this context, IACHR (2015[238]), where the commission and its Office of the Special Rapporteur for Freedom of Expression reaffirmed that in order to effectively combat hate speech, a comprehensive and sustained approach that goes beyond legal measures and includes preventive and educational mechanisms should be adopted.

[16.] Restrictions on any form of expression must remain an exception for cases that fall into one of three categories acknowledged in international human rights law: i) states must criminalise expression that constitutes incitement to genocide (Art. III [c] of the Convention on the Prevention and Punishment of the Crime of Genocide, “direct and public incitement to commit genocide” is punishable); ii) states must prohibit by law, though not necessarily criminalise, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (ICCPR, Art. 20 [2]); iii) countries may further restrict the exercise of the right to freedom of expression only as provided by law and as necessary for respect of the rights or reputations of others or for the protection of national security, public order, or public health or morals (ICCPR, Art. 19 [3]).

[17.] This does not apply to countries where insulting religions or their leaders or institutions is only punishable if it disturbs the peace.

18. See European Court of Human Rights, E.S. v. Austria, No. 38450/12, Judgment of 25 October 2018, para. 43.

19. See Council of Europe, Parliamentary Assembly Resolution 1805 (2007) of 29 June 2007 on Blasphemy, religious insults and hate speech against persons on grounds of their religion, para. 15.

20. Article 19's analysis combines data from the V-Dem Institute's indicators and indices (over the period 2000-20) and its Pandemic Violations of Democratic Standards Index (2020-21). It selected the 25 most relevant indicators, half of which are based "on factual information obtainable from official documents, such as constitutions and government records" while the rest are "subjective assessments on topics like democratic and governing practices", with experts providing ratings for each country.

21. See European Court of Human Rights, Djavit An v. Turkey, No. 20652/92, Judgment of 20 February 2003, para. 56, and IACHR, Judgment in the case of Women Victims of Sexual Torture in Atenco v. Mexico, 28 November 2018, para. 171.

22. See UN Human Rights Committee, Denis Turchenyak et al. v. Belarus, Communication No. 1948/2010, views adopted on 24 July 2013, para. 7.4.

23. See Kiai (2013[237]), para. 59, who at the same time stressed that this does not apply where the message incites discrimination, hostility or violence within the meaning of Article 20 ICCPR. See further OSCE/ODIHR and Venice Commission (2020[45]), para. 30, and European Court of Human Rights, Primov and Others v. Russia, No. 17391/06, Judgment of 12 June 2014, para. 135, noting that it is only in rare cases that assemblies may be banned in relation to the message that their participants wish to convey.

24. It should be noted that generally only peaceful assemblies are protected in constitutions and other legislation.

25. See UN Human Rights Committee (2020[44]), para. 4; European Court of Human Rights, Kudrevičius and Others v. Lithuania, No. 37553/05, [GC] Judgment of 15 October 2015, para. 92.

26. See European Court of Human Rights, Kudrevičius and Others v. Lithuania, No. 37553/05, [GC] Judgment of 15 October 2015, para. 145; OSCE/ODIHR and Venice Commission (2020[45]), para. 19.

27. See European Court of Human Rights, Sergey Kuznetsov v. Russia, No. 10877/04, Judgment of 23 October 2008, para. 42.

28. See UN Human Rights Committee (2020[44]), para. 70, and Kiai (2012[236]), para. 28. See also European Court of Human Rights, Oya Ataman v. Turkey, No. 74552/01, Judgment of 5 December 2006, para. 38; OCSE/ODIHR and Venice Commission (2020[45]), para. 25; and Inter-American Commission on Human Rights (2015[234]), para. 129.

29. See European Court of Human Rights, Kudrevičius and Others v. Lithuania, No. 37553/05, [GC] Judgment of 15 October 2015, para. 150; Kiai (2012[236]), para. 29; and Inter-American Commission on Human Rights (2019[235]), para. 60.

30. See UN Human Rights Committee (2020[44]), para. 55, Kiai (2013[237]), para. 63, and OSCE/ODIHR/Venice Commission (2020[45]), para. 133.

31. See European Court of Human Rights, Christians against Racism and Fascism v. the United Kingdom, No. 8440/78, admissibility decision of 16 July 1980.

32. See UN Human Rights Committee (2020[44]), para. 56, and OSCE/ODIHR/Venice Commission (2020[45]), para. 147.

33. See UN Human Rights Committee (2020[44]), para. 53, and OSCE/ODIHR/Venice Commission (2020[45]), para. 132 and Inter-American Commission on Human Rights (2019[235]), para. 71.

34. The V-Dem Institute's indicator on freedom of peaceful assembly is based on the evaluation of multiple ratings provided by country experts, of whom about 85% are academics or professionals working in media or public affairs (e.g. senior analysts, editors, judges); about two-thirds are also nationals of and/or residents in a country and have documented knowledge of both that country and a specific substantive area.

35. See European Court of Human Rights, Gorzelik v. Poland, No. 44158/98, Judgment of 17 February 2004, para. 92.

36. See European Court of Human Rights, Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan, No. 37083/03, Judgment 8 October 2009, par. 82; OSCE/ODIHR/Venice Commission (2015[76]), paras. 35, 114, 253.

37. See IACHR, Huilca-Tecse v. Peru, and Judgment of 3 March 2005, para. 69 and Garcia and Family Members v. Guatemala, Judgment of 29 November 2012, para. 116.

38. See IACHR, Kawas-Fernández v. Honduras, and Judgment of 3 April 2009, paras. 145-146 and OSCE/ODIHR/Venice Commission (2015[76]), paras. 27, 29, 74 and 171.

39. While the question in the OECD Survey on Open Government focused on actions in the interests of public safety as an exception to freedom of association, numerous countries responded with references to legislation citing the maintenance of public order as a justification for limiting freedom of association. For this reason, both public safety and public order have been listed as exceptions to freedom of association found in national legislation.

40. While the question in the OECD Survey on Open Government focused on actions in the interests of national sovereignty as an exception to freedom of association, numerous countries responded with references to legislation citing national security as a justification for freedom of association.

41. See also OSCE/ODIHR/Venice Commission (2015[76]), para. 34.

42. See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report A/HRC/23/39, 24 April 2013, para. 30.

43. See also OSCE/ODIHR/Venice Commission (2015[76]), para. 34.

44. See Kiai (2013[237]), para. 8.

45. See UN (2013[237]), paras. 19 and 20. See also Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, para. 179, and OSCE/ODIHR/Venice Commission (2015[76]), paras. 32, 75, 221 and 222.

46. See, for general standards on proportionality UN Human Rights Committee, Lee v. Republic of Korea, Communication No. 1119/2002, views, 20 July 2005, paras. 7.2 and 7.3 and, with respect to dissolution of associations in particular, European Court of Human Rights, Vona v. Hungary, No. 35943/10, Judgment of 9 July 2013, paras. 58 and 71.

[47.] See European Court of Human Rights, Ognevenko v. Russia, No. 44873/09, Judgment of 20 November 2018, paras. 72-73; see also Junta Rectora Del Ertzainen Nazional Elkartasuna (ERNE) v. Spain, Application No. 45892/09, Judgment of 21 April 2015, paras. 38-40.

[48.] See European Court of Human Rights, Junta Rectora Del Ertzainen Nazional Elkartasuna (ERNE) v. Spain, Application No. 45892/09, Judgment of 21 April 2015, paras. 38-40.

[49.] See European Court of Human Rights, Matelly v. France, Application No. 10609/10, Judgment of 2 October 2014, para. 71.

[50.] See European Court of Human Rights, Denisov v. Ukraine, No. 76639/2011, [GC] Judgment of 25 September 2018, para. 95.

[51.] See Article 17 ICCPR.

[52.] See also Article 30 of the ACHR stating that restrictions on the enjoyment or exercise of the rights or freedoms recognised in the ACHR need to be in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.

[53.] See UN Human Rights Committee (1988[239]), para. 4.

[54] See ACHR, Art. 8, para. 2, and ECHR, Art. 11, para. 2.

[55.] See ECHR, Art. 8, para. 2.

[56.] See European Court of Human Rights, Hämäläinen v. Finland, No. 37359/09, [GC] Judgment of 16 July 2014, para. 65.

[57.] See European Court of Human Rights, Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland, [GC] Judgment of 27 June 2017, para. 136 and P.G. and J.H. v. the United Kingdom, No. 44787/98, Judgment of 25 September 2001, para. 57.

[58.] See European Court of Human Rights, Klass and Others v. Germany, No. 5029/71, Judgment of 6 June 1978, para. 42.

[59.] See UN Human Rights Committee (1988[239]), paras. 7 and 8; European Court of Human Rights, Khan v. the United Kingdom, No. 35394/97, Judgment 12 May 2000, para. 26; Shimovolos v. Russia, No. 30194/09, Judgment of 21 June 2011, para. 68; and IACHR, Escher et al. v. Brazil, Judgment of 6 July 2009, para. 131.

[60.] The OECD Members that declared a state of emergency: Australia, Colombia, Costa Rica, the Czech Republic, Estonia, Finland, France, Germany, Hungary, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Mexico, New Zealand, Portugal, the Slovak Republic, Spain and the United States.

[61.] This includes OECD Members that declared a general state of emergency and those that declared a state of health emergency (where such an option was available).

[62.] The OECD Members operating under a state of emergency as of June 2021 were: Australia, Colombia, Costa Rica, Hungary, Israel, Italy, Japan, Lithuania, Portugal, the Slovak Republic, Spain and the United States.

63. 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, e.g. European Court of Human Rights, Biao v. Denmark, No. 38590/10, [GC] Judgment of 24 May 2016, para. 103.

64. See Article 2, para. 1, of the ICCPR, Article 14 and Protocol No. 12 to the ECHR, Article 1 of the ACHR, and Article 2 of the African Commission on Human and Peoples' Rights (ACHPR). Article 26 of the ICCPR, Article 24 of the ACHR and Article 3 of the ACHPR contain separate provisions outlining the equality of individuals before the law, and the right to equal protection of the law.

65. At the European level, the European Court of Human Rights notes that any "difference in treatment of persons in analogous, or relevantly similar situations" based on an "identifiable characteristic, or "status" is capable of amounting to discrimination. Such difference in treatment is discriminatory if it has no objective and reasonable justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be achieved (Biao v. Denmark, No. 38590/10, [GC] Judgment of 24 May 2016, paras. 89-90).

66. See UN Human Rights Committee, CCPR General Comment No. 18: *Non-discrimination*, para. 10. Likewise, the European Court of Human Rights notes that the ECHR does not prohibit states from treating groups differently in order to correct "factual inequalities" between them (see, e.g. European Court of Human Rights, Taddeucci and McCall v. Italy, No. 15362/09, Judgment of 30 June 2016).

67. See, Art. 1, paras. 2 and 3, of the International Convention on the Elimination of All Forms of Racial Discrimination, stating that the convention does "not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens".

68. See Article 4 of the Convention on the Elimination of All Forms of Discrimination against Women, noting that the "adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention". In this context, see also Committee on the Elimination of Discrimination against Women (CEDAW), General recommendation No. 28 on the core obligations of States parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, 16 December 2010, para. 34: "States parties should financially support independent associations and centres providing legal resources for women in their work to educate women about their rights to equality and assist them in pursuing remedies for discrimination". See also Article 5, para. 4, of the Convention on the Rights of Persons with Disabilities, which states that "specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention".

69. At the same time, the report notes that weak legal frameworks with loopholes in some areas remain and still restrict women's access to rights and empowerment opportunities. Moreover, laws in some Caribbean countries continue to define women's citizenship rights in relation to their marital status. Discriminatory attitudes and violence against women in politics hinder women's full and uninterrupted political participation (OECD, 2020[105]).

70. The report also finds that the proportion of women in parliaments in the region was 30% in 2018, higher than the global average (24%), or the average for OECD Members (29%) (OECD, 2020[105]).

71. In Latin America, poverty levels in 2014 were significantly higher for the Afro-descendant and Indigenous population than for the non-Afro-descendant and non-Indigenous population. Lack of access to jobs and lower wages are problems facing African descendants throughout the LAC region (ECLAC, 2016[138]).

[72.] OECD Members are in a position to support civic space and civil society in non-Members in many other ways – in line with the 2021 DAC Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance – that are not fully discussed in this report due to space constraints. See also Section 5.5 on the protection of civic space as part of development co-operation in Chapter 5.

[73] This is distinct from political communication, the legitimate but partisan communication conducted by elected officials, political parties and figures that supports personal, party or electoral objectives.

3 Protecting and promoting the right to access information as a core component of civic space

This chapter provides an overview of the fundamental right to access information as a key element of civic space and open government. It first outlines the role of access to information as a right, its intersection with other civic freedoms, and how the right is protected and promoted through international treaties and conventions. The chapter then focuses on the legal framework for access to information (ATI), including constitutional recognition and ATI laws, and how their various provisions can be more effectively implemented to foster civic space. Finally, it outlines trends, challenges and opportunities for strengthening the right to access information.

Key findings

- Transparency is a core element of a functioning democracy as well as of a healthy public interest information ecosystem. It is underpinned by the right to access information, understood as the ability of an individual to seek, receive, impart and use information. The right to access information has been enshrined in the constitutions of 70% of respondent OECD Members (78% of all respondents). Since the 2000s, there has been a significant increase in the adoption of ATI laws, however, countries still face challenges in the effective implementation of the law in practice.
- Most ATI laws require the proactive disclosure of a minimum set of public information: 84% of respondent OECD Members and of all respondents outline specific conditions for proactive disclosure in their guidelines on access to information. Some have also undertaken consultations with citizens and stakeholders to understand which types of information are most relevant and useful.
- Ensuring inclusive and equitable access to information for all citizens and stakeholders is key for the exercise of the right to access information. Almost all (82%) respondent OECD Members (78% of all respondents) have ATI laws that stipulate that anyone can file a request.
- Almost half of all respondents provide additional support for requesters with special needs to ensure inclusive and equitable access to information, with half also providing information on how to make a request on a dedicated portal or website. Furthermore, some countries have made efforts to use plain language and undertake specific campaigns, training, and workshops with citizens and CSOs to raise awareness of their right to information.
- Ideally, filing a request for information is simple, free of cost and subject to clear deadlines for public officials to respond. In addition, it is important to protect the identity of citizens and to ensure that there is no risk of profiling, unjust denials or reprisals. Very few countries ask requesters to provide a motive for their request. That said, the legislative framework has provisions for anonymity when requesting information for only 18% of all respondents.
- Providing a legitimate justification upon denial of a request is important to secure trust in the ATI law. In the event of refusal, 97% of respondent OECD Members (96% of all respondents) require a justification. However, enforcement and sanctions for non-compliance remain rare.
- Appeals processes are necessary in the event of access to information being limited by a public body. All respondents have at least one mechanism for appeal, whether internal (79% respondent OECD Members, 76% of all respondents), external (85% OECD, 82% of all respondents) or judicial (97% OECD, 94% of all respondents). Most countries make efforts to ensure that filing an appeal is simple, free of charge to the extent possible, subject to clear timelines and available to all without legal representation.
- A co-ordination and oversight body for the ATI law, with a clearly defined mandate, sustained resources, an adequate level of independence and capacity for enforcement, is essential for its implementation. Most countries have a dedicated ATI oversight body such as an information commission/agency/body or ombudsman with a specific mandate for ATI (45% of respondent OECD Members, 47% of all respondents), an ombudsman with a wider mandate (27% of respondent OECD Members, 25% of all respondents) or a central government authority (52% of respondent OECD Members, 45% of all respondents). Fifty percent of respondent OECD Members (61% of all respondents) also provide for the establishment of an ATI office or officer in their laws.

3.1. Introduction

Transparency is a core foundational element of a functioning democracy (Guerin, Mccrae and Shepheard, 2018[1]) and a key principle of an open government, defined by the OECD as a "culture of governance that promotes the principles of transparency, integrity, accountability and stakeholder participation" (Section 1.3 in Chapter 1) (OECD, 2017[2]). Government transparency refers to "stakeholder access to, and use of, public information and data concerning the entire public decision-making process, including policies, initiatives, salaries, meeting agendas and minutes, budget allocations and spending" (OECD, 2021[3]). In an increasingly complex and interconnected information ecosystem, providing timely, reliable and relevant public sector data and information to citizens[1] and stakeholders has become crucial in promoting governments' accountability, combatting corruption and addressing challenges such as mis- and disinformation (OECD, 2022[4]).

Government transparency is underpinned by the right to access information, understood as the ability of an individual to seek, receive, impart and use information (UNESCO[5]). ATI invites citizens and stakeholders to engage with public officials in a tangible way and breaks down barriers in the government-citizen relationship, enabling them to champion their needs and those of their communities. In this sense, it sets the basis for citizens and stakeholders to access and use public information to exercise their voice, contribute to setting priorities and engage in an informed dialogue about – and participate in – policy making and service design and delivery. Furthermore, it allows citizens to engage in the effective monitoring of government actions and facilitates the oversight of the decisions that affect their lives.

Moreover, access to information is inextricably linked to other core civic freedoms as well as to facilitating an enabling environment for civic space in the digital age and in supporting press freedom (Chapter 4). ATI contributes to strengthening freedom of expression and a pluralistic and diverse media environment as part of a broader public information ecosystem built on accuracy, objectivity and informed debate. As a result, ATI is a core element of a protected civic space and safeguarding this right must be fulfilled in tandem with promoting other civic freedoms.

All survey data presented in this chapter pertain to the countries that responded (33 OECD Members and 18 non-Members) to the transparency section of the 2020 OECD Survey on Open Government (hereafter "the Survey") except where explicitly stated otherwise (e.g. Figure 3.2).

3.2. The right to access information as a fundamental right

Throughout the years, access to information has been recognised as a fundamental right as it enables citizens and stakeholders to be informed of and exercise other rights. The value of ATI as a fundamental right and as a key safeguard for democracy has become more evident in the past years. Various crises (ranging from financial to health-related), recurring corruption scandals, and the rise of social media and mis- and disinformation have increased the need and demand for accurate information from government as well as a more open and transparent decision-making process.

"Access to information", "right to information", "right to know" and "freedom of information" are often used as synonyms[2] (UNESCO, 2015[6]) and were initially understood as a free flow of information and not necessarily as the capacity to request and source information from public bodies, as it is known today. Under that definition, ATI was recognised as a "fundamental right and the touchstone of all freedoms" by Resolution 59 of the United Nations (UN) General Assembly held in 1946 (UN, 1946[7]). In 1948, the Universal Declaration of Human Rights (UDHR) stated in its Article 19 that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (UN, 1948[8]). Although access to information was not explicitly mentioned, "to seek, receive and impart information" has been interpreted by international and regional human rights laws as providing the right of

ATI (McDonagh, 2013[9]). Most treaties, conventions and laws ensuring freedom of expression and information are framed similarly.

Importantly, the International Covenant on Civil and Political Rights (ICCPR) laid out general principles and limitations for the enforcement of the rights to freedom of expression and information in 1976 (ICCPR, 2011[10]). It specified that the exercise of both rights is "subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals" (OHCHR, 1976[11]). This implies that signatories commit to protecting and preserving the rights stated therein by taking administrative, judicial and legislative measures to effectively enforce them. Furthermore, in 2011, the scope of freedom of information, as set in Resolution 59 of the UN General Assembly, was broadened with the General Comment 34 from the UN Human Rights Committee to include information held by public bodies regardless of the format. It also provided an interpretation of how Article 19 of the ICCPR should be implemented by adhering states (Box 3.1) (ICCPR, 2011[10]).

Box 3.1. General Comment 34 on access to information from the UN Human Rights Committee

General Comment 34 from the UN Human Rights Committee recognises that Article 19, para. 2, of the ICCPR embraces a right to access public information. Information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production. Public bodies, including all branches of the state (executive, legislative and judicial) and other public or governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the state party. The designation of such bodies may also include other entities when such entities are carrying out public functions. To give effect to the right to access information, states parties should:

- Proactively put in the public domain government information of public interest.
- Make every effort to ensure easy, prompt, effective and practical access to such information.
- Enact the necessary procedures whereby one may gain access to information, such as by means of freedom of information legislation.
- Guarantee procedures provide for the timely processing of requests for information according to clear rules that are compatible with the covenant.
- Ensure fees for requests for information are not such as to constitute an unreasonable impediment to ATI.
- Ensure authorities provide reasons for any refusal to provide ATI.
- Check that arrangements are put in place for appeals from refusals to provide ATI as well as in cases of failure to respond to requests.

Source: ICCPR (2011[10]), *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf.

Acknowledging the importance of this right, Target 16.10 of the UN Sustainable Development Goals (SDGs) specifies the need to "ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements" (UN[12]) (Box 3.2).

Box 3.2. SDG Target 16.10: Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements

Conceptually, "public access to information" refers to the presence of an effective system to meet citizens' rights to seek and receive information, particularly that which is held by or on behalf of public authorities. Several existing frameworks and documents recognised internationally mention principles of ATI, including legal frameworks with the following provisions for access to information: limited exemptions; obligation of public authorities to provide information (including proactively); oversight and appeals mechanisms; and record keeping. These ATI principles are often reflected, to varying degrees, in freedom of information or right to information laws and/or policies.

Access to information has been acknowledged as a key element of sustainable development since the adoption of the Rio Declaration in 1992.

In 2015, the 2030 Agenda for Sustainable Development recognised access to information ATI as a necessary enabling mechanism for transparent, accountable and participatory governance, rule of law and peaceful societies, as epitomised by SDG 16: Peace, justice and strong institutions (UN, n.d.[13]). SDG Target 16.10 calls for states to "ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements". SDG Indicator 16.10.2 was agreed upon by the UN Statistical Commission in 2016 and approved by the UN General Assembly in 2017. The indicator measures the adoption and implementation of constitutional, statutory and/or policy guarantees for public access to information in accordance with Article 19 of the UDHR and of the ICCPR.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) has been designated to report on progress made on SDG Target 16.10 on ensuring "public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements" (UNESCO, 2020[14]). In particular, Indicator 16.10.2 is measured based on the "number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information" (UNESCO, 2020[14]).

The UN Human Rights Council, in its 2020 resolution on freedom of opinion and expression (General Assembly A/HRC/44/L.18/Rev.1) at its 44th regular session, recognised that "public authorities should strive to make information available, whether the information is proactively published electronically, or provided upon request" (UNESCO, 2020[14]). Within the perspective of the 2030 Agenda, is critical for empowering the public to make decisions, holding governments accountable, evaluating public officials in implementing and monitoring the SDGs and facilitating effective public participation.

Source: United Nations (n.d.[13]), *The 17 goals*, https://sdgs.un.org/goals; UNESCO (2020[14]), *From Promise to Practice: Access to Information for Sustainable Development*, https://unesdoc.unesco.org/ark:/48223/pf0000375022.locale=en.

At the regional level, the most relevant conventions recognising the right to information are found in Europe, through the European Convention on Human Rights (ECHR) and the Council of Europe Convention on Access to Official Documents (Tromsø Convention); the Americas, through the Inter-American Convention on Human Rights; and in Africa, through the African Charter for Human and People's Rights.[3] Through a series of regional enforcement and monitoring mechanisms of the conventions, such as the European Court of Human Rights or the Inter-American Commission on Human Rights (IACHR), citizens and stakeholders can file complaints and appeals processes in case of violations of their rights.

At the supranational level, the right to ATI has also been developed in certain sectoral policies, particularly the environmental sector. One relevant international example is the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted in 1998 (UNECE, 1998[15]). The ATI pillar of the convention calls upon adhering countries to make environmental information available for citizens within the framework of their national legislations. The OECD also adopted in 1998 the Recommendation of the Council on Environmental Information [OECD/LEGAL/0296] recommending Adherents take all necessary actions to increase the availability of public environmental information held by public authorities, improve the quality, relevance and comparability of data and promote periodic, publicly-accessible environmental reporting by enterprises (OECD, 1998[16]). This Recommendation was recently replaced by the Recommendation of the Council on Environmental information and Reporting [OECD/LEGAL/0471] and recommends that Adherents "take all necessary actions to increase the availability to the public of environmental information held by public authorities and ensure adequate dissemination and timely and user-friendly access". Another notable legal instrument at the regional level is the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean in 2018, also known as the Escazú Agreement (ECLAC, 2018[17]). This legally binding agreement, which entered into force in April 2021, includes obligations for generating, disseminating and providing access to information pertaining to environmental matters. Overall, the progress made on environmental policies and access to information at the supranational level helped boost national legal frameworks on ATI (Darbishire, 2015[18]).

3.3. The legal and institutional framework facilitating access to information

3.3.1. Constitutional recognition of the right to access information

At the national level, the legal frameworks for access to information can take different forms depending on the context and particularities of each country. In fact, ATI has been enshrined in many constitutions across the world. In 70% of respondent OECD Members and 78% of all respondents, including **Estonia, Mexico** and **Portugal** (Box 3.3 for more examples), it is recognised as a constitutional right.

Box 3.3. Examples of constitutions that recognise the right to access information

Belgian constitution

Article 32: "Everyone has the right to consult any administrative document and to obtain a copy, except in the cases and conditions stipulated by the laws, federate laws or rules referred to in Article 134" (2021[19]).

Colombian constitution

Article 20: "Every individual is guaranteed the freedom to express and diffuse his/her thoughts and opinions, to transmit and receive information that is true and impartial, and to establish mass communications media" (1991[20]).

Article 74: "Every person has a right to access to public documents except in cases established by law".

Finnish constitution

Section 12: "Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right to access public documents and recordings" (1999[21]).

Greek constitution

Article 5(A): "1. All persons have the right to information, as specified by law. Restrictions to this right may be imposed by law only insofar as they are absolutely necessary and justified for reasons of national security, of combating crime or of protecting rights and interests of third parties. 2. All persons have the right to participate in the Information Society. Facilitation of access to electronically transmitted information, as well as of the production, exchange and diffusion thereof, constitutes an obligation of the State, always in observance of the guarantees of articles 9, 9A and 19" (2008[22]).

Indonesian constitution

Article 28F: "Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by employing all available types of channels" (2002[23]).

Moroccan constitution

Article 27: "The citizens [feminine] and citizens [masculine] have the right to access information held by the public administration, the elected institutions and the organs invested with missions of public service. The right to information may only be limited by the law, with the objective of assuring the protection of all which concerns national defence, the internal and external security of the State, and the private life of persons, of preventing infringement to the fundamental freedoms and rights enounced in this Constitution and of protecting the sources and the domains determined with specificity by the law" (2011[24]).

Portuguese constitution

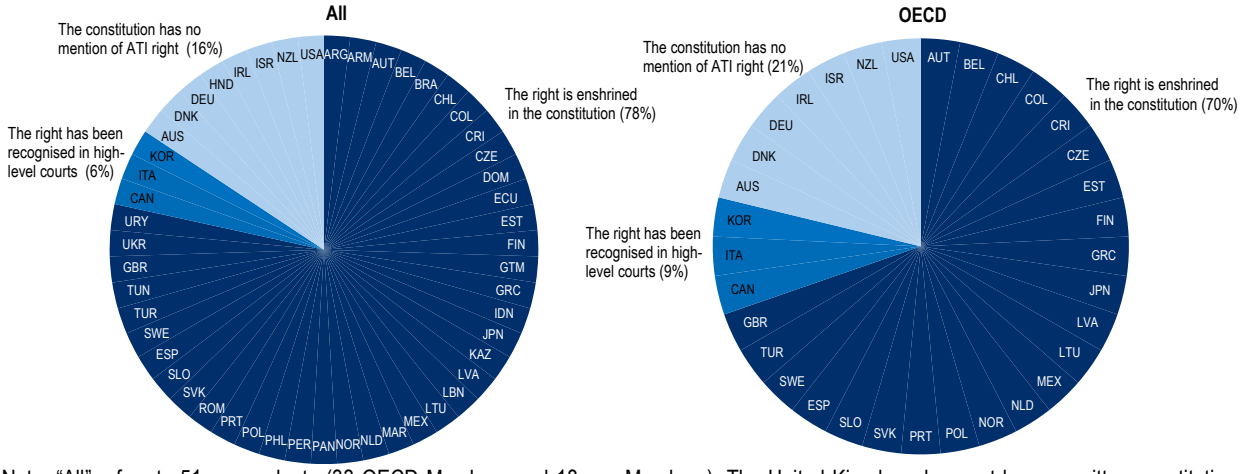
Article 268: "1. Citizens have the right to be informed by the Administration, whenever they so request, as to the progress of the procedures and cases in which they are directly interested, together with the right to be made aware of the definitive decisions that are taken in relation to them. 2. Without prejudice to the law governing matters concerning internal and external security, criminal investigation and personal privacy, citizens also have the right to access administrative files and records" (2005[25]).

Source: Government of Belgium (2021[19]), *The Belgian Constitution (English translation)*, https://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetUK.pdf; Government of Colombia (1991[20]), *Political Constitution 1 of 1991*, https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=4125; Government of Finland (1999[21]), *The Constitution of Finland*, https://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf; Government of Greece (2008[22]), *The Constitution of Greece*, https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf; Government of Indonesia (2002[23]), *The 1945 Constitution of the Republic of Indonesia*, https://www.parliament.go.th/ewtadmin/ewt/ac/ewt_dl_link.php?nid=123&filename=parsystem2; Government of Morocco (2011[24]), *The Constitution*, http://www.sgg.gov.ma/Portals/0/constitution/constitution_2011_Fr.pdf; Government of Portugal (2005[25]), *Constitution of the Portuguese Republic*, https://www.wipo.int/edocs/lexdocs/laws/en/pt/pt045en.pdf.

In **Canada, Israel** and **Korea**, the right has been recognised in high-level courts (i.e. jurisprudence, Supreme Court rulings, etc.). For 16% of all respondents, ATI is not mentioned in the constitution; however, some countries recognise the right directly in national legislation (Figure 3.1). Such is the case in **Honduras**; while the constitution has no mention of it, the law recognises "the right that every citizen has to access information generated, managed or held by obliged institutions provided for in this law" (Government of Honduras, 2006[26])".

Figure 3.1. Respondents with the right to access information enshrined in their constitutions, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (33 OECD Members and 18 non-Members). The United Kingdom does not have a written constitution. However, a series of acts are considered to be an equivalent to the constitution. The Human Rights Act 1998 is one of these and it mentions the right to information as part of the right to freedom of expression in Article 10: Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority regardless of frontiers.

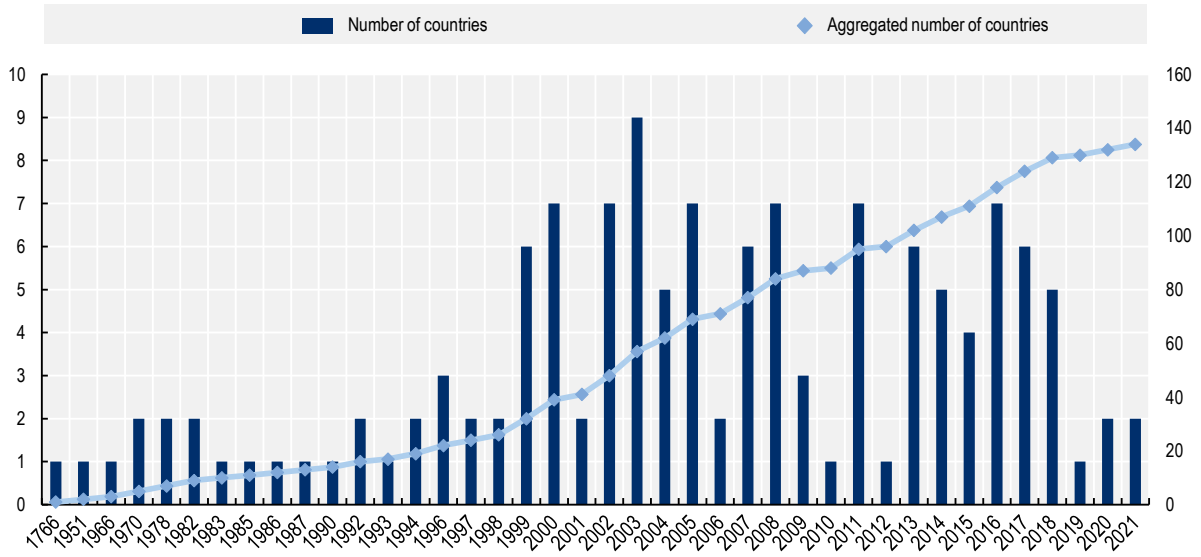
Source: 2020 OECD Survey on Open Government and the Global Right to Information Rating (n.d.[27]), "By country", https://www.rti-rating.org/country-data/ (accessed on 16 December 2021).

> ***Key measures to consider on recognising the right to access information***
>
> *Enshrining the right to information at the highest legislative level to recognise this fundamental right and ensure it is operationalised through a legal framework such as an ATI law. This would ensure longevity throughout changing political cycles and grant additional legitimacy to the development of a legal and institutional framework for access to information at all levels and branches of government.*

3.3.2. The right to access information is operationalised through ATI laws

The right to access information is mostly made operational through specific ATI laws that can be enacted at the national and subnational levels. These guarantees can also take the form of specific decrees, as is the case in **Costa Rica**, or directives or laws providing access to certain types of information (i.e. environmental, health). The first country to adopt an ATI law was **Sweden** in 1766, then **Finland** in 1951, followed by the **United States** in 1966. Since the 2000s, there has been a significant increase in the adoption of these laws, with 75% adopted during the past 2 decades (Figure 3.2). According to the Global Right to Information (RTI) Rating, ATI laws are present in 134 countries (RTI Rating[27]), including 37 OECD Members.[4]

Figure 3.2. Evolution of the adoption of ATI laws, 1766-2021

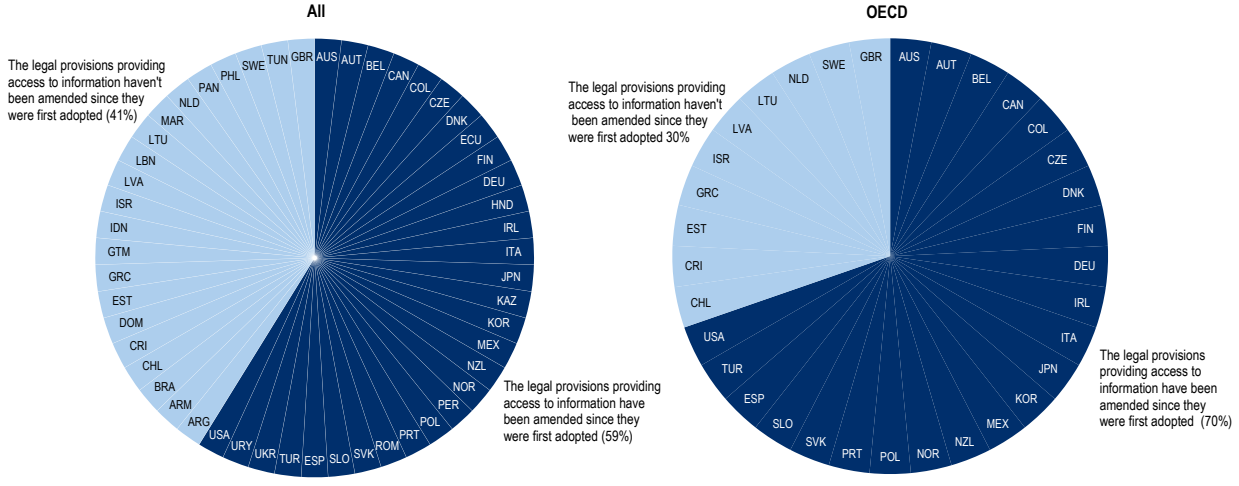


Note: Costa Rica does not currently have an ATI law in place.
Source: Author, based on Global Right to Information Rating (n.d.[27]), "By country", https://www.rti-rating.org/country-data/ (accessed on 16 December 2021).

The first generation of ATI laws essentially provided for the right of access to official "documents" or "records" – meaning documents officially created by the administration in the course of its duties. Recent laws have clarified the scope of the "right to access information" and the definition of "information" more broadly than documents or records; they refer to all material held by public authorities in any format (written, audio, visual, etc.). They have also strengthened proactive disclosure and have defined a clear mandate, responsibilities, and range of powers for bodies in charge of its implementation and/or oversight. In fact, 59% of the laws providing access to information in all respondents have been amended since they were first adopted, as is the case for **Italy**, **Ireland**, **Norway** and **Peru** (Figure 3.3), while 41% have not.

Figure 3.3. Respondents that have amended their ATI laws, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (33 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

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For OECD Members, most of the amendments expanded the right rather than restricted it. For example, in **Italy**, an amendment in 2016 introduced "generalised civic access", which is an approach intended to give citizens the widest possible access to public documents, meaning they can request any materials held by public bodies and not only the documents subject to publication as per the former law. In 2016, **Ireland** amended its law to expand the framework's reach to all public bodies unless specifically exempt. The new legislation also reduced the fees set for applications for both internal review and reviews by the Office of the Information Commissioner and introduced a minimum threshold and maximum fee limit for the search, retrieval and copying of information. As part of this process, two expert review groups considered and reported on the ATI system in Ireland in order to inform the drafting process. 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 ways in which these new amendments and provisions vary can often be attributed to whether they were adopted recently or could be classed as first-generation laws. For example, the law may not specify certain digital formats or make references to making online requests, depending on when it came into force. Some good practices on consulting stakeholders include **Romania,** which opened the amendment process to a public consultation, which involved civil society, representatives from academia, trade unions, business councils and the media. **Poland** also involved civil society actors and ensured public actors, such as the ombudsman and relevant ATI offices, participated in consultations.

> ***Key measures to consider on operationalising the right to access information through an ATI law***
>
> *- Continually monitoring and evaluating ATI laws to guarantee that they reflect changes in how modern public administrations function, for example, in regard to new technology. These assessments can assist countries in identifying legal gaps and potential bottlenecks to streamline ATI practices.*
>
> *- Taking an inclusive approach by facilitating the participation of a diverse range of stakeholders when considering amendments to the law.*

As stated by the RTI Rating, although every ATI law is different and must respond to the specificities of each country, they all share similar provisions, namely: objectives and scope; provisions for proactive and reactive disclosure; potential exemptions and denials to grant information to the public; the possibility to file internal and/or external appeals; and measures to encourage promotion of the law (RTI Rating[28]).

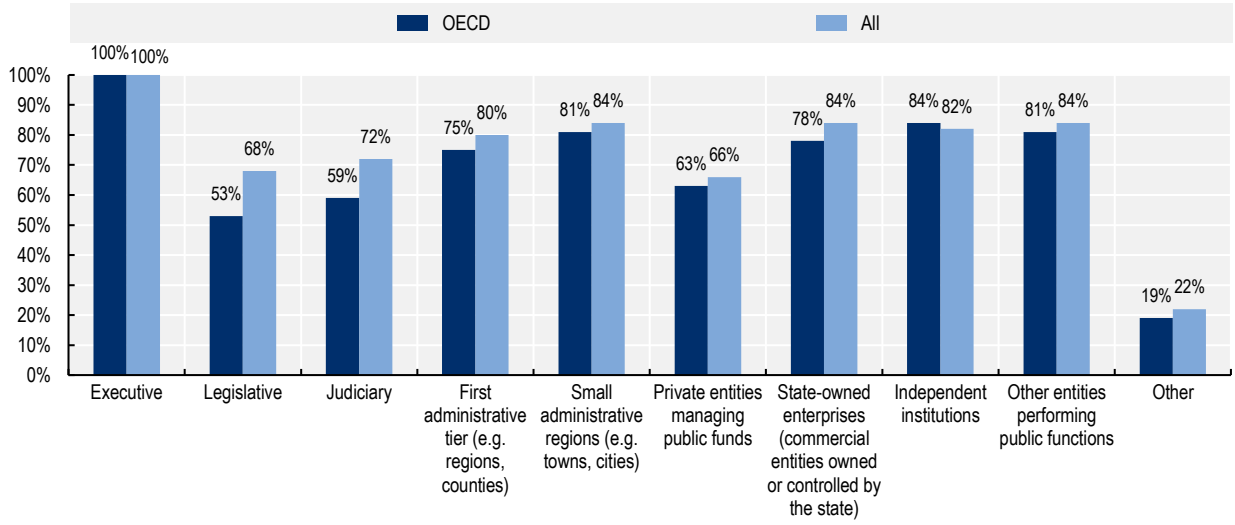
The objectives and scope of ATI laws

Ideally, an ATI law would include clearly stated objectives for granting access to public information and the term "information" would be defined. According to Article 19, information should be defined as "all records held by a public body, regardless of the form in which the information is stored (document, tape, electronic recording and so on), its source (whether it was produced by the public body or some other body) and the date of production" (Article 19, 2016[29]). In 76% of respondent OECD Members (82% of all respondents), the law applies to any material held by public authorities in any format. Other laws mention written, audio and/or visual formats, while 21% of respondent OECD Members (16% of all respondents) do not have any formats specified in the law.

The scope of application of ATI laws indicates whether the provisions in place apply to all branches of government, all levels of government, independent institutions of the state and the entities carrying out public functions or managing public funds. In addition to the national executive, 75% of respondent OECD Members (80% of all respondents) cover the first administrative tier[5] (e.g., regions, counties), and 81% of respondent OECD Members (84% of all respondents) include small administrative regions[6] (e.g., towns, cities) (Figure 3.4).

Figure 3.4. Scope of application of ATI laws, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 50 respondents (32 OECD Members and 18 non-Members). At the time of writing, Costa Rica did not have an ATI law but an executive decree applying to the executive branch, therefore the country was not included in this question.
Source: 2020 OECD Survey on Open Government.

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In some countries with federal structures, ATI legislation passed at the national level also applies to subnational governments. In these cases, some subnational governments have passed their own to complement national legal frameworks, such as in **Brazil** and **Mexico**. While all states in Mexico have developed their own ATI laws and institutional frameworks, not all subnational governments have done so in Brazil. In other federal countries, the national ATI law only applies to information relative to the federal government, as in **Australia**, **Canada, Japan** and the **United States**. For example, in the case of the latter, all states have passed their own legislation to cover state and municipal information (RTI Rating, 2016[30]). While laws and frameworks around ATI – and whether or not subnational levels have their own specific laws – can depend on whether there are federal or centralised structures in place, it is essential that public bodies at all levels can locate clear and coherent guidance on how the requirements of ATI laws apply to them. Furthermore, Furthermore, this is also a significant factor in the usability of the law from a citizen's perspective and can ensure, for example, that citizens know which public officials they can contact when making a request and whether to submit their request to public bodies at the national or subnational level.

As shown in Figure 3.4, in 53% of all respondent OECD Members (68% of all respondents), the ATI law applies to the legislative branch and for 59% of respondent OECD Members (72% of all respondents) to the judicial branch. Most ATI laws also apply to different public bodies, such as state-owned enterprises (SOEs), independent institutions and other entities performing public functions. Some countries include other bodies, such as non-governmental organisations receiving public funds, as in **Denmark, Honduras** and **Tunisia**, or any legal person, such as in **Austria**, the **Dominican Republic** and **Peru**. Certain countries have separate legal frameworks (i.e. sectoral laws) that also include ATI requirements, as in **Armenia**. In several countries, additional legal frameworks have been developed specifically for other levels, branches or bodies. This is the case for **Brazil** for independent institutions, for **Panama** for entities performing public functions and for the **Philippines** for SOEs.

3.3.3. Ensuring the disclosure of information

Proactive disclosure: What, when and how proactive information is published

Proactive disclosure refers to the act of regularly releasing information without the need for a request by stakeholders. It reduces the administrative burden for public officials handling and answering individual ATI requests, which can often be lengthy and costly. Favouring proactive disclosure "encourages better information management, improves a public authority's internal information flows, and thereby contributes to increased efficiency" (Darbishire, 2010[31]). Finally, it ensures timely access to public information for citizens as information is published as it becomes available and not upon request (OECD, 2016[32]).

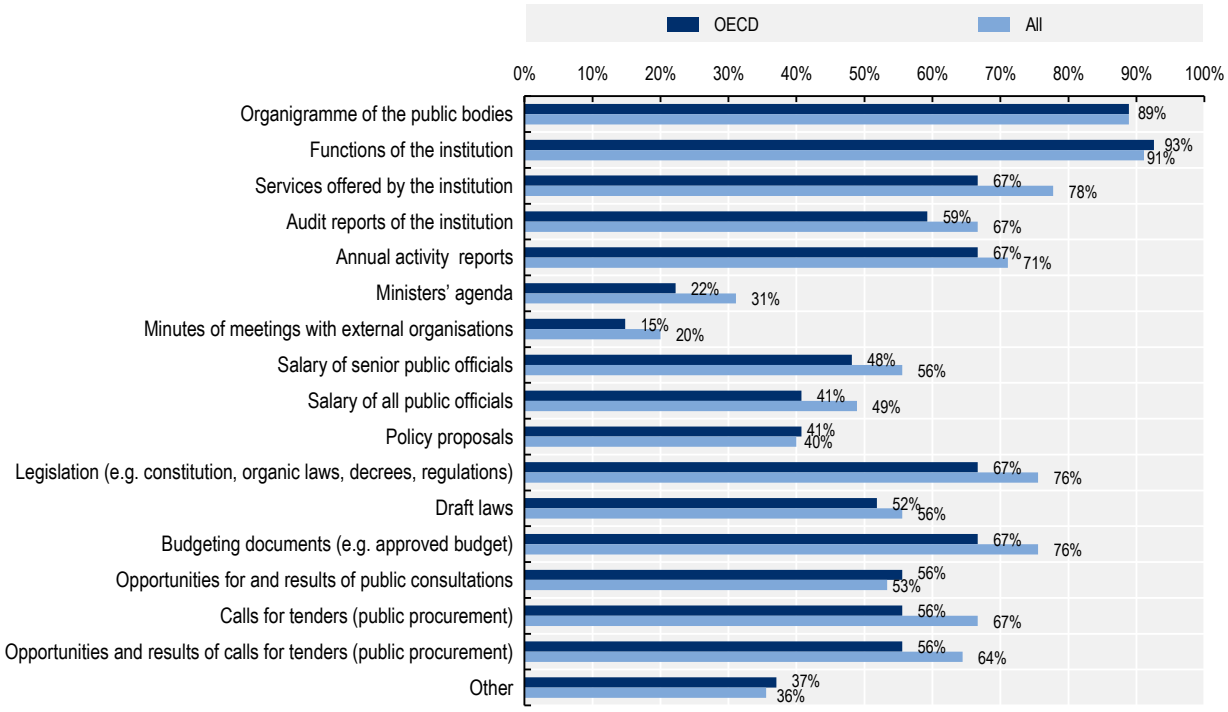
Most ATI laws require the proactive disclosure of a minimum set of public information to be published by each institution subject to the law. As shown in Figure 3.5, the most commonly disclosed items stated in the law or other legal framework are those related to the institution itself: its functions (93% of respondent OECD Members, 91% of all respondents), the organigramme (89% for both respondent OECD Members and all respondents) and the services offered (67% of all respondent OECD Members and 78% of all respondents). Other relevant documents regularly published include legislation, budgeting documents, annual activity reports and audit reports. A smaller number of countries proactively publish the minutes of meetings with external organisations (15% of respondent OECD Members, 20% of all respondents) or the ministers' agendas (22% of respondent OECD Members, 31% of all respondents). While two countries do not have a legally pre-defined list of information to be disclosed, they do publish information proactively in practice.

As illustrated in Figure 3.5, many of the forms of information proactively disclosed by governments are of particular interest to civil society actors and civil society organisations (CSOs) specifically. For example, governments committing to proactively disclosing and publishing opportunities for and results of public consultations can ensure that CSOs are aware of the ways in which they can engage with public decision making. Providing the results, in particular, can enable public officials to demonstrate how feedback and inputs were taken into account and reflected in the legislation, policy, strategy or any other subject of the consultation. Publishing policy proposals and budget documents also allows CSOs to remain informed about ideas and potential upcoming changes and offers them the time necessary to discuss (either among themselves, with their members if they are an umbrella organisation, or even with other CSOs working in a similar field) and provide a nuanced statement to the responsible public body or ministry. Calls for tender can also be of interest to CSOs interested in operating as partners in service provision alongside the government.

An important element of any ATI law is where and how information is published, as this facilitates access to a wide range of individuals. Among respondents, proactively disclosed information is mostly published on each ministry's or institution's website, followed by a central portal, or a combination of both. Other means of publication include official gazettes, which are mostly used for disclosing legislative information (e.g. constitution, organic laws, decrees, regulations) or budgeting documents.

Figure 3.5. Information proactively disclosed by central/federal governments as stated in the law or any other legal framework, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 45 respondents (27 OECD Members and 18 non-Members). For Costa Rica, the information relates to the executive decree applying to the executive branch.
Source: 2020 OECD Survey on Open Government.

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Governments have different approaches to the disclosure of information. Some share information on central portals, which often simultaneously function as open data portals, for example, in **Austria** (Government of Austria, n.d.[33]) and **Brazil** (Government of Brazil, n.d.[34]). Some have specific websites that inform citizens of the various bodies that hold public information and redirect them to relevant sites, e.g. **Canada**'s "Information About Programs and Information Holdings" webpage (Treasury Board of Canada Secretariat, n.d.[35]). Others publish different types of information on different websites. For example, the **Danish** Finance Agency clearly publishes the salaries of public officials on its website (Danish Finance Agency, n.d.[36]). **Ireland** publishes draft bills and acts centrally on the website of its legislature (Irish Houses of the Oireachtas, n.d.[37]), while **Italy** publishes formally approved legislation in an official gazette (Government of Italy, n.d.[38]). Regarding public funds, governments often have dedicated websites for financial and budgetary statements. For example, the **New Zealand** Treasury centrally shares annual activity reports and financial statements on its website (New Zealand Treasury, n.d.[39]). Similarly, calls for tenders and their results tend to have centralised web pages, as is the case in **Lebanon** (Government of Lebanon, n.d.[40]).

The accessibility and usability of these online tools are key to ensuring that all citizens can easily locate existing information. Furthermore, these websites and portals could be designed to minimise barriers for both the general public and those with specific needs. In fact, conducting consultations with users would allow governments to embrace digitalisation while ensuring that users can clearly identify how to source

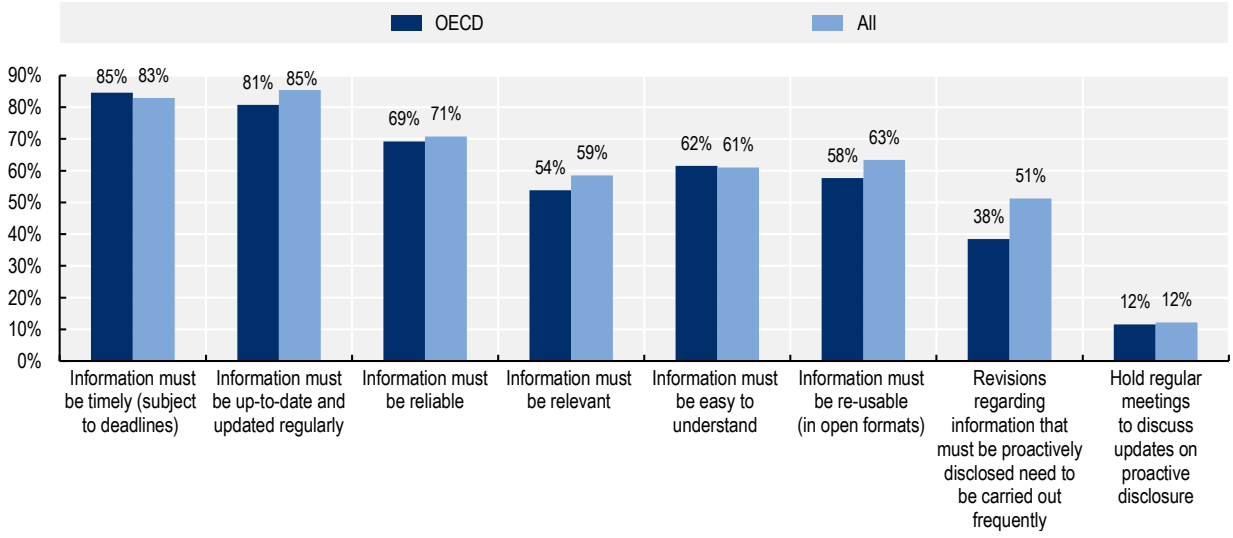
government information, which they can then employ to advocate for their needs, defend their civic freedoms and engage with public decision-making processes on laws, policies and services. In addition, information could be disseminated through a multi-channel approach to ensure that stakeholders with limited information and communication technology (ICT) skills or access to the Internet have the same opportunities to access and use public information.

Concerning how information is disclosed, most respondents (84% for both categories) have requirements for proactive disclosure outlined in specific guidelines. For example, **Australia**'s Statement of Principles to support proactive disclosure of government-held information offers insight into the type of information that countries can proactively publish (OAIC, 2021[41]). The principles outline that public bodies should regularly review requests and analyse trends with a view to maximising proactive disclosure of similar documents and encourages them to install proactive disclosure mechanisms whenever they create any new institutions or processes. Overall, guidelines for disclosure often require that information must be (Figure 3.6):

- Up to date (81% of respondent OECD Members with guidelines, 85% of all respondents with guidelines).
- Timely and subject to specific deadlines for instance: i) it should be published as early as possible, so it is relevant and actionable; and ii) if it is requested by an individual, the government is subject to clear deadlines on providing the information (85% of respondent OECD Members with guidelines, 83% of all respondents with guidelines).
- Reliable and accurate (69% of respondent OECD Members with guidelines, 71% of all respondents with guidelines).
- Easy to understand (62% of respondent OECD Members with guidelines, 61% of all respondents with guidelines).

Figure 3.6. Requirements mentioned in respondents' guidelines for proactive disclosure, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 41 respondents (26 OECD Members and 15 non-Members). Armenia, Austria, Belgium, Denmark, Latvia, Lebanon, Panama and the Slovak Republic do not have guidelines in place for proactive disclosure.
Source: 2020 OECD Survey on Open Government.

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Few countries have requirements to hold regular meetings to discuss updates on proactive disclosure (12% for both categories) or to carry out frequent revisions on what must be published proactively (38% of respondent OECD Members with guidelines, 51% of all respondents with guidelines). Other countries such as the **Czech Republic** have specific decrees (442/2006) that set out a framework for the proactive disclosure of information but do not specify the conditions; **Israel** has general and specific guidelines when disclosing information relating to public expenditure. Similarly, **Tunisia**'s guidelines go further in ensuring automatic data publication when datasets are extracted from an information system. Last, **Brazil** has detailed logistical instructions, for example, mandating that all websites have adequate content search tools and that the date of the last modification of the webpage should be indicated.

These measures avoid the risk of a "tick-the-box" exercise without due attention to quality. If the information made available is not in line with minimum standards or if there are vast amounts disclosed in a format that is not comprehensible or usable by most stakeholders, then its availability alone may not have any effect.

> ***Key measures to consider on the proactive disclosure of information***
>
> *- Prioritising which information is most useful when proactively disclosed to ensure its relevance and usability in consultation with stakeholders.*
>
> *- Tracking and measuring which information is most frequently requested and beginning to disclose this type of information periodically, guidance for which could be outlined in specific policy guidelines. They could also collaborate with citizens and stakeholders in dedicated focus groups or workshops to gain feedback and identify whether the proactive disclosure of information facilitates more engagement from civil society in public decision making.*
>
> *- Acknowledging that while there is no one-size-fits-all solution, creating a one-stop-shop of an online repository or central portal that is easy for citizens to navigate could minimise fatigue associated with searching through numerous websites. It could also improve the overall efficiency of these systems and the governance of ATI more broadly.*
>
> *- Conducting user consultations with stakeholders on the usability of online ATI tools to better tailor their format to increase uptake. Public officials could also use these consultations to understand which categories of information are deemed to be most useful for citizens and CSOs (e.g. draft legislation, policy proposals, cabinet decisions, budgets, etc.)*

Reactive disclosure

Countries have made substantial efforts to disclose information; however, not all information can and should be published. Reactive disclosure refers to the right for citizens to request information that is not made publicly available. Usually, the provisions for reactive disclosure under the law describe the procedure for making the request, including who can file the request, the possibility of anonymity, the means to file a request, the existence of fees and the timelines for response to the request.

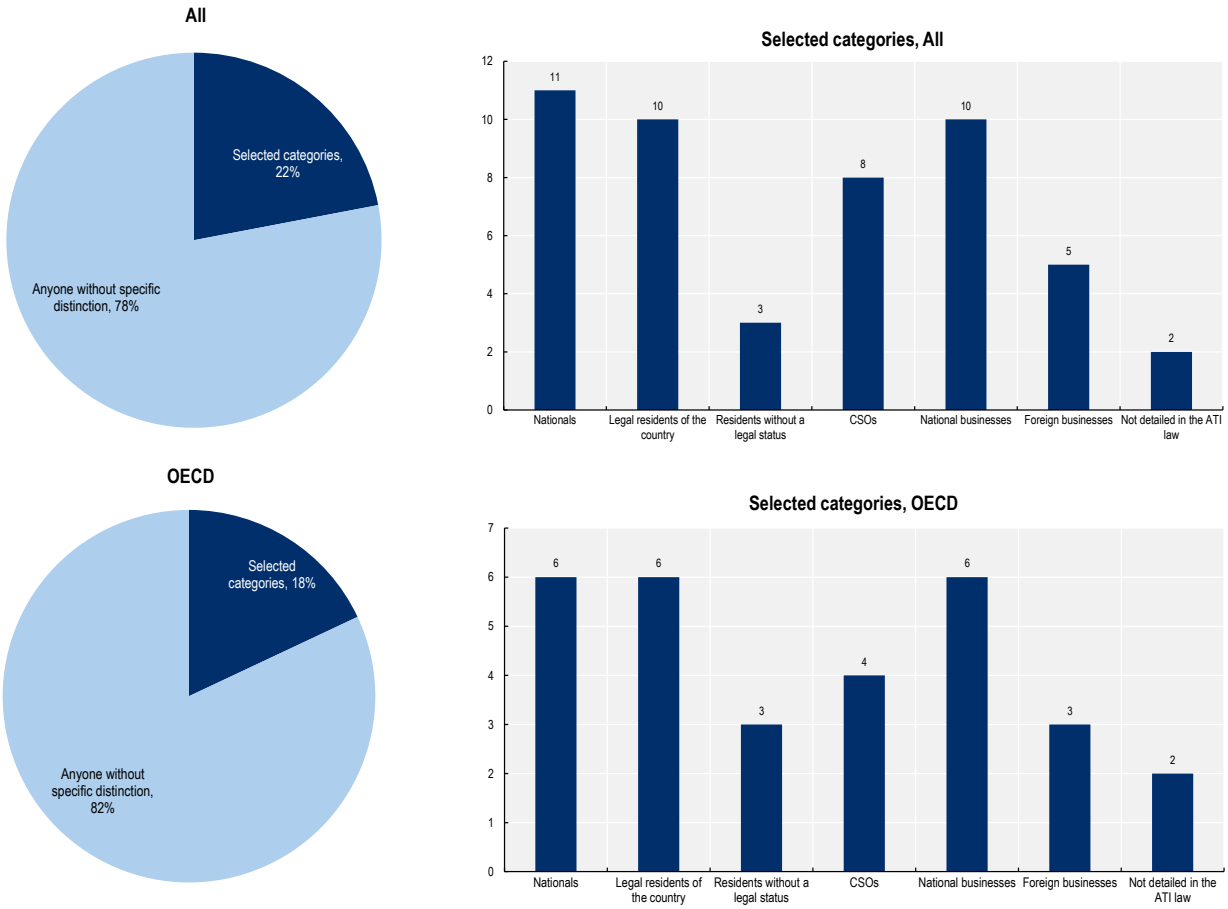
Any person or stakeholder should be able to make a request for information

In principle, any person regardless of age, gender, sexual orientation, religious belief, legal status and political affiliations, and institutions and organisations, whether governmental or non-governmental, from civil society, academia, the media or the private sector, should be able to make a request for information. In this regard, 82% of respondent OECD Members have ATI laws that stipulate that anyone can file a request for information (78% of all respondents) (Figure 3.7). No specific criteria, details or further qualifications are mentioned in the law to limit the definition of anyone. However, in some cases, laws clearly specify that requests can be made by nationals (18% of respondent OECD Members, 22% of all respondents), legal residents of the country (18% of respondent OECD Members, 20% of all respondents),

CSOs (12% of respondent OECD Members, 16% of all respondents), national businesses (18% of respondent OECD Members, 20% of all respondents) and foreign businesses (9% of OECD Members, 10% of all respondents). Only 9% of respondent OECD Members and 6% of all respondents include residents without legal status. The ATI laws in 6% of respondent OECD Members and 4% of all respondents do not include any details on who can make the request (Figure 3.7). For instance, the **Czech Republic**'s ATI law distinguishes between legal and natural persons. In addition, **Lithuania**'s ATI law provides in Article 3 that natural or legal persons and branches of enterprises established in the member states of the European Union (EU) and the states of the European Economic Area (EEA) located in Lithuania can request information.

Figure 3.7. Categories of individuals and stakeholders who can make a request for information, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (33 OECD Members and 18 non-Members). The graphs for selected categories refer to absolute numbers, not percentages.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/xqb2cg

In addition, a few countries ask requesters to indicate the motivation or reason for the request: for example, **Indonesia** seeks the purpose of the request. Others, like **Spain**, do not require the intention behind the request but allow requesters to state their reasons, which may be taken into account when the resolution is issued. However, the absence of motivation cannot serve as a reason to reject the request, meaning that ideally, the motive or reason for the request does not serve as a prerequisite for the publication of the information.

> ***Key measures to consider on reactive disclosure of information and personal information***
>
> *- Ensuring that ATI requests only require the minimum amount of information needed for the public official handling the request to be able to find the information and share it with the requester.*

This is especially fundamental in contexts where civic space is restricted, as seeking a motive for each request could lead the request to be ignored or denied, especially if the intention is to use this information to oversee government activities or critique their decision making, for example, through watchdog CSOs.

Protecting the identity of requesters is crucial

Protecting the identity of those filing an access to information request is important to avoid the risk of profiling citizens or stakeholders and governments acting on biases when responding to them, especially in countries where stakeholders and citizens are not protected from or are afraid of reprisals. In a context of shrinking or limited civic space, citizens and stakeholders may be unable, unwilling or fearful of interacting with government officials when seeking information or raising their voices to alert the government or society at large to instances of wrongdoing by public bodies or public officials. While 82% of all respondents do not allow for anonymous requests, for 18% of all respondents, the legislative framework explicitly protects the integrity and privacy of individuals and parties that file a request for information, such as in **Australia, Finland** and **Mexico**. However, in some of the countries where the law does not provide for anonymous requests, they have measures allowing for *de facto* anonymity. For example, some countries do not verify the information provided, such as the proof of identity or the email or contact address to send the requested information, as in **Chile,** the **Netherlands** or **Ukraine**.

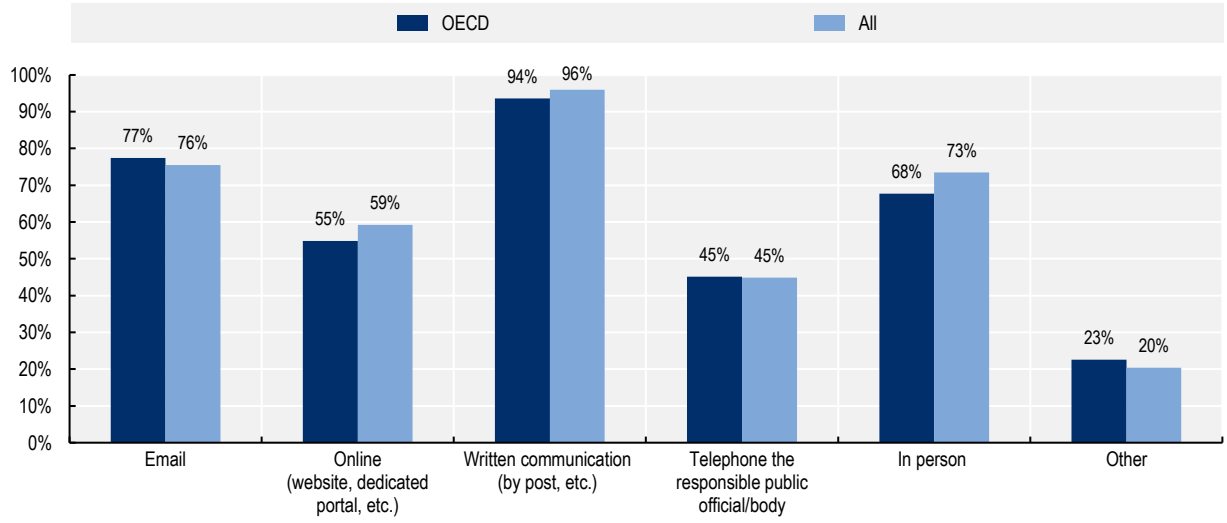
> ***Key measures to consider on reactive disclosure of information and anonymity***
>
> *- Protecting the identity of requesters could be prioritised to avoid the risk of identity-questing (profiling citizens and acting on biases) by governments. This is particularly key for protecting vulnerable and at risk groups, such as journalists, whistleblowers, activists and human rights defenders, from harassment, intimidation and violence.*

The ease of filing requests is critical to ensure access, quality and usability of ATI laws

Governments are increasingly aware that publishing information widely and committing to providing information upon request alone does not ensure that citizens and stakeholders can benefit from initiatives for greater transparency on an equal basis. For this reason, governments are increasingly committed to making these procedures as simple, clear and comprehensible as possible. In most countries, requests can be made by post (94% of respondent OECD Members, 96% of all respondents) and in person (68% of respondent OECD Members, 73% of all respondents). Most countries also allow requests by email (77% of respondent OECD Members, 76% of all respondents) or on line (on each ministry's website or a dedicated portal) (55% of OECD Members, 59% of all respondents) (Figure 3.8).

Figure 3.8. Means to make a request for information by law, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 49 respondents (31 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/komcvi

Box 3.4. The Fala.br platform in Brazil

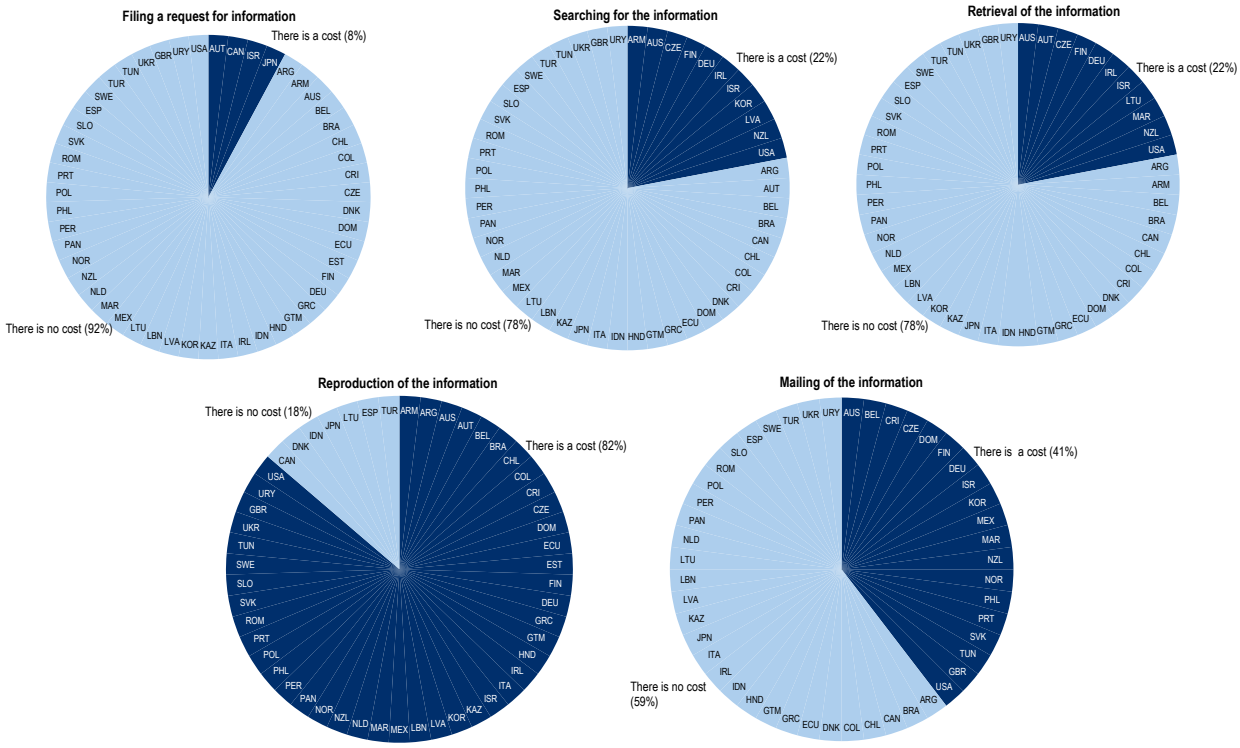
To ease the process of requesting information, Brazil created Fala.br, an innovative platform that combines the federal *ouvidorias* and Citizen Information Service obligations. It allows citizens to request information and make complaints or claims against any federal body, express satisfaction or dissatisfaction with a service or programme, and provide suggestions for improving or simplifying public services. Importantly, users can also follow the progress of their request and file an internal appeal in case of non-conformity with the response. In addition, Fala allows the government to provide up-to-date statistics on requests. Overall, by centralising ATI requests into a single system, the Fala platform has significantly simplified the process for citizens, stakeholders and federal government institutions when making or processing an ATI request.

Source: Government of Brazil (n.d.[34]), *Fala.BR - Plataforma Integrada de Ouvidoria e Acesso à Informação*, https://falabr.cgu.gov.br/publico/Manifestacao/SelecionarTipoManifestacao.aspx?ReturnUrl=%2f.

Filing a request for information in most OECD Members does not involve a cost. There can, however, be costs associated with obtaining the requested information in practice (Figure 3.9 and Figure 3.10). For example, while fees may be involved should the requester wish to have documents or other materials mailed to them, submitting an initial request itself is almost always free. In 12% of respondent OECD Members and 8% of all respondents, there is a cost for filing a request. In 31% of OECD Members and 22% of all respondents, there is a cost for searching for information; the same percentages of both categories also have costs for the retrieval of information. Regarding reproduction, there is a cost in 82% for both categories, while there is a cost for mailing information in 48% of OECD Members and 41% of all respondents. In some cases, as in **Uruguay**, the law specifies that there is no cost to file a request for information. However, the interested party will have to reimburse the public institution only the cost incurred in the reproduction of the information if needed.

Figure 3.9. Costs associated with the request for information process, 2020, all countries

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government

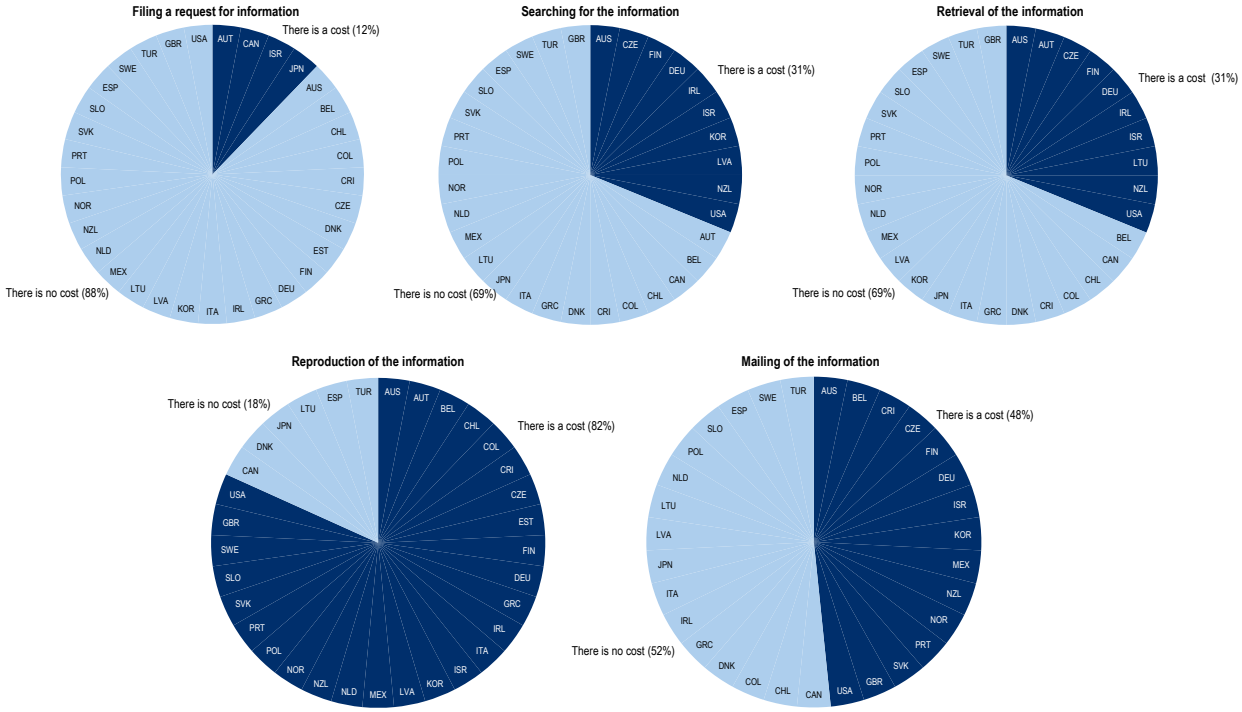


Note: "Filing a request for information" and “Reproduction of the information" were answered by 51 respondents (33 OECD Members and 18 non-Members); “Searching for the information” and “Retrieval of the information” was answered by 50 respondents (32 OECD Members and 18 non-Members); and “Mailing of the information” was answered by 49 respondents (31 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/pous62

Figure 3.10. Costs associated with the request for information process, 2020, OECD Members

Percentage of OECD Members that provided data in the OECD Survey on Open Government



Note: "Filing a request for information" and "Reproduction of the information" were answered by 33 OECD Members; "Searching for the information" and "Retrieval of the information" was answered by 32 OECD Members; and "Mailing of the information" was answered by 31 OECD Members and 18 non-Members.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/9sctxy

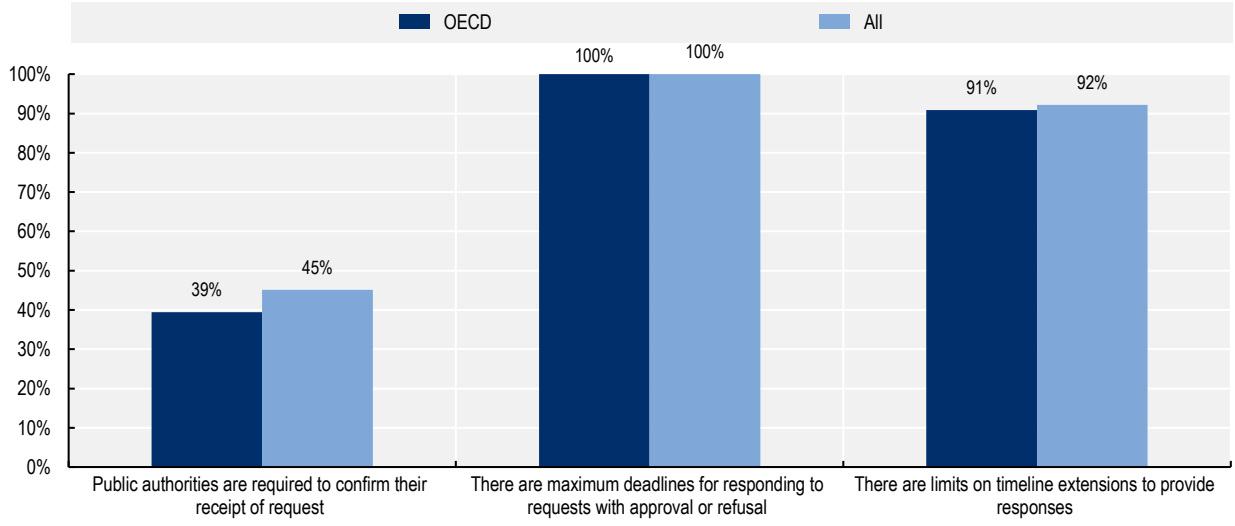
Ensuring that requests are free of charge is one of the most important ways to reduce obstacles to citizens and stakeholders exercising their right to information. Costs associated with requests can either greatly discourage citizens from lower socio-economic backgrounds from submitting a request or make it entirely impossible for them to do so. This is even more so if fees are in place at more than one stage of the process (e.g. filing a request, searching for information, reproduction of information and mailing of information) and there is no relief for impecunious requesters. Thus, entitlement to a fundamental civic freedom becomes unattainable for certain social demographics. This continues to be a relevant cause for concern as many countries charge fees related to the reproduction of the information, depending on the number of pages to be reproduced and on postage fees for example. When a variable fee is charged, a cap on the amount of the fee is applied only in a limited number of countries, such as **Austria, Finland** and **France**. Most governments distinguish between charging fees related to documents that are already available, for example on a central government portal, and those requests that require searching, retrieval, reproduction and mailing of the information.

> ***Key measures to consider on reactive access to information and costs***
>
> *- Ensuring that filing the request is both simple and free. The cost associated with searching, retrieval, reproduction and mailing could be kept to a minimum and remain consistent across the public administration.*

Having and respecting clear timeliness standards is crucial as it provides a degree of certainty to requesters on how long the process for their request will last. Extended time limits for the provision of information can be especially problematic if the information is urgently needed by the requester. In less than half of all respondent countries, public authorities are required to confirm their receipt of the request (39% of respondent OECD Members, 45% of all respondents), while in both categories, there are maximum deadlines for responding to requests with approval or refusal, with an average of 21 working days in OECD Members (Figure 3.11). Most countries (91% of respondent OECD Members, 92% of all respondents) have also established limits on timeline extensions on responses, with an average of 19 working days in OECD Members and 18 working days across all respondents.

Figure 3.11. Existence of a specific number of days to respond to a request at different stages of the information request process, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (33 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/45s6mb

For example, the **Dominican Republic** and **Estonia** respond no later than within 5 working days, which can be extended to 15 working days in the case of Estonia and 10 days for the Dominican Republic. In addition, **Belgium** initially provides for 30 days, which can be extended for another 15 days. **Australia** provides that public authorities must confirm their receipt of the request no later than 15 days of receiving the request and provide the information no later than 30 days of receiving the request.

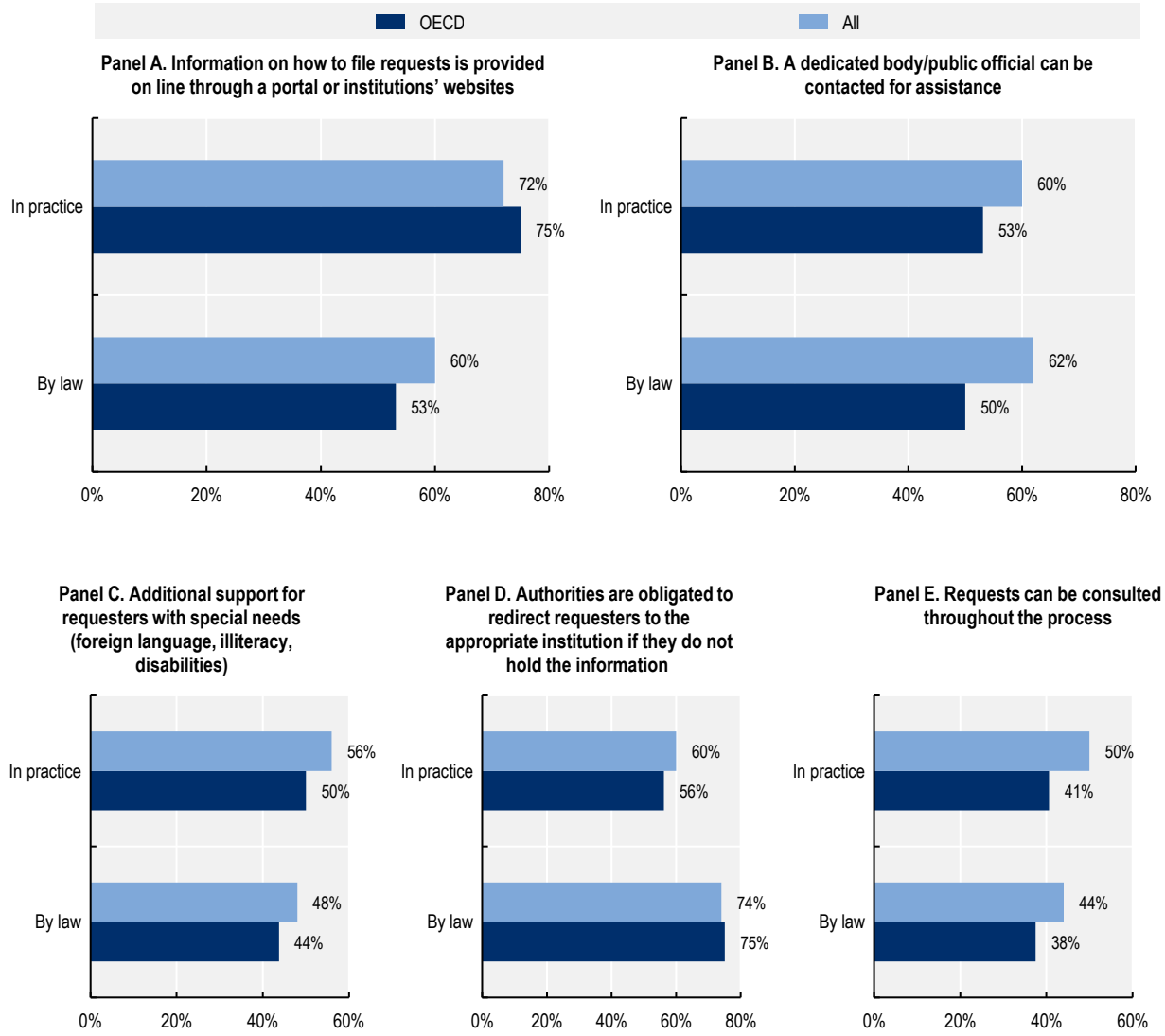
> ***Key measures to consider on reactive access to information and timeliness***
>
> *- Implementing clear guidelines and proper mechanisms to monitor that public officials provide information within the agreed timeframes through the request process.*
>
> *- Keeping timeframes to a minimum so as to not discourage the requester with significant delays.*

Furthermore, efforts to make procedures as simple, clear and comprehensible as possible can take different forms and be implemented either by law or in practice. In this regard, there are two main factors governments need to address to ensure that procedures are as effective as intended: accessibility and inclusion.

On accessibility, governments are making efforts to provide information on how to make a request on line, either on a portal or a government website (60% of all respondents by law, 72% of all respondents in practice). However, bridging the digital divide and addressing technology gaps between young and senior populations, rural and urban groups and those from high and low socio-economic backgrounds is crucial in ensuring equal opportunity to access information. Governments can endeavour to introduce more e-literacy and e-accessibility initiatives but, in the meantime, there must be other means to file requests for those without ICT skills or without at-home or community Internet access. For example, citizens could be able to call a contact point or visit the relevant office and ask in person, which is provided in 62% of all respondents' laws (Figure 3.12). Other means of communication could also be explored, such as community radios, television and newspapers to promote the law and different channels for making a request.

Figure 3.12. Procedures in place related to requests for information by law and in practice, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 50 respondents (32 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

Moreover, less than half of all respondents' laws allow requests to be consulted throughout the process (44% in law, 50% in practice). In practice, the procedure for requesting information does not always explicitly or clearly set out the means for requesters to follow up on their requests, exacerbating any existing incomprehension about how the ATI process works and leading to weariness among citizens in the face of inaction on the part of their public bodies. The ability to inquire about the status of a request is also key to allowing civil society actors to monitor its progress. For example, this can allow watchdog organisations to note if there is interference in the process or if the request is transferred repeatedly without any development. It can also allow them to demand an answer or submit an appeal in the case of administrative silence, unjustifiable delays or denials of information.

Improving inclusiveness through simple language and additional support for certain groups

Regarding inclusion, certain under-represented demographics, including those from low socio-economic groups, youth, migrants and refugees, Indigenous groups and people with disabilities, among others, can face additional obstacles in exercising their right to access to information. However, the more pressing issue is that many citizens do not realise that this right is available to them at all, nor do they fully comprehend its potential in allowing them to advocate for their own needs and demands. In this sense, groups whose voices most often go unheard miss yet another opportunity to be informed of the decisions of their elected officials and to participate in public life. As Transparency International recognises, the value of ATI lies in how it can allow citizens to raise concerns about government activities and demand their rights to essential services like education and healthcare, for example (2018[42]).

In the same way, having access to information allows CSOs to advocate on behalf of citizens in an organised manner that can lead to substantial changes in policies and services. Many of the barriers that exist for the political inclusion of certain groups also apply to their difficulties in accessing information. Such barriers include the use of technical jargon rather than simple guidance from governments, language barriers, a digital divide and technological gaps, as well as a lack of outreach to the communities that would benefit from awareness-raising on ATI. In this regard, many countries, such as **Uruguay** have developed programmes on gender and access to information, awareness-raising campaigns for youth, and guides for requesters to foster knowledge of the right and the process of requesting information.[7] For example, Morocco's Ministry of Administration Reform and Civil Service has developed a communication strategy on the right to ATI, which includes hosting meetings at the national, regional and local levels and using various media and communication channels to promote public awareness (Open Government Partnership, n.d.[43]). In addition, the National Institute of Transparency, Access to Information and Protection of Personal Data in Mexico regularly hosts workshops and engages in outreach with vulnerable groups facing structural barriers that can impede access to information (INAI, n.d.[44]). One outcome of these workshops was the production of guides on digital literacy for senior citizens and women in rural areas.

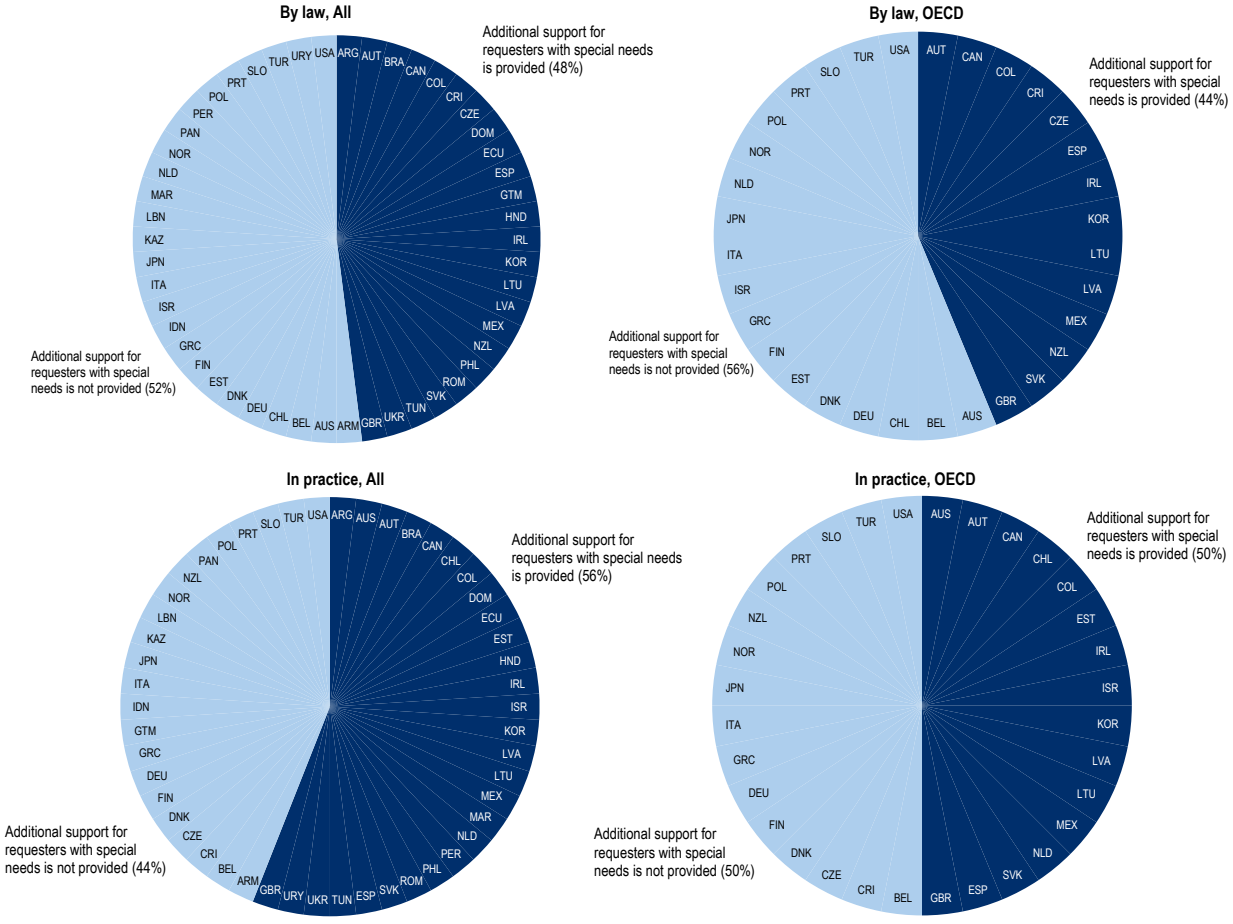
Furthermore, simple language, meaning writing that is as clear and concise as possible and is appropriate for as broad a target audience as possible, is essential in making information on ATI accessible. It is particularly necessary for groups with low levels of literacy or those without advanced language skills in the country in which they live. Furthermore, government websites, portals and documentation on the right to access information could be provided in all relevant languages to the extent possible. This is especially relevant for countries with two or more official languages and those with Indigenous groups with their own languages that often face additional difficulties in engaging with their local and national government given this barrier. To combat these constraints, governments have several initiatives in this regard. For example, some countries, including the **United States**, have introduced legislation on using simple language in the public administration, such as the Plain Writing Act (US Government, 2010[45]). Others, like the Ministry of Social Development in **New Zealand,** have introduced checklists for public officials on plain language

(Government of New Zealand, n.d.[46]). In 2019, the Ministry of Finance in **Finland** introduced a policy brief on how clear language prevents exclusion and "largely determines how well citizens can understand, follow and evaluate activities" (Government of Finland, 2019[47]). The **United Kingdom's** Digital Government Service also provides guidance on planning, writing and managing government content, with an emphasis on simple language (UK Government Digital Service, 2016[48]).

Survey results show that 44% of OECD Member respondents (48% of all respondents) have measures in their ATI laws to provide additional support to marginalised groups in making a request (Figure 3.13), with 50% of OECD Member respondents (56% of all respondents) providing support in practice.

Figure 3.13. Respondents that provide additional support for requesters with special needs, as specified in ATI laws and/or provided in practice, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 50 respondents (32 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

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Lastly, Box 3.5 illustrates some good examples from Colombia in making the ATI law more accessible to all social groups.

Box 3.5. Increasing inclusiveness in accessing information in Colombia

The *Procuraduría general de la Nación* has developed a series of tools to guide public officials in providing access to public information to people with disabilities, members of Indigenous communities and other minorities in the country. They have also created specific booklets for these members of society to ensure that they are aware of their ATI rights and how to use them.

The guide for public officials was created with the following points in mind, among others:

- Use simple language and avoid legal technicalities.
- Understand that it must be understood by people without knowledge of the matter.
- Keep it short.
- Only include theoretical and technical aspects when strictly necessary.

Access to public information for people with hearing disabilities

An explanatory video in sign language was developed for citizens with disabilities or hearing impairments in order to present the Transparency and Access to Information Law.

Access to public information for people with visual disabilities

The entire law was transformed into braille and macrotypes for citizens with disabilities or visual impairments.

Access to public information for ethnic populations that speak languages other than Spanish

Colombia has an Indigenous population of 2 million people. The law has been translated into six indigenous languages: Arhuaco, Chamí, Katío, Koreguaje, Nasa and Wayuu.

Source: Procuraduría general de la Nación (2014[49]), *ABC Principles and Law 1712 of 2014 with Differential Criteria for the Right to Access Public Information, Law 1712*, https://www.procuraduria.gov.co/portal/cartilla-criterio-diferencial.page; Procuraduría general de la Nación (n.d.[50]), *Guide to Differential Criteria in Information Accessibility*, https://www.procuraduria.gov.co/portal/media/file/GU%C3%8DA%20DE%20CRITERIO%20DIFERENCIAL(1).pdf.

Key measures to consider on reactive access to information and promoting inclusiveness

- Committing to the use of plain and simple language in all public communication with citizens, and especially in regard to guidance on access to information and requesting procedures to ensure that the right to information is used by all social demographics.

- Making ATI requests free of cost to enable inclusive and equitable access to information for all citizens and stakeholders, including those who rely most on public policies and services, or who are often disproportionately affected by government decisions.

- Undertaking specific campaigns, training and workshops with citizens and CSOs to raise awareness of their right to information and how requests are the main avenue to exercise this entitlement.

Use of exceptions, appeals processes and sanctions

Countries can have legitimate reasons to exempt some information from being disclosed. For example, public officials may invoke their ability to refuse to grant access to public information if they see legitimate consequences of doing so: the information in question could pose a threat to national security or international relations or could expose the personal data of an individual or violate their privacy. That said, exceptions must be appropriate. Often, these categories can be ill-defined and vague, allowing an excess of discretion for each public official in ways that could limit public access to information. In some cases,

this can be mere misinterpretation rather than purposeful misuse. However, for this reason, it is crucial that all exceptions are balanced by a strong appeals process coupled with independent oversight (Section 3.3.4 for bodies responsible for oversight).

Before the appeal stage, public interest tests and harm tests present two common ways to exempt information while ensuring that any exceptions employed are proportionate and necessary. Under harm tests, refusals are only made when disclosure poses a risk of actual harm to a protected interest, whether for a person, national defence, economic interests or others. The public interest test asks public officials to weigh the harm that disclosure would cause to the protected interest or individual and whether it justifies withholding information that may serve the public interest (Open Society Justice Initiative, n.d.[51]). A mandatory public interest override, which can force disclosure of information that is in the public interest, such as information on human rights abuses, corruption or crimes against humanity, is also an important standard in ATI laws. The international standards in this regard include the list outlined in Box 3.6.

Box 3.6. International standards for exemptions to providing access to information

According to international standards, exemptions to providing access to information include:

- National security (i.e. information that would compromise the safety of a country against threats such as terrorism, war or espionage).
- International relations (i.e. information that would compromise relations with other countries).
- Personal data (i.e. information that would infringe on an individual's right to privacy).
- Commercial confidentiality (i.e. information that would compromise the privacy of sensitive information of individual firms).
- Public health and safety (i.e. information that would compromise the health and safety of the public or a specific demographic).
- Law enforcement and public order information received in confidence.
- The prevention, investigation and prosecution of legal wrongs.
- Fair administration of justice and legal advice privilege.
- Privacy.
- Legitimate commercial and other economic interests.
- Management of the economy.
- Conservation of the environment.
- Legitimate policy making and other operations of public authorities.

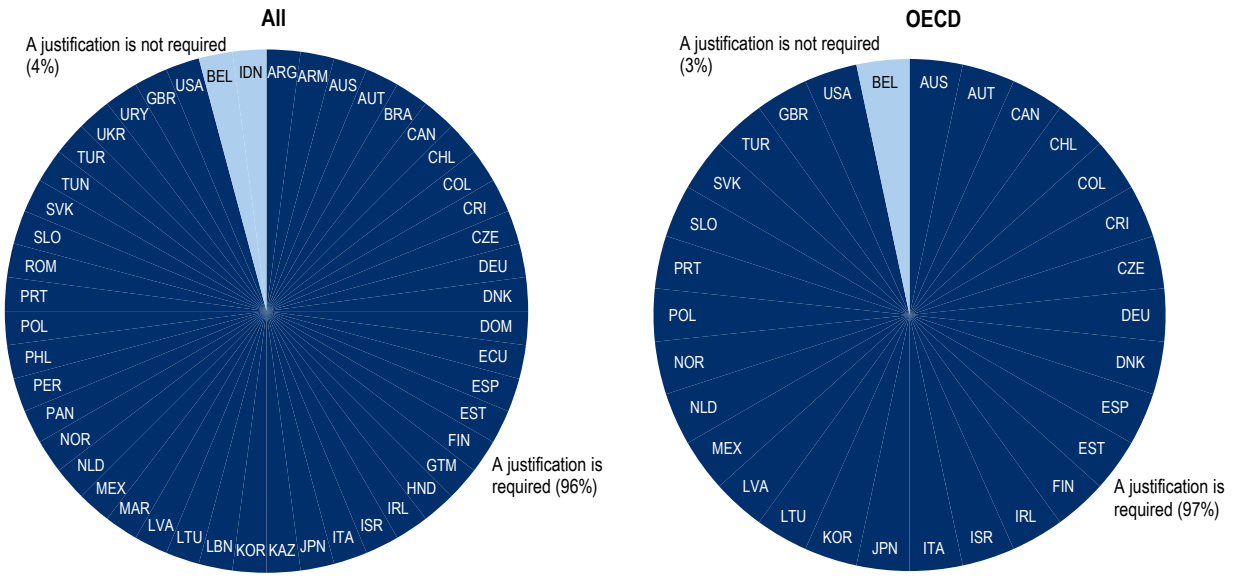
Source: Author, based on Article 19 (2016[29]), *The Public's Right to Know: Principles on Right to Information Legislation*, https://www.article19.org/data/files/RTI_Principles_Updated_EN.pdf; OAS (2020[52]), *Inter-American Model Law 2.0 on Access to Public Information*, http://www.oas.org/en/sla/dil/docs/publication_Inter-American_Model_Law_2_0_on_Access_to_Public_Information.pdf; OECD (2016[32]), *Open Government: The Global Context and the Way Forward*, http://dx.doi.org/10.1787/9789264268104-en.

In the event of a denial of a request for access to information, 96% of all respondents require a justification to be provided based on the use of exceptions (Figure 3.14). Having such a requirement in place is valuable as it can deter public officials from refusing a request as easily and encourages them instead to verify that the exception is legitimate or seek advice from an office or official in charge of ATI, or from an oversight body, on whether the exception is plausible.

In fact, most ATI laws provide requesters with the possibility to file appeals in the event of a denied ATI request or any improper procedures during the process. The grounds for these appeals vary across countries but most often include denial of information (100% of OECD Members, 98% of all respondents), negative administrative silence (94% for both categories), breaches of timelines (84% of respondent OECD Members, 86% of all respondents) or excessive fees (53% of respondent OECD Members, 46%of all respondents) (Figure 3.15).

Figure 3.14. Respondents that require a justification if the information is denied based on exceptions provided by law, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 48 respondents (30 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

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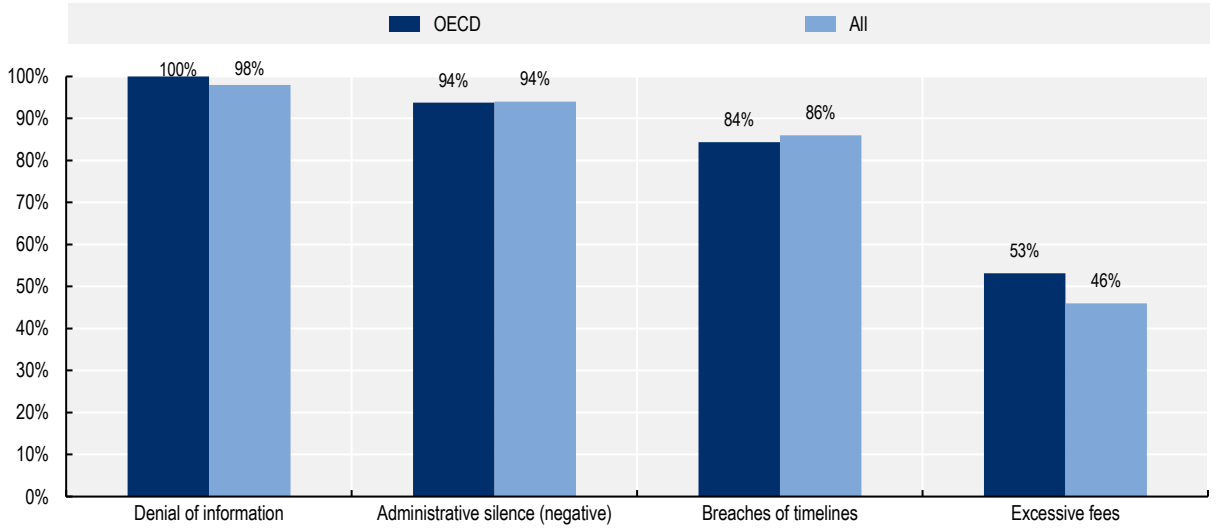
Figure 3.15. Grounds for appeals in the event of a denied ATI request, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 50 respondents (32 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

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The case for negative administrative silence, meaning the absence of a response within the period specified, is particularly relevant as a lack of a proper justification may lead to a discretionary use of denials. **Canada** has a more substantial process than most as the Office of Primary Interest makes recommendations on which exceptions (including both exemptions and exclusions) could be applied to the records requested. These recommendations are reviewed by the Access to Information and Privacy Office within the department and the information within the records can be withheld based on a final determination by the head of the institution or his/her delegate. Once the requester receives the response, the requester may submit a complaint to the Office of the Information Commissioner (OIC), who, during the investigation, may require further justification from the institution as to why the information in question was withheld. If the OIC believes the information was withheld in error or without sufficient justification, the Information Commissioner may order the institution to release the information.

> ***Key measures to consider on reactive access to information and appeals***
>
> *- Moving towards systematically providing a justification when a request is denied and avoiding negative administrative silence, so as to ensure that citizens and stakeholders trust the government and have the necessary basis to ask for a revision of a decision.*
>
> *- Ensuring the grounds for appeals are broad enough to reflect the multitudinous ways governments can refuse information – other than an outright denial – and guaranteeing that these refusals are subject to adequate oversight.*
>
> *- Verifying that, as with making requests, the process of filing appeals is simple, free of charge to the extent possible and subject to clear timelines. Whether internal, external or judicial, the available mechanisms could also provide information and support on all stages and aspects of the process and the grounds for appeal. It could also be accessible to all without legal representation or financial burden.*

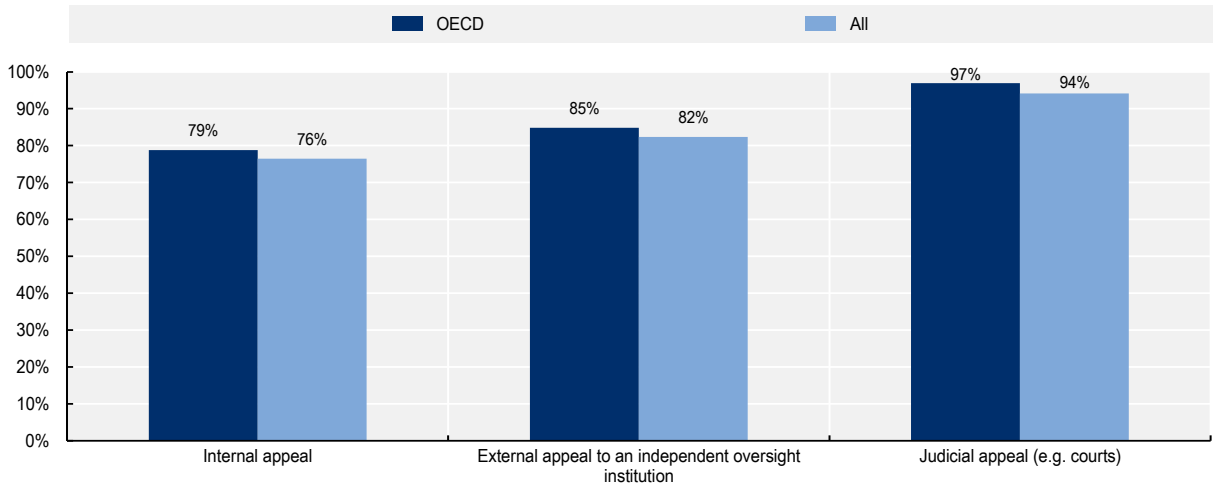
Processes for appeals that do not have clear guidelines or are not implemented in full can hamper the efficiency of this system and affect trust in the mechanisms that safeguard this right. The most common mechanisms for appeals are the following:

- **Internal appeal**: The requester can submit an internal appeal to the same institution or body that denied his/her original request for information.
- **External appeal to an independent oversight institution**: The requester can submit an external appeal to an independent oversight institution (e.g. an information commission, ombudsman).
- **Judicial appeal** (e.g. courts): The requester has the right to submit a judicial appeal. Some countries may require that requesters first lodge an internal or external appeal.

All countries have at least 1 mechanism for appeals, with 79% of respondent OECD Members (76% of all respondents) having in place an internal appeal; 85% of respondent OECD Members (82% of all respondents) an external appeal; and 97% of respondent OECD Members (94% of all respondents) having a judicial appeal (Figure 3.16). The judiciary plays a key role in upholding the right to access information as it is often the “last resort” for requesters to appeal a decision with an independent body. However, the courts are sometimes not competent to judge the case because the matter does not fall within their jurisdiction (for instance, the public official concerned is outside their jurisdiction). Other countries may face challenges with judicial pathways, as this option may be inaccessible (e.g. due to its cost), inefficient (e.g. due to delayed decision-making or an inability to enforce a decision) or the process may not be sufficiently independent.

Figure 3.16. Mechanisms in place for appeals in the event of a denied ATI request, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (33 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

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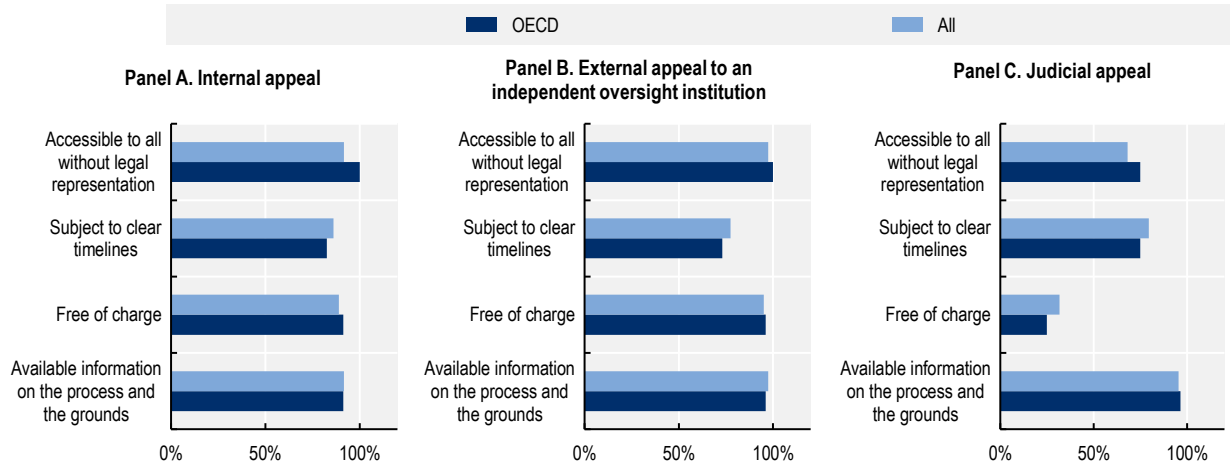
Concerning appeals, regardless of whether the appeal is internal, external or judicial, certain conditions could be met to improve these processes (Figure 3.17). For example, information could be available on the grounds for appeal (which is the case for 92% of all respondents for internal appeals, 98% for external appeals and 95% for judicial appeals). In addition, the processes could be free of charge and subject to clear timelines. Last, they could be accessible to all without the need for legal representation (which is the case for 92% of all respondents for internal appeals, 98% for external appeals, and 68% for judicial appeals). The **United Kingdom** provides a good practice in this regard as the country has internal, external and judicial appeals processes in place, with all three satisfying the below conditions (Figure 3.17). It also has a dedicated webpage entitled "If your request is turned down" to provide specific instructions to requesters on the next steps that they can take to submit an appeal (UK Government, n.d.[53]).

Figure 3.17. Conditions satisfied by the appeals or revision procedures related to denied ATI request, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: The figure corresponds to the countries with an internal, external and/or judicial appeal process. For internal appeals, "All" refers to 36 respondents (23 OECD Members and 13 non-Members). For external appeals, "All" refers to 40 respondents (26 OECD Members and 14 non-Members). For judicial appeals, "All" refers to 44 respondents (28 OECD Members and 16 non-Members).
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/brxzda

Establishing sanctions for public officials who fail to meet the obligations outlined in ATI laws is essential. The lack of sanctions can create perverse incentives, resulting in breaches of an ATI law, such as overly broad application of exemptions or simply administrative silence. It can also be the source of weak enforcement of the law. For example, in some countries, response periods are not respected even if there are legal limits, exceptions are overused without proper justification, and the sanctions for non compliance are either non-existent or are not applied in line with the provisions of the legal framework.

> ***Key measures to consider on reactive access to information and sanctions***
>
> *- Recognising that appeals procedures need to be effective and accessible to all citizens. Therefore, information on the process and the grounds could be available and the process must be free of charge, subject to timelines and available to all without legal representation.*
>
> *- Implementing strong and effective enforcement mechanisms and sanctions for public officials who fail to meet the obligations outlined in ATI laws to help avoid perverse incentives and ensure accountability for public officials who violate the law.*

3.3.4. Institutional frameworks governing access to information

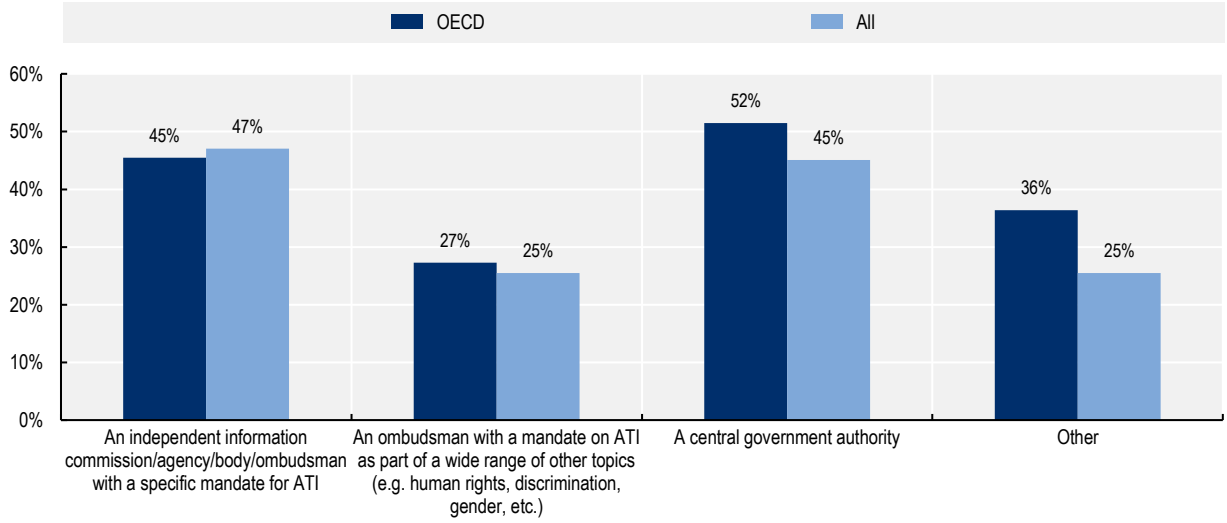
Bodies responsible for enforcement, monitoring and/or promotion of ATI laws

An important factor in implementing ATI laws is the existence of institutional arrangements for oversight of their application. The responsibilities of these bodies vary but often include enforcement, monitoring and promotion of the law. Such bodies can be an independent information commission (or agency or other body) with a mandate purely to oversee the implementation of ATI laws (which is the case for 45% of respondent OECD Members, 47% of all respondents) or they could be a body such as an ombudsman with an ATI mandate as part of a wider remit (e.g. human rights, discrimination or gender) (which is the

case for 27% of respondent OECD Members, 25% of all respondents). The ATI oversight mandate can also be assigned to a central government body, which is not independent of the executive branch (which is the case for 52% of respondent OECD Members, 45% of all respondents). Some respondents have systems in which 2 or more public bodies oversee the implementation of ATI laws. The "Other" category in Figure 3.18 (36% of respondent OECD Members, 25% of all respondents) comprises countries that either have no body specified in the law or have a body that does not fall under any of the aforementioned categories. As discussed in further detail in Section 4.5 in Chapter 4, governments are increasingly grappling with new challenges emerging from the need to balance access to information while ensuring the right to privacy and personal data protection. In this context, bodies responsible for access to information (ATI) are increasingly identifying synergies between ATI and on personal data protection in order to safeguard both rights, with some consolidating these policy areas into a single institution.

Figure 3.18. Bodies responsible for the enforcement, monitoring and/or promotion of ATI laws, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (33 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/h8fj6u

The mandate and responsibilities of these bodies vary widely among countries but can be grouped into enforcement, monitoring and promotion of the law. In relation to enforcement, bodies can be in charge of managing an ATI online portal; consolidating the proactively disclosed information from other government institutions; reporting to parliament on its implementation regularly (e.g. yearly); and redistributing misallocated or non-allocated requests among government institutions. They are also related to appeals and/or revision processes, such as handling complaints on breaches to the law, initiating investigations on potential breaches, issuing opinions/witness in litigations on the law; and sanctioning public officials/institutions for non-compliance.

Monitoring responsibilities can be related to compliance with the law itself, the internal appeals process and/or the awareness of the law among citizens. Finally, bodies responsible for promoting the law can be in charge of advising public institutions on its application and providing training and/or awareness-raising campaigns to civil servants and/or civil society. According to the OECD Survey on Open Government findings, the most common responsibility of independent information commissions and central government authorities is advising public institutions on the application of the ATI law. For ombudsman institutions, it

is handling complaints on breaches of the law. Certain countries with two bodies with ATI mandates were found to face competing responsibilities in terms of enforcement of the law.

The independence and enforcement capacity of these bodies is crucial. Some do not have the necessary capacities to sanction non-compliance or adequate resources (human and financial) or independence to effectively fulfil their mandate. Furthermore, these oversight bodies often only have the competency to issue opinions or recommendations, leaving the public entity to decide whether to comply or not (OECD, 2019[54]). This can lead to weak implementation of ATI laws. Lastly, sometimes these bodies do not collect and properly disseminate data on the implementation of the ATI law by public entities and/or its use by citizens. One good example of data collection in this regard is that of **Uruguay**, which through its National Index of Transparency and Access to Information (INTAI), calculates the level of compliance of ATI among public bodies and assesses both reactive and proactive disclosure. Unfortunately, submitting a self-assessment to the Index is optional for these bodies and is not enforced (Government of Uruguay, n.d.[55]). The National Institute of Statistics and Geography (INEGI) in **Mexico** also collects statistics on the management and performance of the public bodies in charge of promoting transparency and access to public information (INEGI, n.d.[56]).

As noted in Section 2.4.1 in Chapter 2 on oversight and complaints mechanisms, publicly funded and independent oversight mechanisms are vital for the protection of fundamental rights, including the right of access to information. As the OECD report *The Role of Ombudsman Institutions in Open Government* (2018[56]) notes, these bodies often have varying mandates, from protecting human rights and dealing with complaints against the public administration, to mediation between citizens and their governments and whistleblower protection. Additionally, many ombudsman institutions have a role in ensuring access to information. For some, their responsibilities are part of a wider mandate on protecting civic freedoms and handling grievances more generally. In these cases, there may or may not be another body with a more central role in monitoring and oversight of ATI laws more specifically, for example an information commission.

In some countries, the ombudsman does have this official mandate and he/she undertakes tasks such as receiving and reviewing complaints from citizens, monitoring reactive and proactive disclosure by public bodies, providing advice and recommendations to the government on ways to improve ATI and raising awareness among the public (Zuegel, Cantera and Bellantoni, 2018[57]). For example, the Parliamentary Ombudsman in **Denmark** also has a mandate for maladministration with a specific focus on ATI (Danish Parliamentary Ombudsman, n.d.[58]). In fact, in 2016, the Parliamentary Ombudsman undertook an internal investigation in relation to the Access to Public Administration Files Act and how it was interpreted and used by ministries in an effort to foster greater openness (Zuegel, Cantera and Bellantoni, 2018[57]). Furthermore, many also have *suo moto* jurisdiction (Section 2.4.1 in Chapter 2), meaning they can begin investigative proceedings on their own initiative regarding non-compliance with ATI obligations (Zuegel, Cantera and Bellantoni, 2018[57]). In other countries, ombudsman institutions share their responsibilities on ATI with other bodies. For example, in **Finland**, the Parliamentary Ombudsman and the Chancellor of Justice both have wide-ranging powers on ATI (OECD, 2021[59]).

Ombudsman institutions can also play an extensive role in promoting the right to information. For example, the ombudsman in **Guatemala** has assisted in reviewing and drafting legislation and policy regarding access to information, while the ombudsman of **Peru** has launched a handbook for public officials on exceptions to the right to information to avoid overly broad interpretations of the law (Zuegel, Cantera and Bellantoni, 2018[57]). The only supranational ombudsman institution, the European Ombudsman, also plays a key role in ensuring public access to documents held by EU institutions, bodies, offices and agencies. Citizens can contact the European Ombudsman if their request is refused by any of these bodies (European Ombudsman, n.d.[60]).

As with other oversight institutions related to the protection of civic space, evidence collected by the Survey suggests that common elements support the effective functioning of ATI oversight bodies. First, the

establishment of a clear and well-disseminated mandate that sets roles and responsibilities is an important factor in ensuring the body's legitimacy. Second, the institutional autonomy and the independence of public officials within the organisation are key to reinforcing the impartiality of their decisions and operations. Last, their enforcement capacity – both in terms of their ability to issue sanctions and in having adequate human and financial resources to perform their role – is crucial for the oversight body to effectively conduct its mandate.

> ***Key measures to consider on oversight institutions for access to information***
>
> *- Establishing a dedicated ATI oversight body to ensure oversight, supervision, monitoring and evaluation of the ATI law. A clear mandate, sustained resources, an adequate level of independence and capacity for enforcement need to be provided to ensure the protection of the right. Where there is adequate institutional capacity, a long-term view could be taken to establishing an independent commission on ATI.*

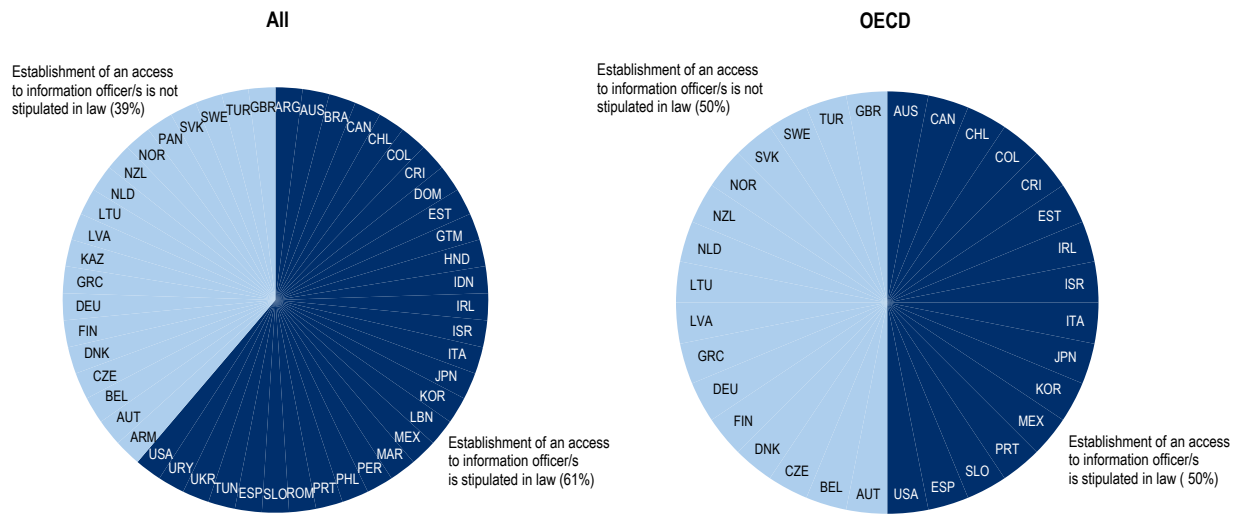
ATI information offices or officers across public institutions

Public institutions sometimes struggle with their ATI obligations due to a lack of a dedicated office or official charged with monitoring the law's implementation. Several ATI laws currently require the establishment of an information office or officer responsible for ensuring compliance with the legal framework. These officers are generally appointed to guarantee both proactive and reactive disclosure of information, including but not limited to, consolidating proactively disclosed information, responding to information requests, redistributing misallocated or non-allocated requests among other public bodies, and supporting colleagues in responding to requests.

Of all the countries that responded to the Survey, 61% stipulate the establishment of this office/r in their ATI law (Figure 3.19). However, while several countries may not directly include these provisions in the law, data from the Survey found that they have established similar positions in practice.

Figure 3.19. Respondents that stipulate the establishment of ATI information offices or officers in the law, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 49 respondents (32 OECD Members and 17 non-Members).
Source: 2020 OECD Survey on Open Government.

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Key measures to consider on establishing ATI information offices or officers

- Establishing ATI information offices or officers in all public bodies and equipping them with adequate resources to carry out their activities to support public administrations in effectively implementing ATI laws.

3.4. Trends, challenges and opportunities for strengthening access to information, as identified by CSOs and other stakeholders

As discussed in Section 2.1.5 in Chapter 2, emergency measures introduced to contain extraordinary situations, such as environmental disasters, health emergencies or terrorism threats, can present a threat to civic space, including ATI. Even strong ATI laws are not immune to external shocks and weakening, with countries adding new exemptions, extending deadlines and even suspending obligations in times of crisis. During the COVID-19 pandemic, several countries took advantage of turbulent contexts to disproportionately restrict their ATI laws, for example, by implementing emergency laws and measures that curtailed civic freedoms, and access to information in particular. The COVID-19 Civic Freedom Tracker from the International Center for Not-for-Profit Law (ICNL) found that 43 countries across the globe restricted access to information in the wake of the pandemic, including by using extraordinary and other informal measures (ICNL, 2021[61]).[8] The most common measures were suspending or altering deadlines for response or the appeals process. While many measures were overturned or repealed after some months, the situation revealed gaps in the ATI frameworks of many countries in regard to maintaining this right in a crisis context.

The pandemic proved that information and data can save lives but, for that to happen, safeguards must be put in place to ensure that information continues to be available. Ensuring the right to ATI while responding to other emergency measures revealed itself to be a complex task for governments. The following measures, based on findings from the RTI Rating (n.d.[27]); UNESCO (2020[62]); and Wylie et al. (2020[63]), could inform future responses to maintaining ATI in the midst of crises.

Key measures to consider on strengthening access to information

- Minimising restrictions on ATI by applying the three-part test:

- *First, there must be a legal basis in the national law that enables the limitation of the right in specific circumstances.*
- *Second, the restriction must protect a legitimate interest, such as national security, public order, etc.*
- *Third, the restrictions must be necessary to protect the legitimate interest (i.e. the least obstructive measures could be used).*

- Promoting the use of electronic requests for information.

- Enhancing proactive disclosure, especially with information and data related to the crisis (i.e. health, budgets, procurement and special programmes).

- Ensuring that oversight and enforcement ATI bodies can continue working by setting the necessary electronic systems in place if in-person attendance is restricted.

- Strengthening record management systems to monitor government decision making during the emergency.

- Elaborating a comprehensive public communication strategy to enable information sharing with citizens, which could be disseminated through a multi-channel approach clearly and simply. This can help counter disinformation and build trust during the crisis.

- Conducting a consultation with stakeholders to prioritise the information and data needs, including the preferable format and channels for dissemination.

Several lessons learned from across countries have emerged that can guide governments during a crisis to ensure ATI. Some countries and local governments have also started developing comprehensive guidelines for implementing ATI during a crisis context, such as Mexico City (Box 3.7).

Box 3.7. The Mexico City Protocol to Access Information in Times of Crisis

Following an earthquake in 2019 and the COVID-19 pandemic in 2020, the government of Mexico City decided to create a Protocol to Access Information and Transparency in Times of Crisis. In sum, it outlines the minimum actions for transparency in emergency situations, by bodies subject to the ATI law, by oversight bodies and by people and communities in each of the stages of a risk situation: prevention, reaction and recovery. These actions can include digitising documents, identifying which information could be published and disseminated during the emergency situation and how to monitor and evaluate emergency ATI actions.

To create the Protocol, the government conducted an open and participative process.

- First, it carried out six co-creation roundtables with multiple stakeholders to co-design a preliminary draft of ideas, proposals and definitions to be included in the protocol.
- Second, in collaboration with the National Center for Disaster Prevention and external specialists on risk management, the content for the Protocol was elaborated. For this stage, three co-creation roundtables with multiple stakeholders were encouraged to revise the content in a collaborative way and agree on a final document.
- Third, once the Protocol was launched, a toolkit was co-elaborated with stakeholders to help different actors implement the Protocol.

The final document is written in plain language and reflects the different needs of all sectors of society. It is also adaptable to any crisis context and provides recommendations to avoid the circulation of fake news during a crisis.

Source: INAI (2020[64]), *Información de Iberoamérica para hacer frente a los desafíos derivados por la emergencia sanitaria provocada por el Covid-19* (Information from Ibero-America to face the challenges derived from the health emergency caused by Covid-19) https://micrositios.inai.org.mx/accionescovid19/; INFOCDMX (2021[65]), *Protocolo de Apertura y Transparencia ante el Reisgo: Prevención, Reacción y Recuperación* (Opening Protocol and Transparency Before Risk: Prevention, Reaction and Recovery), https://infocdmx.org.mx/micrositios/2021/protocolo-apertura-y-transparencia/assets/files/inicio/Protocolo_Apertura_Transparencia_Riesgo.pdf.

Overall, most ATI laws in OECD Members align with the aforementioned good practices. Even though there is room for improving such provisions, research suggests that the main challenges for increasing ATI transparency are linked to their implementation and measuring their impact rather than weaknesses in the legal framework.

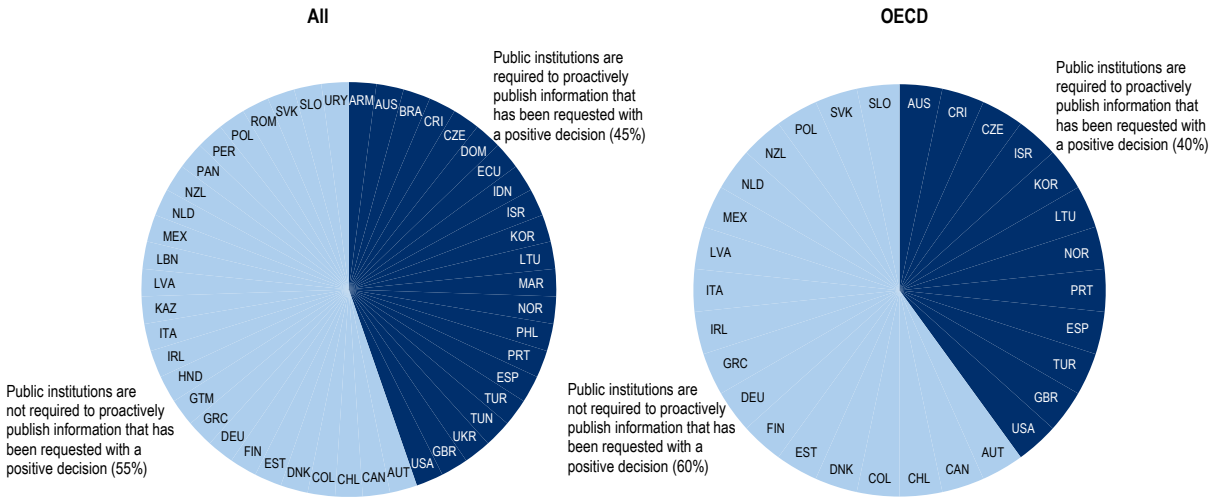
Countries can face a range of internal and external challenges in fulfilling the implementation of their ATI laws. The external challenges are those not explicitly related to the public administration but to elements and dynamics in the country that may influence its implementation. These can include: low levels of trust in public institutions, inadequate communication and awareness-raising for stakeholders, and complex geography and infrastructure. Furthermore, the success of ATI laws can be negatively impacted by internal challenges, which refer to the capacity of public administrations to implement ATI laws. These include a lack of political will, inadequate monitoring, evaluation and enforcement mechanisms, insufficient human and financial resources and inadequate technology and information systems management in the public sector.

The lack of strong monitoring and evaluation mechanisms is a major internal challenge in implementing ATI laws. At the national level, access to information laws are monitored and evaluated, to varying degrees,

by different types of national entities: parliaments, ATI bodies (independent commissions, ombudsman institutions, etc.), administrative services in charge of the laws and administrative evaluation bodies, such as general inspectorates and supreme audit institutions. For ATI in particular, robust data and statistics on the number of requests, the topics requested, the average response time and the reasons for denial/refusal, among others, allow countries to identify challenges, bottlenecks and specific needs for information. For instance, 45% of all respondents, like **Australia, Lithuania, Portugal** and **Tunisia,** require public institutions to proactively publish information that has been repeatedly requested with a positive decision taken on its disclosure (Figure 3.20). In **Uruguay**, although not required by law, public bodies proactively publish information that has been repeatedly requested with a positive decision taken on its disclosure. This measure can help ease the administrative burden of ATI requests, saving time and resources for the public administration in the future.

Figure 3.20. Respondents required to proactively publish information that has been repeatedly requested, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 47 respondents (30 OECD Members and 17 non-Members).
Source: 2020 OECD Survey on Open Government.

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In addition, the Survey revealed that 64% of respondents collect data on the implementation of the ATI law. The types of data most commonly collected by OECD Members are the number of requests received and the number of requests processed, followed by the average time to respond to a request, the number of requests denied, the number of complaints received as well as the number of appeals (upheld and dismissed). Evaluation, in particular, makes it possible to predict the law's impact upstream (*ex ante*), to adjust its provisions as they are implemented (*in itinere*) and to determine whether they could be continued, abandoned or corrected (*ex post*).[9] Ultimately, monitoring and evaluation help to improve the quality of public debate and restore the legitimacy of public action by basing discussions and choices on facts and analysis (Conseil d'État, 2020[66]). Yet, only a few countries conduct some form of evaluation of their ATI laws, such as **Brazil** and **Ireland**, and even fewer undertake an impact evaluation, such as those conducted in **Finland** and **Italy**.

> ***Key measures to consider on strengthening access to information***
>
> *- Mainstreaming different forms of both process and impact evaluations as a first step towards recognising where reforms of the ATI law and its practice could be valuable.*

3.4.1. Fostering impact evaluations and empowering civil society on the use of ATI to monitor government action and increase accountability

Determining whether ATI laws are being effectively implemented and are having a positive impact (i.e. whether they are contributing to more transparency and accountability and the overall public interest information ecosystem in a country) is difficult to assess and measure as there is limited evidence on the circumstances that can affect their effective implementation and their long-term impact. Conducting a quality impact evaluation can provide reliable information on why and how a policy was successful or not and the underlying causal mechanisms leading to success or failure (OECD, 2020[67]). Although standards or principles on the right to access information are subject to different types of national or international assessments, they mostly focus on the robustness of the ATI law by analysing its provisions or monitoring its implementation by collecting input data such as the number of requests received and/or denied, and the number of datasets available to the public. While this endeavour is useful in identifying whether the short-term objectives of an ATI law are being achieved (i.e. the public has full access to information), it is less valuable in understanding whether this information is being used and re-used by requesters, for what overall aim and whether the information goes on to have an impact beyond the individual level.

Assessing the impact of ATI laws on broader policy goals necessitates accurate, verifiable and documented data on government practices and perception of how access to information contributes to policy making and service delivery beyond value-based judgements. This implies having quality data on both the demand side of the law (the number of requests received and denied by subject, the average time of response, the number and reasons for denial/refusal, among others) as well as the supply side (responsiveness, capacity and awareness from implementing and oversight institutions). A comprehensive analysis of the supply and demand ecosystem of an ATI law, including the external factors affecting its implementation, can therefore help determine its maturity, quality and outcomes (Calland and Neuman, 2007[68]). Nevertheless, as discussed above, few countries have effective systems in place to gather such data.

> ***Key measures to consider on strengthening access to information***
>
> *- Learning from other countries wherein ATI impact data have been gathered and evaluations have taken place, and endeavouring to introduce and use systematic and evidence-driven impact assessments of both the legal framework and practice so as to improve ATI implementation and strengthen civic space.*

Civil society also has a multi-faceted role to play in the process of assessing ATI. CSOs, in particular, can take different approaches, depending on their mission statements and intended outcomes (Box 3.8). First, CSOs can be invited to consult and engage with the government on potential ATI impact frameworks and give first-hand feedback on any gaps or issues that could be considered in the procedures involved. Since CSOs often operate as an important source of information for citizens, many employees of CSOs have filed an ATI request over the course of their tenure and can provide the government with reflections that they may not have otherwise contemplated. They can also lobby the government with comparative initiatives undertaken and data collected on measuring the ATI law in other countries. Second, CSOs can monitor governments to ensure that they follow through on the findings of assessment processes and that particular attention has been given to any recommendations from civil society and citizens, with clearly demonstrated feedback loops. CSOs can then take an active role in evaluating changes made to the ATI law or processes following the impact assessment.

Box 3.8. The role of civil society in using and ensuring access to information

Civil society has been an instrumental actor in the initial development and recognition of the right to access information. Towards the end of the 20th century, activists and reformers began to use constitutional and rights-based arguments and make comparisons between their countries' legal frameworks and those with more advanced laws on access to information (Darbishire, 2015[18]). In particular, in post-communist Central and Eastern Europe, civil society played a significant role in pushing through more constitutional provisions and laws to establish ATI as a fundamental instrument to strengthen democracy (Darbishire, 2015[18]). Growing debate among governmental and non-governmental actors across Europe led to significant changes at the European supranational level to heighten the importance of transparency in modern public governance (Darbishire, 2015[18]). Movements in Eastern Europe and Africa also began to inspire similar changes in Latin America. Globally, "a strong and well-organised international civil society movement pushed forward the standard-setting, through national, regional and international declarations on the main elements of access to information laws" (Darbishire, 2015[69]), some of which included the major milestones mentioned above.

Access to information empowers civil society and allows CSOs, journalists, activists and others to equip themselves with the knowledge needed to have their rightful say in matters that concern them (UNCAC Coalition, 2022[70]). Because of this, civil society actors have a stake in demanding that public officials fulfil their legal obligations so that they can carry out their own respective mission, whether they involve advocacy, lobbying, service provision, watchdog activities or others. CSOs can also use the information for varying purposes: for example, some CSOs may work in partnership with the government to deliver services and wish to access public documents or budgets that would inform their tasks. Others may serve as critics that seek to monitor and evaluate government actions and call for greater accountability in policy making. Regardless of the objective, CSOs have achieved significant impact in both using ATI and ensuring that the right is protected and promoted among citizens. For example, the Right2Know campaign in South Africa "aims to ensure the free flow of information necessary to meet people's social, economic, political and ecological needs" (Right2Know, 2022[71]).

CSOs, particularly those operating at the local level, know the needs of their communities and are often the first port of call for citizens looking for assistance, especially if their civic freedoms have been infringed upon. As a result, CSOs play a key role in raising awareness of the right to information. In fact, as the U4 Anti-Corruption Resource Centre states, there are many instances of platforms being created by CSOs to support citizens with submitting ATI requests and with making an appeal in the case of a denial (U4, 2014[72]). Many also help citizens access any previous requests made and find already available answers from government bodies (U4, 2014[72]). In filing their own requests, overseeing that ATI laws are implemented fully and encouraging citizens to request information, CSOs contribute to strengthening both transparency and stakeholder participation in public governance. There is also substantial evidence demonstrating the changes that materialise through the use of ATI laws.

Ireland: CSOs using ATI to improve public services

ATI also has demonstrated value in improving public services in the long term. A notable example of this in Ireland took place in 2005. ATI disclosures regarding the mistreatment of residents in public nursing homes led to nationwide debate and calls to improve healthcare facilities (CHRI, 2007[73]). Consequently, a Commission of Investigation was established to review the management, operation and supervision of one nursing home in particular. Additional information requests uncovered that the government had been aware of such issues and had delayed acting promptly. As a result of the controversy, an independent inspection of all nursing homes began nationwide in 2009 (HIQA, 2009[74]).

Source: UNCAC Coalition (2022[70]), "Access to information", https://uncaccoalition.org/learn-more/access-to-information/; U4 Anti-Corruption Resource Centre (2014[72]), *Right to Information Laws: Impact and Implementation*, https://www.u4.no/publications/right-to-information-laws-impact-and-implementation.pdf; Right2Know (2022[71]), "Latest from the Right2Know", https://www.r2k.org.za/; Commonwealth Human Rights Initiative (2007[73]), *Our Rights, Our Information: Empowering People to Demand Rights through Knowledge*, https://www.humanrightsinitiative.org/publications/rti/our_rights_our_information.pdf; Irish Health Information and Quality Authority (2009[74]), "Independent inspection of nursing homes to begin", https://www.hiqa.ie/hiqa-news-updates/independent-inspection-nursing-homes-begin.

Regarding measuring the broader impact of ATI on other policy goals, civil society can be instrumental in advocating for the law and highlighting its successes, which can lead to greater recognition from public officials of its importance across diverse policy areas. For example, journalists can shed light on meaningful changes that have resulted from information requests, especially in cases that could spur national or even international debate. Academics, research institutions and the private sector can collaborate with public bodies to produce useful statistics on the ATI law and present data in visually accessible and appealing ways for all demographics. Citizens themselves can be directly involved in activities such as focus groups and workshops on the impact of ATI laws from their perspective. CSOs and citizens that have filed a request can be interviewed to share their opinions and learn how their suggestions for improvement could be concretely implemented to ensure feedback loops end to end.

> ***Key measures to consider on strengthening access to information***
>
> *- Ensuring that the relationship between government and civil society in relation to access to information is mutually reinforcing and based on trust. Public officials could facilitate civil society access to information that enables them to undertake their advocacy, lobbying or watchdog activities by establishing the necessary in-person and digital channels, respecting deadlines for providing information, and sanctioning non-compliance based on the relevant provisions of ATI laws.*
>
> *- At the same time, civil society has a responsibility to raise awareness of the importance of ATI laws, inform citizens of ways that they can use information, and demonstrate the benefits of ATI and how it could be further improved, in order to allow them to fulfil their diverse roles while promoting greater government transparency.*

These types of actions by civil society are essential for fostering several types of accountability. The involvement of civil society in monitoring and evaluation of public policies and services is a key pillar of social accountability, meaning the ways in which CSOs, citizens and the media can increase accountability in state institutions beyond formal types of political participation (Lührmann, Marquardt and Mechkova, 2020[75]). Their participation in impact assessments in particular also contributes to policy outcome accountability, in that they can both encourage and assist policy makers in being accountable for the policies and services they implement as well as the overall outcomes and performance of such policies and services (Bovens, Schillemans and Goodin, 2014[76]). This process enables evidence-informed policy making and allows public officials to learn from successes and failures and can lead to necessary reform in ATI and other fields to ensure that stakeholders can continue to use, re-use and impart information widely.

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Notes

1. In line with the OECD Survey on Open Government, for the purposes of this report, the term citizen is meant in the sense of an inhabitant of a particular place and not as a legally recognised national of a state.

2. UNESCO states that "access to information", "right to information", "right to know" and "freedom of information" are often used as synonyms (UNESCO, 2015[6]). All four terms are used interchangeably in articles discussing such legislation and research suggests that there is no empirical difference in the substance of the laws, whether they are named access to information, right to information, freedom of information or otherwise (UNESCO, 2015[6]). No title seems to suggest that one concept is more comprehensive or robust than another and many countries use different terms for access to information (ATI) laws that have broadly the same functions (e.g. the Right to Information Act in India and the Freedom of Information Act in the United States). However, the diverse terminology highlights the particular (albeit related) dimensions of the issue.

3. The Asia-Pacific and Middle-East regions do have a certain recognition of this right at the supranational level, including Article 32 of the Arab Charter of Human Rights (OHCHR, 2004[77]) and Principle 23 of the Association of Southeast Asian Nations (ASEAN) Declaration of Human Rights (ASEAN, 2012[78]). However, both instruments and their respective enforcement and monitoring mechanisms are considered to be imprecise or inconsistent with international ATI standards (Article 19, 2015[79]; Ghormade, 2012[80]). Nonetheless, this right has been protected and promoted in some countries of both regions through laws, constitutional provisions and other transparency-related policies.

4. On 27 April 2022, the Legislative Assembly approved Bill 20.799, the "General Law of Access to Public Information and Transparency". As of 6 May 2022, it has been partially vetoed following concerns that certain provisions may in fact limit access to information and press freedom (CIVICUS, 2022[81]).

5. This refers to the large regions of subnational government, which often differ in terminology across OECD Members. Common examples include provinces, regions, districts and counties.

6. This refers to smaller units of the subnational government within the first administrative tier. Common examples include towns and cities.

7. For more information on Uruguay's initiatives, please consult the following links: access to information with a gender and diversity perspective, handbook for requesters, guide on exercise the right, campaign aimed at children and adolescents, and the Digital Citizenship Strategy for an Information and Knowledge Society.

8. These countries are: Algeria, Argentina, Armenia, Bangladesh, Bolivia, Brazil, Cambodia, Chad, Colombia, the Dominican Republic, Egypt, El Salvador, Ethiopia, Georgia, Ghana, Guatemala, Hungary, India, Islamic Republic of Iran, Jordan, Lesotho, Mexico, Moldova, Morocco, Myanmar, Nepal, Oman, the Palestinian Authority, Papua New Guinea, the Philippines, Romania, Russia, Serbia, the Solomon Islands, South Africa, Tanzania, Thailand, Türkiye, the United States, Uzbekistan, Venezuela, Yemen and Zimbabwe.

9. Process evaluations aim to assess the design, implementation and monitoring of a specific policy (e.g. a programme, initiative or strategy) and enable public officials to detect failures in implementation or delivery. Impact evaluations, however, assess the overall effectiveness of a programme, policy or strategy, in achieving its ultimate goals.

4 Media freedoms and civic space in the digital age for transparency, accountability and citizen participation

This chapter provides an overview of the status of press freedom and civic space in a digitalised world, including relevant legal frameworks. It discusses harassment and attacks targeting journalists and makes suggestions on building the necessary enabling environment for reliable, fact-based journalism. It considers the protection of online civic space for citizens and related challenges such as hate speech and mis- and disinformation. It concludes with an analysis of the importance of personal data protection for civic space and safeguarding civic freedoms in the context of increased use of artificial intelligence (AI).

Key findings

- Protected media freedoms are an essential component of democratic societies. Freedom of the press is guaranteed in law in all respondents but the level of harassment and threats targeting journalists, including those covering protests, remains a serious concern.
- In recent years, a number of OECD Members and non-Members have passed special measures enhancing the rights of journalists or protecting them against threats of violence or intimidation. Courts have also issued decisions strengthening the rights of journalists and media. However, in some countries, national security measures have the potential to stifle freedom of the press.
- While the overall picture for freedom of the press is good in OECD Members compared to the rest of the world, it has deteriorated in recent years. The proportion of countries where the situation is regarded as favourable for journalism has halved in the space of six years, with 49% of countries ranked as "good" in the 2015 World Press Freedom Index and only 26% in 2021, according to data from Reporters Without Borders (RSF). The level of press freedom afforded to journalists was classified as "good" or "fairly good" in nearly three-quarters (74%) of all OECD Members in 2021 and "problematic" or "bad" in the rest (26%).
- The protection of online civic freedoms is a precondition for citizens and civil society to access information, operate freely online and thrive without fear of arbitrary or unlawful intrusion. Almost all respondent OECD Members (94%, 75% of all respondents) have legal provisions to protect an open Internet and a number have passed recent legislation and other measures to enhance access to and safety of the Internet and net neutrality.
- Nevertheless, in 93% of respondent OECD Members (86% of all respondents), the Internet can be restricted to protect national security and measures introduced in a few countries have intensified pressure on content-sharing services to filter illegal content. Depending on how these are implemented, such measures may risk stifling public debate by overly restricting online content.
- Online hate speech and *harassment* are a growing obstacle to online civic participation, with countries introducing a variety of measures to tackle the phenomenon: 65% of respondent OECD Members have established reporting and complaint mechanisms and provide support for victims (e.g. hotlines, free legal advice) and almost half (44%) have introduced specific measures to address online hate speech that targets women.
- Concerns about the misuse of artificial intelligence (AI) are also growing and have particular prominence in the use of AI in and by the public sector. Almost one-third of the 19 reviewed strategies include an in-depth discussion on the impact of AI on civic freedoms. More than half of these strategies address the need to establish oversight and redress mechanisms and a majority (84%) include the intention of developing an ethics framework to guide the development of AI, in particular in the public sector.

4.1. Introduction

Protected media freedoms are an essential component of democratic societies. They allow for access to diverse sources of information and enable informed debate as part of a vibrant "public interest information system" (Forum on Information and Democracy, 2021[1]) that facilitates citizen and stakeholder participation in public life and decision making. Media restrictions, including media concentration and monopolies, in contrast, can hamper balanced and multifaceted debate on matters of public interest and promote one-sided views that can ignite polarisation, in addition to impeding transparency and accountability.

Online civic freedoms are an equally crucial component of an information ecosystem in democratic societies, understood for the purposes of this report as the combination of communication and media governance frameworks (i.e. institutional, legal, policy and regulatory) as well as principal actors (i.e. governments, traditional and social media, professional and citizen journalists) (Matasick, Alfonsi and Bellantoni, 2020[2]). Citizens[1] and civil society organisations (CSOs) are increasingly moving their activities onto social media and the Internet as part of what is commonly referred to as online civic space. This shift has been accentuated by the COVID-19 pandemic, related lockdowns and restrictions on freedom of assembly due to public health measures. At a time when civic space – defined 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[2] – is eroding globally, digital transformation is thus providing new opportunities to exercise key rights, support civic mobilisation and the articulation of interests, and facilitate more dynamic and inclusive civic participation (Freelon, 2016[3]; Anderson, 2018[4]).

Technological advances and social media platforms are powerful tools for civic engagement, yet data-intensive technologies also come with important challenges to civic freedoms and democratic governance. In some countries, digital technologies are being misused or abused by governments to surveil or even silence civil society and stifle political opposition, as well as to express extremist views and hate speech, undermining the safety and security of online civic space (OECD, 2020[5]). More and more citizens and civil society actors are thus demanding transparent and accountable governance, regulations and processes for online civic spaces that are open, accessible, safe and equitable and that serve the public interest.

Online civic space is also becoming more complex as a result of the increasing role played by online platforms and of the rapidly advancing technologies such as AI and facial recognition, impacting civic freedoms, including privacy and raising additional concerns about their ethical use. Citizens are often unaware of how their online statements are turned into data, how systems used by online platforms sort content and how they profile and target them through advertising (Zuboff, 2019[6]; Couldry and Mejias, 2019[7]). Governments also recognise technological advances and the (mis)use of personal data as growing challenges to civic freedoms. According to the 2019 OECD Digital Economy Policy Questionnaire, conducted under the purview of the OECD Committee on Digital Economy Policy (CDEP), more than 80% of the 29 OECD respondents reported in 2019 that AI and big data analytics are currently the biggest challenges to privacy and personal data protection (OECD, 2020[8]). Similarly, as addressed by the CDEP initiative on terrorist and violent extremist content (TVEC), limited reporting by platforms of their TVEC moderation is hampering constructive dialogue and an understanding of the impacts on online civic space.

All survey data presented in this chapter pertain to the countries that responded to the civic space section (32 OECD Members and 19 non-Members) of the 2020 OECD Survey on Open Government (hereafter, "the Survey"). The chapter also benefits from content contributed by RSF, which covers all 38 OECD Members.

4.2. Protection of freedom of the press

4.2.1. Legal frameworks governing freedom of the press

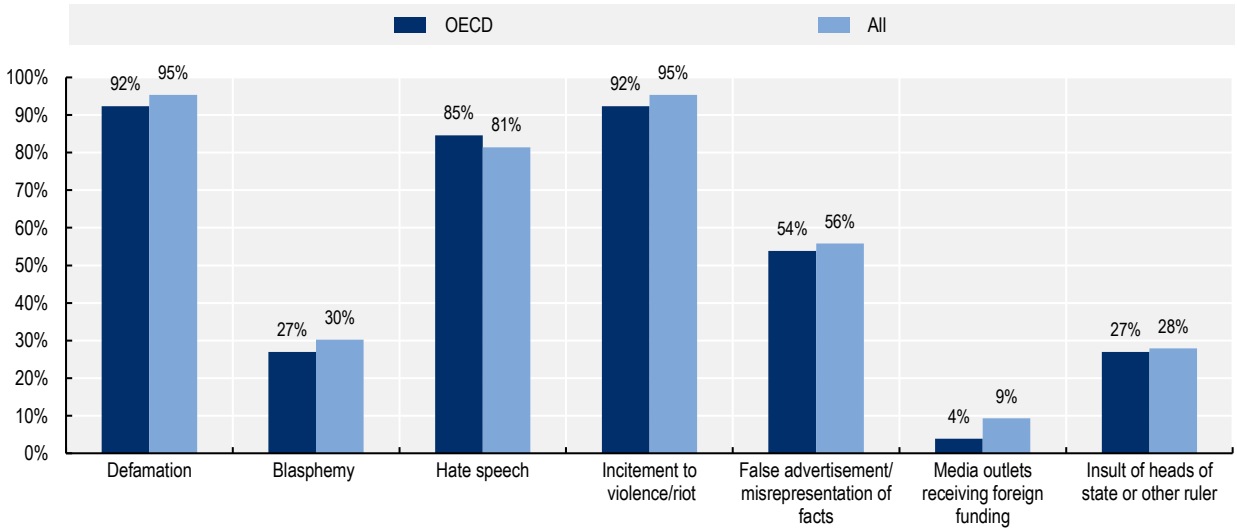
Media freedom is a fundamental component of civic space as a prerequisite for the unrestricted flow of information and the open exchange of opinions and ideas. The right to freedom of expression, discussed in detail in Section 2.1.1 of Chapter 2, underpins media freedom in national legislation and the principles set out there apply equally to media freedoms. According to the United Nations (UN) Human Rights Committee, countries are obliged to ensure that legislative and administrative frameworks for the regulation of mass media, including in print, broadcast and online media, are consistent with the provisions of Article 19 (para. 3) of the International Covenant on Civil and Political Rights (ICCPR), which limits the circumstances in which the right to freedom of expression may be restricted (UN Human Rights Committee, 2012[9]). The UN has also affirmed that the same rights that people have off line must also be protected online, particularly freedom of expression (UN, 2021[10]).

For the purposes of this report, press freedom is defined as the principle that communication and expression through various channels, including printed and electronic media, are considered a right to be exercised freely and without interference from an overreaching state polity. The OECD Survey on Open Government shows that in all respondents[3] the principle of freedom of the press is set out in relevant constitutional and/or media-specific legislation or guaranteed by high court decisions, either explicitly or as part of a general constitutional right to freedom of expression.

In many countries, the exceptions to this right, notably legislation prohibiting and sanctioning defamation, blasphemy, hate speech, incitement to violence and insults to heads of state, are the same as exceptions to the general right to freedom of expression (Section 2.1.1 in Chapter 2) and are shown in Figure 4.1. A total of 92% of OECD respondents have legal exceptions to press freedom based on defamation and incitement to violence (95% of all respondents), while 85% make exceptions on the basis of hate speech (81% of all respondents). Furthermore, 54% of respondent OECD Members (56% of all respondents) exclude false advertisement/misrepresentation of facts from the right to freedom of the press. Exceptions based on other grounds are less common, such as blasphemy (27% of respondent OECD Members, 30% of all respondents) and insults to heads of state (27% of OECD Members, 28% of all respondents).

Figure 4.1. Legally mandated exceptions to freedom of the press, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 43 respondents (26 OECD Members and 17 non-Members). Data on Brazil, Cameroon, Costa Rica, Dominican Republic and Indonesia are based on OECD desk research for at least one of the categories and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/7exuzm

A number of OECD Members also have more specific press-related limitations in legislation covering media and communications. For example, there is a prohibition of hate speech in mass media broadcasting and advertising in **Costa Rica** and **Latvia** and a ban on publishing information that is slanderous and offensive, injures the honour and dignity of people or otherwise defames them in **Latvia** and **Lithuania**. In a number of respondents, including **Austria**, **Brazil**, **Colombia**, **Cameroon**, **Germany** and **Spain**, penalties for hate speech are increased when these are committed through media or publication by any means. Other countries, for instance, **Italy**, foresee aggravated punishment in cases where members of the press commit acts of defamation. In **Greece**, criminal legislation likewise aggravates punishment for the repeated act of spreading "false news likely to cause concern or fear among citizens or undermine public confidence in the national economy, the defence capacity of the country or public health" committed by the media; and media owners and publishers are also liable for news provided by their media outlet (CPJ, 2021[11]). Another example is **Ireland,** which, in its constitution, states that the press may not be used to undermine public order, while in **Latvia**, programmes and broadcasts issued by electronic mass media may not contain incitement to violence or hatred, or incitement to discrimination against a person or group of persons.

While it may be justified to provide aggravated sanctions for media outlets when it comes to hate speech or defamation, relevant provisions should be formulated in a clear and foreseeable manner, so that journalists know which laws protect their rights in case of violations and that the respective sanctions are not so high as to unduly limit the rights of media or individual journalists, or hamper the ability of media outlets to function.

Additionally, high courts in **Germany**, **Lithuania** and **Türkiye** have issued decisions strengthening the rights of journalists and media in general in cases related to state surveillance or other forms of state interference, access to information, oversight of public broadcasting and the accreditation of media representatives. These court rulings are a positive sign that in various OECD Members, the judiciary is

protecting and safeguarding civic space. Box 4.1 highlights special measures that have been implemented to protect journalists.

Box 4.1. Laws, policies and programmes for the physical protection of journalists

A number of respondents to the OECD Survey on Open Government have passed special measures enhancing the rights of journalists, providing them with additional support when conducting their work, or protecting them against threats of violence or intimidation. Human rights defender protection laws in **Honduras** and **Mexico** (Section 2.3.1 in Chapter 2) explicitly apply to journalists, while **Colombia** has passed additional legislation and policies to protect journalists and social communicators (Government of Colombia, 2000[12]). **Mexico** has a special prosecutor's office that investigates crimes against journalists (UNESCO, 2021[13]) and, in **Portugal,** murder is met with aggravated sanctions if committed against a journalist.

In response to the rising levels of threat to journalists, several OECD Members have also started to develop specific policies to protect them. The **United Kingdom**, for example, has a national action plan to protect journalists from abuse and harassment, including measures for training police officers and journalists, while social media platforms and prosecution services have committed to taking prompt and tough action against abusers (UK Government[14]). In **Brazil**, since 2018, the federal human rights protection programme of the Ministry of Human Rights has also explicitly protected "communicators", defined as persons performing regular social communication activities to disseminate information aimed at promoting and defending human rights (Ministry of Human Rights, 2018[15]).

Source: Government of Colombia (2000[12]), *Decree 1592 of 2000*, https://www.suin-juriscol.gov.co/viewDocument.asp?id=1314526; Government of the United Kingdom (2021[14]), "Government publishes first ever national action plan to protect journalists", https://www.gov.uk/government/news/government-publishes-first-ever-national-action-plan-to-protect-journalists; Ministry of Human Rights (2018[15]), Ordinance Nº300 of 3 September 2018, https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/39528373/do1-2018-09-04-portaria-n-300-de-3-de-setembro-de-2018-39528265; UNESCO (2021[13]), "Recent convictions highlight the work of Mexico's Prosecutor Office dedicated to crimes against freedom of expression", https://en.unesco.org/news/recent-convictions-highlight-work-mexicos-prosecutor-office-dedicated-crimes-against-freedom.

There have been numerous amendments to legal frameworks and court decisions governing media freedoms in recent years aimed at safeguarding the rights of the media and introducing clauses based on national security and counter-terrorism concerns. OECD Members such as **Canada, Germany**[4] and the **Netherlands** have recently passed legislation that protects journalists and their sources from undue disclosure and surveillance measures. In **Canada**, the Supreme Court ruled in 2018 that a Vice reporter had to surrender his materials related to a case about an accused terrorist to the Royal Canadian Mounted Police. The court acknowledged the potential negative impact of such a decision on journalists and their secret sources but said the "state's interest in the investigation and prosecution of crime outweighed the media's right to privacy in gathering and disseminating the news".[5] **Norway** has passed a media liability act relating to editorial independence that clarifies the liability of editor-controlled journalistic media and thereby contributes to open and informed public discourse (Box 4.2). **Italy** has likewise amended its legislation on the media so that defamation is no longer punishable by cumulative penalties (involving prison sentences and fines); rather, while still a criminal offence, the sanction is now either a prison sentence or a fine.

Box 4.2. Good practice: Media Liability Act in Norway

In **Norway**, since 2020, a new media responsibility law defines journalists' freedoms and responsibilities. The purpose of the act is to facilitate open, informed public discourse by ensuring editorial independence and establishing clear liability regulations for content published in editor-controlled journalistic media. The duties of media professionals defined in the law include the obligation to have an editor (Section 4 of the law) and for that person to be known (Section 5 of the law). The editor is responsible for the content of the medium but also for the clarity of the rules applying to user-generated content. In cases where a medium hosts editorial content and user-generated content, users should be able to distinguish these (Section 6 of the law). In addition, the law also ensures the editorial independence of the medium stating that the publisher, the owner or other company management should not interfere with the editor's final decision on content (Section 7 of the law).

Source: (Norwegian Ministry of Culture and Equality, 2020[16]); (Reporters Without Borders, 2021b[17]).

At the same time, threats against national security, such as terrorism have led to more restrictive legislation in a number of OECD Members. In **Australia**, journalists may be categorised as people "acting on behalf of a foreign principal" in certain circumstances, which means that they may be required to register in a public registry and disclose foreign contacts and may suffer sanctions for failure to do so (Parliament of Australia, n.d.[18]). In **Latvia** and **Lithuania**, broadcasting or retransmission permits may be refused or suspended where necessary in the interests of national security or public order. Similarly, the **Netherlands** has recently passed legislation that obliges anyone, including journalists, travelling to areas controlled by terrorist groups to request prior permission from the Ministry of Justice.

Additionally, some respondents have introduced new provisions in their criminal codes or adopted new legislation in recent years to combat mis- and disinformation,[6] including **Greece** (2021), **Kazakhstan** (2018), **the Philippines** (2017) and **Türkiye** (2022), with prison sentences of up to three years as potential sanctions. Human rights bodies and CSOs have raised concerns as general prohibitions on the dissemination of information are often based on overly broad and vague language or concepts (ICNL, 2021[19]; UN, 2022[20]; RSF, 2021[21]).

Generally, most OECD Members provide for some sort of complaints and redress mechanisms through which individuals and media entities can complain about alleged violations of freedom of the press. These mostly range from constitutional and other courts to government entities and independent institutions, such as national human rights institutions (NHRIs). Broadcasting media may also complain about licensing issues to independent broadcasting councils, such as those in the **Czech Republic**. Similarly, the **United Kingdom**'s regulatory and competition authority, Ofcom, investigates complaints and can revoke broadcasting licenses. In addition, in some countries, individuals can address complaints about the press or broadcast matters to specific complaint bodies. In **Austria**, for example, the Presserat allows for individual complaints regarding news content that violates the code of ethics established by the institution, as well as complaints where an individual is personally affected. In **New Zealand**, the Media Council's complaint procedure foresees that the council rulings following a complaint are made public. In **Korea**, the Press Arbitration Commission allows individuals or press organisations to initiate a mediation procedure.

> ***Key measures to consider on legal frameworks on media freedoms***
>
> *Ensuring that legal frameworks guarantee media pluralism, the independence of journalists and the media, and the right of journalists to protect the secrecy of their sources; and that freedom of the press is also fully protected in the context of security or counter-terrorism measures.*

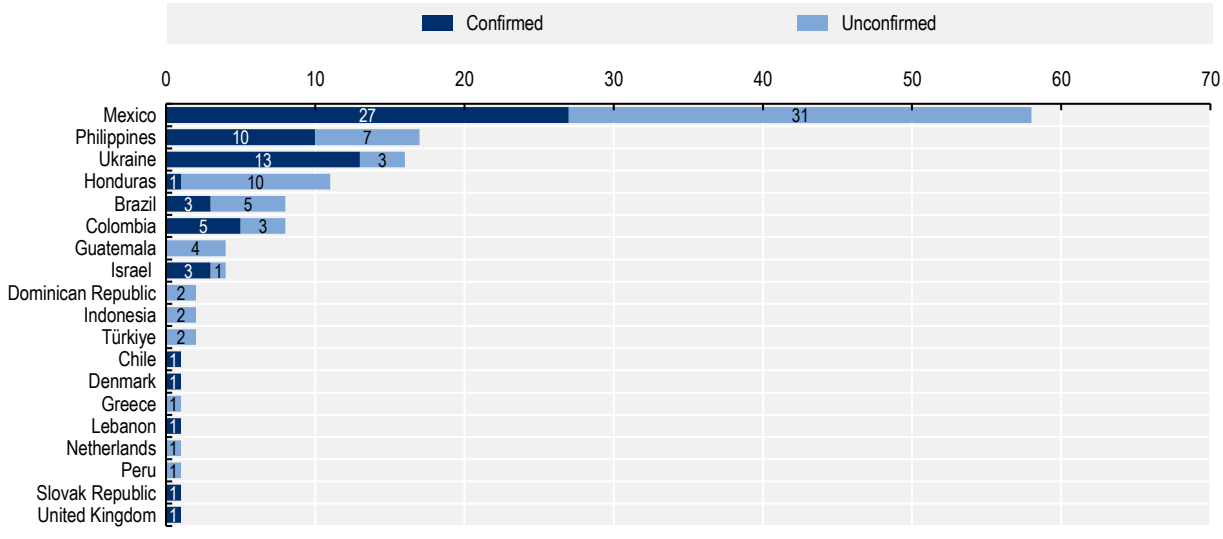
4.2.2. Implementation challenges and opportunities for media freedoms, as identified by CSOs and other stakeholders

Harassment and attacks on journalists

Journalists enjoy special protection based on the right to freedom of information and expression under Article 19 of the ICCPR, Article 10 of the European Convention on Human Rights (ECHR) and Article 13 of the American Convention on Human Rights (ACHR). In 2020, the UN Human Rights Council passed a resolution on the safety of journalists, condemning related attacks, reprisals and violence, including specific attacks on women journalists and impunity for such acts (UN Human Rights Council, 2020[22]). In 2022, the Council of Europe published its principles on *Journalism in Situations of Conflict and Aggression*, which are based on the relevant conventions, recommendations, guidelines and case law from the European Court of Human Rights (Council of Europe, 2022[23]).

Despite these special protections, estimates of journalists killed worldwide between 2010 and 2020 range between 937 (RSF, 2020[24]) and 956 (UNESCO, 2021[25]). The COVID-19 pandemic has further exacerbated the threats and limitations to journalists' work (OAS, 2020[26]). In 2021, 293 journalists were imprisoned worldwide, reaching a new high, according to the Committee to Protect Journalists (CPJ, 2021[27]) (Figure 4.2). In the same year, estimates of journalists killed range from between 31 to 55 killings (Section 4.3.3 on the growing vilification of journalists).[7] Between 2017 and 2021, 67 journalists and media workers were killed in respondent countries with the motive confirmed as related to their work (CPJ, n.d.[28]). Some countries are experiencing particular challenges in relation to protecting journalists in contexts marked by organised crime and social conflicts (CPJ, 2021[29]; UNESCO, 2021[25]).

Figure 4.2. Number of journalists killed between 2017 and 2021



Note: The graph includes countries where one or more journalists were killed in countries participating in the 2020 OECD Survey on Open Government only. Researchers from the CPJ independently investigate and verify the circumstances behind each death. CPJ considers a case "confirmed" as work-related only when it appears certain that a journalist was murdered: in direct reprisal for his or her work; in combat or crossfire; or while carrying out a dangerous assignment. Cases involving unclear motives but with a potential link to journalism are classified as "unconfirmed" and CPJ continues to investigate. The "unconfirmed" category does not include journalists who are killed in accidents or other incidents where the journalist was not on assignment and there is no evidence to suggest the journalist was the target.
Source: (Committee to Protect Journalists, 2022[30]).

A related global trend is the increase in attacks against journalists covering protests. Around the world, journalists have been increasingly targeted by harassment and violence at demonstrations, with a United

Nations Educational, Scientific and Cultural Organization (UNESCO) report finding 125 such instances across 65 countries between January 2015 and June 2020 (2020[31]). Journalists can face verbal and physical intimidation both from protestors and the police. In 2021, RSF reported on instances of police violence at protests negatively impacting press freedom, including journalists suffering injuries from teargas and baton strikes and others having their equipment seized (RFI, 2021[32]). The situation can be particularly difficult for independent and freelance journalists, who often face barriers in accessing events and can be more vulnerable to harassment without the protection of a larger media company.

Beyond constituting human rights violations, attacks against journalists limit free expression and deprive others of their rights to receive information, thus hampering freedom of expression, public debate and civic space more broadly. In 2021, reflecting the growing concern about violence targeting journalists in Europe, the European Commission (EC) adopted a *Recommendation on the Protection, Safety and Empowerment of Journalists and Other Media Professionals in the European Union (EU)* (European Commission, 2021[33]). In 2016, the Committee of Ministers of the Council of Europe adopted a *Recommendation on the protection of journalism and the safety of journalists and other media actors* (CoE, 2016[34]).

The V-Dem Institute's indicator on the harassment of journalists[8] for 2020, which is based on expert evaluation, shows that in 75% of respondent OECD Members, it was rare for a journalist to be harassed for offending powerful actors and, if this were to happen, those responsible for the harassment were identified and punished (V-Dem Institute, 2021[35]). In 16% of respondent OECD Members, some journalists who offended powerful actors were forced to stop working but others managed to continue practising journalism freely. In only one OECD respondent country, journalists who occasionally offended powerful actors were almost always harassed and eventually forced to stop (V-Dem Institute, 2021[35]). In two OECD Member respondents, journalists were never harassed by governmental or powerful non-governmental actors while engaged in legitimate journalistic activities.

> ***Key measures to consider on protecting journalists***
>
> *- Establishing effective mechanisms, initiatives and programmes to protect journalists at risk and to systematically investigate and provide access to justice for threats and attacks to ensure full accountability.*
>
> *- Taking additional measures to increase training among the police on protecting journalists' ability to report and on ensuring they themselves follow protocols to avoid any escalation of violence.*
>
> *- Engaging in awareness-raising on the crucial role that journalism plays in democratic societies, as part of a healthy public interest information ecosystem.*

Ensuring media pluralism and avoiding capture by other interests

A plurality of media owners contributes to a more effective "watchdog" environment by reducing the risk of public opinion being dominated by a single actor. Relying solely on publicly owned media makes it difficult to gauge whether reporting is unbiased. Likewise, relying only on privately-owned media may result in media "moguls" who use their position to exert undue influence on news content. Therefore, opting for and promoting a mix of both public and private media can help ensure a balance (Stapenhurst, 2000[36]).

Similarly, transparency in media ownership is also crucial. For the public to evaluate the objectivity of specific media outlets and for the government to evaluate media diversity, the business interests of media owners should be transparent and accessible to all. Transparency on business activity between private media and governments is even more relevant to prevent any form of undue political influence. Governments could consider instituting measures to require disclosure of business interests to an independent regulator or directly to the public in the form of a publicly available registry, or both. Governments could also consider establishing transparency measures to identify the beneficial owners of the media, especially in the broadcasting sector (OECD, 2020[37]).

4.3. Freedom of the press in OECD Members: Contribution from Reporters without Borders

4.3.1. The status of press freedom in OECD Members according to RSF

The World Press Freedom Index from Reporters Without Borders (RSF), an international non-profit organisation working to defend the right to access free and reliable information, evaluates the level of media freedom in 180 countries and territories every year and is widely used as a reference for media freedom (Box 4.3). Its 2021 edition shows that journalism is blocked or seriously impeded in 73 countries and is restricted in 59 others, which together represent 73% of the countries ranked by RSF.

Box 4.3. How Reporters Without Borders' World Press Freedom Index is compiled and the main trends of 2022

Published annually by RSF since 2002, the World Press Freedom Index measures the level of media freedom in 180 countries and territories. It assesses the level of pluralism, press independence, the environment for the media and self-censorship, the legal framework, transparency and the quality of the infrastructure that supports the production of news and information. The index does not evaluate government policy.

The global indicator and regional indicators are calculated on the basis of scores registered for each country or territory. In 2021, these scores were calculated from the answers to a questionnaire available in 20 languages, completed by experts throughout the world, supported by a qualitative analysis.

In 2021, RSF used seven indicators for its ranking: pluralism, media independence, environment and self-censorship, legislative framework, transparency, infrastructure and abuses. Countries are classified as "good", "fairly good", "problematic", "bad" or "very bad". The same weighted average method has been used to calculate the overall indicator for the 38 OECD Members.

For its 20th edition in 2022, RSF updated its methodology, basing the Index's rankings on a new score ranging from 0 to 100, 100 being the best possible rating. These scores are based on a tally of abuses against journalists and on the responses of press freedom specialists (journalists, researchers, academics and human rights defenders) to an RSF questionnaire available in 23 languages. Each country and territory are evaluated through five contextual indicators: political context, legal framework, economic context, sociocultural context and safety.

The main trend in 2022 is a double polarisation: i) within democratic societies, divisions are growing as a result of the spread of opinion media and of disinformation circuits that are amplified by the way social media function; and ii) within autocratic countries, propaganda and media shutdowns are more problematic than ever.

In Europe, the Nordic countries at the top of the Index – Denmark, Norway and Sweden – continue to serve as a democratic model where freedom of expression flourishes. But the region shows significant disparities and conditions on both extremes have evolved considerably. Estonia (4th) and Lithuania (9th) – two former communist states – are now among the top ten, while the Netherlands (28th) no longer is. Greece (108th) is last in Europe. These developments can partly be explained by the return of murders of journalists in the EU: Giorgios Karaivaz, in Greece, and Peter R. De Vries, in the Netherlands, were gunned down in the centre of two European cities.

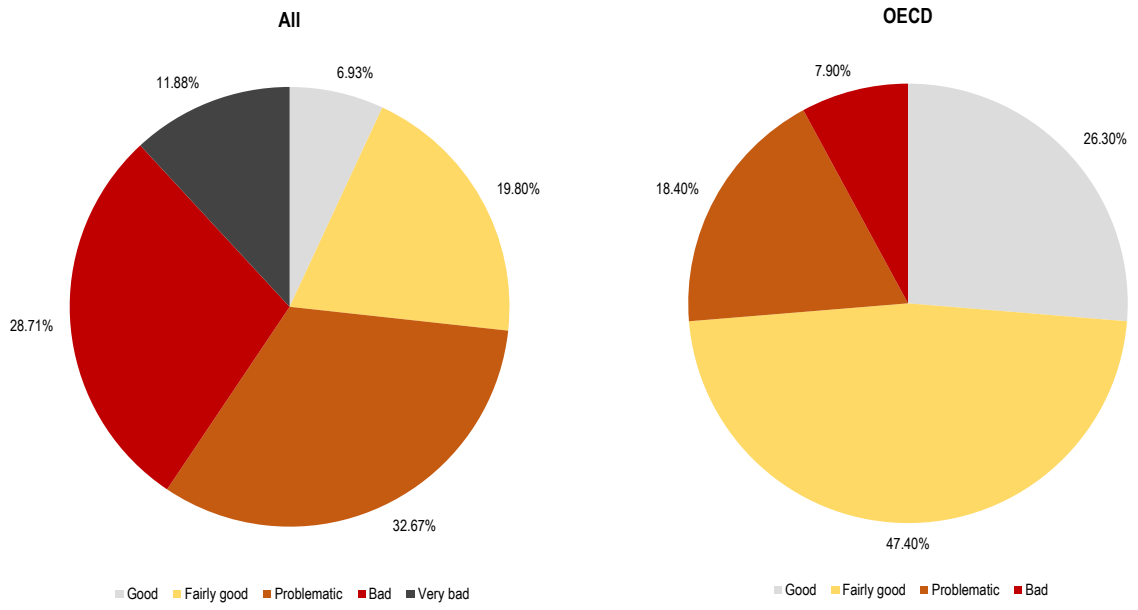
Overall, European institutions have started to implement protective measures for journalists and press freedom and they have launched proceedings against Hungary (85th) for violating European law. It is

worth noting, nevertheless, that Slovenia (54th), Poland (66th), Albania (103rd) and Greece also intensified draconian measures against journalists.

Source: Reporters without Borders (2021[38]), "Detailed methodology", https://rsf.org/en/detailed-methodology.

The results for the 38 OECD Members are more positive overall (Figure 4.3). The level of freedom enjoyed by journalists was classified as "good" (grey) or "fairly good" (yellow) in nearly three-quarters (74%) of OECD Members in 2021, while the proportion of all 180 countries with a "good" or "fairly good" evaluation is only 27%. Similarly, the freedom of the press situation is deemed to be "problematic" (orange) or "bad" (red) in just one-quarter of OECD Members (26%), while this proportion is more than 60% in all 180 countries. Significantly, no OECD Member is designated as black, signifying a country where the situation is "very bad".

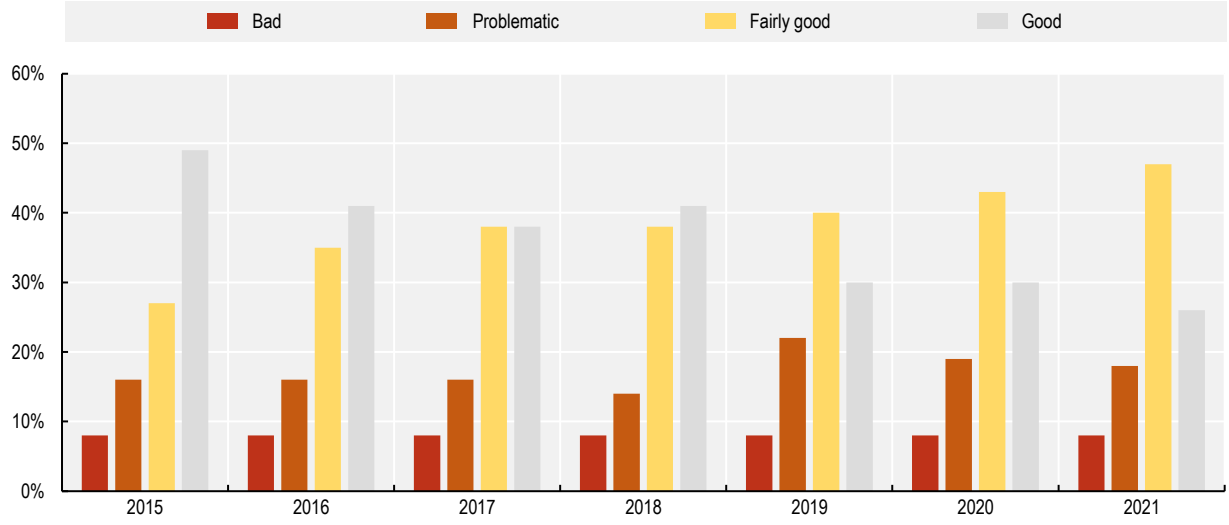
Figure 4.3. Overall press freedom scores in OECD Members and across 180 countries, 2021



Note: The situation is "good" or "fairly good" in nearly three-quarters of OECD Members, a much higher proportion than in the world as a whole.
Source: Reporters without Borders (2021[39]), *2021 World Press Freedom Index*, https://rsf.org/en/ranking/2021.

While the overall situation continues to be satisfactory in OECD Members compared to other countries, it has nonetheless eroded in recent years. The proportion of OECD Members where the situation is regarded as good for journalism has been halved in the space of six years. The proportion of countries ranked as "good" (grey) was 49% in the 2015 World Press Freedom Index but has fallen to 26% in 2021 (Figure 4.4). This decline is attributable above all to the various crises that journalism has experienced: a geopolitical crisis (due to the aggressiveness of authoritarian regimes); a technological crisis (due to a lack of democratic guarantees); a democratic crisis (due to polarisation and repressive policies); a crisis of trust (due to suspicion and even hatred of the media); and an economic crisis (that has impoverished quality journalism) (RSF, 2020[40]). All of these crises have been compounded by the coronavirus (COVID-19) crisis since early 2020.

Figure 4.4. Evolution of a "good" rating in press freedoms among OECD Members, 2015-21



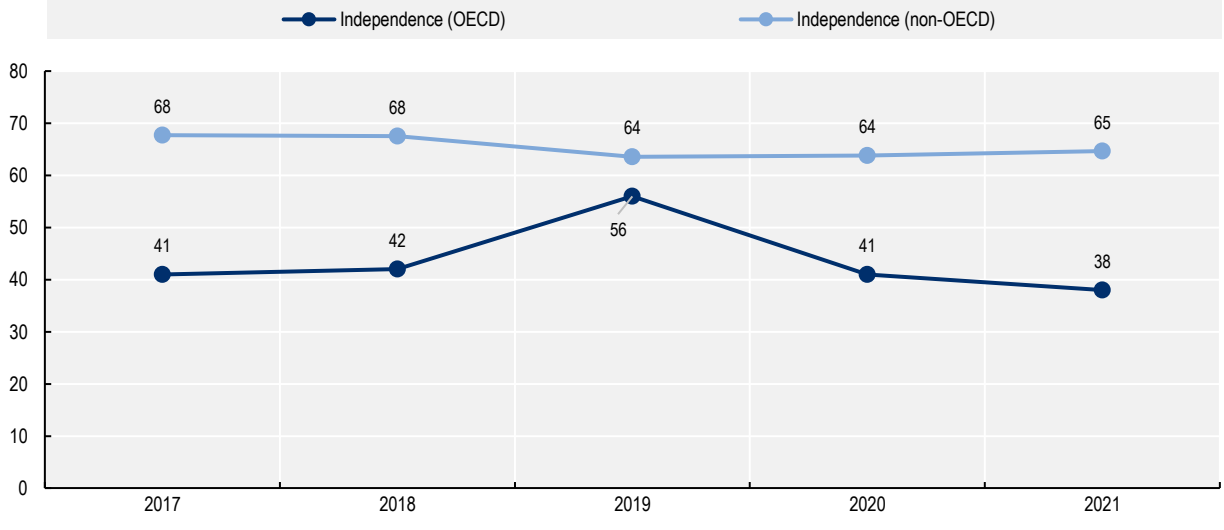
Note: Over six years, the number of OECD Members in a "good" situation for journalism has halved.
Source: Reporters without Borders (2021[39]), *2021 World Press Freedom Index*, https://rsf.org/en/ranking/2021.

4.3.2. RSF indicators for OECD Members

The seven indicators that RSF uses to compile the World Press Freedom Index every year – which measure factors such as the level of media independence or the climate in which journalists work and the degree to which they may feel the need to censor themselves for their protection – show better results overall for OECD Members than the rest of the world.

Figure 4.5. World Press Freedom Index indicators with better results across OECD Members: Independence, 2017-21

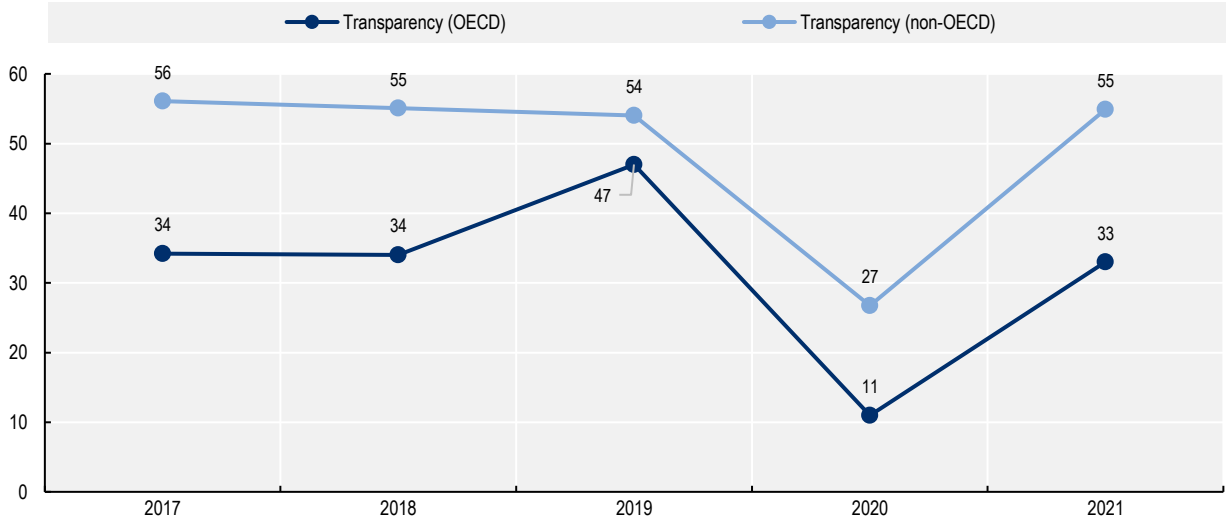
Average independence score in OECD Members and in non-Members



Note: 100 is the worst and 0 the best possible score. The Abuses, Independence and Transparency indicators have yielded better results in OECD Members than in the rest of the world.
Source: RSF (2021[39]), *2021 World Press Freedom Index*, https://rsf.org/en/ranking/2021.

Figure 4.6. World Press Freedom Index indicators with better results across OECD Members: Transparency, 2017-21

Average transparency score in OECD Members and non-Members



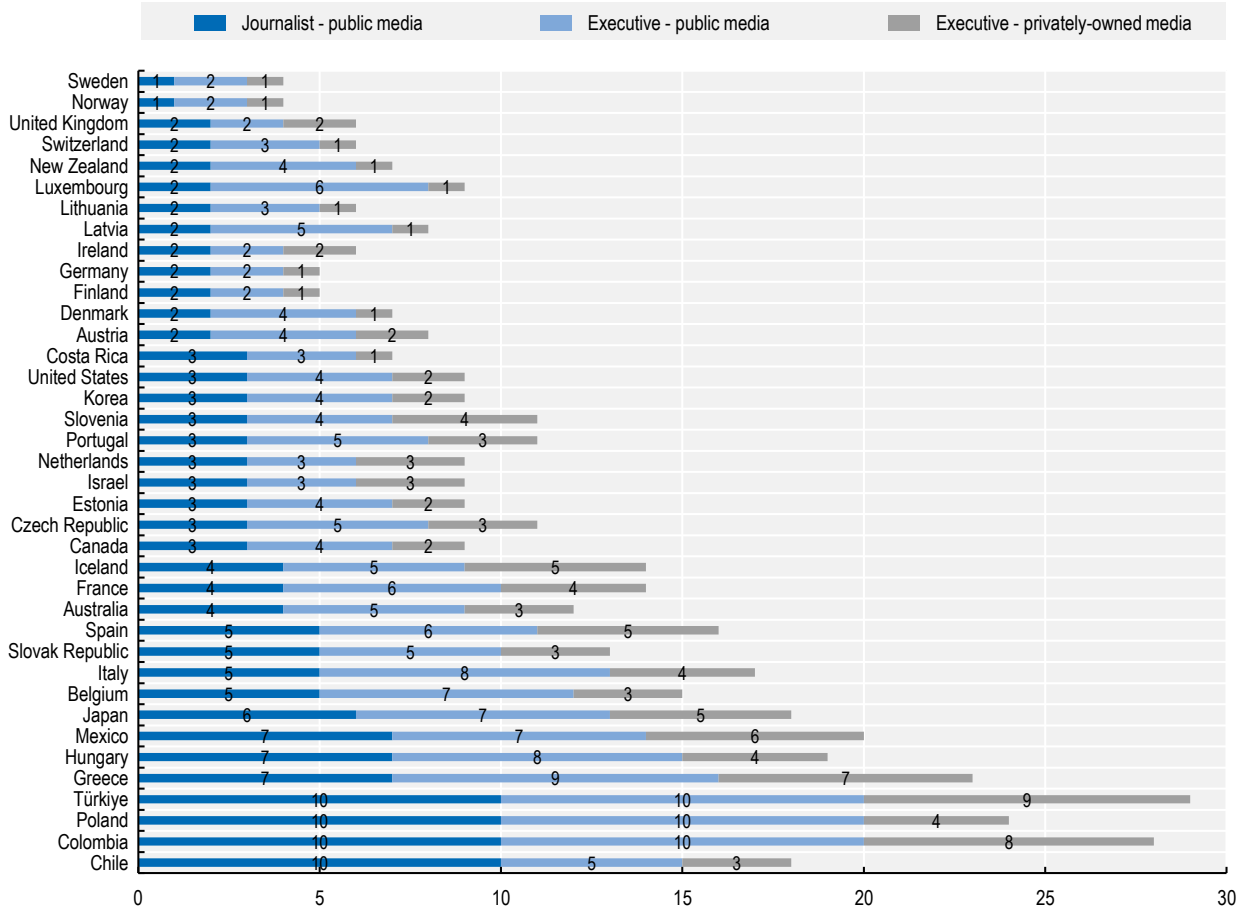
Note: 100 is the worst and 0 the best possible score. The Abuses, Independence and Transparency indicators have yielded better results in OECD Members than in the rest of the world.
Source: RSF (2021[39]), 2021 World Press Freedom Index, https://rsf.org/en/ranking/2021.

Within a year, the level of violence against journalists has doubled in Europe (which includes 27 OECD Members), whereas the deterioration worldwide was 17%. The deterioration has been due above all to an increase in attacks against field reporters. Many cases of police violence were reported amid an increase in protests worldwide. Journalists were also attacked by supporters of extremist and conspiracy-theory groups during protests against restrictions imposed to combat the COVID-19 pandemic.

The Environment and Self-Censorship indicator, which evaluates the environment for journalists and the pressures to which they may be subjected, registered little variation among OECD Members between 2019 and 2021. However, the Transparency indicator, which measures restrictions on reporters' access to information – whether in the field or from sources – registered a sudden worsening in 2020. This was directly linked to the COVID-19 pandemic and lockdown measures, which drastically restricted journalists' reporting and coverage of events (Figure 4.11 on access restrictions). The Independence indicator, which measures the degree to which the media are able to function independently of sources of political, governmental, business and religious power and influence, registered a 10% improvement over 2020 within OECD Members.

The overall trend must, however, be nuanced, given a thorough analysis of the responses by media professionals and different experts to the questionnaire used to help compile the World Press Freedom Index. The likelihood of state interference in the appointments and dismissals of public media journalists and executives is considered significant in one-third of the 38 OECD Members (Figure 4.7). This proportion corresponds to the number of countries where the experts put the likelihood of interference at 5 out of 10 or more, with 10 out of 10 signifying complete freedom to have a journalist or executive fired from a state-owned media company or an executive fired from a privately-owned media company. This problem is particularly marked in Central and South America and the eastern part of Europe. State media executives are particularly exposed to dismissal in 19 OECD Members and privately-owned media executives are also exposed to this threat in 7 countries.

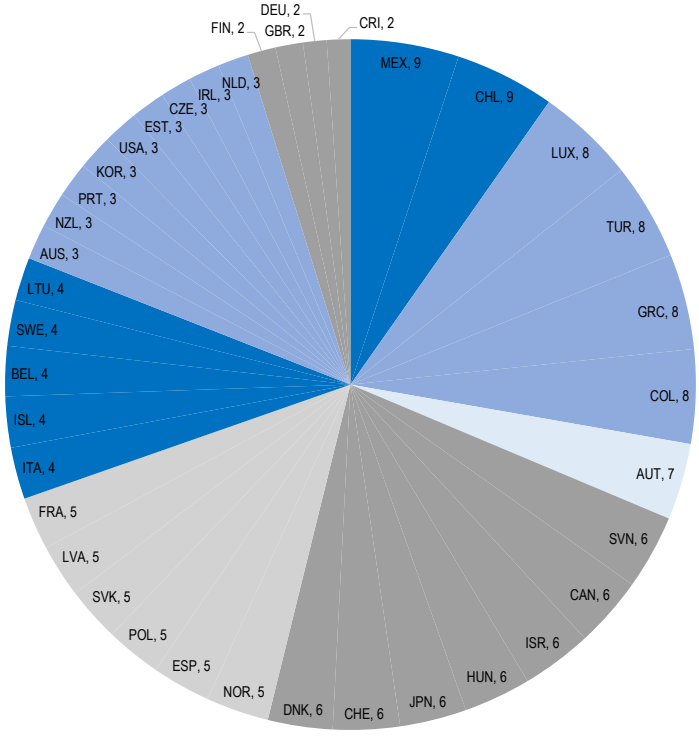
Figure 4.7. Public media exposure to dismissals in OECD Members, 2021



Note: Scores range from 1 (zero facility of dismissal) to 10 (total facility). Public media executives and journalists are more exposed to dismissal by authorities than their private sector counterparts.
Source: Reporters without Borders (2021[39]), *2021 World Press Freedom Index*, https://rsf.org/en/ranking/2021.

Nevertheless, while privately-owned media are resisting better overall to pressure from authorities, they are more sensitive to economic pressures. The responses to the question "To what degree are privately-owned media economically dependent on direct or indirect subsidies?" indicate that media depend on state subsidies to function in more than half of the 38 OECD Members (Figure 4.8). More generally, in several OECD Members, especially in Eastern Europe, privately-owned media are exposed to fiscal, commercial and legislative pressure that may take the form of a tax on advertising revenue or can manifest itself, for example, in the form of the acquisition of local media outlets by a state-controlled company.

Figure 4.8. Economic dependence of privately-owned media on government subsidies in OECD Members, 2021

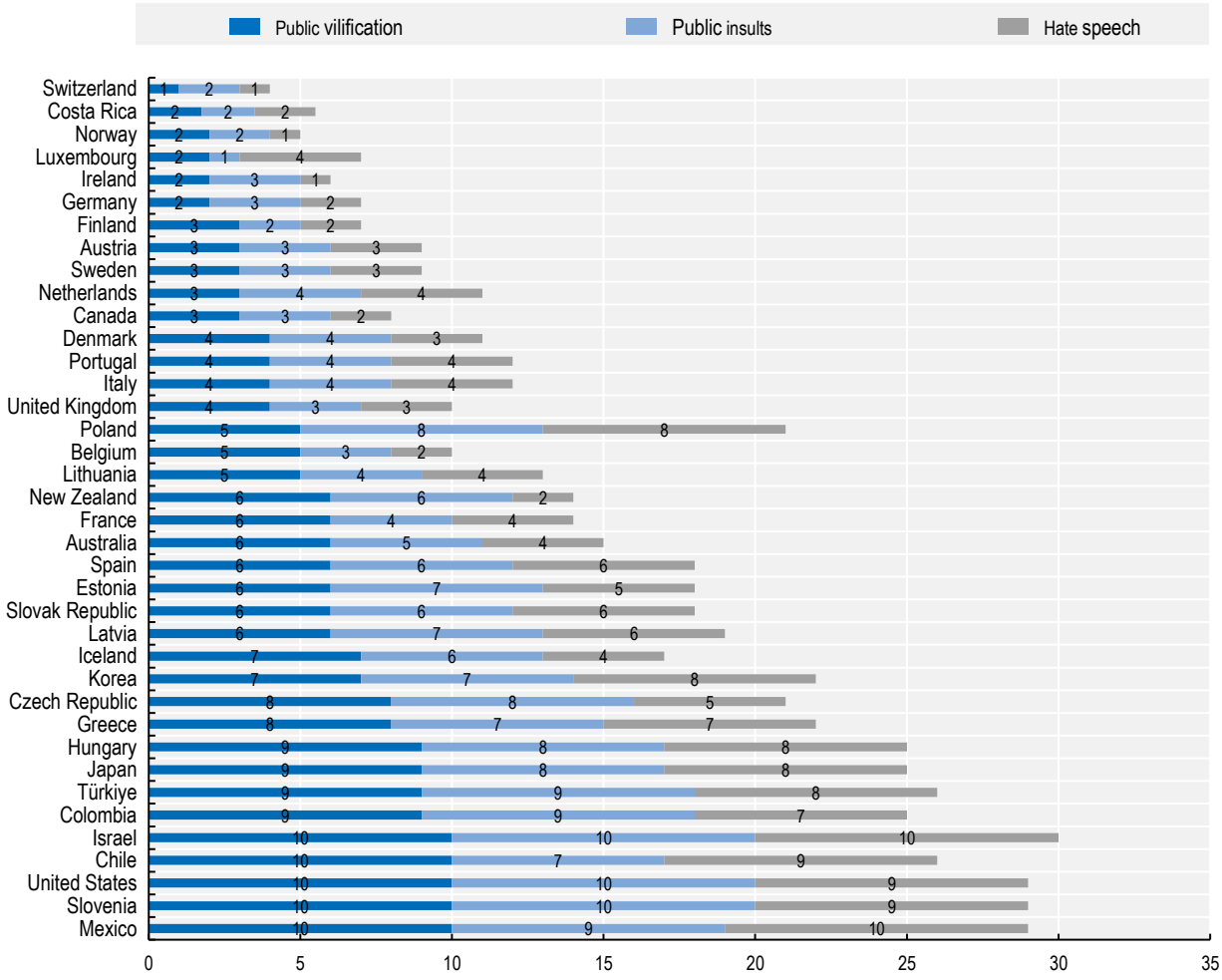


Note: Scores are listed for each country and range from 1 (no dependence) to 10 (major dependence). In many OECD Members, privately-owned media continue to depend on direct or indirect state subsidies.
Source: Reporters without Borders (2021[39]), *2021 World Press Freedom Index*, https://rsf.org/en/ranking/2021.

4.3.3. Public vilification of journalists becoming common practice

Analysis of the RSF questionnaire results reveals that journalists in OECD Members are not being spared the growing climate of mistrust and even hatred of the media, often directly fomented by politicians who publicly vilify journalists, branding them, for example, as “enemies of the people”. Journalists are regularly subjected to “public vilification”, “public insults” and “hate speech” in 23 of the 38 OECD Members (Figure 4.9). Although criticism and hate speech targeting journalists are also increasing in countries outside the OECD, good results from countries such as **Costa Rica**, **Luxembourg**, **Norway** and **Switzerland** show that the trend is not inevitable.

Figure 4.9. Public vilification of journalists in OECD Members, 2021



Note: Scores range from 1 (non-existence of this activity) to 10 (constant repetition of this activity) measuring how often journalists are subjected to public vilification, insults and hate speech.
Source: Reporters without Borders (2021[39]), *2021 World Press Freedom Index*, https://rsf.org/en/ranking/2021.

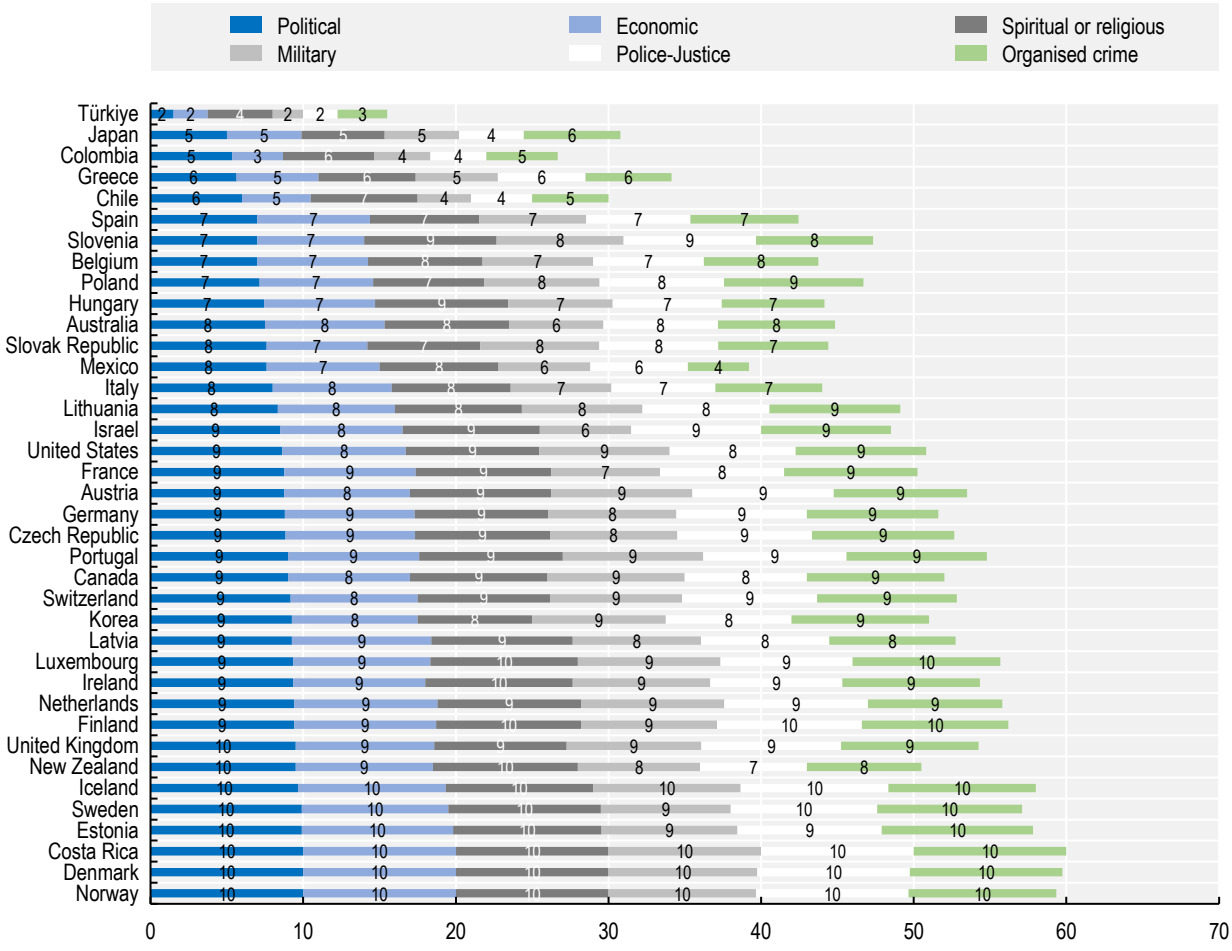
4.3.4. Trends in the freedom to investigate

The World Press Freedom Index also enables measurement of the level of pressure placed on journalists in connection with the subjects they cover and their freedom to investigate centres of power and influence (Figure 4.10). Measurement of the media's freedom to publish revelations produces the best results (no limitation whatsoever) in **Norway**, **Sweden**, **Costa Rica, Denmark** and **Iceland** (which are ranked 1st, 3rd, 4th and 16th respectively in the World Press Freedom Index) and confirms the primacy of the "Nordic model" as regards media freedom.

On the other hand, in about one-third of OECD Members, journalists are subjected to significant constraints when investigating sensitive subjects, such as the military and organised crime. The 2021 World Press Freedom Index indicates a growing difficulty overall for journalists to investigate and publish revelations about sensitive subjects. These constraints are particularly marked, however, in Eastern Europe, Asia-Pacific and Central and South America.

The latest RSF Round-up also shows that more and more journalists are being targeted due to their investigative reporting (RSF, 2020[41]). Of the 50 journalists killed worldwide in 2020, 14 were investigating stories linked to corruption or organised crime (RSF, 2020[41]).

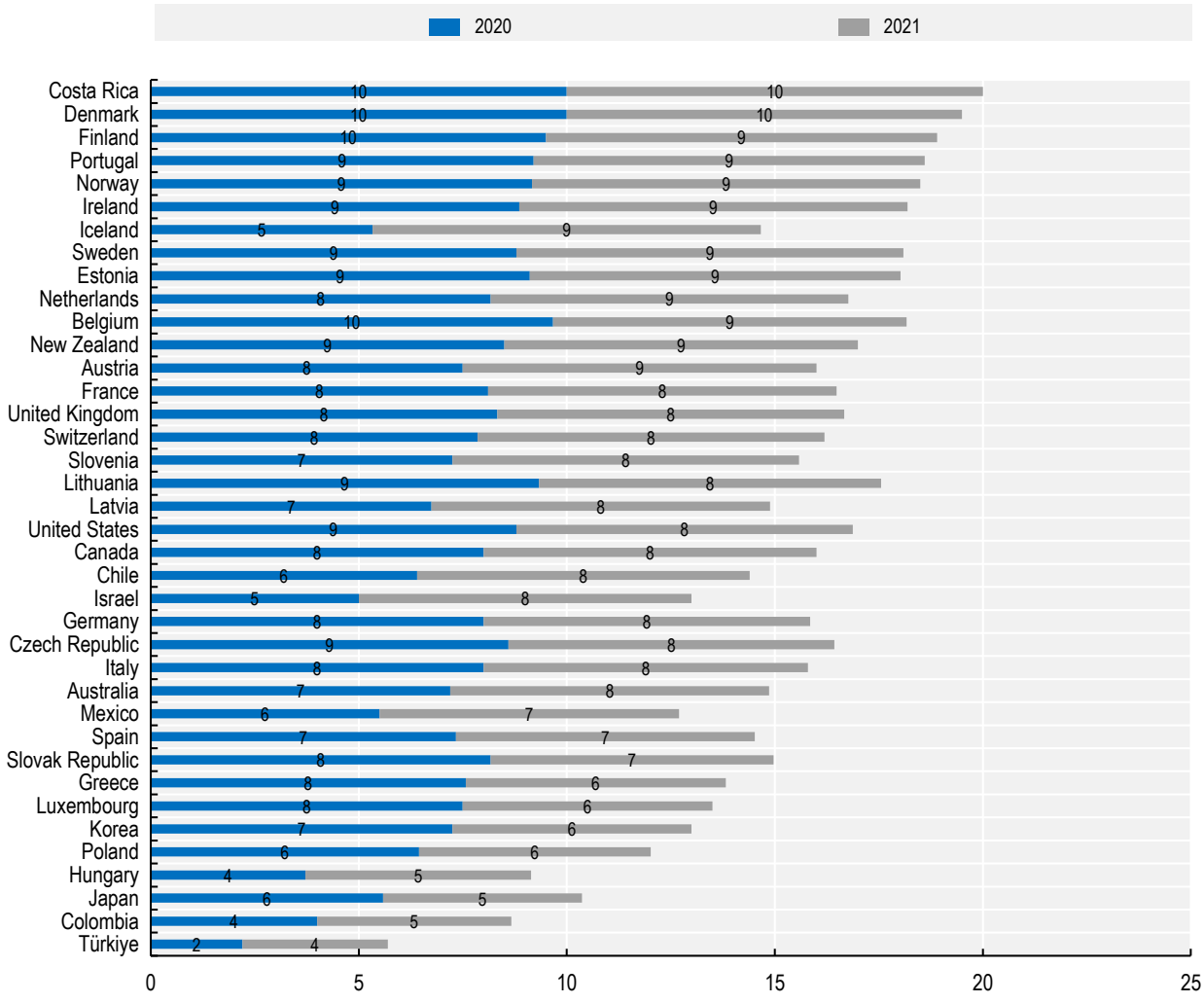
Figure 4.10. Media ability to investigate centres of power in OECD Members, 2021



Note: Scores range from 1 (no freedom at all) to 10 (no restriction on freedom).
Source: Reporters without Borders (2021[39]), *2021 World Press Freedom Index*, https://rsf.org/en/ranking/2021.

The COVID-19 pandemic has placed major limitations on journalistic work and especially reporting in the field. As a result of the public health crisis, or its use as a pretext, many journalists were not able to provide coverage of many events throughout the world in 2020 (Figure 4.11). Of the 38 OECD Members, 10 registered a decline in journalists' ability to access physical events in 2021, 16 reported no significant change and the remaining 12 countries registered an evolution, albeit often minimal, towards greater accessibility. This was above all the case in Central and South America, Europe-Central Asia and the Middle East.

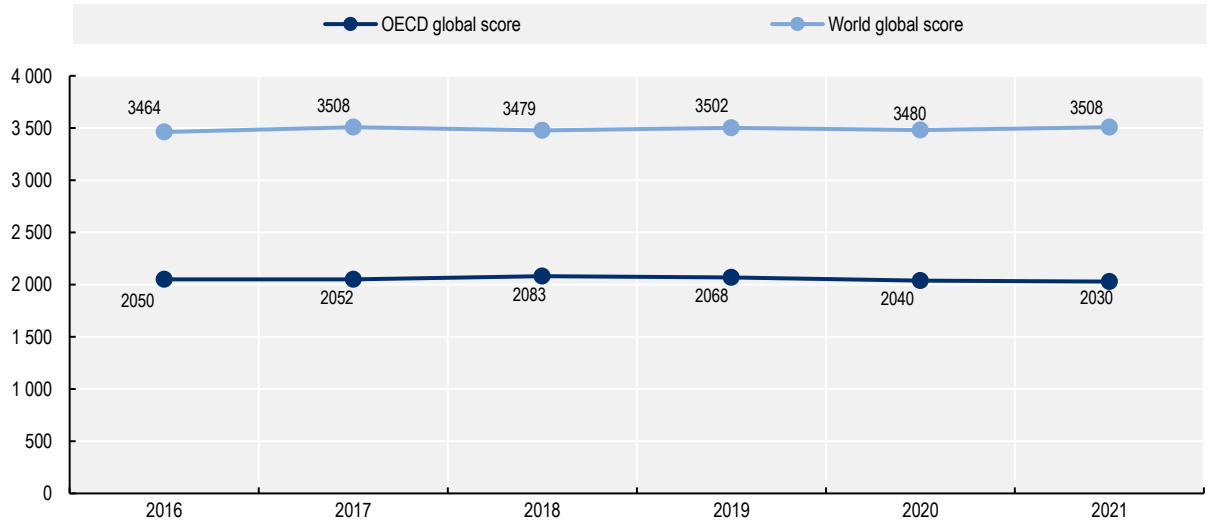
Figure 4.11. The extent to which journalists faced difficulty accessing events in OECD Members, 2021



Note: Scores range from 1 (covering event is impossible) to 10 (covering event is always possible).
Source: Reporters without Borders (2021[39]), *2021 World Press Freedom Index*, https://rsf.org/en/ranking/2021.

The global indicator, the measure of the level of media freedom overall, has been stable during the past five years (2016-21) in the 38 OECD Members. While some OECD Members have seen their score deteriorate during this period, others have registered significant improvements. They include **Portugal**, whose score has improved by nearly 5 points in the past 5 years, enabling it to rise 13 places in the World Press Freedom Index. Overall, the OECD Member results continue to be better, on average, than those of all 180 countries and territories ranked by RSF (Figure 4.12).

Figure 4.12. OECD Member and world global scores for press freedom, 2016-21



Note: Higher scores indicate less freedom for journalists and media. The global indicator for OECD Members has been better than in the world as a whole from 2016-21.
Source: Reporters without Borders (2021[39]), *2021 World Press Freedom Index*, https://rsf.org/en/ranking/2021.

The main trends of the 2022 World Press Freedom Index reflect a "two-fold increase in polarisation" with growing divisions within countries due to the rise of opinion media, alongside a widening gap between open societies and regimes that control their media.

As regards misinformation, the Forum on Information and Democracy has developed 250 recommendations on how to stop "infodemics" (Box 4.4) and RSF also recommend several measures to enhance press freedom for OECD Members (Box 4.5).

Box 4.4. Recommendations from the Forum on Information and Democracy on countering mis- and disinformation and infodemics

False or manipulated information has proliferated steadily online, even before the COVID-19 pandemic, and has increased exponentially since, endangering democracies and human rights, including the right to health. Several countries, including France, Germany and Türkiye have already adopted regulations aimed at addressing this major challenge. Other jurisdictions, including Canada, the United Kingdom and the EU, have initiated discussion processes.

In a report entitled *How to End Infodemics*, the Forum on Information and Democracy – which was created by 11 organisations from civil society – made 250 recommendations centred on four major structural challenges: platform transparency, content moderation, promotion of reliable news and information, and private messaging services.

- **Platform transparency**: Transparency obligations in public regulation on digital platforms that structure the information and communication space on their core functions should include content moderation, content ranking, content targeting and social influence building.
- **Content moderation**: States should create a new model of meta-regulation with regard to content moderation while respecting a set of principles based on international human rights law: legality, necessity and proportionality, legitimacy, equality and non-discrimination. Nonetheless, they should refrain from establishing laws or arrangements that would require the "proactive"

monitoring or filtering of content, which is both inconsistent with the right to privacy and likely to amount to prepublication censorship. They should also refrain from adopting models of regulation in which government agencies, rather than judicial authorities, become the arbiters of lawful expression.

- **Promotion of reliable news and information**: At the core of any social platform is a technical construction resulting from deliberate choices in design, architecture and engineering. States could explore and develop a new regulatory focus on digital architecture and software engineering in the regulation of online service providers, with safety and quality standards developed in collaboration with experts. Online service providers should be subject to an obligation of neutrality in relation to their own interests and be required to represent reality honestly and not limit its representation to the content, goods or services they have an interest in. Platform conflicts of interest should therefore be prohibited so that the information and communication space is not governed or influenced by commercial, political or any other interests.
- **Private messaging services**: Instead of just being used to exchange private messages, messaging apps are being used in some countries to massively disseminate disinformation. It would therefore seem essential to establish safeguards in private messaging services when they enter into a public space. New specific obligations should be imposed on service providers, in particular the obligation to create reporting mechanisms allowing users to report hateful or illegal content, in order to be able to take appropriate action, and the obligation to create effective mechanisms for appealing against moderation decisions.

Source: https://rsf.org/en/forum-information-and-democracy-250-recommendations-how-stop-infodemics

Box 4.5. RSF recommendations on enhancing press freedom for OECD Members

To foster an enabling environment for press freedom and reliable, fact-based journalism, RSF recommends introducing the following:

- **Mechanisms to protect journalists at risk**, including:
  - Protection programmes and the systematic investigation of threats or attacks against the press.
  - At the international level, the establishment of a UN Special Representative of the Secretary-General to serve as a “protector of journalists”, ensure the implementation of existing UN mechanisms, hold states accountable and impose concrete costs on perpetrators.
- **A legal framework that creates an environment in which the press can perform its social role**, including provisions that:
  - Are in compliance with international standards, in particular **Article 19 of the International Covenant on Civil and Political Rights and permitted restrictions on this freedom**.
  - Guarantee media pluralism and limiting concentrations in the media sector.
  - Protect the independence of journalists and the media.
  - Guarantee the right of journalists to protect the secrecy of their sources.
  - Guarantee the independence of the regulatory authorities from political power.

- Guarantee transparency of public policies and the right to access public documents.
- **A legal framework that counters disinformation and ensures the future of journalism**, including regulations that:
  - Promote the transparency of platforms and the auditability of their algorithms.
  - Secure the political, ideological and religious neutrality of platforms.
  - Promote the discoverability of reliable information on the basis of self-regulatory standards defined by professional communities.
  - Ensure that moderation of content respects international standards on freedom of expression.
  - Safeguard media pluralism and competition by promoting a more pluralistic, open and decentralised digital environment.
  - Guarantee the independence of national regulators and the future relevance of regulation.

4.4. Protection of online civic space

4.4.1. An open Internet as a facilitator of civic participation: A review of legal frameworks

An open Internet[9] has become a precondition for the enjoyment of civic space and the transformative nature of the Internet as an open platform, that facilitates citizen and stakeholder participation and dramatically expands civic freedoms, has been recognised by several international bodies. The UN Human Rights Council has recognised, for example, that "the same rights that people have offline must also be protected online, in particular freedom of expression" (UN, 2018[42]; UN, 2021[10]). OECD work in this area is under the purview of the OECD Committee on Digital Economy Policy (CDEP). In this regard, the *OECD Recommendation of the Council on Principles for Internet Policy Making* [OECD/LEGAL/0387], adopted in 2011, "recognises that the Internet provides an open, decentralised platform for communication, collaboration, innovation, creativity, productivity improvement and economic growth" (2011[43]). The Recommendation aims to preserve and promote the "open, distributed and interconnected nature of the Internet" (OECD, 2011[43]) and encourage governments to collaborate to safeguard personal data, protect intellectual property rights and ensure cybersecurity, while also maintaining respect for fundamental rights and the open nature of the Internet (OECD, 2014[44]). Infrastructure is key in terms of governments' facilitation of access to an open Internet – and by extension, online civic space – and the OECD Recommendation on Broadband Connectivity [OECD/LEGAL/0322] recommends that adherents take measures to "eliminate digital divides and to reduce barriers to broadband deployment", including by fostering the adoption and use of broadband services "at affordable prices, accessible for everyone, including all locations, genders, abilities, and socioeconomic circumstances" (OECD, 2021[45]).

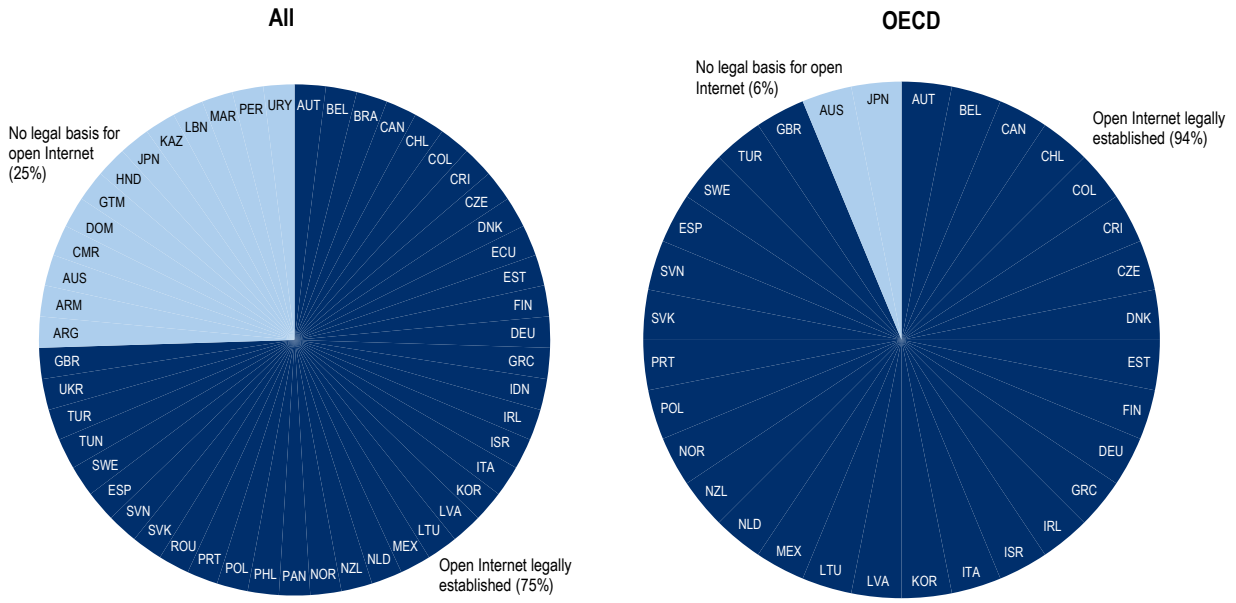
The UN Human Rights Council has called upon countries to promote human rights-based, universal Internet access (UN, 2016[46]). The Council of Europe's Committee of Ministers has similarly urged countries to create an enabling environment for Internet freedom (CoE, 2016[47]) and acknowledged their responsibility to take reasonable measures to protect and promote the universality, integrity and openness of the Internet as a means of safeguarding freedom of expression and access to information regardless of frontiers.[10] EU Member states are also required to implement the Open Internet Regulation 2015/2120, according to which Internet service providers are prohibited from blocking or slowing down Internet traffic, except where necessary (EU Monitor, 2015[48]). Additionally, the OECD, the Council of Europe's Committee of Ministers and other international bodies have emphasised that there should be no discrimination in the treatment of Internet traffic and data (net neutrality)[11] (OECD, 2019[49]; UN et al., 2011[50]; CoE, 2016[51]). More recently in January 2022, the European Parliament, the European Council and the EC issued a

European Declaration on Digital Rights and Principles for the Digital Decade, a non-binding guidance to a human-centric and rights-based approach to digital transformation (EC, 2022[52]).

The principle of an open Internet is established in law in most respondents (75% of all respondents, 94% of respondent OECD Members) (Figure 4.13). Some respondents do not explicitly protect the Internet in law but do have relevant legislation on freedom of expression and information. **Costa Rica** was one of the first to recognise Internet access as a fundamental right in 2010 (Freedom House, n.d.[53]). In **Mexico**, the right to access the Internet is set out in the constitution.

Figure 4.13. Legal provisions protecting the open Internet, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (32 OECD Members and 19 non-Members). Data on all EU Member states, Chile and Uruguay are based on OECD desk research and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

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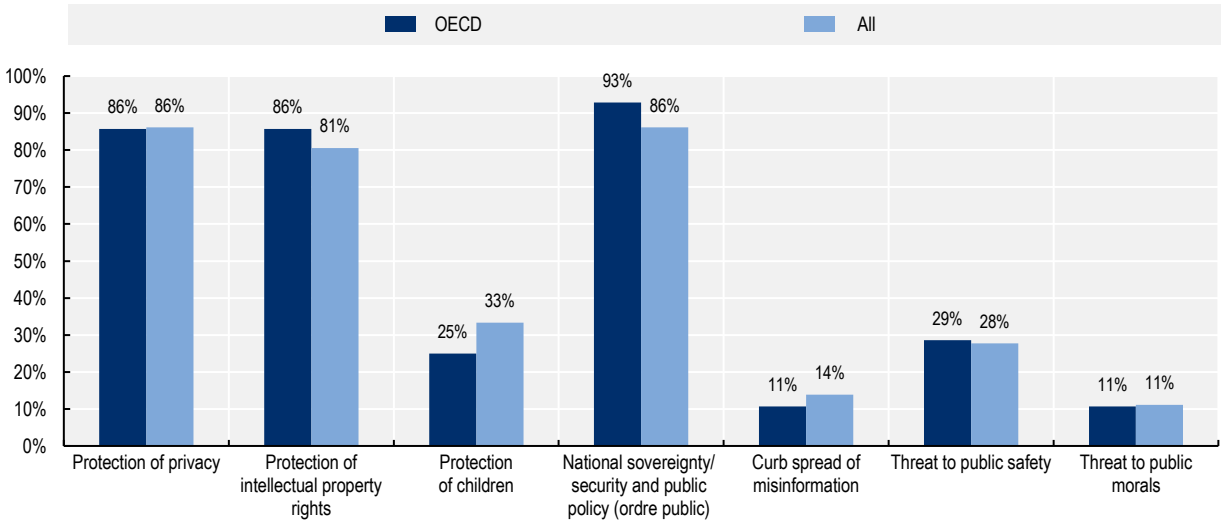
Nevertheless, there are a number of common legally mandated exceptions and conditions related to an open Internet, often to protect other rights (Figure 4.14). For example, in 86% of all respondents and 86% of respondent OECD Members, the Internet can be restricted by law in the interests of individuals' privacy rights. In 81% of all respondents and 86% of respondent OECD Members similar restrictions are possible to safeguard individuals' intellectual property rights. The protection of children's rights is an exception in a smaller group of countries (33% of all respondents, 25% of respondent OECD Members), where rules must be followed to ensure that publications or broadcasts do not include sexually offensive or abusive images of children. Furthermore, in 86% of all respondents and 93% of respondent OECD Members, laws or case law set out limitations in the interests of national sovereignty or security and 28% of all respondents (29% of OECD Members) have limitations to counter threats to public safety. Finally, in 14% of all respondents and 11% of OECD Members, the Internet can be limited to curb the spread of misinformation[12], and in 11% of all respondents (11% of OECD Members) restrictions are based on threat to public morals. Regarding the exceptions to this right, while some countries referred to specific laws that apply to online matters, other countries referred to general legislation, which applies both on and off line.

Figure 4.14. Legally mandated exceptions to the right to an open Internet, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 36 respondents (28 OECD Members and 8 non-Members). Data on all EU Member states, Brazil, Ireland, Netherlands, Norway, the Philippines, Portugal and Slovenia are based on OECD desk research for at least one of the categories and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

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Several countries have a complaints system (either governmental or independent) for individuals regarding access to an open Internet, in addition to courts and NHRIs in place in all countries to address violations. For example, in **Finland,** the Finnish Transport and Communications Agency (Traficom) monitors net neutrality and ensures that the country adheres to relevant EU regulations. Citizens can contact Traficom if they have specific complaints about their operators which could not be solved between the two parties. The Bundesnetzagentur in **Germany** has similar responsibilities for monitoring and compliance, while the Ministry of Communication and Information has this role in **Indonesia** and can investigate any violations by service providers.

A number of OECD Members, among them **Australia**, **Canada**, **Colombia**, **Israel** and **Korea**, have passed legislation and taken other measures to facilitate and enhance access to and safety of the Internet and net neutrality, which are positive steps in terms of enhancing civic space online. At the same time, countries such as **Australia** have passed legislation permitting temporary or permanent restrictions on the Internet in the interests of combatting terrorist acts by obliging service providers to remove content considered to be harmful. A law in **Germany** likewise obliges online platforms to investigate and delete flagged content containing illegal content. The law has recently been amended to include the possibility of appeals proceedings in such cases (Library of Congress, 2021[54]). On the other hand, **Latvia** has adopted legislation that requires international service providers to block access to TV broadcasts that violate intellectual property rights (Dziadul, 2019[55]). In **Colombia**, a Supreme Court decision in December 2019 made blog and forum operators legally responsible for third-party defamatory user comments in the absence of measures to control them, according to Freedom House (2020[56]).

In very few OECD Members, such as **Spain** and **Türkiye**, legislation provides public authorities with wider powers to control Internet technologies and block access to Internet sites (EDRi, 2019[57]; Balamir Coskun, 2021[58]). Concerns have been voiced by civil society that in case of overly broad implementation, such laws can risk restricting access to the Internet and thus also civic space (Freedom House, 2021[59]). The

UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted that electronic modes of expression are a critical means for civil society to exercise their freedom of expression and that restricting such platforms can affect civil society, journalists, human rights defenders and others disproportionally (Ní Aoláin, 2019[60]).

4.4.2. Implementation challenges and opportunities for freedom of expression online, as identified by CSOs and other stakeholders

Governments in OECD Members have generally protected and promoted freedom of expression online from interference such as Internet shutdowns. Internet shutdowns – the bluntest instrument involving a time or location-based large-scale Internet blackout – did not occur in 2019 in any of the 29 OECD Members that responded to a relevant survey question. Nevertheless, at the global level, Internet freedom declined for the 11th consecutive year in 2021 according to Freedom House (2021[59]).

Government interference with overall access to the Internet, or to parts of the Internet through blocking or filtering access, can come in a wide range of forms. While most of Freedom House's reports of government investigations, arrests or convictions of people for their social media posts between June 2020 and May 2021 concerned non-Members, such incidents were also reported in at least three OECD Members (Freedom House, 2021[61]; 2020[56]; 2021[62]; 2020[63]). Interference with access to an open Internet can also come in the form of network disruptions, such as slowdowns imposed on the Internet or parts of the Internet, or by blocking specific websites and applications or censoring specific online content. The V-Dem Institute's indicator on government Internet filtering in practice,[13] which is based on expert evaluation and measures how frequently governments censor political information on the Internet by blocking access to certain websites, shows that government censorship of the Internet and blocking access to certain websites never or almost never occurred in 2021 in the majority of respondent OECD Members (79%) that participated in the Survey. In 16% of OECD respondents, there have been a few occasions in which governments removed political content online. In one country, the government removed about half of the critical online political content, and in another, the government commonly removes online political content (V-Dem Institute, 2021[35]). According to a separate V-Dem Institute indicator on Internet shutdowns in practice, also based on expert assessment, 97% of OECD respondents never or almost never shut down the Internet in 2021 (2021[35]).

Freedom of expression online and the increased availability of digital tools and platforms to connect and share views remain particularly significant for youth and their ability to ensure their voices are heard. Box 4.6 highlights the importance of engaging this hyper-connected demographic, including in the context of the recovery from the COVID-19 crisis.

Box 4.6. Using digital tools to engage young people

The COVID-19 crisis has exacerbated pre-existing challenges for young people in terms of employment, education and mental health, while also curtailing civic space for youth[1] and youth-led organisations (OECD, 2020[64]). Promoting civic space is crucial to ensure that young people can meaningfully participate in public life and that public administrations are able to deliver on their diverse needs as they find themselves in a period of transition and stress. Broadening young people's influence on decisions provides policy solutions based on a wider range of experiences and skills, it enhances young people's trust in public institutions and supports policy outcomes that are responsive to all citizens (OECD, 2020[65]).

Media freedoms and protected online civic space are particularly relevant for young people, as they tend to use digital tools to inform and express themselves, communicate and associate more regularly than older age cohorts. Young people are more likely to use social media as their main source of news, thereby increasing their likelihood of being exposed to misinformation. According to a recent study,

social media accounted for 88% of misinformation related to the COVID-19 pandemic between January and March 2020 (Brennen et al., 2020[66]). Young people are also more likely to use digital tools to voice their opinions and concerns: in 2018, 23% of people aged 15-29 surveyed across 22 OECD Members in the European Social Survey reported that they had shared or posted online about politics in the previous 12 months, compared to 15% of respondents aged 30 or more (OECD, 2020[65]). Furthermore, 75% of youth organisations surveyed[2] for the OECD report *Governance for Youth, Trust and Intergenerational Justice: Fit for All Generations?* believe online debates via social media will become even more important in the next five years (OECD, 2020[65]).

However, the COVID-19 crisis has also revealed vulnerabilities in terms of young people's access to online tools. For instance, more than one in five 15-year-olds from socio-economically disadvantaged schools does not have access to a computer for schoolwork across OECD Members (OECD, 2020[67]). Policies and programmes to ensure more inclusive access to electronic devices, and connectivity among young users and to protect their civic space online are critical to overcoming the digital divide and countering misinformation. A number of countries are tackling these issues in the recovery from the COVID-19 crisis. For instance, a recent OECD analysis of recovery plans shows that numerous countries include, within their recovery plans, measures to promote digital literacy among young people (OECD, 2022[68]). In some cases, these efforts also aim to engage young and elderly people together to strengthen social cohesion: for instance, the Connected Lithuania programme was expanded to support projects led jointly by youth and senior organisations to promote digital literacy among marginalised communities (OECD, 2022[68]).

1. Mindful of the de-standardisation of life trajectories and the constant evolution and re-interpretation of particular stages of life, "youth" is defined as a period towards adulthood which is characterised by various transitions in one person's life (e.g. from education to higher education and employment; from the parental home to renting an own apartment, etc.). Where possible, for statistical consistency, the UN classification of "youth" as individuals aged 15-24 is adopted.
2. Eighty-one youth organisations based in participating countries responded to the online survey that fed into the OECD report *Governance for Youth, Trust and Intergenerational Justice: Fit for All Generations?* (2020[65]). The survey was run between May 2019 and January 2020. Only the responses that included a valid URL/website presenting the work of a youth organisation were included in the final analysis (65 respondents).
Source: (Brennen et al., 2020[66]); (OECD, 2020[65]); (OECD, 2020[67]); (OECD, 2020[64]); (OECD, 2022[68])

Addressing online hate speech

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[69]). In the digital era, concerns around hate speech have become increasingly pronounced. Hate speech is defined for the purposes of this report as any kind of communication in speech, writing or behaviour that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, and aims to incite discrimination or violence towards that person or group, e.g. based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factors (Section 2.1 in Chapter 2 on legal frameworks governing hate speech whether on or off line). There is an emerging consensus among governments, technology companies and civil society on the need to consider new policy and regulatory frameworks that encourage the flow of factual information and protect individuals and society from the unchecked spread of hateful or illegal content, while also preserving users' freedom of expression.

The actual extent of hate speech and content that promotes harassment remains uncertain as comprehensive and comparable data regarding complaints are lacking. Nevertheless, the use of electronic forms of communication, such as social media and technology platforms, has made different forms of harmful content more visible and easier to spread (UN, 2020[70]). Reported online hate cases include calls to violence, murder, rape and, in their most extreme forms, calls to commit atrocities (de Varennes, 2021[71]). Empirical analysis suggests that the overwhelming majority of hate speech on social media is

targeted against minorities (de Varennes, 2021[71]) and that the COVID-19 pandemic has exacerbated this issue. For example, the UN has found that COVID-19 has given rise to a new wave of hate speech, discrimination and scapegoating of particular individuals and groups using derogatory, misogynistic, xenophobic, Islamophobic and anti-Semitic language and that online social media as well as mainstream media are being used to spread it (UN, 2020[70]).

The challenges around combatting online hate and potential policy responses have been widely discussed within OECD Members and by the CDEP, as well as by international and regional bodies in recent years, with the emergence of a number of measures to combat it (UNHCHR, 2013[72]; UN, 2019[73]; CoE, 2015[74]; ECtHR, 2020[75]; Lanza, 2019[76]; CoE, 2022[77]; Brookings Institution, 2021[78]; OECD, 2020[79]).[14] At the regional level, the EU introduced a voluntary code of conduct on hate speech in 2016 (EU, 2016[80]). In 2022, the EU adopted the so-called Digital Services Act, which imposes legal obligations on social media platforms related to transparency and moderating illegal and harmful content (EC, 2020[81]). The European Court of Human Rights has also ruled that in cases involving hate speech or incitement to violence, declaring Internet news portals liable for failing to remove hate speech and generally unlawful content does not violate the respective companies' right to freedom of expression.[15] At the same time, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has emphasised that countries may only demand actions from Internet companies that are justified under and in compliance with international law. He recommends that countries only restrict online content based on a court order in accordance with relevant, fair trial standards and that they should refrain from imposing disproportionate sanctions on Internet intermediaries (Kaye, 2018[82]).

The OECD, through the CDEP, has addressed similar concerns in regard to the role and responsibilities of online platforms in terms of confirmation bias, content bubbles and societal polarisation. The 2019 OECD report *An Introduction to Online Platforms and their Role in the Digital Transformation* (2019[83]) suggests tackling the question of whether social media platforms should still be considered private spaces or whether they have actually become public spaces.

Some governments have undertaken measures, for example co-regulation between the government and the private sector, and self-regulation by the platforms themselves, alongside legal requirements to push platforms to filter unlawful content (OECD, 2019[83]). Co- and self-regulation can allow platforms themselves to identify emerging challenges and develop solutions in a quick and effective manner. However, governments have raised concerns that self-regulation by online platforms alone is often inadequate and not sufficient (OECD, 2019[83]).

The consequences of anti-terrorism legislation have been raised as another source of concern for free expression online. While the spread of terrorist and violent extremist content (TVEC) online has contributed to numerous attacks and intensified pressure on content-sharing services to do more to prevent or avoid TVEC on their platforms, observers such as the UN Office of the High Commissioner for Human Rights and CSOs have expressed concerns that anti-terrorism legislation in some countries negatively impacts people's civic freedoms, including freedom of expression (RSF, 2021[84]; OHCHR, 2015[85]; OECD, 2021[86]). The CDEP is currently examining TVEC-related policies and procedures undertaken by online content-sharing services as part of a broader initiative to develop a Voluntary Transparency Reporting Framework, which was launched in 2022 (OECD, 2020[79]). This portal allows online platforms to submit their standardised transparency reports on TVEC policies and actions, aiming to build trust in online platforms by providing a baseline standard for transparency. The wider objective of the project is to increase the accountability of online platforms in both protecting human rights and ensuring that the Internet is a safe space for all (OECD, 2022[87]).

In recent years, governments have taken a variety of measures to tackle the phenomenon of online harm. Internet platforms have adopted content policies on hate speech, including banning users from posting or sharing unlawful or illegal speech. At the same time, such measures are also being contested for limiting free expression, especially when platforms use automated processes to identify hate speech (Kaye,

2019[88]). Indeed, a public consultation conducted by the EC in 2020 shows that citizens are demanding caution in using automated tools that risk removing legal content, potentially leading to unintentional and unjustified limitations on freedom of expression (EC, 2020[89]). In addition, they are increasingly of the view that regulatory oversight and auditing of platforms' actions and risk assessments are crucial (EC, 2020[89]; Smith, 2018[90]). Identifying the scope of regulatory solutions and measures against hate speech, in addition to hateful speech that is harmful, albeit not illegal, remains a challenge for governments and platforms alike and is a matter of ongoing debate.

Government-led measures to combat online hate speech

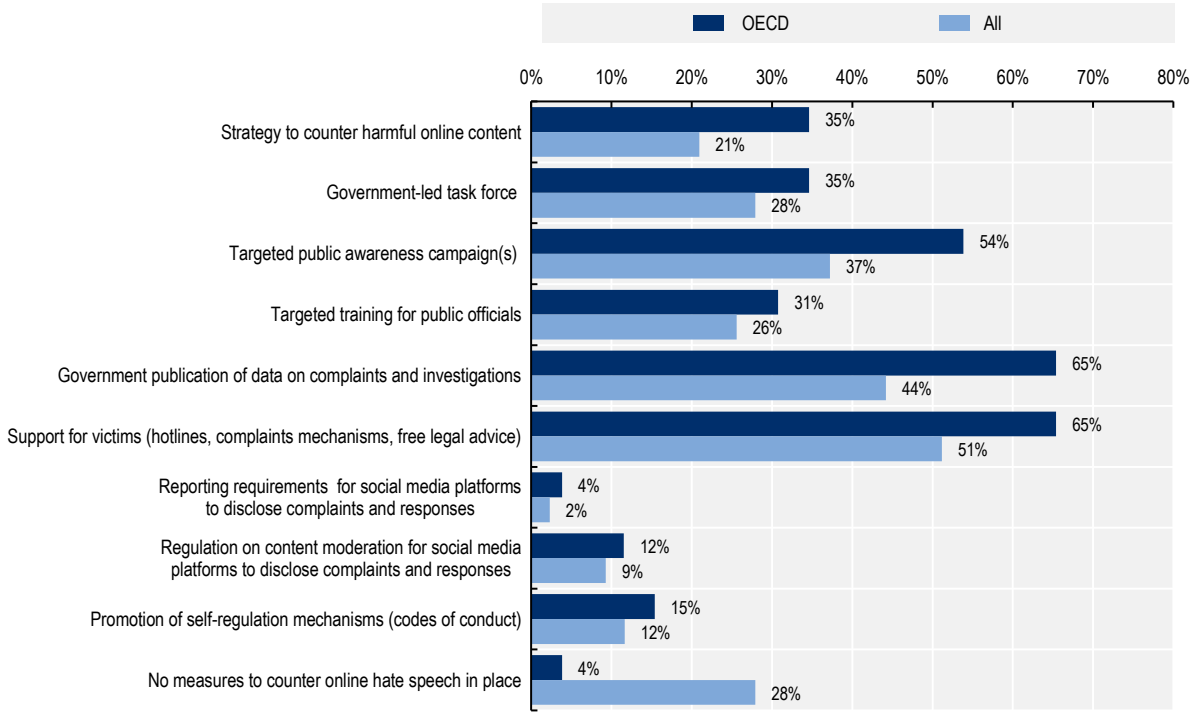
In addition to legislation discussed in Section 2.1.1 in Chapter 2, a wide range of other government-led initiatives to combat hate speech has been introduced in OECD Members and beyond in recent years (Figure 4.15).

National strategies and action plans

The adoption of national strategies or action plans to combat hate speech or speech that promotes harassment, including online, can help countries to move from a fragmented approach to a more encompassing, co-ordinated, whole-of-government, long-term approach with the aim of ensuring that all individuals have the same opportunity to participate in public life as others: 35% of OECD respondents and 21% of all respondents to the OECD Survey on Open Government have embedded measures *to* combat such online content *within broader national strategies or action plans on cybersecurity or strategies to combat racism, extremism, xenophobia or radicalism.* To varying degrees, such strategies envisage actions related to awareness-raising, research, training for officials, support to victims, self-regulation, introducing regulatory measures and strengthening the capacities of law enforcement structures.

Figure 4.15. Measures to counter online hate speech, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 43 respondents (26 OECD Members and 17 non-Members). Data on Australia, Austria, and Ireland are based on OECD desk research and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

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Some such strategies include a situation analysis of trends regarding online hate speech. For example, the **Czech Republic**'s strategy to fight against hate speech assesses how harmful speech has transformed throughout the years from being a problem at the fringes of society to becoming a prevalent phenomenon of a more polarised society in general (Czech Ministry of Interior, 2020[91]). Others, including those in the **Slovak Republic** and **Spain**, stress the need for enhanced research (Spanish Ministry of Interior, 2019[92]; Slovak Ministry of the Interior, 2020[93]). Yet others, such as **Germany**'s Action Plan Against Racism, also point to the need for systematic education in schools to raise awareness (ECRI, 2020[94]).

Strategies also focus on the introduction of new legislation to regulate online hate speech. In this context, a handful of countries, including **Finland** (Box 4.7) and **Ireland**, have consulted their populations on the issue. In **Ireland,** the government conducted a wide public consultation in 2020, throughout which the necessary limits of future hate speech legislation regarding freedom of expression were discussed in detail. Throughout the consultations, a broad consensus emerged among participants and experts that new legislation on harmful speech needed to contain robust safeguards for freedom of expression, such as protections for reasonable and genuine contributions to literary, artistic, political, scientific or academic discourse, in addition to fair and accurate reporting (Department of Justice Ireland, 2020[95]).

Box 4.7. OECD's Civic Space Scan of Finland: recommendations on measures to combat hate speech targeting people in public professions in Finland

In 2021, as part of the OECD *Civic Space Scan of Finland* (2021[96]), a deliberative Citizens' Panel commissioned by the Ministries of Finance and Justice developed recommendations for measures that Finland should implement to protect people working in the public eye from hate speech while safeguarding a plurality of views and freedom of expression (Jäske et al., 2021[97]). Panel participants were recruited from a random sample of 3 000 people, representing as diverse a sample as possible of the population of Finland in terms of age, gender, education, language and geographical area.

The Citizens' Panel proposed a total of 25 measures. These emphasise: awareness-raising on hate speech and online shaming; the importance of straightforward and clear definitions of relevant terms; the need for better government communication on the issue to the wider public; and the need for proportional penalties, prevention initiatives and sufficient resources; in addition to the responsibility of online platforms to play a role in countering the phenomenon. The greatest consensus and support from panellists, who voted on each of the recommendations, was on the following:

- Increase effective dissemination of information on hate speech to citizens.
- Include citizens' voices in decision making through citizens' panels at the municipal and state levels.
- Develop guidelines for decision makers and those officials most susceptible to online shaming, to address situations where these become victims of hate speech and/or harassment.
- Oblige employers to draw up clear instructions for possible cases of hate speech or harassment, both to intervene in the situation and support the victim.
- Appoint responsible persons in organisations and give clear responsibilities in the work against hate speech and online shaming to individual persons in central government.
- Increase resources and a centralised website on support services for victims.

The most controversial recommendations were those concerning penalties for hate crimes (with some participants favouring harsher penalties and others community service), user moderation and forming a counterforce to target and engage with Internet trolls.

Source: OECD (2021[96]), *Civic Space Scan of Finland*, https://doi.org/10.1787/f9e971bd-en; Jäske, M. et al. (2021[97]), *Recommendations for measures to be taken in Finland to protect people in public professions from hate speech and to safeguard free expression of opinion*, https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162966/Citizens_Panel_on_the_Freedom_of_Expression-Final_Report.pdf.

Government-led task forces

Several governments have set up specific structures within their administrations *to counter online hate speech and content that promotes harassment.* Figure 4.15 shows that 35% of respondent OECD Members and 28% of all respondents have done so*. For example,* ***Australia*** *established a eSafety Commissioner, which is a government agency mandated to keep its citizens safe online, with powers related to harmful online content* (eSafety Commissioner, 2021[98])*.* ***Italy*** *established a working group to develop policy recommendations to counter online hate speech. In 2020, the working group in Italy proposed drafting a strategy with measures centred on civic education, legal culture, research, information and communication, as well as regulatory reforms that clarify roles and responsibilities* (Gruppo di lavoro sull'odio online, 2021[99])*. In the* ***Slovak Republic****, the government set up a committee to prevent and eliminate racism, xenophobia, antisemitism and other forms of intolerance, which serves as a platform for co-ordinating activities and defining priorities. The committee has a dedicated working group on hate speech on the Internet* (Slovak Ministry of Interior, 2021[100])*.*

Targeted public awareness campaigns

*Fifty-four percent of respondent OECD Members and 37% of all respondents have initiated targeted public awareness campaigns (*Figure 4.15*).* Public information and education campaigns are essential in combatting negative stereotypes of and discrimination against individuals on the basis of their protected characteristics. Such campaigns can equip individuals with greater confidence to identify and challenge manifestations of intolerance. *In* ***Canada****, for example, the government funded a project entitled Block Hate: Building Resilience against Online Hate Speech, which examines hate speech trends across the country and works with experts to develop online tools and digital literacy training* (YWCA Canada, 2020[101])*. Initiatives launched by the eSafety Commissioner in* ***Australia*** *have provided stakeholders and the general public with tools for a deeper analysis of online safety issues, including harmful content, which provides guidance for students, parents, educators and community workers.*

Targeted training for public officials

Targeted training for public officials and law enforcement bodies on online hate and content *that promotes harassment* has been rolled out in 31% of respondent OECD Members and 26% of all respondents (Figure 4.15). In some respondents, such as the **Czech Republic**, **Latvia** and **Spain**, this training was carried out jointly for law enforcement and civil society actors (ECRI, 2020[102]; 2019[103]; Spanish Ministry of Interior, 2019[92]). In **Latvia,** this training included non-governmental organisations directly linked to vulnerable groups. In the **Slovak Republic,** the national human rights institution, the Slovak National Centre for Human Rights, undertook educational activities for members of law enforcement bodies and the Ministry of Education (2019[104]). In **Finland,** training activities focus on improving reporting, enhancing capacities of the law enforcement agents and improving support structures for victims (Finish Ministry of Justice, 2019[105]). Hate crimes are part of the basic and continuous instruction for Finnish police and annual specialists' training is offered by the Police University College. In 2021, the entire Finnish police force was required to take mandatory online training on equality, good relations and hate crime (OECD, 2021[96]).

Publication of disaggregated data

Comprehensive data collection systems, with fully disaggregated data by category of offence, type of hate motivation, target group as well as judicial follow-up and outcomes, are important tools to measure the true scale of the challenge, better understand emerging trends, improve the effectiveness of responses and raise awareness. While 65% of respondent OECD Members and 44% of all respondents track such information, data are not always sufficiently disaggregated, thereby hindering a detailed understanding of the issue that could guide interventions (Figure 4.15). In some OECD Members, such as **Austria** and

Latvia, data on related complaints, crimes, investigations and prosecutions are recorded within national statistics on hate crimes (ECRI, 2020[106]; 2019[103]). When combined in this manner, it is not possible to differentiate the number of hate speech incidents as distinct from hate crimes, which is a broader category of crime covering, for example, physical violence and threats of violence. It also makes monitoring and tracking crimes more difficult for victims. Moreover, national statistics usually record only those forms of hate speech that are criminalised (ECRI, 2020[102]), precluding monitoring of the phenomenon in a more comprehensive manner.

Some countries publish an analysis of trends together with the number of online hate speech cases. In **Denmark**, for example, the annual national police report includes an analysis of hate speech trends, showing numbers disaggregated by motivation and type of bias, and comparing the data across years (National Police Denmark, 2019[107]). In **Germany**, apart from general statistics on hate speech, the bi-annual transparency reports that social network companies publish under the Network Enforcement Act (NetzDG) have proven to be an important source of data on the phenomenon (ECRI, 2020[94]).

Support for victims

A total of 65% of respondent OECD Members and 51% of all respondents have established hotlines or complaint mechanisms to report online hate speech and provide support for victims. While in some countries, there are dedicated reporting mechanisms[16] specifically for online hate speech – such as in **Belgium** or **Germany** – often incidents can be reported to existing police structures or support mechanisms for victims through independent bodies that handle human rights complaints. In **Belgium**, for example, the national equality body (Unia, 2021[108]) provides complaints channels for online hate speech. Other OECD Members have embedded reporting channels within the reporting mechanisms of the police, such as in **Finland**, **Latvia**, **Portugal** and **Sweden**.

Alongside government structures, in some OECD Members, such as **Ireland** and **Latvia**, CSOs also provide reporting channels for victims and other support. In **Belgium**, the NHRI supports victims by acting as a civil party in court proceedings. In **Germany**, a network of counselling services specifically for victims of online hate speech is provided through the initiative Zivile Helden (2021[109]). In **Sweden,** authorities are enhancing victim support structures for individuals who are exposed to threats and hatred in connection with their participation in public discourse (Government of Sweden, 2017[110]). Specialised hate crime units have also been created in Swedish police structures to assist victims, train fellow police officers and conduct outreach and confidence-building activities in local communities and among vulnerable groups, according to ECRI (2018[111]).

Where complaint mechanisms for hate speech exist, research suggests that under-reporting remains a significant challenge, often due to a lack of confidence in the police or justice system (de Varennes, 2021[71]; FRA, 2020[112]; 2013[113]; CoE, 2015[74]). Reasons for this are numerous, including: a lack of knowledge of complaint mechanisms; victims blaming themselves for the crime; fear of re-victimisation, such as retaliation by perpetrators; language barriers; or the fear of being deported in cases involving undocumented persons, among others (Bayer, 2020[114]). To tackle this challenge, the police in **Denmark** conducted outreach activities, including information meetings and dialogues with minority communities, to encourage more victims of hate crimes to report such incidents (ECRI, 2020[115]).

In recent years, CSOs in several countries have also started gathering statistics on hate speech. Given the challenge of under-reporting, co-operation between national authorities and CSOs – particularly those representing the interests of target groups – is a promising path to obtaining a realistic picture of the extent of the problem.

Regulations on content moderation and reporting requirements for social media platforms

The extent to which online platforms should be responsible for monitoring, removing or blocking user content that does not conform to legal requirements has been under increased focus in recent years (OECD, 2019[83]). In the context of the OECD Survey on Open Government, only **Australia** and **Germany** confirmed to have introduced regulations on content moderation for social media platforms (Figure 4.15), while the **Slovak Republic** strategy in the fight against radicalisation and extremism specifies that a new legislative obligation will be introduced for social network operators in order to systematically remove hate speech from their sites and to archive the removed evidence for investigators (Slovak Ministry of the Interior, 2020[93]; Government of Australia, 2021[116]). The law in Germany requires social media platforms to take down or block manifestly illegal fake news, hate speech and certain other unlawful content within 24 hours of receiving a complaint. Furthermore, a recent decision of the High Court of Australia confirmed that media companies were liable for defamatory comments by third parties posted in response to articles appearing on their Facebook pages (Karp, 2021[117]; High Court of Australia, 2021[118]).

Legislation adopted at the EU level in September 2022 to tackle the spread of illegal content online will be applicable in all EU Member states. The Digital Services Act sets obligations for social media platforms and obliges them to react quickly while respecting fundamental rights (EC, 2022[119]). However, some strict approaches have been criticised for their potential to limit freedom of expression given the short timeframes allotted to social media companies to identify this material (UN Human Rights Committee, 2021[120]). The OECD report *An Introduction to Online Platforms and Their Role in the Digital Transformation* notes the need for sufficient clarity and guidance from governments for the platforms responsible for carrying out filtering responsibilities so that they can comply with filtering requirements without pre-empting legitimate freedom of expression (OECD, 2019[83]).

Self-regulation mechanisms

Self-regulation and voluntary codes of conduct are additional, increasingly common approaches, with 15% of respondent OECD Members and 12% of all respondent countries reporting their use (Figure 4.15). Indeed, the OECD report *An Introduction to Online Platforms and Their Role in the Digital Transformation* suggests that private companies may often be better placed to understand problems that need regulatory attention and react to changes in their markets more quickly than public regulatory authorities (OECD, 2019[83]). Self-regulatory schemes can be adopted by private and public bodies – such as parliaments, political parties, business organisations, cultural and sports associations – by stressing that the use of hate speech by persons affiliated with them is unacceptable and taking action to prevent and sanction such use.

Box 4.8. Countering online abuse targeting women

As with other online hate, gendered online violence aims to silence, stigmatise and intimidate but focuses on women, girls and people who identify as female (Šimonović, 2018[121]; Article 19, 2020[122]) through misogynistic harassment, abuse and threats (Posetti, 2021[123]). Research from UNESCO suggests that 73% of women worldwide have experienced some form of online violence (UNESCO, 2015[124]). In EU Member states, one in ten women have reportedly experienced sexual harassment online (EC, 2019[125]; EIGE, 2017[126]; FRA, 2014[127]). In the **United States**, research indicates that while 21% of women aged 18 to 29 reported being sexually harassed online, this figure was 9% among men (Pew Research Center, 2017[128]). According to research from **Australia**, 76% of women under 30 have experienced online abuse (Hunt, 2016[129]).

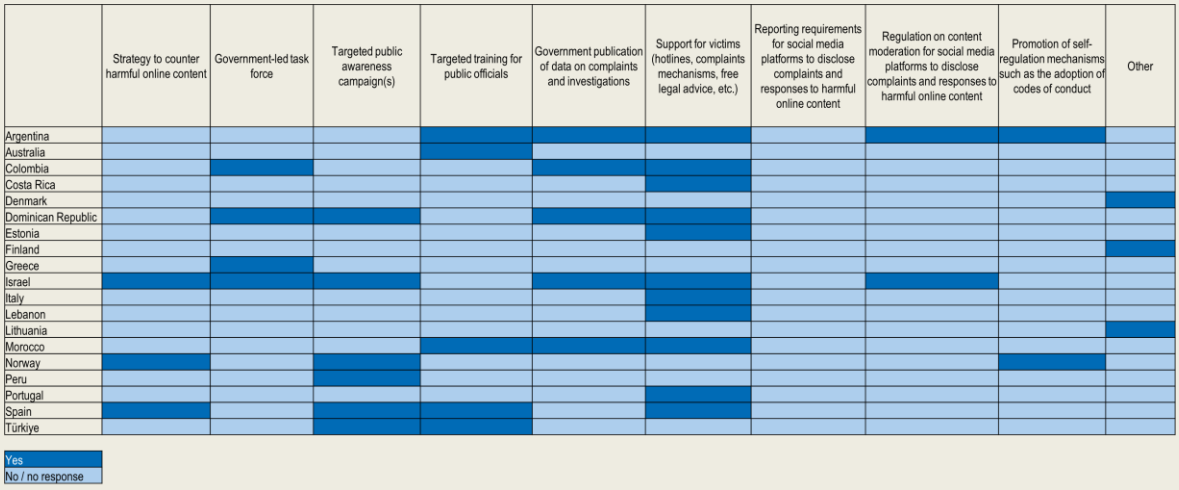
Gendered online abuse against women activists and journalists has become more prominent in recent years, with a potentially grave impact on their ability to engage in public life.[17] Data from UNESCO

suggest that nearly three-quarters of women journalists globally have experienced online abuse (Posetti, 2021[123]). In addition, evidence suggests that the increase in online violence has resulted in women limiting their online participation, self-censoring or abandoning certain types of coverage altogether (Digital Rights Foundation, 2019[130]; Ferrier, 2018[131]; CPJ, 2019[132]; Fundacion Karisma, 2016[133]; Šimonović, 2018[121]).

Recent studies also show that such online violence easily moves offline, resulting in abuse and harassment of women and, in its most extreme forms, physical attacks (Posetti, 2021[123]) and even killings (Lawlor, 2020[134]). In 2017, the Committee to Protect Journalists (CPJ) reported that in at least 40% of cases, journalists who were murdered reported receiving threats, including online, before they were killed (Witchel, 2017[135]). Furthermore, according to the UN Office of the High Commissioner for Human Rights, women belonging to ethnic minorities and Indigenous women, lesbian, bisexual and transgender women, women with disabilities and women from marginalised groups are at even greater risk (Al Hussein, 2017[136]). A global survey by UNESCO of 714 self-selecting women journalists from 125 countries also showed that while 64% of white respondents had experienced online violence, the rates for minorities and marginalised women were significantly higher (81% identifying as Black, 86% identifying as Indigenous, and 88% identifying as Jewish) (Posetti, 2021[123]). The same survey also suggests that discrimination against women intersects with sexual orientation: while 72% of heterosexual women indicated they had been targeted in online attacks, the rates of exposure for those identifying as lesbian and bisexual women were 88% and 85% respectively (Posetti, 2021[123]).

As a response, at least 44% of respondent OECD Members and 51% of all respondents have introduced specific measures to address online hate speech that targets women (Figure 4.16). For example, **Spain** and **Türkiye** both train public officials to combat online violence against women and have targeted public awareness campaigns to assess harmful online content. **Colombia**, **Costa Rica**, **Estonia**, **Israel**, **Italy**, **Portugal** and **Spain** have introduced support structures for women victims of online violence through hotlines, complaint mechanisms or free legal advice**. Columbia** and **Israel** both publish data on online hate against women. **Israel** disaggregates the published data based on the categories of offence type, age, region and platforms where the online hate occurred.

Figure 4.16. Measures to counter online hate speech and/or content that promotes violence or harassment directed at women, 2020



Source: 2020 OECD Survey on Open Government.

Key measures to consider on countering hate speech or harassment online

- Assessing whether all groups or individuals, including women and minority communities, have the same opportunities to participate online without fear of abuse, harassment, threats or self-censorship and taking measures to counter any exclusion, including via targeted outreach efforts among affected communities.

- Considering adopting national strategies to counter online hate and harassment to implement a co-ordinated, whole-of-government and long-term approach to countering this growing phenomenon.

- Encouraging self-regulation by public and private entities by incentivising appropriate codes of internal conduct.

- Gathering and publishing disaggregated data on the phenomenon and actively supporting monitoring of related trends by civil society, equality bodies and national human rights institutions; supporting research related to how hateful content is created and spread, why and by whom, and which responses are most effective.

- Addressing under-reporting by raising awareness of relevant, accessible complaint mechanisms and remedies and co-operating in this respect with media and technology companies.

- Strengthening victim support systems including legal support, in consultation with specialist CSOs and targeted persons or groups.

Countering mis- and disinformation to support democracy and safe civic spaces online

The spread of mis- and disinformation[18] can distort democratic engagement and threaten the public interest information ecosystems that are crucial for healthy civic space and functioning democracies. By convincing people to believe incorrect messages that may demonise political opponents, reinforce polarisation or distort policy debates, as well as inhibit access to timely, relevant and accurate information and data, the amplification of mis- and disinformation can undermine the public's willingness and ability to engage constructively in democratic debate.

Concerns about the risks posed by false information are at an all-time high. Indeed, 76% of respondents to the 2022 Edelman Trust Survey in 27 countries indicated that they worry about false information being used as a weapon (Edelman, 2022[137]). Such concerns illustrate the urgency and importance of ensuring governments have the capacity to respond to immediate threats posed by the spread of mis- and disinformation, as well as strengthen the wider public interest information ecosystems.

While mis- and disinformation are not new phenomena, the emergence of online communication spaces and social media platforms that allow for virtually anyone to instantaneously be a source of information (or misinformation) and amplify such content globally is a fundamental shift. The Internet has changed and facilitated the ability for content to be created and shared in ways that are only beginning to be understood (Lesher, Pawelec and Desai, 2022[138]). Changing business models in the media industry and increasing polarisation are additional systemic issues that both affect – and are affected by – how people get and share information and who and what they trust.

At the same time, these technological changes have provided new avenues to conduct public debate and can contribute to dynamic engagement. The growth in the diversity of sources and the opportunities to access global information provided by social media and the Internet also offer an essential counterweight to proscribed, anticompetitive or otherwise restricted media (particularly notable in the context of Russia's aggression in Ukraine). Online communication technologies have also enabled governments, media and CSOs to more easily engage with citizens and for citizens to communicate with each other.

Nevertheless, because these same technologies can be used to threaten basic elements of democratic life, governments need to identify what constructive roles they can play in helping to build societal resilience to the challenges to civic space caused by mis- and disinformation. The breadth and depth of the mis- and disinformation challenge call for a wide range of measures driven by a whole-of-government and whole-

of-society approach (OECD, forthcoming[139]). Current and proposed initiatives must reflect the multi-sectoral and systemic challenges faced and be developed and implemented in partnership with media and CSOs. To that end, understanding and building proactive roles for government responses, as well as identifying opportunities to develop and expand such a whole-of-society approach, will be crucial.

Maintaining freedom of expression and an open Internet means that mis- and disinformation will never disappear. A focus on responding to specific threats while reducing systematic risks to their spread, however, suggests a range of relevant responses. For example, the public communication function – which is distinct from political communication and is intended to deliver information, listen and respond to citizens in the service of the common good (OECD, 2021[140]) – will continue to be an important and strategic tool to strengthening public interest information ecosystems. Notably, recent OECD analysis suggests that there are opportunities for governments to use social media platforms more effectively and consciously to promote interactive communication online in ways that help counteract mis- and disinformation (OECD, 2021[140]).

Furthermore, the forthcoming *OECD Principles of Good Practice for Public Communication Responses to Mis- and Disinformation* explore in more detail how this function can facilitate rapid, strategic, inclusive and proactive responses to information challenges (forthcoming[141]). These principles examine the communication practices, institutional frameworks and interventions that foster an enabling ecosystem in which governments support a whole-of-society effort to support the flow of trustworthy information and data while mitigating the spread of false and misleading content.

Other efforts to build long-term resilience include media, information and digital literacy efforts, which can better equip citizens with the skills to differentiate between accurate and false or misleading information and increase awareness of their role in preventing its spread. Regarding regulatory responses, governments can adopt measures aimed at increasing online platforms' transparency related to sources and content of disinformation campaigns, content take-downs and moderation activities, algorithmic design and impact, as well as beneficial ownership and disclosure of the entities sponsoring certain content (OECD, forthcoming[139]; Lesher, Pawelec and Desai, 2022[138]). Governments can also implement measures that are indirectly connected to mis- and disinformation but nevertheless have significant implications on the structural and economic drivers that affect its spread. Importantly, strengthening the press and news media sector through encouraging diversity, editorial independence and ensuring high-quality news provision, including through public service broadcasters, can help build the resilience of the media and information ecosystem more widely (OECD, forthcoming[139]). Additional initiatives to counteract mis- and disinformation include: developing content moderation policies in a multi-stakeholder process and with independent oversight; better integrating humans and technology in the fight against untruths online; and designing a measurement agenda to improve the evidence base and inform more targeted policies to stop the creators and spreaders of untruths (Lesher, Pawelec and Desai, 2022[138]).

While each country has a unique policy and information context, promoting freedom of speech and reinforcing the space for democratic debate and engagement are essential. Facilitating the independent role of civil society and media organisations will be critical. Given the speed of changes to the spaces in which people, organisations and institutions communicate, a whole-of-society effort will be required to counteract the threats posed and to reinforce public interest information ecosystems.

Key measures to consider on countering mis- and disinformation online

- Implementing policies to respond to threats as well as to build more resilient societies against mis- and disinformation by pursuing a whole-of-society approach to transparently and constructively counteract and prevent the spread of false and misleading information; improving media and information literacy; and supporting domestic and international collaboration to identify responses, among others.

- Building capacity for more proactive, responsive and effective public communication that provides factual information to populations, fills information voids and counteracts mis- and disinformation.

- Supporting the design of policy and regulatory measures to increase transparency and prevent the spread of false and misleading content.

- Identifying regulatory and policy responses that reduce economic and structural drivers of mis- and disinformation, for example via initiatives to promote more responsible behaviour of online platforms and identifying ways to strengthen the broader media and information ecosystem.

4.5. Personal data protection, artificial intelligence (AI) and civic space

Emerging technologies, big data analytics and AI enable governments and businesses alike to obtain fine-grained information about individuals. Indeed, for an increasing number of companies, personal data have become core to their business models, either in terms of selling such data to third parties, for advertising purposes or for tailoring their services. For governments, data collection is mostly carried out for the purpose of service provision (e.g. health, education or taxation) but data can also be held for criminal investigations or identification purposes. Data gathered and stored by governments can reveal a great deal of personal information about individuals, providing insights into private spheres of life, such as membership of organisations, participation in protests, religious or social affiliations, sexual orientation and health status and it is essential to protect such data from misuse as part of protecting civic space.

As with the protection of privacy more generally (Section 2.1.4 in Chapter 2), personal data protection supports an enabling environment in which citizens, journalists and civil society actors can gain access to information, express their views, operate freely and thrive without fear of arbitrary or unlawful intrusion or interference in their activities. The global trend towards greater data protection is reflected in regional instruments and guidelines on data protection, such as the Council of Europe's Data Protection Convention (CoE, 2001[142]), the Inter-American Declaration of Principles on Freedom of Expression (OAS, 2000[143]), the African Union Convention on Cyber Security and Personal Data Protection (2014[144]) and the General Data Protection Regulation (GDPR) (EU, 2016[145]). Recent instruments such as the GDPR, the EU Directive on open data and the re-use of public sector information of 2019 and the European Data Governance Act (DGA) of 2022 are trailblazing data-related regulations worldwide (OECD, forthcoming[146]).

While data-driven technologies can be highly beneficial in terms of enhancing public services and identifying emerging societal needs (OECD, 2019[147]), the vast amounts of data collected as well as the potential linking of public datasets also come with risks (Al Hussein, 2018[148]), for example, data breaches resulting from accidents, the identification of individuals, malicious hacking and unauthorised access or disclosure, also increase (OECD, 2020[8]; Pillay, 2014[149]). Such breaches greatly diminish trust in the digital ecosystem and may affect how citizens and CSOs conduct their online activities, negatively impacting civic space. These trends have contributed to an evolving awareness of the need for greater personal data protection (OECD, 2021[150]). CSOs have particular concerns, with 7% of surveyed CSOs in the EU reporting a concern about surveillance by law enforcement (Section 5.6.4 in Chapter 5). Data governance and privacy have long been a focus of the CDEP and are also reflected in the establishment of a dedicated Working Party on Data Governance and Privacy in the Digital Economy. The 2017 and 2020 *OECD Digital Economy Outlooks*, prepared under the purview of the CDEP, find that individuals are

increasingly concerned about the extensive use of their personal data by governments and private companies (OECD, 2017[151]; 2020[8]). Furthermore, the OECD Survey on Drivers of Trust in Public Institutions, undertaken under the purview of the Public Governance Committee (PGC), found that, on average, only half (51%) of the population in 22 surveyed countries trust their governments to use their personal data safely (OECD, 2022[152]). Thus, citizens are sharing more information about themselves than ever before but they are also increasingly seeking information on how it is handled, coupled with assurances that they maintain some control over how it is used (OECD, 2020[153]).

The OECD has played an important role in promoting data protection and privacy as fundamental values for governments as they embrace digitalisation (Box 4.9) on the basis that consideration must be given to protecting citizens' rights, and especially their right to privacy, to prevent misuse (OECD, 2020[153]). The inherent tensions between personal data protection and data transparency, in addition to access to information (ATI) and freedom of expression, and the rights of the individual versus the common good present significant, unresolved challenges in the digitalised world and call for a balanced approach to data governance where the benefits of data access and sharing are maximised and the risks controlled (OECD, 2021[154]). For example, many countries take an approach to protecting personal data and ATI known as *habeas data,* meaning that the "right of individuals to access, update, rectify, and delete personal data collected by third parties and stored in databases" is considered a constitutional right (Data-Pop Alliance, 2022[155]).

Even with solid legal frameworks in place, the OECD has found that over-compliance with personal data protection regulations by public authorities can lead to restricted ATI following information requests (OECD, 2018[156]). Data protection laws can thus be used by authorities to prevent CSOs or individuals from pursuing public interest research or investigative reporting or to force journalists to reveal sources (Franz, Hayes and Hannah, 2020[157]). Increasingly, public bodies responsible for ATI are moving towards combining their role in ATI and on personal data protection. This is the case for instance, in **Argentina**, **Belgium** and **Mexico**. Although both topics are treated in separate legal frameworks in most countries and require different technical capacities and training, their proximity and complementarities are pushing governments towards centralising their role into a single institution. Dual responsibility can allow institutions to identify and exploit potential synergies between both policy areas to ensure that personal data and privacy are safeguarded while also allowing ATI (Box 4.9).

Box 4.9. OECD standards on data sharing, privacy and data ethics in the public sector

Governments are increasingly leveraging digital technologies to improve and streamline core government functions, to inform the design and delivery of policies and services and, where feasible and appropriate, to automate decision making using algorithms to process data at scale. In past years, societal demand for ethical frameworks to complement data protection and privacy regulations has increased.

The OECD *Recommendation of the Council concerning Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data* [OECD/LEGAL/0188], which was adopted in 1980 and amended in 2013, promotes the global free flow of information with guidance on how to protect individual civil liberties while collecting, processing and sharing personal data (2013[158]). In 2021, CDEP, though the Working Party on Data Governance, undertook a review of the implementation, dissemination and continued relevance of the Recommendation based in responses to a questionnaire, thematic expert roundtables, focused thematic reports, inputs form relevant work streams and discussions in conference calls, workshops and comment by an ad hoc informal advisory group of civil society, academic and private sector actors, noting the continued importance of the guidelines "as an international reference on minimum standards for privacy and personal data protection" (OECD, 2021[150]). The same year, the OECD *Recommendation of the Council on Enhancing Access to and Sharing of Data*

[OECD/LEGAL/0463] was adopted (OECD, 2021[154]) to support governments in harnessing the potential of "personal, non-personal, open, proprietary, public and private" data while protecting the rights of individuals (OECD, 2021[159]). It also assists governments in fostering trust in the data ecosystem based on responsible data access and sharing while stimulating investment (OECD, 2021[154]).

In addition, and in response to challenges around the use of data and public trust, the OECD has elaborated ten *Good Practice Principles for Data Ethics in the Public Sector* to ensure that trust and 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 specific actions (OECD, 2021[160]):

1. Manage data with integrity.
2. Be aware of and observe relevant government-wide arrangements for trustworthy data access, sharing and use.
3. Incorporate data ethical considerations into governmental, organisational and public sector decision-making processes.
4. Monitor and retain control over data inputs, in particular those used to inform the development and training of AI systems, and adopt a risk-based approach to the automation of decisions.
5. Be specific about the purpose of data use, especially in the case of personal data.
6. Define boundaries for data access, sharing and use.
7. Be clear, inclusive and open.
8. Publish open data and source code.
9. Broaden individuals' and collectives' control over their data.
10. Be accountable and proactive in managing risks.

Source: OECD (2021[160]), (OECD, 2013[158]), (OECD, 2021[154]).

4.5.1. The essential role of oversight in monitoring the protection of personal data

The protection of personal data can be effectively guaranteed through the existence of accessible institutional oversight mechanisms. Key international and regional instruments safeguarding the right to personal data protection, including the GDPR, the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, and the African Union Convention on Cyber Security and Personal Data Protection, require countries to establish independent supervisory authorities to monitor the implementation of their respective instruments. All OECD respondents have such supervisory bodies with total or partial independence from other state bodies. The vast majority of OECD Members responding to the OECD Survey on Open Government confirmed that these bodies handle complaints (as do central government authorities and domestic courts) and that they are mostly funded by general government revenues but with their own budget lines. All EU members are bound to have an independent data protection officer in place, based on the obligation to implement the GDPR.

4.5.2. AI in the public sector and civic space

AI[19] is also increasingly used in the private and public sectors to more effectively address pressing societal challenges. The OECD is closely monitoring AI developments across the globe through the OECD Artificial Intelligence Policy Observatory, with country-specific information on national AI strategy and policy initiatives. The OECD has developed a recommendation to promote innovative and trustworthy AI (Box 4.10) and discussions on the broader governance of AI and its use in the digital economy are conducted under the purview of the CDEP.

Box 4.10. OECD Recommendation of the Council on Artificial Intelligence

The Recommendation on Artificial Intelligence [OECD/LEGAL/0449] – the first intergovernmental standard on AI (OECD, 2019[161]) – was adopted by the OECD Ministerial Council in May 2019. The recommendation identifies five complementary values-based principles for the responsible use of trustworthy, human-centric AI, calling on relevant actors to promote and implement them. These principles are: inclusive growth, sustainable development and well-being; human-centred values and fairness; transparency and explainability; robustness, security and safety; and accountability.

Crucially, the Recommendation calls stakeholders to proactively steward AI that advances the inclusion of marginalised populations. As part of the principle of "human-centred values and fairness", it makes reference to AI actors respecting "the rule of law, human rights and democratic values", including "privacy and data protection, non-discrimination and equality", all of which are essential preconditions for protected civic space (Chapter 2).

Source: OECD (2019[161]), "Recommendation of the Council on Artificial Intelligence", *OECD Legal Instruments*, OECD/LEGAL/0449, OECD Publishing, Paris, https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449.

In the public sector, evidence shows that AI can adapt services to users' needs and preferences, provide wider access to services such as education, safety and health and, overall, can increase citizen well-being (Ubaldi et al., 2019[162]). However, empirical evidence also highlights the potential for violations of rights by AI systems (Eubanks, 2018[163]; Richardson, Schultz and Crawford, 2019[164]) and concerns about how AI affects individual rights are growing, with implications for the protection of civic space (UN, 2020[165]; CoE, 2020[166]). For example, AI algorithms can transfer biases from the analogue to the digital world through the data they use (Mijatović, 2018[167]; Chander, 2020[168]). One of the key concerns surrounding their use in the public sector is the risk of discrimination, which can arise when machine-learning systems are fed data that only consider and reflect certain demographic groups or reproduce prejudices against such groups (FRA, 2019[169]). Algorithmic decision making can thus have a direct impact on the development of public policies, fair access to public services and can create barriers to the ability of all social demographics to participate in public life.

Threats to the right to non-discrimination have also been raised in relation to AI systems used in crime prevention and judicial proceedings. Law enforcement agencies increasingly use predictive policing through algorithmic processing of historical crime data and other sources to reveal patterns of criminal activity and identify targets for police intervention, for example (AlgorithmWatch, 2020[170]; Gonzalez Fuster, 2020[171]).[20] The EU Agency for Fundamental Rights (FRA) has stressed that this practice risks being discriminatory, possibly reflecting biases by individual officers and data gaps due to chronic under-reporting of certain types of crimes (2020[172]). To effectively contest decisions based on the use of algorithms, it is essential for people to know when they are used, what information is underpinning relevant decisions, and how and where to complain in the event of a discriminatory outcome. A prominent concern about AI is the lack of transparency in the use of algorithmic decision making and the fact that in practice, decisions are difficult for citizens and stakeholders to challenge. Information about why certain data are collected or fed into algorithms often remains opaque, according to the FRA (2020[172]).[21]

Further concerns relate to ATI and freedom of expression, both of which can be affected by algorithms used by social media platforms and online search engines, hindering stakeholders' ability to engage in diverse public debate. Research suggests that social media platforms can limit exposure to varied perspectives and facilitate the formation of groups of like-minded users (Cinelli et al., 2021[173]). Online search engines that use algorithms to index and rank content also means that users are less likely to reach content that is not highly ranked (Pasquale, 2016[174]), again limiting their ability to access information. This can have an impact on government outreach efforts – such as public consultations – and by extension on

public policy making because it influences the quality of public debate and participation. Table 4.1 illustrates concretely how some Adherents are implementing the OECD's recommendation on AI, in terms of respecting the rule of law, human rights and democratic values in the context of developing AI technologies.

Table 4.1. Common elements in national strategies on AI related to the protection of civic space, OECD Members, 2021

Element in the national AI strategy	Adherents	Count
Mentions potential risks to civic freedoms	Canada, Chile, Colombia, Czech Republic, Denmark, Finland, Germany, Ireland, Latvia, Netherlands, Norway, Poland, Portugal, Spain, Sweden, United Kingdom	16
Proposes development of ethics framework/commission	Canada, Colombia, Czech Republic, Denmark, Finland, Germany, Ireland, Lithuania, Korea, Netherlands, Norway, Poland, Portugal, Spain, Sweden, United Kingdom	16
Proposes concrete types of oversight and redresses mechanisms to protect civic freedoms	Canada, Czech Republic, Denmark, Latvia, Netherlands, Norway, Poland, Spain, Sweden, United Kingdom	10
Proposes public participation in the development and oversight of AI technologies	Colombia, Finland, Germany, Ireland, Lithuania, Portugal, Spain	7
Proposes training courses to make citizens more aware of AI and its risks and to improve inclusion in AI	Estonia, Finland, Germany, Ireland, Netherlands, Norway, Portugal	7
Engages in in-depth discussion on the impact of AI on civic freedoms	Chile, Denmark, Latvia, Netherlands, Spain, Sweden	6
Contains information on public participation (citizens or CSOs) in the development of the strategy	Canada, Chile, Czech Republic, Germany, Portugal	5
	Total	**19**

Note: The table is based on in-depth research on primary sources (AI strategies), provided by the OECD Members and non-Members in the context of the 2020 OECD Survey on Open Government. The strategies included in the analysis are from: Canada, Chile, Colombia, the Czech Republic, Denmark, Estonia, Finland, Germany, Ireland, Korea, Latvia, Lithuania, the Netherlands, Norway, Poland, Portugal, Spain, Sweden and the United Kingdom (England and Wales). Data on Ireland is based on OECD desk research and was shared with it for validation.
Source: 2020 OECD Survey on Open Government.

A total of 81% of respondent OECD Members and 57% of all respondents to the 2020 Survey on Open Government had a national strategy for AI by the end of 2021. Common elements found in the 19 national strategies assessed are a focus on potential risks to civic freedoms and the intention to develop an ethics framework or commission to guide the development and application of AI, in particular in the public sector (84% respectively). Six of the strategies (**Chile, Denmark, Latvia,** the **Netherlands**, **Spain** and **Sweden**) include a deeper discussion on the impact of AI on civic freedoms. The rights most commonly discussed are the right to privacy and protection against discrimination, where discussions mainly focus on personal data protection, transparency and the explainability of algorithmic decision making. Public participation, either in the development of the strategy itself or in related activities, is mentioned in strategies in 7 OECD Members (37%). More than half of the strategies (53%) propose introducing concrete oversight and redress mechanisms with the aim of protecting civic freedoms.

Key measures to consider on protecting civic space in the context of personal data protection and AI

- Assessing the impact of legislation and policies governing personal data protection on ATI, privacy and civic freedoms, as part of creating and maintaining an enabling environment for civil society and citizens to participate in government policy and decision making.

- Establishing and adequately resourcing independent public institutions that address the misuse of personal data and automated decision-making complaints in the public sector and ensuring that the requisite legal structure and funding allow these institutions to be both independent and sustainable.

- Ensuring transparency regarding automated decision making in the public sector.

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Notes

[1.] Unless otherwise stated, in line with the OECD Survey on Open Government, for the purposes of this report, the term citizen is meant in the sense of an inhabitant of a particular place and not as a legally recognised national of a state.

[2.] This definition implicitly includes online and offline civic space. Notably, the definition of civic space adopted by the Development Assistance Committee (DAC) in 2021 in the DAC *Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance*, adopted after the 2020 Survey on Open Government, includes an explicit mention of the virtual world: civic space is defined as the physical, virtual, legal, regulatory and policy space where people can, among other things, securely exercise their rights to the freedoms of peaceful assembly, association and expression, in keeping with human rights (OECD, 2021[182]).

[3.] Armenia (Constitution Art. 42), Guatemala (Constitution Art. 35), Ireland (Constitution Art. 40) and Slovenia (Constitution Art. 39) are kindly asked to validate that freedom of the press is legally established.

[4.] Reporters Without Borders (RSF) has, however, criticised the new legislation in Germany as not going far enough to protect the rights of journalists, as the amended version still allows the German intelligence service to collect, analyse and pass on the traffic data of media professionals and their contacts to other intelligence agencies without restrictions. See RSF (2021[177]).

[5.] See Rice v. Vice Media Canada, Inc., Judgment of 30 November 2018.

[6.] 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.

[7.] The number of killed journalists reported by different organisations in 2021 differs due to the use of different methodologies. The UNESCO observatory of killed journalists reports 55 killings (39 for 2022) (2021[25]); the Committee to Protect Journalists reports 45 killings (17 with an unconfirmed motive; 28 with a confirmed motive; 38 in total for 2022) (CPJ, 2021[29]); the RSF reports 31 killings (29 journalists; 2 media workers; same number for 2022) (RSF, 2021[179]); and the International Federation of Journalists reports 45 killings (IFJ, 2021[180]).

[8.] The V-Dem Institute's indicator on harassment of journalists is based on the evaluation of multiple ratings provided by country experts with deep knowledge of a country and of a particular political institution, of whom about 85% are academics or professionals working in media or public affairs (e.g. senior analysts, editors, judges); about two-thirds are also nationals of and/or residents in a country and have documented knowledge of both that country and a specific substantive area. The question related to this indicator is: "Are individual journalists harassed – i.e. threatened with libel, arrested, imprisoned, beaten, or killed – by governmental or powerful non-governmental actors while engaged in legitimate journalistic activities?". Responses include the following options:

- 0: No journalists dare to engage in journalistic activities that would offend powerful actors because harassment or worse would be certain to occur.
- 1: Some journalists occasionally offend powerful actors but they are almost always harassed or worse and eventually are forced to stop.
- 2: Some journalists who offend powerful actors are forced to stop but others manage to continue practising journalism freely for long periods of time.

- 3: It is rare for any journalist to be harassed for offending powerful actors, and if this were to happen, those responsible for the harassment would be identified and punished.
- 4: Journalists are never harassed by governmental or powerful non-governmental actors while engaged in legitimate journalistic activities.

Given that the data of the V-Dem Institute's indicator on harassment of journalists for 2021 did not include Austria, the data refer to the year 2020.

9. For the purposes of the 2020 OECD Survey on Open Government, an open Internet was defined as follows: a fundamental network neutrality concept in which information across the World Wide Web is equally free and available without variables that depend on the financial motives of Internet service providers.

10. See the Council of Europe Recommendation CM/Rec(2011)8 of the Committee of Ministers to member states on the protection and promotion of the universality, integrity and openness of the Internet, adopted by the Committee of Ministers on 21 September 2011 at the 1 121st meeting of the Ministers' Deputies, para. 11. For more information: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680645b44.

11. Net neutrality refers to the principle that Internet service providers should enable access to all content and applications regardless of the source, and without favouring or blocking particular products or websites.

12. The OECD defines misinformation as false or inaccurate information not disseminated with the intention of deceiving the public.

13. The V-Dem Institute's indicator on Internet filtering in practice is based on the evaluation of multiple ratings provided by country experts with deep knowledge of a country. The question related to this indicator is: "How frequently does the government censor political information (text, audio, images, or video) on the Internet by filtering (blocking access to certain websites)?". Responses include the following:

- 0: Extremely often. It is a regular practice for the government to remove political content, except to sites that are pro-government.
- 1: Often. The government commonly removes online political content, except sites that are pro-government.
- 2: Sometimes. The government successfully removes about half of the critical online political content.
- 3: Rarely. There have been only a few occasions on which the government removed political content.
- 4: Never, or almost never. The government allows Internet access that is unrestricted, with the exceptions mentioned in the clarifications section.

14. As discussed in Chapter 2, the UN launched a Strategy and Plan of Action on Hate Speech in 2013 (UNHCHR, 2013[72]). The Istanbul Process – a group of countries that united around the UN Human Rights Council's Resolution 16/18 on combatting intolerance, negative stereotyping and stigmatisation of, and discrimination, incitement to violence and violence against, persons based on religion or belief, was also reinvigorated in 2019, working to promote tolerance and inclusion, and end violence and discrimination based on religion or belief (UN, 2011[181]).

[15.] See European Court of Human Rights, Delfi AS v. Estonia, Application No. 64569/09, [GC] Judgment of 16 June 2015, para. 162. By contrast, in the absence of hate speech or any direct threats to physical integrity in the user comments in question, the court has found that objective liability of Internet portals for third-party comments was not compatible with Article 10 of the convention. See Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary, Application No. 22947/13, Judgment of 2 February 2016, para. 91, and Savva Terentyev v. Russia, Application No. 10692/09, Judgment of 28 August 2018, paras. 83-87, where the court found that a blogger's offensive statements could not be regarded as an attempt to incite hatred or provoke violence, and thus concluded that his criminal conviction was not proportionate.

[16.] For a list of the Council of Europe member states' reporting mechanisms for online hate speech, see CoE (2021[175]).

[17.] In 2014, a global survey on harassment and violence against female media workers launched in August 2013 and completed by almost 1 000 women from around the world – conducted by the International Women's Media Foundation (IWMF) and the International News Safety Institute (INSI) – found that 23% of women respondents had experienced intimidation, threats or abuse online in relation to their work (Barton, 2014[178]). A follow-up survey conducted by the IWMF and Trollbusters in 2018 found that 63% of women respondents had been harassed or abused online (Ferrier, 2018[131]). In 2021, a UNESCO-International Center for Journalists survey found that 73% of women journalists had experienced online violence (Posetti, 2021[123]). While these surveys are not directly comparable, the pattern suggests that gendered online violence against women journalists has worsened significantly over the past few years.

[18.] 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.

[19.] The OECD has adopted the following definition of artificial intelligence: AI refers to a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments. AI systems are designed to operate with varying levels of autonomy.

[20.] AI is used for predictive policing in a number of OECD Members, including **Belgium**, **Germany**, the **Netherlands**, **Spain** and the **United Kingdom** (Allen and Masters, 2020[176]).

[21.] According to a 2019 Eurobarometer survey, only 40% of Europeans know that they can have a say when decisions are automated. See https://search.gesis.org/research_data/ZA7562?doi=10.4232/1.13318

5 Fostering an enabling environment for civil society to operate, flourish and participate in public life

This chapter explores the measures countries can take to foster an enabling environment for civil society. It examines legal and regulatory frameworks governing the establishment and operations of civil society organisations (CSOs), in addition to registration requirements and appeal mechanisms. It focuses on good practice in improving the enabling environment through government strategies to protect civil society and offer support in the aftermath of COVID-19. It discusses key challenges such as Strategic Lawsuits against Public Participation (SLAPPs). It examines support for civic space as part of development co-operation. It also assesses key regional challenges and opportunities within Africa, the European Union and Latin America and the Caribbean, providing proposals for consideration.

Key findings

- A majority of governments in respondent OECD Members (68%, and 52% of all respondents) have developed overarching policy frameworks to improve or promote an enabling environment for civil society. Through these strategies, governments are striving to develop robust and independent civil society organisations (CSOs), build strong CSO-state relationships and enhance inclusion and social cohesion, among other objectives.
- In addition to funding the civil society sector, governments in OECD Members work extensively to protect the enabling environment for civil society in partner countries. Approximately half (48% of respondent OECD Members) have a dedicated policy or strategy to promote CSOs as part of development co-operation.
- In the context of COVID-19, several OECD Members adopted support programmes and initiatives for the CSO sector such as state subsidies, support funds and temporary suspensions of tax obligations.
- The enabling environment for CSOs is comparatively strong in most OECD Members. Civil society is free to organise itself, associate, strike, express itself and criticise governments without fear of sanctions or harassment in three-quarters (76%) of all OECD Members and 47% of non-Members (data from the Varieties of Democracy Institute). However, 18% of all OECD Members document weak repression and in 2 OECD Members either moderate or substantial repression (V-Dem Institute, 2021[1]).
- In 44% of respondent OECD Members (55% of all respondents), unregistered CSOs are not permitted to operate, contrary to international guidance in this area; and in some respondents, administrative procedures are overly burdensome.
- Legal frameworks in some respondents may make it difficult for CSOs in taking political positions. 31% of OECD Members restrict political engagement for public benefit organisations and 7% restrict it for all types of CSOs.
- Hostile public discourse, smear campaigns, lawsuits and obstacles to participate in decision-making processes are posing growing challenges in some respondents for CSOs that engage on particular issues, such as the environment and the rights of migrants.
- CSOs are also increasingly endangered by Strategic Lawsuits against Public Participation (SLAPPs) that aim to silence people who publicly criticise or investigate powerful individuals, companies or interest groups. While at least two respondent OECD Members have adopted anti-SLAPP legislation at the regional level, there is an opportunity for all countries to protect the CSO sector and activists by assessing whether there are frequent cases of SLAPPs in their jurisdictions and by introducing legislation to counter them.
- Access to government funding remains a critical challenge for CSOs, with additional pressures since 2020 due to COVID-19. While medium- to long-term funding, in addition to unconditional and core funding, can provide predictability and sustainability for the sector, short-term funding continues to be the most common funding modality used by OECD Members. Data collection on government funding to CSOs remains scarce, hindering a strategic approach to supporting the sector and the identification of emerging needs and gaps.

5.1. Introduction

An enabling environment is central to promoting the ability of CSOs to operate in a free and autonomous manner and to strengthen the civic fabric of society and its social capital (Putnam, Leonardi and Nanetti, 1994[2]). A conducive legal and policy environment safeguards freedom of association and impacts CSOs' ability in reaching their full potential and positively contributing to society (OECD, 2020[3]).

By fostering the necessary legal and policy conditions, by fully recognising civil society as self-empowered and by providing concrete opportunities for collaboration with civil society, governments can better align policies, laws and services to societal needs. In countries that commit to protecting civic space, sustained efforts are needed to strengthen CSOs' contribution to societal trust, in particular in times of crisis and turbulence.

All survey data presented in this chapter pertain to the countries that responded to the civic space section (32 OECD Members and 19 non-Members) of the 2020 OECD Survey on Open Government (hereafter "the Survey") except where explicitly stated (e.g. Figure 5.22). Given that the 2 geographical areas with the most respondents to the Survey are Europe (23 respondents) and Latin American and Caribbean countries (LAC) (13), some of the data presented include a comparative regional analysis. This chapter also includes an overview by the European Union Agency on Fundamental Rights (FRA) on key challenges for civic space within the European Union (EU) and an assessment of civic space in Africa by the Mo Ibrahim Foundation.

The majority of challenges, good practices and measures addressed throughout Chapter 5 pertain not only to fostering an enabling environment for civil society within surveyed countries but also within their development co-operation, and a number of measures proposed in this chapter could be applied to development co-operation in the spirit of policy coherence and in line with the OECD Development Assistance Committee (DAC) *Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance* (2021[4]). Section 5.5 of this chapter focuses on select aspects of enabling civil society in development co-operation.

5.2. Legal frameworks governing the CSO enabling environment

For the purposes of this report, the concept of CSO is an umbrella encompassing a variety of non-market and non-state organisations in which people organise themselves to pursue shared interests in the public interest.[1] While the types of CSOs for which there is legislation in place differ from country to country, regardless of the type of organisation, CSOs commonly possess an institutional structure, are separate from the government and are non-profit and self-governing. The term includes trade unions, charities, consumer groups, associations, non-governmental organisations (NGOs), foundations and other groups. The term excludes government representatives, legislators, academia and media.

Legal frameworks regulating CSOs and their operations make up a crucial part of the enabling environment for civil society and have a significant impact on the health of civic space. For CSOs to work effectively, their legal environment needs to be predictable, transparent and free from political interference. An enabling environment for CSOs also requires regulations that recognise CSOs' autonomy and the important role they play in society (Section 2.1.3 on freedom of association more generally in Chapter 2).

Based on the responses to the Survey, all respondents except Sweden have legal frameworks regulating the establishment and operations of a variety of CSOs. While the type of regulations differs from country to country, the most common types concern NGOs, charities, foundations, trade unions and religious or cultural organisations.

5.2.1. Registration of CSOs

Registration procedures, responsible entities and length of time required

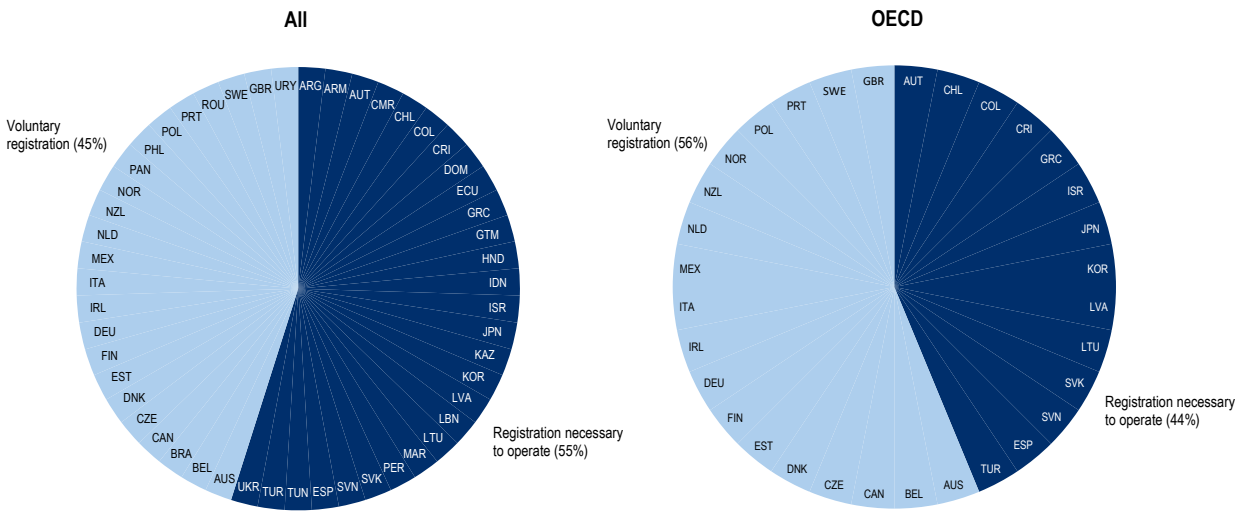
Figure 5.1 shows that 55% of all respondents and 44% of OECD Members require CSOs and associations to register in order to operate. In contrast, other respondents confirmed that registration is only necessary to obtain legal personality or in order to receive public interest or similar status, or other benefits. In some respondents, such as **Chile** or **Costa Rica**, non-registration can lead to administrative fines and in **Tunisia**, a failure to register can result in imprisonment and fines (Boussen, 2021[5]; Freedom House, 2021[6]; Shahin, 2018[7]).

The United Nations (UN) and Council of Europe (CoE), as well as other international organisations, have noted that associations, including NGOs, can either be unregistered bodies or organisations that are registered and/or have legal personality (Kiai, 2012[8]; CoE, 2007[9]). The Organization for Security and Cooperation in Europe (ODIHR) Office for Democratic Institutions and Human Rights (OSCE) and Venice Commission Guidelines on Freedom of Association recommend that the formation of unregistered associations should not be banned or obstructed (OSCE/ODIHR/Venice Commission, 2015[10]). While registration is necessary for CSOs that seek legal personality or certain state benefits, international guidance suggests that unregistered CSOs should be allowed to exist and operate. An open and enabling environment provides CSOs with a range of options at their disposal in terms of the framework and structure that they wish to operate under, including unregistered structures for CSOs that do not seek benefits from the state.

As regards the procedure for registration, the OSCE/ODIHR and Venice Commission Guidelines recommend a “notification procedure”, which automatically grants associations legal personality as soon as authorities are notified by the founders that an association has been created (OSCE/ODIHR/Venice Commission, 2015[10]).

Figure 5.1. Legal requirement for CSOs to register in order to operate, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



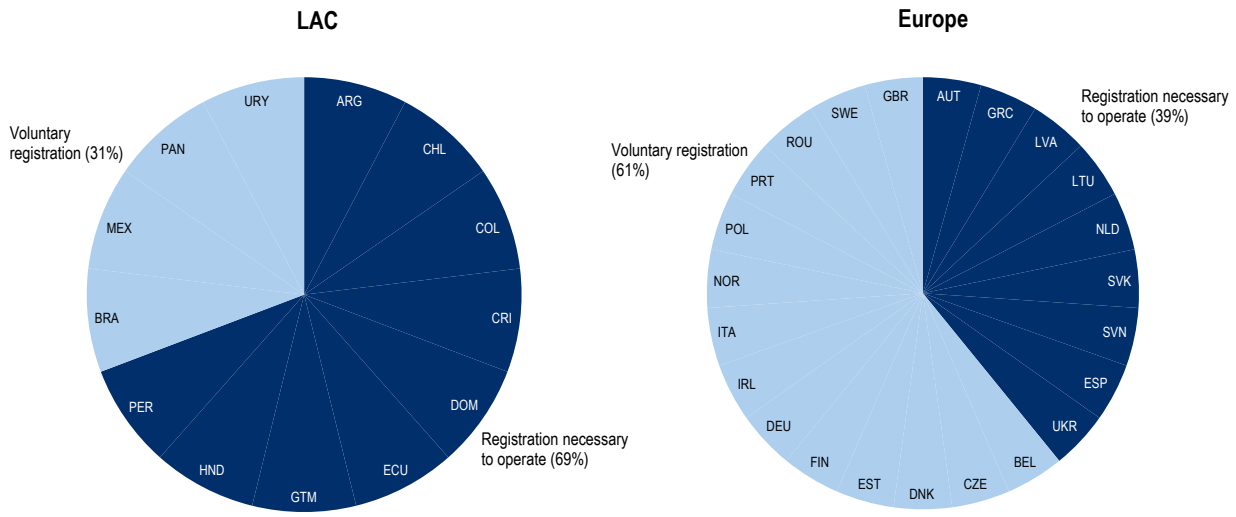
Note: “All” refers to 51 respondents (32 OECD Members and 19 non-Members). Data on Finland, Guatemala and Ireland are based on OECD desk research and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/p5j8ng

The obligation for CSOs to register in order to operate is one of the distinguishing aspects of countries in LAC when compared with countries in Europe. Figure 5.2 shows that while registration of CSOs is obligatory in 39% of European countries and voluntary in 61%, it is obligatory in 69% of countries in LAC and voluntary in 31% (Box 5.1).

Figure 5.2. European and LAC respondents with a legal requirement for CSOs to register in order to operate, 2020

Percentage of European and LAC respondents that provided data in the OECD Survey on Open Government



Note: "Europe" refers to 23 respondents, and "LAC" refers to 13 respondents. Data on Finland, Guatemala and Ireland are based on OECD desk research and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/2567yc

Box 5.1. Good practices in CSO registration

A number of OECD Members have taken recent steps to simplify and streamline procedures for CSO registration:

- In **Lithuania**, since 2020, the procedure for CSOs to register is notification-based and does not require authorisation by the state. Registration is free of charge and relevant information about registered NGOs is publicly available, providing more transparency about the CSO sector for the larger public.
- In **Portugal**, the foundation of CSOs was simplified as part of the Association in an Hour (*Associação na Hora*) programme, allowing CSOs to be created in one hour in a single location (civil registry office, notary or citizen shop). This reform has been particularly welcomed by CSOs during the COVID-19 pandemic when they were on the front line supporting the government in emergency responses.
- In **Romania**, the registration procedure for associations and foundations was simplified in 2020. The number of administrative steps and required documents for registration was substantially decreased, aiming to reduce barriers to entry for new CSOs. For example, CSOs are no longer required to have their constitutive acts or beneficial owner declarations notarised; the initial

funding amount to set up a foundation was also significantly reduced and for associations, it was eliminated (previously EUR 40).

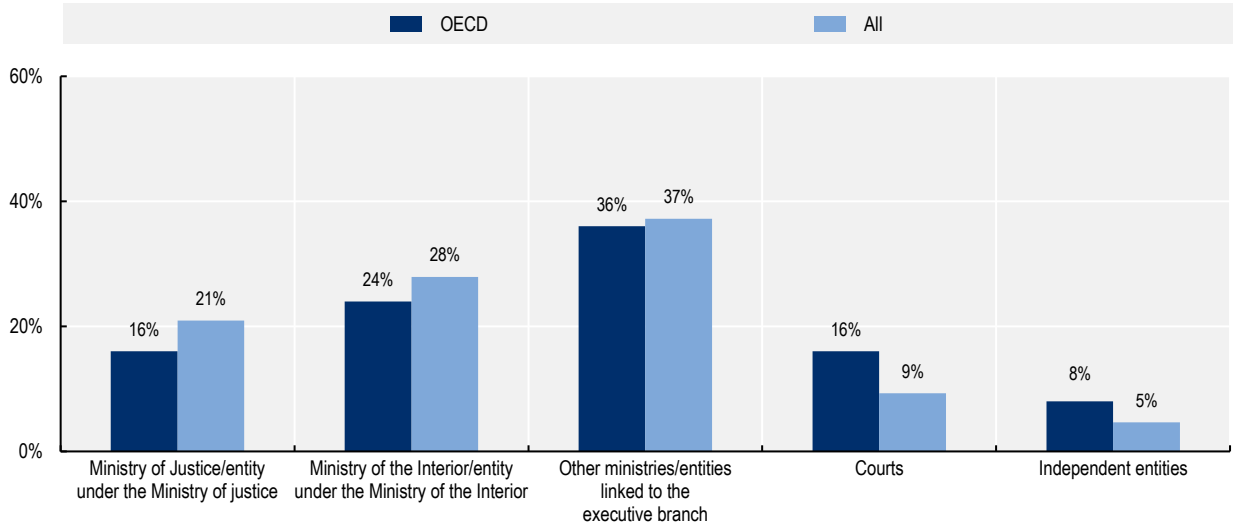
- In the **Slovak Republic**, a unified CSO register created in 2021 merged different existing registers, increasing the transparency of the sector and simplifying public access to information.

Source: (Voicu, 2021[11]); (FRA, 2021[12]); (EU Agency for Fundamental Rights, 2021[13]); (ICNL, 2022[14]); (Open Government Partnership, 2020[15]); (Government of Portugal, n.d.[16]).

Responsibility for registering CSOs is an important function and can send a powerful message about the sector as a whole. Figure 5.3 shows that, in 24% of respondent OECD Members and 28% of all respondents, ministries of the interior are in charge of registration. In other respondents this function is performed by the ministry of justice (or an entity under the ministry of justice) (16% of OECD respondents, 21% of all respondents), the courts (16% of OECD Members, 9% of all respondents) or other independent entities (8% of OECD Members, 5% of all respondents). But generally, it is other government departments – such as ministries of culture or labour and social affairs – or local administrative entities that fulfil this role (36% of OECD Members, 37% of all respondents). Giving the registration responsibility to entities that are at the same time responsible for investigating crimes or protecting national security or public order, such as ministries of the interior, may cause CSOs to be associated with security risks and threats to public order.

Figure 5.3. State entities responsible for the registration of CSOs

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 43 respondents (25 OECD Members and 18 non-Members). Data on Germany and Italy are based on OECD desk research and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

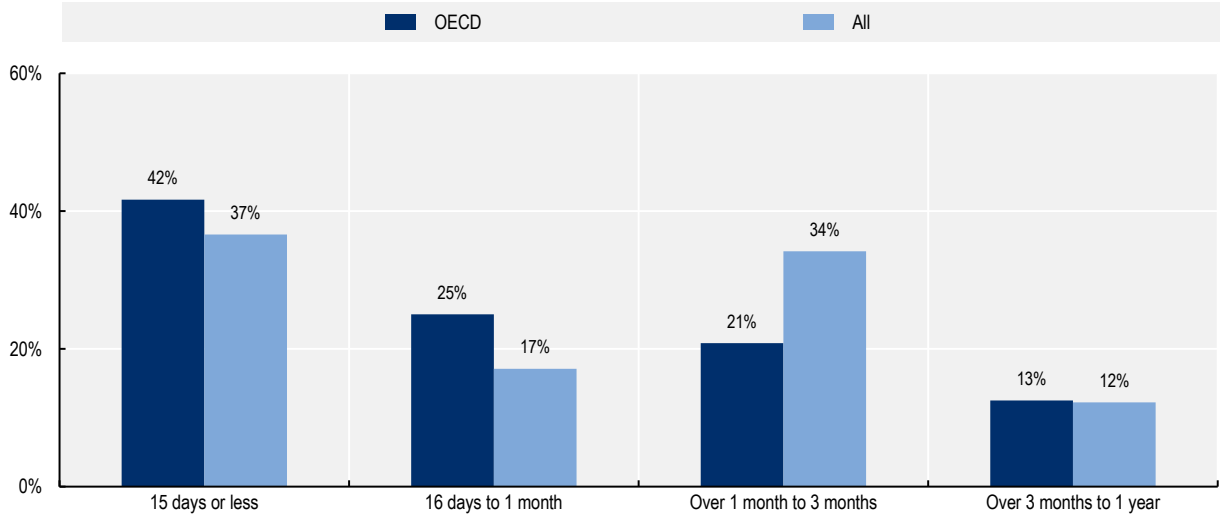
StatLink https://stat.link/1ho2eq

As regards the time between the submission of a registration request and the decision of relevant authorities to accept or deny the registration, international guidance suggests that laws should set short time limits for public authorities to respond to applications for registration (ECtHR, 2008[17]). Figure 5.4 shows that 42% of OECD Members surveyed and 37% of all respondents have relatively short timelines of 15 days or less. Long timelines of 3 months to 1 year for obtaining a decision on registration exist in a minority of OECD Members surveyed (13%), such as **Canada**, **Colombia** and **Spain** (12% of all respondents). Figure 5.5 shows that the average length of time between submitting a request for registration and a decision tends to be shorter in Europe than in the LAC region where registration times are significantly longer, with 42% of respondents requiring more than 1 month for a decision and 25%

requiring more than 3 months, in contrast to 20% in Europe requiring more than 1 month and 7% requiring more than 3 months.

Figure 5.4. Average length of time between submission of a request for registration by CSOs and a decision by state authorities, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government

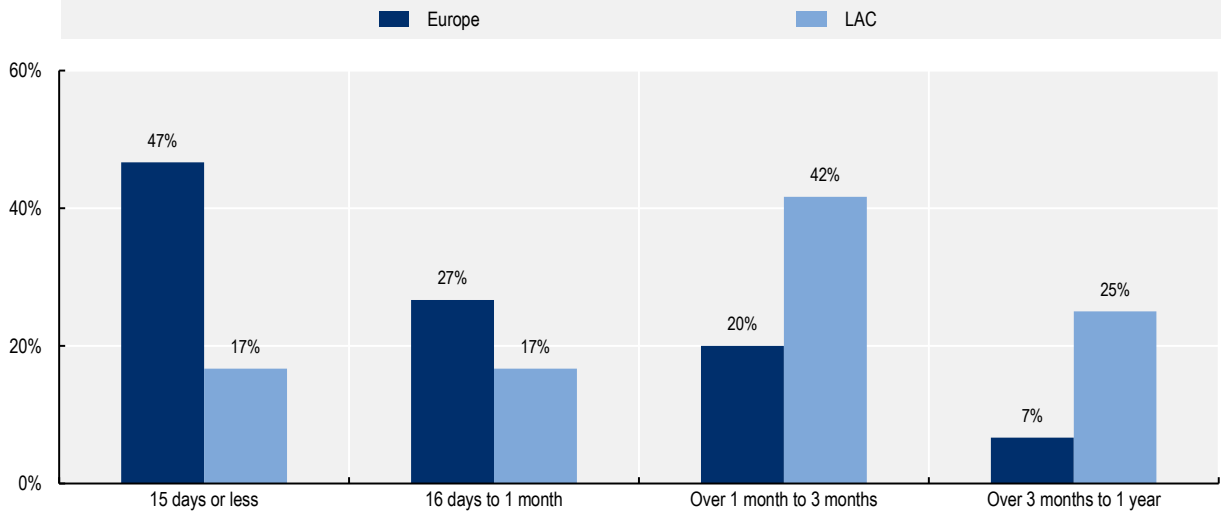


Note: "All" refers to 41 respondents (24 OECD Members and 17 non-Members). Only those who responded "yes" to Question 19 related to the registration of CSOs were asked to respond to this question in the Survey.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/1hez4x

Figure 5.5. Average length of time between submission of a request for registration by CSOs and a decision in European and LAC respondents, 2020

Percentage of European and LAC respondents that provided data in the OECD Survey on Open Government



Note: "Europe" refers to 15 respondents, and "LAC" refers to 12 respondents. Only those who responded "yes" to Question 19 related to the registration of CSOs were asked to respond to this question in the Survey.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/adi9gq

Criteria for CSO registration

Registration criteria usually include the submission of a range of documents, including a list and information on founding members, governing rules of the organisation, documents confirming the status and legal address of the organisation and proof of payment of the registration fee. Nationality or residency requirements for founders of associations exist in some respondents (Section 2.1 in Chapter 2). In **Brazil** and **Ukraine**, stateless persons who are residents can establish CSOs. In some respondents, including **Costa Rica**, **Guatemala**, **Honduras**, **Mexico** and **Panama**, legal costs related to registration procedures (e.g. the legal authentication of documents in Honduras or the obligation to file an application through a lawyer in Panama) may add to the costs incurred by CSOs.

While in many countries, a minimum number of only 2 to 3 persons is required to create an association, the minimum number is 20 persons in **Greece**, 10 persons in **Costa Rica, Japan** and **Kazakhstan** and 7 in **Germany**, **Guatemala** and **Honduras**. Generally speaking, international guidance suggests that two or more persons or groups of persons should be a sufficient basis for establishing an association (OSCE/ODIHR/Venice Commission, 2015[10]). Often, regulations also set a minimum age for CSO founding members, which is generally the national age of majority. Some respondents have specific registration criteria for specific types of CSOs. For example, **Greece** introduced specific criteria in 2020 for the registration and certification of national and foreign CSOs and their staff working in the field of migration, asylum and social inclusion (ECNL, 2021[18]). In **Cameroon**, a 2020 law regulating cultural and artistic associations requires state authorisation of such associations to be renewed every five years (Doh Galabe, 2020[19]). In **Cameroon** and the **Dominican Republic**, foreign and religious associations require special authorisation by the authorities and, in the former, violations may involve imprisonment. In **Cameroon**, this affects associations led by a foreigner or that include more than 50% of foreign members.

As regards fees for registration, the OSCE/ODHIR and Venice Commission Guidelines on Freedom of Association recommend that these should not be so high as to discourage or make applications for registration impractical (2015[10]). In 13 of the 39 respondents that provided information on registration fees in the Survey, registration is free; costs are between EUR 3 and EUR 55 in most countries (21) and they vary in the other 5. Depending on the circumstances, the costs may amount to EUR 180 in **Finland**, over EUR 200 in **Israel** and **Panama**, and EUR 300 in **Portugal**. In the **Netherlands**, the registration of certain CSOs is free but foundations need to be set up before a notary, whose fees can be as high as EUR 800, in addition to a registry fee of EUR 50. Where the costs of registration are disproportionately high, there is a risk that CSOs might be discouraged from applying for registration.

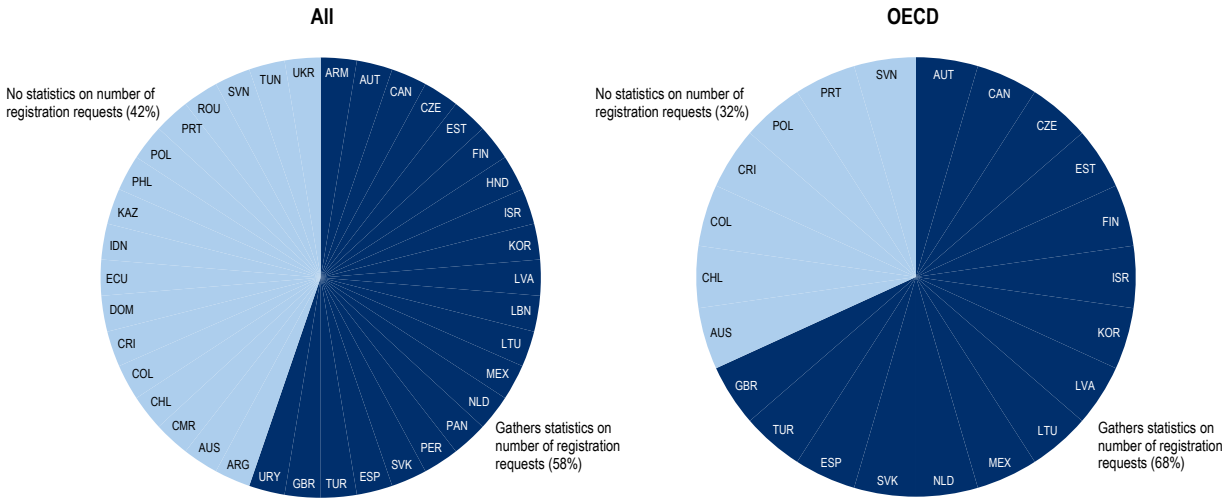
In some respondents, there is an additional requirement for CSOs to have a physical office space, while in others registration criteria only require CSOs to have an address. Against the background of rights being equally applicable off line as well as online (UN, 2012[20]), allowing CSOs to function without a permanent office premise facilitates their right to exercise freedom of association online.

Statistics on CSO registration

By publishing statistical information on the number of registered CSOs, governments can ensure transparency and accountability. Figure 5.6 shows that 58% of all respondents, comprising 68% of respondent OECD Members, gathered statistics on the number of requests for CSO registration in 2019. The percentage of countries that gathered these statistics was significantly higher in Europe (67%) than in the LAC region (45%), as illustrated in Figure 5.7. **Austria**, **Estonia** and **Türkiye** confirmed that they do not count registration requests but rather collect data on the number of existing CSOs.

Figure 5.6. Respondents that gathered statistics on requests for CSO registration in 2019

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government

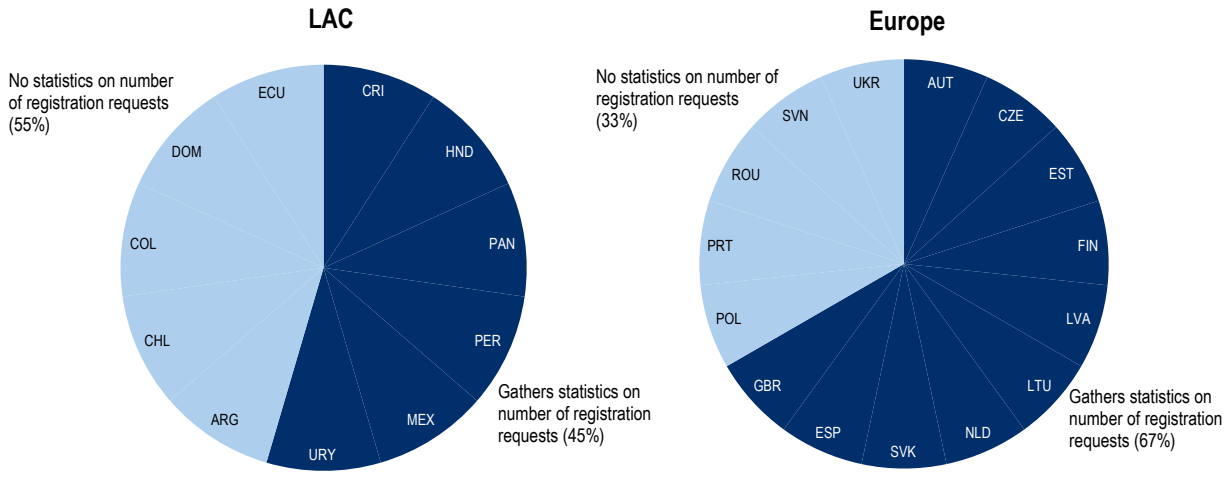


Note: "All" refers to 38 respondents (22 OECD Members and 16 non-Members). Only those who responded "yes" to Question 19 related to the registration of CSOs were asked to respond to this question in the Survey.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/pqy2sx

Figure 5.7. Respondents in Europe and LAC that gathered statistics on requests for CSO registration in 2019

Percentage of European and LAC countries that provided data in the OECD Survey on Open Government



Note: "Europe refers to 15 respondents and "LAC" refers to 11 respondents. Only those who responded "yes" to Question 19 related to the registration of CSOs were asked to respond to this question in the Survey.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/cx3ijp

Denials and revoking of CSO registrations

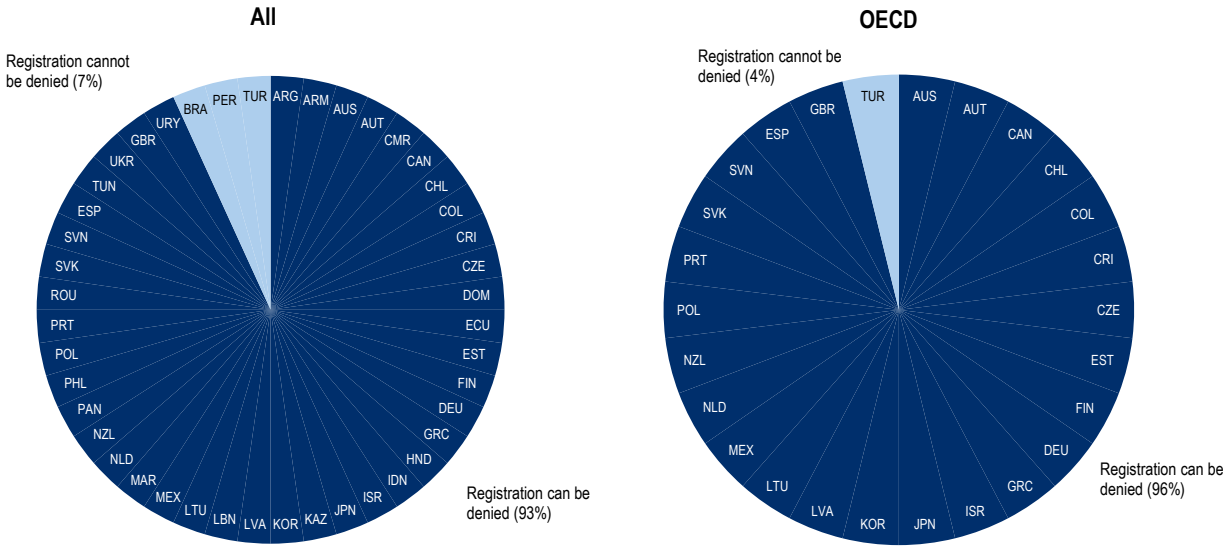
According to international standards, it is essential to have a clear legal basis with an explicit and limited number of justifiable grounds to deny or revoke CSO registration. UN and other standards state that restrictions on the right to freedom of association need to be based in law, follow one of the legitimate aims set out in relevant international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) (Art. 22, para. 2), the European Convention on Human Rights (ECHR) (Art. 11, para. 2) and the American Convention on Human Rights (ACHR) (Art. 16, para. 2) and adhere to the principles of necessity and proportionality (OHCHR, 2012[21]; Kiai, 2012[8]; OSCE/ODIHR/Venice Commission, 2015[10]). The European Court of Human Rights has found that dissolving an association on grounds of bankruptcy or prolonged inactivity may follow such a legitimate aim, provided that the dissolution decision is based on an acceptable assessment of the relevant facts.[2] The OSCE/ODIHR/Venice Commission Guidelines on Freedom of Association also note that the dissolution of an association should only occur following a decision of an impartial and independent court and that associations should never be dissolved due to minor infringements that may be easily rectified and only following adequate warnings that provide them with ample time to correct infringements and minor infractions (OSCE/ODIHR/Venice Commission, 2015[10]).

Figure 5.8 illustrates that for 93% of all respondents, including 96% of respondent OECD members where CSOs are required to register in order to operate, registration can be denied based on specific grounds set out in law. Figure 5.9 shows that for 81% of all respondents and 88% of OECD Members registration can be revoked.

The rates of CSO denials provided by respondents vary substantially from 21% in Ukraine, a country where registration is mandatory, to 40% in the United Kingdom and 54% in Mexico, countries where registration is voluntary. Publishing the reasons for denial or revoking of CSO registration provides an opportunity for governments to strengthen the CSO enabling environment by increasing transparency. It can also help in identifying the areas where more clarity on registration procedures is needed and in identifying opportunities for simplifying registration procedures.

Figure 5.8. Respondents where registration of CSOs can be denied, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government

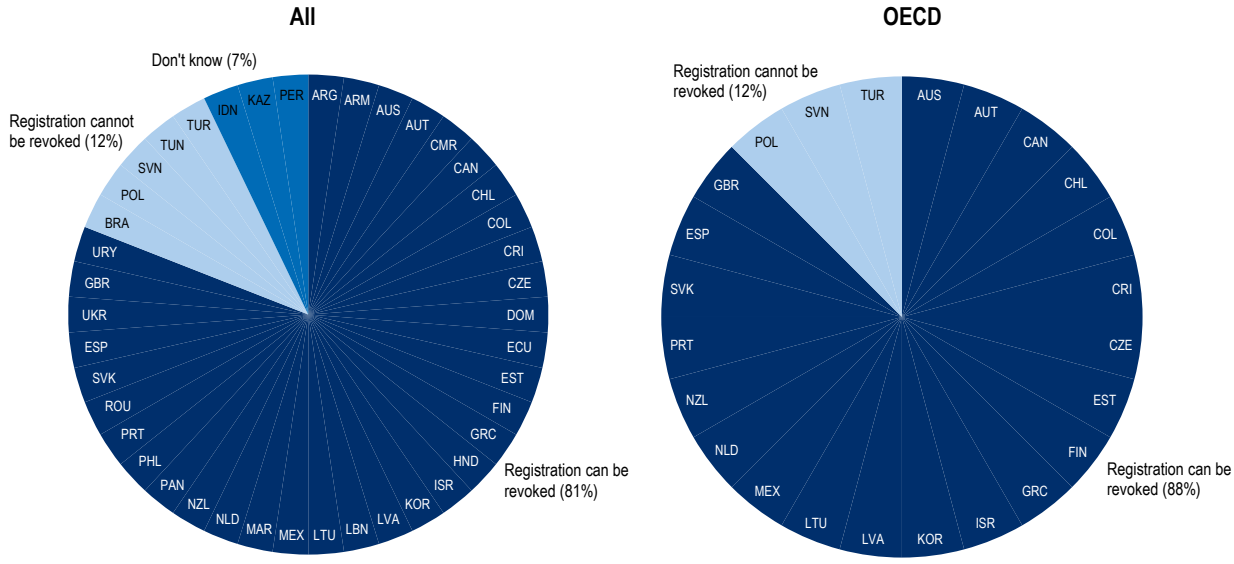


Note: "All" refers to 44 respondents (26 OECD Members and 18 non-Members). Only those who responded "yes" to Question 19 related to the registration of CSOs were asked to respond to this question in the Survey. Data on Germany are based on OECD desk research and were shared with it for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/psncyg

Figure 5.9. Respondents where registration of CSOs can be revoked, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



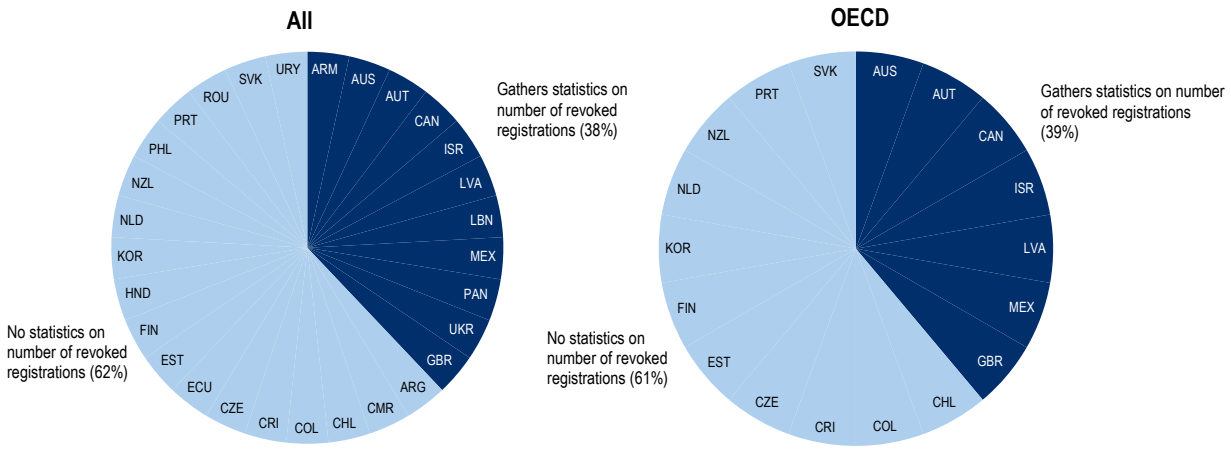
Note: "All" refers to 42 respondents (24 OECD Members and 18 non-Members). Only those who responded "yes" to Question 19 related to the registration of CSOs were asked to respond to this question in the Survey. Data on Lithuania are based on OECD desk research and were shared with it for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/305nzf

By publishing data on denied and revoked CSO registrations, governments can also increase accountability for related decision-making processes. Ideally, this should be part of a register of CSOs that is publicly available and regularly updated in order to monitor trends. Figure 5.10 illustrates that 39% of respondent OECD Members and 38% of all respondents gather statistics on the number of CSO registrations that have been revoked.

Figure 5.10. Respondents that gathered statistics on the number of revoked CSO registrations in 2019

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 29 respondents (18 OECD Members and 11 non-Members). Only those who responded "yes" to Question 19 related to registration of CSOs were asked to respond to this question in the Survey.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/jig7x2

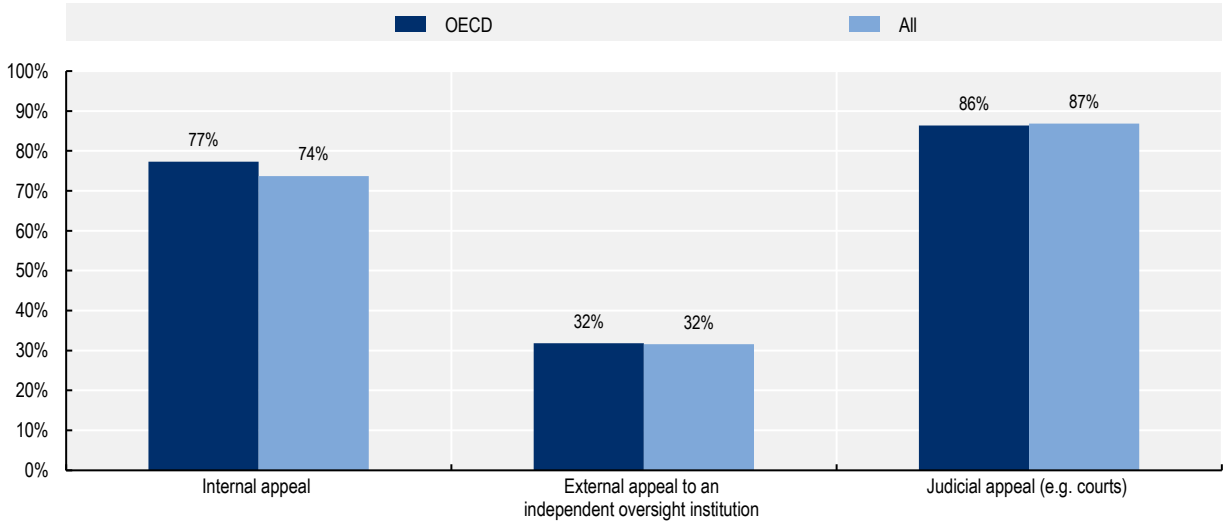
While all survey respondents confirmed that authorities must provide a justification to the applicant in such cases, the criteria underpinning these decisions vary across respondents. Often, the grounds include general provisions related to non-compliance with existing laws. In a number of countries, specific reasons for denial of registration or deregistration are stipulated in relevant legislation, such as a declaration of bankruptcy, inactivity for a specified time period, a failure to file reports, or a failure to appoint members of the organisations' governing bodies. In **Austria**, for example, an association can be deregistered if it does not appoint any organ representatives within one year of its formation. In **Costa Rica**, registration may be revoked if the number of eligible associates is less than the number necessary to establish the governing body. In **Honduras,** associations can be dissolved when the number of members decreases below the minimum number of seven. In **Canada, Israel** and **Panama**, registration can be revoked if reporting requirements are not fulfilled. In **Cameroon** and **Ecuador**, organisations can be dissolved when their activities deviate from the objectives for which they were founded. In other countries**,** the political activities of associations may lead to deregistration or denial of registration (Section 5.2.2).

Appeal mechanisms

Based on international standards, countries are advised to have comprehensible and accessible appeal mechanism in place for CSOs wishing to challenge a decision to deny or revoke their registration before an independent and impartial court (OHCHR, 2012[21]; Kiai, 2012[8]; OSCE/ODIHR/Venice Commission, 2015[10]). A total of 88% of all respondents and 80% of OECD respondents have appeal mechanisms in place for decisions on revoking CSO registrations. Figure 5.11 illustrates the types of appeal mechanisms (internal, external and judicial) that a CSO can resort to in case of denial of registration. Eighty-seven percent of all respondents and 86% of respondent OECD Members have a judicial appeals process in place (e.g. through the court system) and 74% of all respondents and 77% of respondent OECD Members have an internal appeals process, while 32% of all respondents provide an opportunity for external appeal to an independent oversight institution.

Figure 5.11. Appeal mechanisms available in cases of denial of registration of CSOs, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



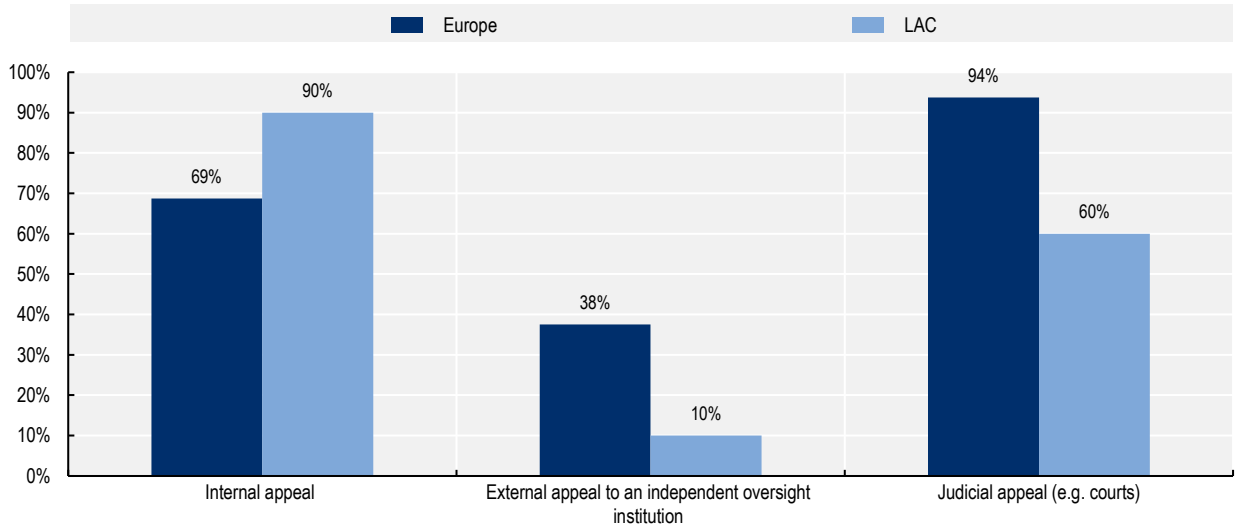
Note: "All" refers to 38 respondents (22 OECD Members and 16 non-Members). Only those who responded "yes" to Question 19 related to registration were asked to respond to this question. In Brazil, Peru and Türkiye, registrations cannot be denied; therefore, these countries are not included in this data point.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/rivcxp

Figure 5.12 shows that judicial appeal mechanisms for denial of registration are more common in European countries (94%) than in LAC countries (60%), while internal appeal mechanisms are more common in LAC countries (90%) than in European countries (69%).

Figure 5.12. Appeal mechanisms available in European and LAC respondents in cases of denial of registration of CSOs, 2020

Percentage of European and LAC respondents that provided data in the OECD Survey on Open Government



Note: "Europe" refers to 16 respondents and "LAC" refers to 10 respondents. Only those who responded "yes" to Question 19 related to registration were asked to respond to this question. In Brazil and Peru, registrations cannot be denied; therefore, these respondents are not included in this data point.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/srhxz0

Key measures to consider on CSO registration

Ensuring that:

- *CSOs can operate either with or without registration, according to laws or regulations aligned with international standards.*
- *Where applicable, registration processes are simple, clear and transparent.*
- *Associations are not de-registered on the basis of minor infringements that may be easily rectified and associations are provided with adequate warning and ample opportunity to correct infringements, particularly if they are administrative.*
- *Bodies responsible for overseeing CSO registers are not at the same time entities responsible for investigating crimes or protecting national security or public order, to avoid tarnishing the CSO sector as a whole by associating it with security risks and threats to public order.*
- *There are clear time limits to process registration requests and, in those respondents where registration requests can remain unanswered for longer than three months, the time periods within which the responsible authorities are legally obliged to respond are shortened or the principle of positive administrative silence is adopted.*
- *An exhaustive and narrow list of justifications to infringe freedom of association is publicly available and any revoking of registration is based on the order of an independent and impartial court.*
- *Responsible state agencies provide and make publicly accessible detailed reasons for a decision to deny or revoke registration and apply sanctions only in cases where associations have committed serious infractions.*

5.2.2. Activities of CSOs

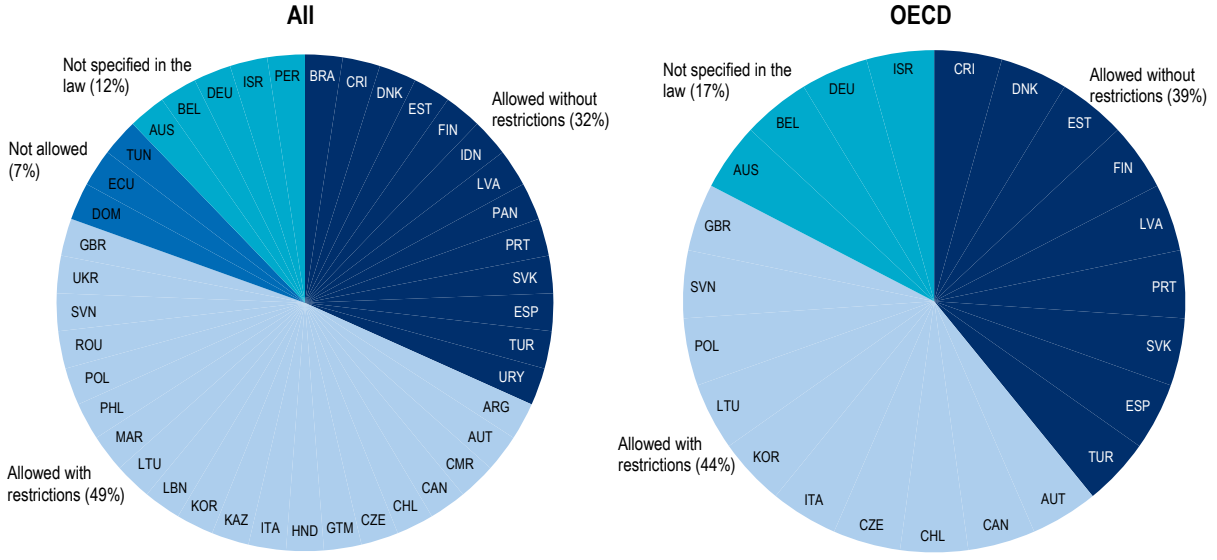
Gainful activities

Figure 5.13 shows that while in 32% of all respondents and 39% of respondent OECD Members CSOs are allowed to engage in gainful activity without any restrictions, in at least 49% of all respondents and 44% of

OECD Members, there are certain restrictions, typically requiring the proceeds of any economic activities to be used to realise the goals and purpose for which the CSO was founded. The **Dominican Republic**, **Ecuador** and **Tunisia** do not allow CSOs to engage in economic activity at all. In some respondents, such as **Armenia**, **Austria**, the **Czech Republic**, **Israel**, **Italy** and **Lithuania**, restrictions exist for CSOs to acquire and dispose of property. UN and Council of Europe bodies have emphasised that associations, and in particular NGOs, should be allowed to engage in for-profit activities to support their non-profit activities and to pay for or compensate their staff (although they may not distribute profits to their members or founders) (OSCE/ODIHR/Venice Commission, 2015[10]).

Figure 5.13. Rules on CSO engagement in gainful activity, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 41 respondents (23 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/9krmep

Political activities

Legal restrictions on CSO engagement in political activities can either relate to activities in the context of support to political parties and elections, or to public policy activities in general. Some legal frameworks include disclosure requirements for CSOs that engage in political matters or support political parties during elections. Limitations can also apply specifically to CSOs that have the public benefit or charitable status, with the rationale being that these types of CSOs often receive benefits such as tax exemptions and are expected to refrain from party politics in some countries.

Table 5.1 shows that political activity is restricted in some way in 41% of respondent OECD Members and in 38% of all respondents. In 7% of respondent OECD Members and 11% of all respondents, political activity is restricted to all types of CSOs. In 31% of respondent OECD and 26% of all respondents, political activity or campaigning by CSOs may lead to the loss of tax-exempt status of public benefit or charitable organisations. In three OECD respondents, there are disclosure requirements for CSOs related to expenditures or donations during elections (**Australia and Ireland**) or for CSOs that receive foreign funding when they engage in campaigning (**Israel**). In **Ireland,** the Electoral Act imposes reporting obligations on organisations that receive over EUR 2 500 from any source and donations from foreign sources for "political purposes".[3] In **Indonesia**, foreign foundations and foundations founded by foreign entities are prohibited from engaging in political activities and, in the **Philippines**, foreign CSOs may not expend funds on political parties, candidates or activities.

Table 5.1. Domestic rules on political campaigning and political activity of CSOs, 2020

Country	No restrictions	Restrictions or requirements on all types of CSOs	Restrictions or requirments on public benefit organisations/ charities	Restrictions and requirements on CSOs that receive foreign funding	Disclosure requirements
Argentina	✓				
Armenia	✓				
Australia					✓
Austria	✓				
Belgium	✓				
Brazil			✓		
Cameroon	✓				
Canada			✓		
Chile	✓				
Colombia	✓				
Costa Rica		✓			
Czech Republic	✓				
Denmark			✓		
Dominican Republic	✓				
Ecuador		✓			
Estonia	✓				
Finland	✓				
Germany			✓		
Guatemala	✓				
Indonesia		✓		✓	
Ireland			✓		
Israel					✓
Italy	✓				
Kazakhstan	✓				
Latvia	✓				
Lebanon	✓				
Lithuania	✓				
Mexico		✓	✓		
Morocco	✓				
Netherlands	✓				
New Zealand			✓		
Norway			✓		
Panama	✓				
Peru	✓				
Philippines			✓	✓	
Poland	✓				
Portugal	✓				
Romania	✓				
Slovak Republic			✓		
Slovenia	✓				
Spain	✓				
Sweden	✓				
Tunisia		✓			
Türkiye	✓				
Ukraine			✓		
United Kingdom			✓		
Uruguay	✓				
Count All	**29**	**5**	**12**	**2**	**2**
Percentages All	**62%**	**11%**	**26%**	**4%**	**4%**
Count OECD	**17**	**2**	**9**	**0**	**2**
Percentages OECD	**59%**	**7%**	**31%**	**0%**	**7%**

Note: This table does not cover lobbying activities. Data on Australia, Austria, Belgium, Brazil, Chile, Cameroon, Colombia, Costa Rica, Denmark, Ecuador, Finland, Germany, Guatemala, Ireland, Lithuania, Mexico, the Netherlands, New Zealand, Norway, Peru, the Philippines, Romania, Slovak Republic, Sweden, Tunisia, and Ukraine are based on OECD desk research for at least one of the categories and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

In 2022, the European Parliament noted in a resolution that, in some EU Member states, restrictions have been placed on CSOs' ability to engage in political activities (European Parliament, 2022[22]). UN and Council of Europe bodies have both emphasised that associations should be free to participate in states' decision-making processes and in matters of political and public debate, including in election-related activities.[4] The OSCE/ODIHR/Venice Commission Guidelines also stress that associations should not be treated differently for reasons such as imparting information or ideas that contest the established order or advocating for a change of the constitution or legislation, defending human rights or for engaging in advocacy on issues of public debate, regardless of whether the position taken is in accordance with government policy (OSCE/ODIHR/Venice Commission, 2015[10]).

Moreover, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has expressed concern that the term "political" has been interpreted in many countries in such a broad manner as to cover all sorts of advocacy activities, including activities aimed at influencing public policy or public opinion, and recommends that all associations should be allowed to engage in activities related to the electoral process (UN, 2013[23]). At the same time, the Special Rapporteur stresses the importance of any organisation supporting a particular candidate or a party in an election to be transparent in declaring its motivation, as its support may impact election results (UN, 2013[23]). The Council of Europe has also stressed the right of CSOs to support particular candidates or parties in an election or referendum, provided that they are transparent about it and that such support is covered by legislation on the funding of elections and political parties (CoE, 2007[9]). Regarding special lobbying legislation, the Council of Europe has recommended that it should not infringe on the democratic rights of individuals to, individually or collectively, express their opinions and petition public bodies or legitimately campaign for political and legislative change (CoE, 2017[24]) (Box 5.2).

A general restriction on political activity for any type of CSO exists in **Costa Rica**, **Ecuador**, **Mexico** and **Tunisia**. In **Costa Rica**, political associations and any manifestations of a political nature by associations are prohibited. In **Ecuador**, social organisations can be dissolved if they engage in political activities. In **Mexico**, CSOs are not allowed to carry out activities that could have an impact on election results. In **Tunisia**, while associations are prohibited from financially supporting political parties or candidates and to assess the role of state institutions, the relevant law also states that this should not prevent CSOs from expressing political views on issues of public affairs.

> ***Key measures to consider on activities of CSOs***
>
> *- Ensuring that CSOs are free to engage in for-profit activities to support their non-profit activities.*
>
> *- Avoiding catch-all definitions of "political activities" or "political purposes" in laws, as these risks being applied to a range of public policy activities or purposes that are broader than those pertaining to direct engagement with elections or referenda.*

Box 5.2. Creating an enabling environment for CSO participation in policy making

CSOs are critical actors influencing public policies and bringing much-needed insights from a range of interests to the policy-making process. Ensuring equal opportunities for all stakeholders to inform and shape public policies is key to achieving better policies, as it helps policy makers to be better informed and ensure that more interests are represented in policy outcomes. Yet, depending on how lobbying activities are conducted, a monopoly of influence by powerful actors can risk magnifying their interests at the expense of those with fewer resources or less access to decision makers. Transparency measures applied equally to all actors engaging in the policy-making process can facilitate the appropriate enabling environment and incentives for CSO participation in policy making.

Lobbying, understood by the OECD as the act of lawfully attempting to influence the design, implementation, execution and evaluation of public policies and regulations administered by executive, legislative or judicial public officials at the local, regional or national level, can enable CSOs to have access to the development of public policies, share their expertise and contribute to decision making. Lobbying regulation can strengthen public confidence in political systems as well as their legitimacy and integrity, and provide a transparent account of how public institutions and public officials made their decisions, including who lobbied on relevant issues. Where CSOs have a significant role in lobbying, transparency measures can require full disclosure of their ownership and financing, and research activities are aimed at influencing public opinion or decisions (Lyon et al., 2018[25]).

By increasing transparency, countries can also mitigate risks related to astroturfing – the practice of presenting an orchestrated campaign under the guise of unsolicited comments from the public – or other forms of abuse for particular aims. Indeed, actors seeking to influence the policy-making process in their own interest may create and fund CSOs to give an impression of widespread grassroots support for a certain policy. This undermines the legitimacy of genuine CSO networks while providing unfair advantages to powerful interests.

Regulations on lobbying in OECD Members

In 2020, 20 OECD Members had public registries with information on lobbyists and/or lobbying activities, with varying levels of transparency and different branches of government addressed. Registries are more common in the legislative and executive branches than in the judiciary branch, and not all actors are covered: 40% of OECD Members have adopted transparency requirements for NGOs/CSOs, 36% for charities and foundations, 40% for think tanks and research centres, 29% for religious organisations and 43% for trade associations (OECD, 2021[26]). Moreover, most OECD Members limit transparency initiatives to those conducting lobbying activities and those targeted, with less focus on reporting obligations on *ex post* disclosures of how decisions were made (legislative footprint).

The OECD's 2021 report on lobbying (2021[26]) found that for an effective, fair and balanced participation of interests, three key challenges facing stakeholders need to be addressed: increasing awareness of opportunities to participate; introducing them earlier in the policy-making process; and ensuring they have the necessary information to fully participate. Moreover, governments can take measures to proactively seek the views of under-represented stakeholders and also explore ways to support the participation of groups that are profoundly impacted by a given regulation or policy, but historically have not had sufficient access to resources to organise and lobby for their interests.

While greater transparency could be ensured by scaling up disclosure requirements, lobbying regulation must not prevent policy makers from considering technical advice from CSOs. While 15% of CSOs working on human rights in the EU have reported that transparency requirements have increased the administrative burden on them (FRA, 2021[12]), some government reviews found that registration

requirements have also had benefits, such as increased public awareness of these organisations' activities to influence public policy and overall transparency and inclusion in the policy-making process (Government of Ireland, 2020[27]; Hepburn, 2017[28]).

Source: (OECD, 2021[26])

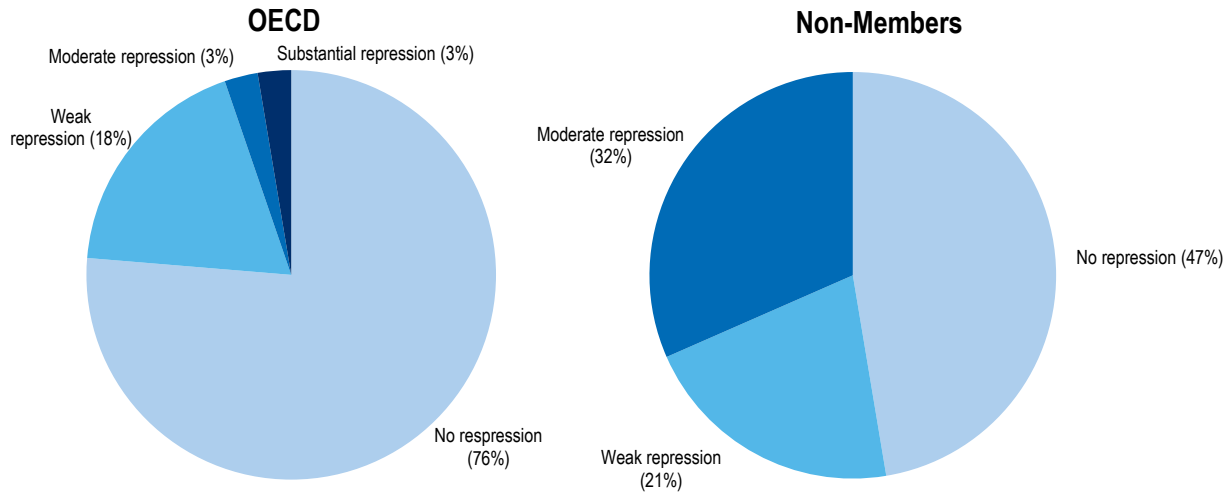
5.2.3. Implementation challenges and opportunities to ensure an enabling environment for civil society, as identified by CSOs and other stakeholders

At the global level, monitoring organisations and the UN Special Rapporteur on the rights to freedom of peaceful assembly and association have observed a number of setbacks and challenges with respect to the creation, maintenance and protection of an enabling environment for CSOs in recent years (Voule, 2020[29]). The International Center for Not-for-Profit Law (ICNL), for example, has found that since 2016, government initiatives related to CSOs in 91 countries have restricted the enabling environment for civil society, notably by impeding the formation of CSOs and their ability to seek and secure resources (ICNL, 2021[30]). While, in 2019, the V-Dem Institute had already noted a drop in freedom of association at the global level compared to earlier years (2020[31]), in 2022, it stressed that CSO repression had reached the very top of the indicators most affected by the global trend towards autocratisation (2022[32]). In some contexts, the COVID-19 crisis and governments' recourse to emergency powers to address it have exacerbated already existing challenges (Section 2.1.5 in Chapter 2).

The V-Dem Institute CSO Repression indicator, which is based on expert opinion,[5] shows that, in 2021 (Figure 5.14), CSOs were free to organise, associate, strike, express themselves and criticise the government without fear of government sanctions or harassment in 76% of the 38 OECD Members and in 47% of the non-Members that responded to the 2020 OECD Survey on Open Government (V-Dem Institute, 2021[1]). Eighteen percent of OECD Members and 21% of non-Members document "weak repression", which can include material sanctions such as fines to deter CSOs from acting or expressing themselves, or excessively burdensome administrative procedures. In one OECD Member and 32% of non-Members, the government engaged in "moderate" repression, such as material sanctions and "minor legal harassment", including detentions and short-term incarceration, according to V-Dem data. In one OECD Member, V-Dem found "substantial" repression of CSOs (such as arrests, charges and imprisonment of leaders of CSOs who acted lawfully).

Figure 5.14. V-Dem Institute CSO Repression Indicator in 2021

Percentage of all OECD Members and the non-Members that provided data in the OECD Survey on Open Government



Note: "OECD" refers to all 38 Members, "non-Members" refers to the 19 non-Members who responded to the 2020 OECD survey on Open Government. V-Dem asks "Does the government attempt to repress civil society organisations (CSOs)?". Answers ranged from 1 to 4, with the least democratic response being "0" and the most democratic being "4". 0: Severely: The government violently and actively pursues all real and even some imagined members of CSOs. 1: Substantially: The government arrests, tries and imprisons leaders of and participants in oppositional CSOs who have acted lawfully. Other sanctions include disruption of public gatherings and violent sanctions of activists. 2: Moderately: The government engages in material sanctions and minor legal harassment (detentions, short-term incarceration) to dissuade CSOs from acting or expressing themselves. 3: Weakly: The government uses material sanctions (fines, firings, denial of social services) to deter oppositional CSOs from acting or expressing themselves. They may also use burdensome registration or incorporation procedures to slow the formation of new CSOs and side-track them from engagement. The government may also organise Government Organised Movements or NGOs (GONGOs) to crowd out independent organisations. 4: No: CSOs are free to organise, associate, strike, express themselves and criticise the government without fear of government sanctions or harassment. For the purposes of data visualisation, the authors have designated categories to countries that scored within 0.5 of each of the 5 options (e.g. a score of 2.5 and above was equated to 3, while below 2.5 was equated to 2).
Source: V-Dem (2021[1]), *The V-Dem Dataset*, https://www.v-dem.net/vdemds.html.

Data gathered through the OECD Survey on Open Government and OECD desk research point to two other key challenges that risk restricting the enabling environment for CSOs both at the global level and within some OECD Members. These are the use of Strategic Lawsuits against Public Participation (SLAPPs) to target CSOs and activists and restricted space for CSOs that engage on particular issues in some countries.

Strategic Lawsuits against Public Participation (SLAPPs)

In certain countries, the daily work of CSOs and the rights of their members and leadership – primarily the rights to freedom of expression and association – are increasingly endangered by lawsuits that aim to silence the voices of CSO representatives who publicly criticise or investigate powerful individuals, companies or interest groups. Such lawsuits, known as SLAPPs, are typically initiated by private sector entities and influential state actors, and serve to harass CSOs, threaten to destroy their reputation and drain their financial resources (BHRRC, 2021[33]).

The use of SLAPPs against civil society actors, journalists and activists is a growing concern, particularly in some regions. Based on a report issued in 2021 by the Business & Human Rights Resource Centre, the highest number of SLAPPs initiated since 2015 took place in Latin America (39%), followed by Asia and the Pacific (25%), Europe and Central Asia (18%), Africa (8.5%), North America (9%) and the Middle East and Northern Africa (MENA) region (0.5%) (BHRRC, 2021[33]). Partner organisations to the Council of

Europe Platform to Promote the Protection of Journalism and Safety of Journalists noted an increase in the number of alerts concerning SLAPPs in 2020, both in terms of numbers and jurisdictions (CoE, 2021[34]). The EU Agency for Fundamental Rights (FRA) reported that 12% of the threats or attacks against CSOs that responded to a FRA survey in 2020 constituted harassment in the form of legal action/SLAPPs (2021[12]).

These lawsuits sometimes take the form of civil or criminal defamation or libel suits but may extend to other types of civil or criminal proceedings. They are often accompanied by other, often public forms of harassment, or follow repeated and varied attacks against a particular individual or organisation. Consequently, even the threat of a lawsuit may intimidate CSO activists or journalists to such an extent that they abandon their investigations and/or statements against the respective individual or company.

SLAPPs have most commonly been brought against individuals, CSOs and media groups in the context of environmental and consumer protection, crime prevention or corruption allegations, as well as against lesbian, gay, bisexual, transgender and intersex (LGBTI) activists (Mijatović, 2020[35]). The criminalisation of defamation in some countries, certain procedural rules or the high level of compensation granted in such proceedings are factors that facilitate the initiation of SLAPPs (Osservatorio Balcani e Caucaso, 2020[36]). Similarly, the UN Special Rapporteur on the rights to freedom of assembly and of association has noted that the manner in which SLAPPs are used depends on a variety of factors, including how expensive legal costs are (including any caps on damages and the availability of legal aid), the elasticity of laws targeting speech (especially defamation) and the absence of any safeguards (e.g. anti-SLAPP statutes or discretionary cost awards against abuse of process) (UN, 2017[37]).

Even though the types of lawsuits may thus vary, SLAPPs have certain common features. First of all, they are vexatious in nature, as the aim of the person or company initiating the lawsuit is often not to win but rather to engage in a lengthy and time-consuming legal battle. The second main feature of SLAPPs is often the power imbalance between the plaintiff and the defendant. The attempts to silence CSO representatives or journalists are successful precisely because of the financial strength of the complainants (Mijatović, 2020[35]). Additionally, in most cases, such lawsuits include demands for high damage payments, in addition to legal fees that grow as the lawsuit progresses.

As a response to the rise of SLAPPs, a few countries have adopted anti-SLAPP legislation. In some instances, such laws have already been used to dismiss SLAPPS accusing individuals of defamation for example (Supreme Court of Canada, 2020[38]). These laws reflect recommendations made by the UN Special Rapporteur on the rights to freedom of assembly and of association, who has urged states to enact anti-SLAPP legislation, allowing an early dismissal (with an award of costs) of such suits and the use of measures to penalise abuse (UN, 2017[37]).

At the EU level, the European Commission (EC) proposed a (binding) directive and a (non-binding) recommendation in April 2022 to encourage EU Member states to take action against the rise of SLAPPs. While the proposed directive is limited to SLAPPs in civil matters with cross-border implications, the recommendation encourages EU Member states to align their rules with the proposed EU law for domestic cases in all proceedings, not only civil matters, and sets out guidance to effectively tackle SLAPPs by removing prison sentences for defamation, training legal professionals and judiciary staff, introducing support mechanisms for victims, collecting data and monitoring SLAPPs (EC, 2022[39]; 2022[40]). The action taken by the EC had been preceded by calls from various entities to provide more effective protection from legal harassment, including civil society initiatives promoting EU anti-SLAPP legislation (Ravo, Borg-Barthet and Kramer, 2020[41]), an EC Expert Group against SLAPP,[6] as well as the European Parliament and the FRA (European Parliament, 2021[42]; FRA, 2021[12]).

The problem of SLAPPs may be greater in some countries than in others and the vast majority of OECD and other respondents have legislation prohibiting and providing damages for cases where claimants abuse the right to lodge a civil claim with courts, or legislation protecting human rights defenders or journalists. However, only two OECD respondents, namely **Australia** and **Canada,** indicated specialised

anti-SLAPP legislation in place, albeit at the subnational level. Three provinces in Canada (British Columbia, Ontario and Quebec) and one state in Australia (Australian Capital Territory) have introduced such measures. Desk research also indicates that similar legislation has been adopted in **Indonesia** and the **Philippines** for the environmental sector (Business & Human Rights Resource Centre, 2021[43]).

This lack of specific anti-SLAPP legislation may point to limited awareness of this issue in numerous states, coupled with the belief that existing legislation is sufficient to protect such abuses from the justice system. Given that the purpose of SLAPPs is to drain the resources and capacities of their targets during court proceedings, however, legislation providing damages to individuals or entities after the end of proceedings may not be sufficient to solve the problem. By assessing their legal systems and court cases, especially defamation cases, countries could establish whether there are frequent cases of SLAPPs in their jurisdictions, and review whether their anti-defamation legislation, rules of civil and/or criminal procedure or the level of damages to be obtained through lawsuits facilitates the use of SLAPPs. In such cases, requisite reforms, in discussions with civil society, could ensure that freedom of expression for individuals and freedom of association for CSOs are sufficiently protected in both law and practice.

Challenges for CSOs working on specific global issues

As global challenges such as the climate crisis and migration flows have increased in recent years, so has the level of engagement of CSOs in these fields. This has given rise to concerns in some countries regarding the enabling environment for organisations working on those critical global challenges that are, by nature, cross-border (ICNL, 2022[44]; Safety of Journalists Platform, 2021[45]; 2021[46]; Freedom House, 2021[47]; FRA, 2021[12]).

UN special rapporteurs have noted that the rise of the global climate movement has been accompanied by businesses linked to resource extraction, infrastructure projects or agribusiness as well as government and government-allied actors increasingly targeting environmental CSOs for their work (Voule, 2021[48]; 2018[49]; UN, 2015[50]). Attacks on environmental activists can take the form of physical attacks, intimidation campaigns and judicial harassment, and even killings (Section 2.3 in Chapter 2). According to Global Witness, over 70% of human rights defenders killed every year are involved in the protection of the environment or the closely related work of asserting Indigenous peoples' rights and the rights of other communities that are marginalised and discriminated against (Global Witness, 2020[51]). In addition to experiencing physical attacks, climate activists have also been victims of hostile discourse and smear campaigns, which portray their activities as unlawful and label them at times as national security threats (ICNL, 2021[52]), including in OECD Members, according to a variety of UN and CSO sources (Section 5.6.4) (Voule, 2021[48]; ECNL, 2020[53]; Hayes and Joshi, 2020[54]; ICNL, 2020[55]).

International migration flows and internally displaced populations have become a global challenge, accelerated by armed conflicts, economic crises and environmental crises. In this context, CSOs have a fundamental role in upholding migrant rights but are often faced with increasing hostility in several regions including Europe and the Americas, as documented by the UN and non-governmental sources (UN, 2020[56]; Carrera, 2018[57]; Amnesty International, 2019[58]; Frontline Defenders, 2019[59]). According to 2021 Global Migration Indicators, 35-40 million people migrate every 5 years and 82.4 million individuals were forcibly displaced worldwide due to persecution, conflict, generalised violence, human rights violations or other reasons by the end of 2020 (Black, 2021[60]). In 2022, the European Parliament called on EU Member states not to criminalise or negatively impact the activities of CSOs working in the field of migration, reflecting concerns in this area (European Parliament, 2022[22]). On 8 March 2002, the European Parliament "condemned physical and verbal attacks against CSO representatives while stressing that those who work on migration in particular should not be criminalised" (2022[61]). Furthermore, multiple civil society sources have reported that CSO members have been accused of facilitation of entry and residence for activities such as providing food, water, medical supplies and shelter along migratory routes (Amnesty International, 2019[58]; Frontline Defenders, 2019[59]; ReSOMA, 2019[62]; CIVICUS, 2021[63]; FRA, 2015[64];

Ferstman, 2019[65]; ReSOMA, 2019[62]). In its 2017 report on *Challenges Facing Civil Society Organisations Working on Human Rights in the EU,* FRA highlighted various cases of prosecution and harassment of CSO members working on migrant rights (FRA, 2017[66]).

UN instruments to counter the smuggling of human beings (such as the UN Protocol against the Smuggling of Migrants by Land, Sea and Air) stipulate that the facilitation of entry of migrants and stay for non-profit purposes, including for humanitarian assistance, should be exempted from criminalisation (UN, 2000[67]). However, relevant EU legislation (referred to as the "Facilitators' Package")[7] makes it optional for EU Member states to exempt individuals or CSOs providing humanitarian assistance to migrants from criminal penalties and does not require a financial or material gain in the case of facilitation of entry for the act to constitute a criminal offence. This has led to significant variations in how EU Member states have incorporated the EU directives into national laws, with the facilitation of entry being criminalised without the intent to gain profit in a majority of EU Member states (Carrera, 2018[57]).

In addition, some countries' administrative procedures for registering associations pose particular challenges for CSOs working on migrant rights given the difficulty of obtaining legal documents required for undocumented persons, due to their sometimes precarious or irregular legal status and living conditions. Registration procedures for CSOs that work to protect the rights of migrants may also present barriers (ECNL, 2021[18]), as well as rules that require CSOs to report irregular migrants to authorities when migrants seek access to basic social services, and that limit CSOs' access to certain locations, such as reception or detention centres (Ferstman, 2019[65]; EC, 2021[68]).

> ***Key measures to consider on challenges to the CSO enabling environment***
>
> *- Ensuring that necessary protections are in place against SLAPPs targeting CSOs, both in law and in practice.*
>
> *- Assessing the challenges faced by CSOs, in particular those working with marginalised or under-represented groups or on contentious issues and defining concrete steps to improve and protect their operating environment including by ensuring that members can exercise their civic freedoms on an equal basis with others.*
>
> *- Countering hostile discourse, where it exists, toward CSOs and activists, by engaging in positive public communications about their contribution to society and by ensuring the safety of CSO activists and their ability to work in an enabling environment.*

5.3. Good practices in improving or promoting an enabling environment for CSOs

A number of countries are taking a variety of measures to strengthen the enabling environment for CSOs. Good practices include the development of overarching policy frameworks to strengthen the operating environment for civil society, support programmes for CSOs during the COVID-19 pandemic and support for civic space for targeted groups such as youth.

5.3.1. Government strategies to improve or promote an enabling environment for CSOs

Governments can support and strengthen civil society in many ways, including by allocating funding and financial resources. Many governments make substantial efforts in this regard; however, these initiatives are often undertaken through a scattered approach without clearly delineated objectives outlined in an overarching framework. To combat this trend, some governments have developed overarching policy frameworks to articulate their vision for improving the operating environment for CSOs.

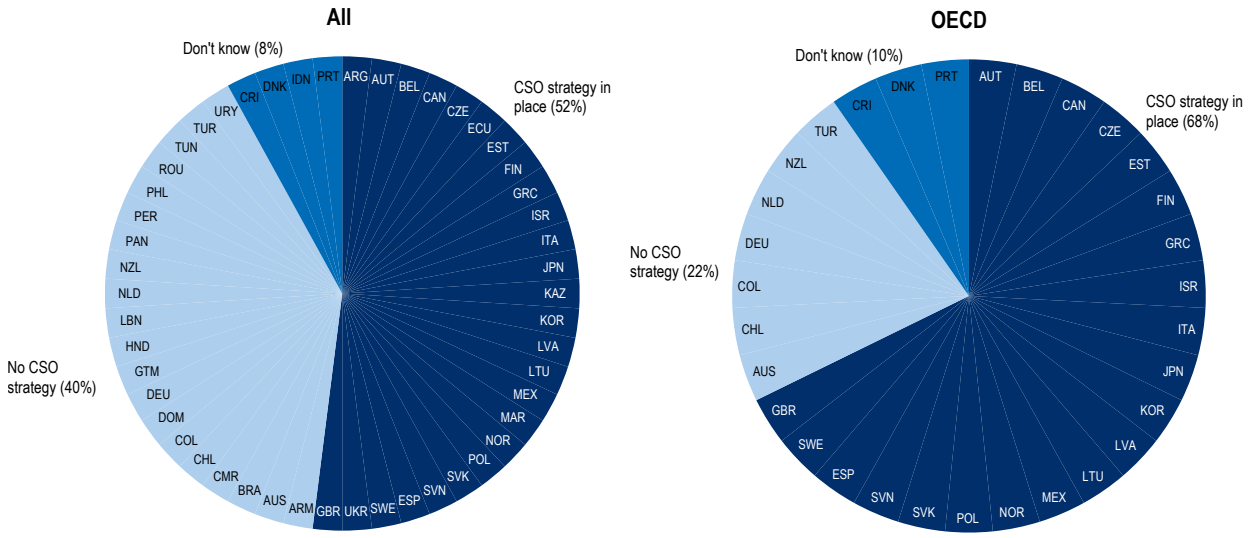
Government strategies to promote an enabling environment for CSOs can have multiple beneficial outcomes. First, they entail the development of a vision and values regarding where and how CSOs fit in the grand scheme of a country's functioning and governance (Phillips, 2011[69]). Second, they offer governments an opportunity to assess the current conditions that CSOs operate within and, third, they enable governments to set expectations and benchmarks for areas of improvement. In addition, such

strategies allow governments to concretely outline mechanisms for bolstering the role of CSOs, both as partners of government and as independent actors in their own right, while taking their varying needs into account. Strategies can also highlight the difficulties that CSOs may be facing, particularly in the aftermath of global crises, such as the COVID-19 pandemic, and identify potential future risks. Last, they can be crucial in finding ways to expand the impact that CSOs have and source innovative ways to enrich the CSO-state relationship. The elaboration of such strategies can be accompanied by a consultation phase with CSOs, allowing governments to gather diverse expertise and perspectives from different stakeholders on how they could improve their performance. While this section focuses on overarching strategies to promote an enabling environment for CSOs, sectoral strategies can also help to mainstream the promotion and protection of civic space throughout different sectors and policies.

Figure 5.15 shows that 52% of all respondents and 68% of respondent OECD Members have a policy or strategy in place to improve or promote an enabling environment for CSOs; and Figure 5.16 illustrates that while 77% of countries in Europe have a policy or strategy to improve or promote an enabling environment for CSOs, only 23% of countries have such a strategy in place in LAC countries.

Figure 5.15. Respondents with a policy or strategy to improve or promote an enabling environment for CSOs, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government

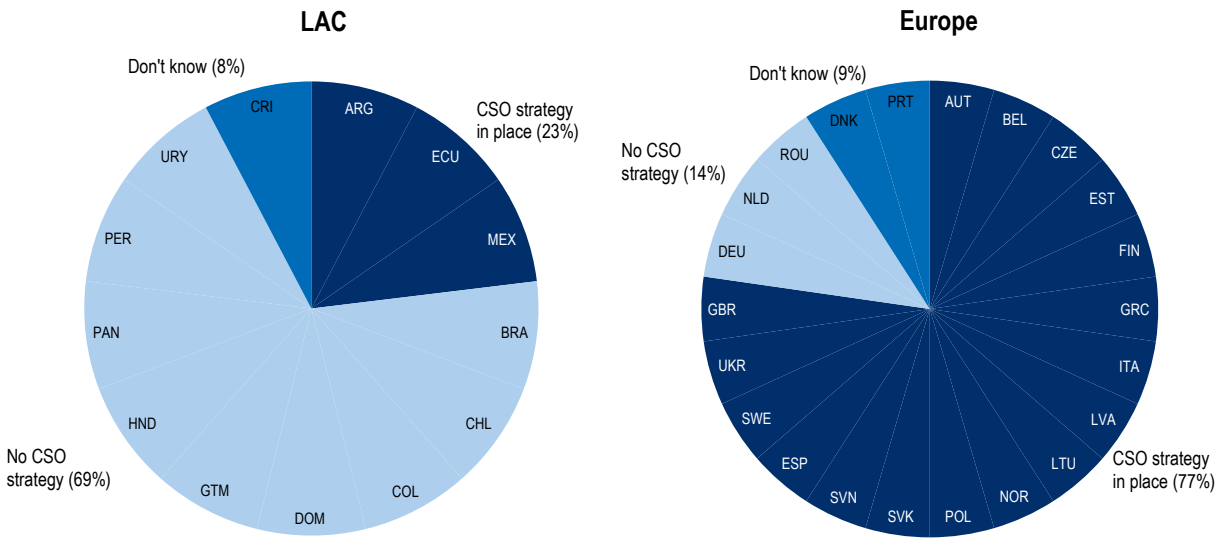


Note: "All" refers to 50 respondents (31 OECD Members and 19 non-Members). Data on Guatemala and Türkiye are based on OECD desk research and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/zvl10r

Figure 5.16. European and LAC respondents with a policy or strategy to improve or promote an enabling environment for CSOs, 2020

Percentage of European and LAC respondents that provided data in the OECD Survey on Open Government



Note: "Europe" refers to 22 respondents and "LAC" refers to 13 respondents.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/nd73qp

Common features of selected government strategies to improve or promote an enabling environment for CSOs

Several common elements can be found in most government strategies to improve or promote an enabling environment for CSOs (Table 5.2). The first is that most propose a definition of civil society, as in the **Czech Republic, Finland, Slovenia, Sweden** and the **United Kingdom.** For example, **Slovenia**'s national *Strategy for Developing Non-governmental Organisations and Volunteering until 2023* (Government of Slovenia, 2018[70]) illustrates a traditional understanding and description of CSOs as "a non-commercial and non-profit organisation independent of public authorities, political parties or economic operators […]. In Slovenia, this definition covers associations, institutes and foundations". This is a widely accepted definition that targets a range of different forms of CSO. **Sweden**'s *A Policy for Civil Society* (Government of Sweden, 2009[71]) outlines a definition that is broader in scope and encompasses civil society more generally, noting that their strategy focuses on an arena which is "separate from the state, the market and the individual household, where people, groups and organisations act together for common interests. Civil society includes non-profit associations, foundations and registered religious communities, but also networks, appeals and other actors". Some countries, such as **Norway** in its most recent State Policy on Volunteering 2018-2019 (Government of Norway, 2018[72]), do not adopt any single description.

Many of the 15 CSO strategies that were reviewed also include an assessment of the current operating environment or state of play for CSOs. Ten of the 15 OECD strategies and 2 non-Member strategies include, to varying extents, information such as figures on the numbers of registered CSOs, financial flows and types of organisations in the country, alongside the historical background of civil society and, in some cases, relevant legal and policy developments. The **Czech Republic**, for example, in its *State Policy with Respect to Non-Governmental Organizations for the Years 2015-2020* (Government of Czech Republic, 2015[73]) provides comprehensive statistics on the size and nature of the CSO sector as well as historic and current public policy and the progression of the state-CSO relationship. **Finland**'s *Action Plan of the*

Advisory Board on Civil Society Policy 2017-2021 (Government of Finland, 2017[74]) similarly offers an in-depth overview of civil society from the 18th century to the present day and also differentiates between the third sector of formal, registered organisations and the growing fourth sector of independent and more sporadic networks and informal groups of civil society actors and advocates. Another policy that gives a thorough assessment of the current operating environment for CSOs is Norway's State Policy on Volunteering (Government of Norway, 2018[72]), with a specific focus on volunteering and inclusiveness in civil society. **Kazakhstan**'s *Decree of the President for the Development of Civil Society in the Republic of Kazakhstan until 2025* (Government of Kazakhstan, 2020[75]) also provides an analysis of the current domestic situation regarding CSOs and the international context.

Another important element that frames most strategies is that they include a high-level vision for state engagement with the CSO sector. The most common components are to: i) improve the functioning of democracy; ii) enhance service provision; iii) contribute to the personal development and well-being of citizens and encourage participation in local decision making; and iv) improve social cohesion and inclusion. The **United Kingdom**'s vision, outlined in its *Civil Society Strategy: Building a Future that Works for Everyone* (UK Government, 2018[76]), for example, focuses on "better-connected communities, more neighbourliness, and businesses which strengthen society" with the aim of building a "sense of shared identity". **Argentina**'s vision in its new *Framework Cooperation Agreement in Favour of all Associations and Entities of Civil Society* is to "establish links of collaboration, articulation, assistance and cooperation" with CSOs (Government of Argentina, 2021[77]). **Ukraine**'s overall aim is to "create favourable conditions for civil society development, various forms of participatory democracy, and effective public interaction with public authorities and local governments" (Government of Ukraine, 2016[78]).

Coherent, feasible and ambitious objectives are the foundation of such strategies as they demonstrate governments' understanding of the strengths and needs of CSOs and allow them to showcase their mutual priorities. Many strategies share common aims in this regard (Table 5.2). One of **Denmark**'s central aims in its *Strategy for a Stronger Civil Society* (Government of Denmark, 2017[79]) is that more people become part of voluntary communities and associations. In addition, **Latvia**'s *National Identity, Civil Society and Integration Policy Implementation Plan 2019-2020* intends to promote tolerance and representation of socially excluded groups, create a high-quality democratic information ecosystem and take innovative approaches to implementing integration policies (Government of Latvia, 2018[80]).

Table 5.2. Common objectives of selected CSO strategies, 2020

Stated objective	Respondents that include this element in their strategy	Count
Strengthen the state-CSO relationship	Argentina, Czech Republic, Denmark, Kazakhstan, Slovak Republic, Slovenia, Sweden, Ukraine, United Kingdom	9
Support volunteering and donations	Czech Republic, Denmark, Kazakhstan, Norway, Poland, Slovenia, United Kingdom	7
Develop strong and independent CSOs	Argentina, Czech Republic, Estonia, Finland, Norway, Poland, Slovenia	7
National development	Argentina, Estonia, Latvia, Sweden, Ukraine	5
Inclusion and social cohesion	Argentina, Kazakhstan, Latvia, Norway, Sweden	5
Create a transparent and effective state policy on civil society	Czech Republic, Kazakhstan, Norway, Ukraine	4
Contribute to the UN Sustainable Development Goals	Argentina, Italy, Kazakhstan	3
Improve the welfare of citizens	Denmark, Sweden	2
Promote public discussion	Slovak Republic, Sweden	2
Identify global changes and their impact on civic space	Finland	1
Good governance	Slovak Republic	1
Increase research and data on civil society	Sweden	1
Improve CSO consultation/policy dialogue	Sweden	1

Note: The table is based on a random selection and subsequent review of the CSO strategies provided by the following 15 respondents: Argentina, the Czech Republic, Denmark, Estonia, Finland, Italy, Kazakhstan, Latvia, Norway, Poland, the Slovak Republic, Slovenia, Sweden, Ukraine and the United Kingdom. The respondents are categorised according to the criteria of having one or more of the most common features found in the majority of strategies submitted by respondents.
Source: 2020 OECD Survey on Open Government and in-depth research based on primary sources provided by the respondents.

Well-developed strategies also often include concrete steps on how to implement the vision and objectives therein and include mechanisms for oversight as well as monitoring and evaluation. For example, the **Slovak Republic**'s *Strategy on the Development of Civil Society* (Government of the Slovak Republic, 2012[81]) is accompanied by a number of action plans (Government of the Slovak Republic, 2021[82]). In addition, 4 OECD Member strategies that were assessed, namely in **Estonia, Latvia, Poland** and **Slovenia**, include a results framework with indicators and targets, while 2 strategies specifically mention who will be responsible for developing such a framework (**Sweden, United Kingdom**). **Ukraine**'s 2016-2020 *Action Plan for the Implementation of the National Strategy for Civil Society Development in Ukraine* (Government of Ukraine, 2016[78]) also assigns specific tasks to ministries. For example, responsibility is given to the Ministry of Youth and Sports to examine ways to introduce institutional support for CSOs and the Ministry of Justice to promote public participation in the formation and implementation of policies and services.

Some respondents do not have specific strategies to promote an enabling environment for CSOs but have other policy documents with similar aims, including programmes led by national authorities with financial support from supranational organisations and bilateral partners that support CSOs. For example, Armenia implements strategies for civil society as part of its bilateral co-operation frameworks with the EU (EEAS, 2019[83]) and the U.S. Agency for International Development (USAID, 2020[84]). Similarly, Lebanon's main civil society framework is a development co-operation programme funded by the EU (Government of Lebanon, 2021[85]), as is the PROCIVIS Active Citizenship Strengthening Programme in Cameroon (Government of Cameroon, 2021[86]). While not having a specific strategy, Cameroon also has several legal and policy frameworks to improve the enabling environment for CSOs and citizen participation (Government of Cameroon, 2019[87]), including a code of transparency and good governance in the management of public finances (Government of Cameroon, 2018[88]) and thresholds for contracts reserved for CSOs (Government of Cameroon, 2019[89]). Similarly, while Indonesia does not have a strategy, its Law on Social Organisations (Government of Indonesia, 2013[90]) has a number of provisions for empowering CSOs through policy facilitation and strengthening institutional capacity and human resources in government for this purpose. In addition, while New Zealand does not have a strategy for CSO engagement, it does have specific guidelines on the participation of Māori in policy making (Government of New Zealand, 2018[91]).

Some OECD Members, such as Belgium, Lithuania and Slovenia,[8] have passed additional legislation in recent years that provides greater clarity on different types of CSOs and their respective rights and duties, e.g. in the area of funding, commercial activities or taxation. In Lithuania, the new law on NGO development, which took effect in March 2020, explicitly aims to create a favourable environment for NGOs and ensure appropriate conditions for their activities. It establishes the first dedicated state-NGO financing mechanism, which may award funds to strengthen NGO institutional capacity, as well as their activities. In Slovenia, the NGO Act adopted in 2018 stipulates that the responsible ministry for the operation of NGOs shall ensure a supportive environment for the development of the sector through: policies and regulations; co-ordination between state actors; measures for state-NGO co-operation; collection and processing of data on state funding; and financing of projects and programmes of horizontal networks as entities of a supportive environment for NGOs.

The above-mentioned strategies often focus on developing strong and independent CSOs that work in partnership with the government but can also outline concrete ways to enable CSOs as independent actors in their own right, including to influence policy making directly via campaigning and lobbying in the public interest. Canada provides an example of a positive outcome of involving both citizens and CSOs in policy

making (Box 5.3). Finland's strategy calls for legislation to create the conditions for CSOs to have more influence on decision making, without disproportionate weight given to some stakeholders' inputs over others (Government of Finland, 2017[74]). In addition, the United Kingdom's strategy references lobbying activities, noting that while government grant standards "prevent taxpayers' money being spent on political campaigning or lobbying", being a recipient should not entirely exclude CSOs from having their voices heard on policies and services that relate to their work (UK Government, 2018[76]).

Box 5.3. Good practice from Canada: Better outcomes by enhancing co-ordination and consultation with civil society actors on security law

Public engagement that led to the 2017 National Security Act

In 2015, the Canadian Anti-Terrorism Act made extensive changes to counter-terrorism, national security and privacy law. Following these changes, many Canadians expressed concerns about potential infringements on their personal rights under Canada's Charter of Rights and Freedoms, given the enhanced powers granted to some national security and intelligence agencies and the lack of a centralised review body to oversee their work. In 2016, the public reaction to the Anti-Terrorism Act led the Government of Canada to conduct extensive public consultations (with close to 59 000 responses) with national security stakeholders, academics, experts, the public and parliamentarians on a range of national security issues, including accountability and information sharing, as well as a review of national security institutions. The consultations revealed that Canadians wanted increased accountability and oversight of institutions with national security responsibilities, as well as increased transparency on national security matters. The following year, the Government of Canada put forward key measures including legislative changes, new oversight and review bodies, and the National Security Transparency Commitment, which has six principles that all national security actors have to implement.

Change of terminology

Canada also changed the use of certain terminology related to terrorism, notably in public threat reports and communications, after listening to concerns from various groups and communities. Partially based on public feedback, the government changed how it refers to violent extremism in general, characterising it based on ideologically, politically or religiously motivated violent extremism as opposed to a specific group or religion (e.g. avoiding terms such as "Sikh extremism", "Sunni extremism").

Source: (Canada National Security Act, 2019[92]); (Government of Canada, 2017[93]); (Public Safety Canada, 2022[94]).

The sustainability of any democratic society relies, among other things, on the commitment and engagement of its young people. Recognising the importance of supporting the development of active youth citizenship and of providing young people with access to public authorities, a number of countries have updated their legal frameworks to ensure an environment that allows for a strong and independent civil society representing youth (Box 5.5).

Box 5.4. Youth laws

Laws in the youth[1] policy field can help promote and protect an enabling environment for youth organisations. Fifteen OECD Members have a national youth law in place; Bulgaria, Brazil, Peru, Romania and Ukraine have also adopted one. A youth law or youth act is the most general and comprehensive legislative framework in the area of youth policy. It defines the target group and identifies the roles and responsibilities of key stakeholders.

National youth laws commonly outline the main fields of action for state institutions as well as for NGOs working with and for young people and they often include considerations of how state institutions and NGOs shall co-operate in the youth field, including financial and budgetary considerations. For instance, youth laws in Estonia, Finland and Iceland guarantee stable sources of funding to national youth organisations that fit a set of criteria. In some OECD Members, such as Finland, Luxembourg and Slovenia youth laws also feature provisions on the status and functions of the National Youth Council, including membership conditions and responsibilities.

1. Mindful of the de-standardisation of life trajectories and the constant evolution and re-interpretation of particular stages of life, "youth" is defined as a period towards adulthood which is characterised by various transitions in one person's life (e.g. from education to higher education and employment; from the parental home to renting an own apartment, etc.). Where possible, for statistical consistency, the UN classification of "youth" as individuals aged 15-24 is adopted.
Source: OECD (2020[95]), Governance for Youth, Trust and Intergenerational Justice: Fit for All Generations?, *OECD Public Governance Reviews*, OECD Publishing, Paris, https://doi.org/10.1787/c3e5cb8a-en.

Encouraging sustained engagement with youth and CSOs focused on youth affairs is important to ensure that public officials hear the perspective of this increasingly active social demographic (Box 5.5).

Box 5.5. Supporting civic space for young people

An enabling environment for youth organisations plays a central role in their ability to engage and co-operate effectively with public institutions. However, 45% of entities in charge of youth affairs in 33 OECD Members point to insufficient financial and human resources among youth organisations as a key obstacle in co-operating with them (OECD, 2020[95]). Available data show that 81% of these government entities provide funding to youth organisations directly, through local authorities or through national youth councils (OECD, 2020[95]); 48% of entities in charge of youth affairs in OECD Members also provide educational and technical assistance to build up the administrative capacities of youth organisations and 58% of surveyed ministries of education in OECD Members do so in support of school and student councils (OECD, 2020[95]).

According to the OECD report Governance *for Youth, Trust and Intergenerational Justice: Fit for All Generations?* (2020[95]), only 26% of youth organisations reported that they were satisfied with the governments' performance in relation to youth participation in public life. Similarly, according to a recent OECD analysis, a large majority of youth organisations in OECD Members express concerns about the lack of opportunities for young people to shape response and recovery measures to the COVID-19 crisis (2022[96]). Yet meaningful participation can deliver better policy outcomes: where youth organisations have been involved in the policy cycle to a greater extent, they report higher satisfaction with government's performance across public service areas (OECD, 2020[95]). However, even among government entities in charge of youth affairs, youth stakeholders' participation in the policy cycle remains limited: while 93% of entities in charge of youth affairs informed and consulted young people in 2019-20, only 50% engaged them throughout the policy cycle, providing them with the opportunity

and necessary resources to collaborate during all phases of the policy and service cycles from design to delivery, monitoring and evaluation (OECD, 2020[95]). Similarly, findings from an OECD assessment of national response and recovery plans from the COVID-19 crisis show that less than a third of all OECD Members (10) explicitly mention having consulted young people or youth organisations in the elaboration of their recovery plans (OECD, 2022[96]).

Governments can also engage young people through public consultations, by adopting innovative deliberative processes targeting young people, by affiliating advisory youth councils to government or specific ministries (as occurs in 53% of OECD Members) or through youth councils at the national (in 78% of OECD Members) and subnational (in 88% of OECD Members) levels (OECD, 2020[95]). For instance, Estonia included its National Youth Council as a key partner in the consultation that led up to the creation of its response and recovery plan (Government of Estonia, 2021[97]). To ensure effective engagement, however, all youth representative bodies and organisations should be equipped with appropriate resources, clear mandates and inclusive membership and should be able to maintain their independence from the executive.

Dedicated bodies to protect the rights of young people are also critical. While competencies and powers vary widely across countries, 19 OECD Members have created a specific ombudsperson for young people or children at the regional or national/federal level to protect civic space for children and young people, promote their rights and hold governments accountable. Moreover, 11 more OECD Members have created an office dedicated to children or youth within the national ombudsperson office or included youth affairs as part of its mandate (OECD, 2018[98]). Taking this one step further, at least nine OECD Members and Malta have also established public institutions to monitor the implementation of government commitments to the rights of future generations (OECD, 2020[95]). While no binding international instrument exists to grant future generations enforceable rights, at least nine OECD Members have enshrined the rights of future generations in their constitution, through clauses related to general, ecological or financial matters.

Source: (OECD, 2020[95]); (OECD, 2022[96]); (Government of Estonia, 2021[97]); (OECD, 2018[98])

Ensuring adequate funding for the implementation of strategies to improve or promote an enabling environment for CSOs

Adequate funding for the implementation of such strategies is an essential component of an enabling environment for civil society. Strategies sometimes include references to a dedicated implementation budget, although this remains uncommon. For example, **Poland** dedicates a total budget of approximately EUR 128 million (PLN 585 million) to its Program for the Development of Civic Organisations for 2018-2030 alongside a detailed financial plan (Government of Poland, 2018[99]). **Estonia**'s Strong Civil Society Programme 2021-2024 (Government of Estonia, 2020[100]) also dedicates a budget for each year of implementation with a total figure of over EUR 12 million. The levels of specificity vary. For example, **Denmark** does not provide a total budget in its strategy but specific funds have been earmarked for 12 initiatives based on 3 core objectives in the document, amounting to approximately EUR 15 million (DKK 112.6 million) (Government of Denmark, 2017[79]). Likewise, **Latvia**'s strategy provides a detailed budget based on activities (Government of Latvia, 2018[80]). **Slovenia** does not offer a comprehensive budget overview but does provide information on funding allocated to certain activities and projects (Government of Slovenia, 2018[70]). While it is useful for budgetary information to be clearly communicated in one relevant policy document, it is important to ensure that funding is consistent, adequate and transparent, whether it is dedicated to the strategy or is part of the national budget, including in the criteria used for its allocation.

Evaluating the impact of state support for the CSO sector

Good public decision making is based on a foundation of sound evidence gained through monitoring and evaluating public policies in a consistent manner. In relation to CSOs, this can include evaluations of the existing legal, policy and institutional frameworks and considering whether they are still fit for purpose or could be updated, alongside assessments of the efficacy and impact of financial support and funding for CSOs. Evaluations can promote learning and enhance the efficiency and effectiveness of future policies while informing their planning and implementation (OECD, 2021[101]). Furthermore, a systematic way of evaluating and assessing the funding of civic activities can contribute to ensuring it is allocated in the most optimal ways.

Evaluations of support to CSOs are uncommon both within OECD and non-Members, although several respondents provide examples of good practice in this area. For example, **Estonia** recently released an assessment of its Civil Society Development Plan 2015–2020 (hereafter the "KODAR") (Government of Estonia, 2015[102]). The KODAR impact assessment study was commissioned by the Strategy Office of the State Chancellery in 2018-19 with the specific goal of evaluating the results and outcomes of the plan (Government of Estonia, 2019[103]). The plan aimed to analyse the trends in civil society and understand the effectiveness of the measures taken to promote CSOs at the national level. Others, for example, the **Czech Republic** and **Finland**, do not commission external evaluations for whole-of-government financial support to CSOs but do through some ministries, such as the Ministry of Foreign Affairs, in relation to development co-operation (Government of Czech Republic, 2021[104]; Government of Finland, 2021[105]). **Ukraine**'s Agency for Legislative Initiatives also undertook a monitoring study on the implementation of the National Strategy for Civil Society Development in Ukraine (2016-2020) (CSO Meter, 2019[106]). This EU-funded initiative aimed to assess the achievements of the strategy and the results of implementation by the relevant public bodies and authorities. The monitoring group also conducted interviews with key stakeholders, experts and public officials involved in implementing the strategy to measure its merit and outcomes (CSO Meter, 2019[106]).

5.3.2. Good practice in supporting CSOs in the context of COVID-19

The crucial role of CSOs in understanding the needs of their local communities, collaborating with governments to provide services, and reaching and supporting the most vulnerable groups in society became particularly evident in the COVID-19 response. However, many CSOs working across diverse policy areas were already facing decreasing levels of financial resources and fewer funding opportunities before the pandemic, a challenge that was exacerbated during the crisis. In 2021, the European Economic and Social Committee (EESC) sounded the alarm in Europe by noting that "the current and future ability of CSOs to respond to needs is threatened by often scarce and fluctuating resources" (EESC, 2021[107]). As part of the COVID-19 response and recovery, the OECD has recommended providing financial support to the social economy or CSOs that help at-risk populations and mobilise networks of volunteers (OECD, 2020[108]).

Several respondents have set up innovative support programmes and initiatives for CSOs during the pandemic. Special state subsidies were introduced in several countries, including **Austria**, **Canada**, **Germany**, **Ireland**, **Italy**, **Lithuania** and **Sweden**. In **Austria**, a 2020 law established a support fund, with CSOs reporting that they were engaged and consulted throughout the process (Government of Austria, 2020[109]). In **Canada**, special COVID-19 calls supported the efforts of ten CSOs supporting citizens to think critically about the health information they found online, to identify mis- and disinformation, and limit the impact of racist and/or misleading social media posts relating to the COVID-19 pandemic (Government of Canada, 2021[110]). In **Germany**, while there was no overall national pandemic-related CSO support, initiatives were undertaken in certain regions. In addition, government subsidies remained consistent (Maecenata Foundation, 2021[111]). **Ireland** launched a COVID-19 Stability Fund to assist community and voluntary organisations in delivering critical frontline services for disadvantaged groups (O'Hare, 2021[112]).

In **Italy**, CSOs were able to benefit from dedicated funds, the temporary suspension of tax payments and a newly introduced regulatory framework fostered co-operation between CSOs and public administrations in providing social and health services (Capesciotti, 2021[113]). In **Lithuania**, subsidies enabled service providers to cover costs for necessary supplies and NGOs that were forced to stop activities were permitted to pay employees allowances (Olendraitė, 2021[114]). In **Sweden**, CSOs working with women, children, the homeless, undocumented and LGBTI persons, as well as activities preventing loneliness and isolation among elderly persons during the pandemic, received additional government funding (Abiri, 2021[115]). Many countries also ramped up their support for CSOs working in development co-operation during the pandemic, such as **Denmark** and the **United Kingdom** (U4, 2020[116]) (Section 5.5). Further, a number of countries swiftly adjusted how they work with CSOs, by, for instance, enabling CSO partners to pivot their programming to COVID-19 crisis response, streamlining various administrative processes such as reporting frequency or reducing co-funding requirements (OECD, 2021[117]).

5.4. Access to funding as a lifeline for CSOs

A favourable financial environment for CSOs is yet another key pillar of an enabling environment for civil society and civic participation. International guidance has made access to funding resources a key component of the right to freedom of association. International and regional human rights bodies agree that CSOs should be free to solicit and receive funding, including state funding and other forms of public support, such as exemption from income tax or other taxes and that any form of public support should be governed by clear and objective criteria (UN, 2013[23]; Kiai, 2012[8]; IACHR, 2011[118]; CoE, 2007[9]). Additionally, CSOs should be free to receive different forms of assistance from non-public sources, as well as from foreign and multilateral agencies.

5.4.1. Main funding opportunities

There are many ways countries can create a supportive environment for CSOs that facilitates, rather than hampers, their ability to access funding in a predictable, sustainable, transparent and fair manner.

Government funding

Government funding for CSOs is typically provided via the national budget or in a few respondents via other dedicated funding streams such as lotteries or specific taxes. In several OECD Members, for example, lottery funds are used to fund the non-profit sector, including in **Belgium, Germany** and **Ireland**. In **Estonia**, gambling taxes are used to finance non-profit associations and foundations to implement projects related to social progress for example.[9] In **Finland,** more than EUR 1 billion is provided per year to civil society from the Veikkaus gaming system.[10]

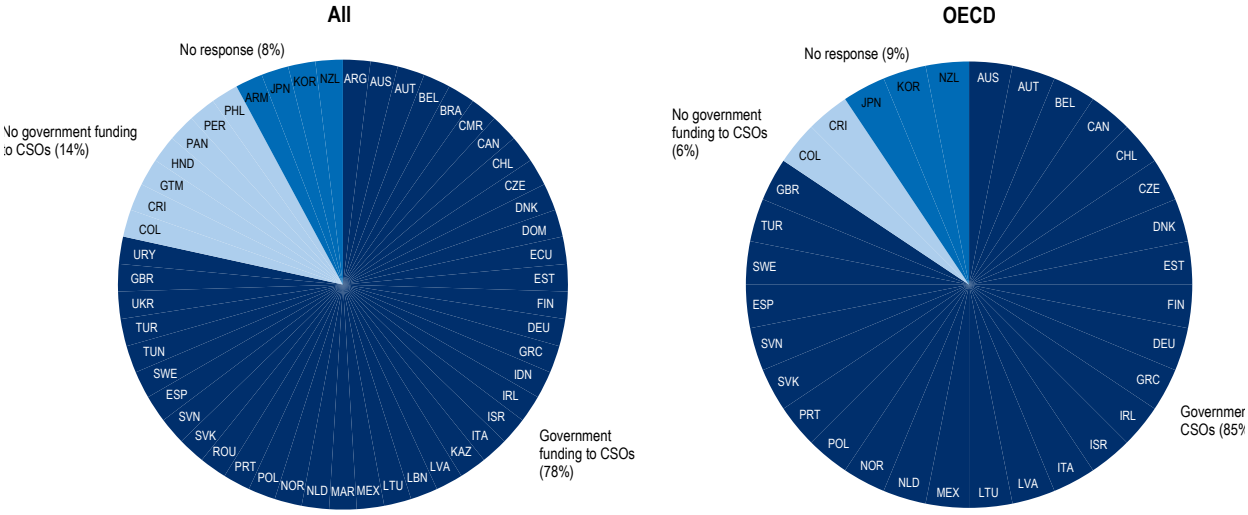
Existing legal provisions can risk restricting the enabling environment for CSOs by impacting their ability to receive financial support and, therefore, to function. In **Cameroon**, for example, associations must have operated for three years before being able to receive national or foreign funds (Government of Cameroon, 1999[119]). In **Mexico**, the Mexico City Criminal Code was amended in June 2021, now stating that directors or managers of CSOs that receive public financial support are “public servants” and may be sanctioned for “crimes against good public administration”. In **Lithuania**, the Constitutional Court ruled that existing laws that set aside a particular percentage of the state budget for programmes or funds violate the constitutional rights of the government to form a state budget independently; CSOs have raised concerns that this ruling risks depriving CSOs of long-term funding (Olendraitė, 2021[114]; Constitutional Court Lithuania, 2020[120]).

Figure 5.17 illustrates that 78% of all respondents and 84% of OECD respondents provided some type of central/federal state funding to CSOs in 2019. Figure 5.18 shows that whereas 100% of central/federal

governments in respondent European countries provided funding to CSOs or associations in 2019, this figure was 54% in LAC countries.

Figure 5.17. Respondents that provided government funding to CSOs in 2019

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government

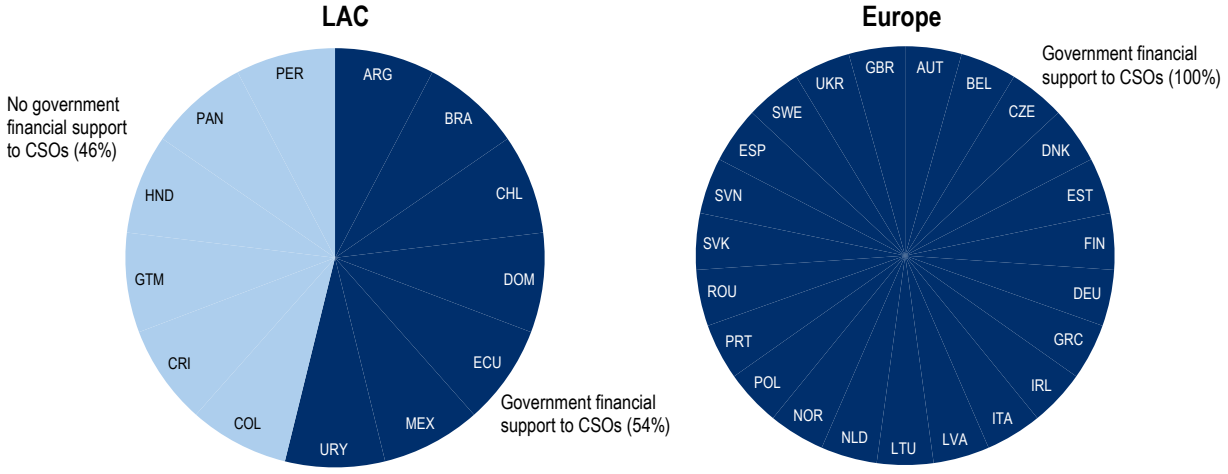


Note: "All" refers to 51 respondents (32 OECD Members and 19 non-Members). Data on Ireland are based on OECD desk research and were sent to it for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/8nai5v

Figure 5.18. European and LAC respondents that provided government funding to CSOs in 2019

Percentage of European and LAC respondents that provided data in the OECD Survey on Open Government



Note: "Europe" refers to 23 respondents and "LAC" refers to 13 respondents. Data on Ireland are based on OECD desk research and were sent to it for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/758z2h

Core funding and unconditional core funding

Government funding is typically disbursed for thematic projects and programmes. In some respondents, there are examples of so-called "core funding", which is a funding modality that is directed at supporting CSOs' organisational expenses that cannot be allocated to specific projects, including administrative costs, infrastructure costs, institutional capacity building, board meetings, audit expenses and other recurring costs. Core funding is important for organisations' successful operations and for increasing the capacity of the CSO sector (OSCE/ODIHR/Venice Commission, 2015[10]). For instance, in **Finland,** the Ministry of Education and Culture provides subsidies to CSOs (Government of Finland, n.d.[121]) that cover costs related to their operations and the construction of educational and cultural sites. **Sweden** provides investment grants and business development grants to CSOs and companies that establish public meeting rooms with the precondition that "in their activities, they respect the ideas of democracy, including the principles of gender equality and prohibition of discrimination" (Government of Sweden, 2016[122]). In **Spain**, organisations engaged in promoting equality, social inclusion and the fight against poverty can be awarded grants that can cover a wide range of running costs and capacity-building activities (Government of Spain, 2019[123]). In **Tunisia**, legal provisions allow for the awarding of core funding to CSOs working in the public interest, even though very small amounts have been disbursed since the law entered into force in 2013 (Government of Tunisia, 2013[124]). The Fund for Strengthening Public Interest Organisation in **Chile** supports CSOs with grants to strengthen their organisational capacities, autonomy and networking. These grants can fund training, workshops, communication initiatives and networking across organisations, as well as ceremonial practices and the maintenance of ancestral sites (Government of Chile, n.d.[125]). The Ministry of Education in **Estonia** also provides funding to strategic partner organisations for a three-year period. This funding includes an operating grant aimed at building the organisation's capacity to participate in policy-making processes (Government of Estonia, 2022[126]).

Unconditional core funding is another funding modality, defined for the purposes of this report as funding that "may be used for any purpose the recipient sees fit". CSOs can use unconditional funding to fulfil their stated goals beyond the outputs related to implementing specific projects. For instance, long-term and predictable unconditional funding can cover the costs of the CSO's programmes and support a wide range of crucial organisational activities (e.g. related to information technology, staff training, fundraising), thus building the professional capacities of CSOs over time. The only two respondents where such funding could be confirmed through concrete examples were **Denmark** and **Sweden**. The Swedish Agency for Youth and Civil Society provides non-specified organisational funding for organisations that support young people's non-profit involvement, strengthen initiatives related to culture, language, identity and participation in society and strengthen the position of LGBTI people in society. All organisations receiving the grant must be democratically structured, follow the ideas of democracy and be membership-based (MUCF, 2021[127]). In Denmark, the National Board of Health and Welfare provides operating grants to a wide range of CSOs for a period of up to 4 years at a time (National Board of Health and Welfare, 2022[128]).

The provision of core funding is also pertinent to CSOs working in development co-operation. Core support is the funding model most conducive to enabling CSOs to respond to the priorities, needs and approaches of their partners in developing countries. It helps to ensure local ownership and accountability to developing country-level CSOs' beneficiaries and constituents, while strengthening civil society and civic space in those countries. Though core funding makes up only 15% of the OECD Development Assistance Committee (DAC)[11] providers' flows for CSOs, this share has seen an incremental increase since 2010 and is expected to rise further in line with measures called for in the DAC Recommendation on Enabling Civil Society (OECD, 2020[129]; 2022[130]).

Data gathering on government funding for CSOs

Collecting consolidated data on the modalities and length of government funding for CSOs has proven challenging in the framework of the OECD Survey on Open Government. Comprehensive data on

government funding, including on different funding modalities (e.g. core, short-, medium-, or long-term), are in part lacking because public resources for CSOs come from a wide range of sources, involving various ministries, budget sources and both local and regional governments. The absence of an overview in many countries, including those giving generously towards the CSO sector, makes it difficult to strengthen systems and monitor funding trends. By enhancing data collection on government funding provided to the CSO sector, including funding coming from different ministries and state institutions, disaggregated by CSO recipient, funding modalities, type of support and area of focus, governments can develop a more strategic approach to supporting civil society. The OECD DAC and some non-DAC members do report annually on official development assistance flow for CSOs in development co-operation and humanitarian assistance, as seen in Section 5.5. This DAC practice of members and some non-members providing consolidated reporting on flows from various agencies and ministries may provide lessons for comprehensive and regular data gathering on domestic flows for CSOs in OECD Members.

Mechanisms to disburse government funding

Most respondents do not have a centralised authority in charge of distributing government funding for CSOs. Thus, eligible costs, selection criteria and procedures are often specific to each public entity or ministry offering the funding, for example, in **Estonia, Finland, Romania, Spain** and **Sweden**. In **Sweden**, grants to civil society are distributed by about 40 different authorities (SIDA, n.d.[131]). The potential advantages of decentralising government grants to CSOs can include better targeting of priority issues and beneficiaries as selection procedures, and eligible costs are specific to each ministry or public institution offering funding.

In contrast, some respondents, including **Chile**, **Lithuania**, **Poland**, **Slovenia** and **Türkiye**, have adopted a centralised approach to supporting CSOs and provide funding for the benefit of the CSO sector as a whole. For instance, new legislation introduced in **Lithuania** in December 2019 established the country's first dedicated NGO-financing mechanism, thereby replacing the traditional approach of ministries channelling government funds to NGOs through thematic programmes. Similarly, **Slovenia** has set up a centralised public fund for the development of CSOs managed by the Ministry of Public Administration. By linking government funding for CSOs to a strategic reporting mechanism or an overarching strategy for civic activities, governments can improve transparency and increase coherence in their approach to civil society and avoid duplication across ministries. Furthermore, by reporting against objectives beyond the number of beneficiaries and quantities, such as more complex impact assessments, governments can conduct evaluations of their overall funding model and achievements and avoid piecemeal funding based on individual CSO performance.

Ensuring predictability, autonomy and access to information on government funding

The predictability of government funding is also essential to allow the CSO sector to function effectively, develop its capacities and play its crucial role in society. However, financial or other crises, such as the COVID-19 pandemic, can have a negative impact on available resources. Six respondents (four of which are OECD Members) reported restricting or cancelling CSO funding in the three years preceding the Survey, for example.

Providing accessible information on funding opportunities and procedures is essential to promote transparency and fairness and can be undertaken via information campaigns and portals. Some respondents actively facilitate access to information on funding, such as the **Dominican Republic**[12] and **Kazakhstan**,[13] which have created one-stop-shops where organisations can inform themselves and upload the documents required when applying for state funding. In 2018, **Morocco** launched a portal bringing together information on government funding opportunities offered by various institutions, ministries and public establishments. Moreover, by ensuring that the requirements for the submission of applications for government support are transparent and proportional to the value of the funding and by taking into

account the size of CSOs seeking funding – smaller CSOs can struggle with heavy bureaucratic requirements – governments can help to strengthen the enabling environment.

Given the importance of public support for many civil society actors, the European Center for Not-for-Profit Law (ECNL) has developed a list of standards and good practices for government funding channelled to CSOs (Skoric, 2020[132]) to guide the regulation, distribution and monitoring of state funds for this purpose (Box 5.6).

Box 5.6. Good practices for public funding of CSOs: Contribution from ECNL

ECNL finds that many governments have used the following eight principles to set specific standards for their public funding and many others have incorporated them into related policies and strategies to guide public officials. The principles are:

- **Independence:** Access to public funding is an opportunity, not a right. As such, it is essential to guarantee the independence and autonomy of associations from the government.
- **Transparency:** Clear application procedures and evaluation criteria must be in place to ensure openness and clarity throughout the process of granting public funds. For example, this may include requirements to publish calls for applications, communication of objective selection criteria and feedback to unsuccessful applicants.
- **Equal treatment:** Objective and pre-established criteria must govern the process of accessing the merit of applications for calls for tender.
- **Free and fair competition:** Adequate information about funding opportunities should be widely published and accessible to the largest number of associations.
- **Accountability:** The principle of accountability applies both to the recipient associations, which must be accountable for the use of the funds allocated for the implementation of their activities, and to the government, which must be accountable to citizens and taxpayers for the funding granted.
- **Impartiality:** Conflicts of interest should be minimised, for example, through a commitment to impartiality on the part of all stakeholders or through the establishment of clear procedures to prevent biased judgements.
- **Proportionality:** The monitoring and oversight processes for associations should be proportional to the amount of public funding allocated to CSOs.
- **Exclusion of overlapping:** In order to limit the risks of the same project being financed several times, a co-ordinating body could be set up between the different institutions granting public funds.

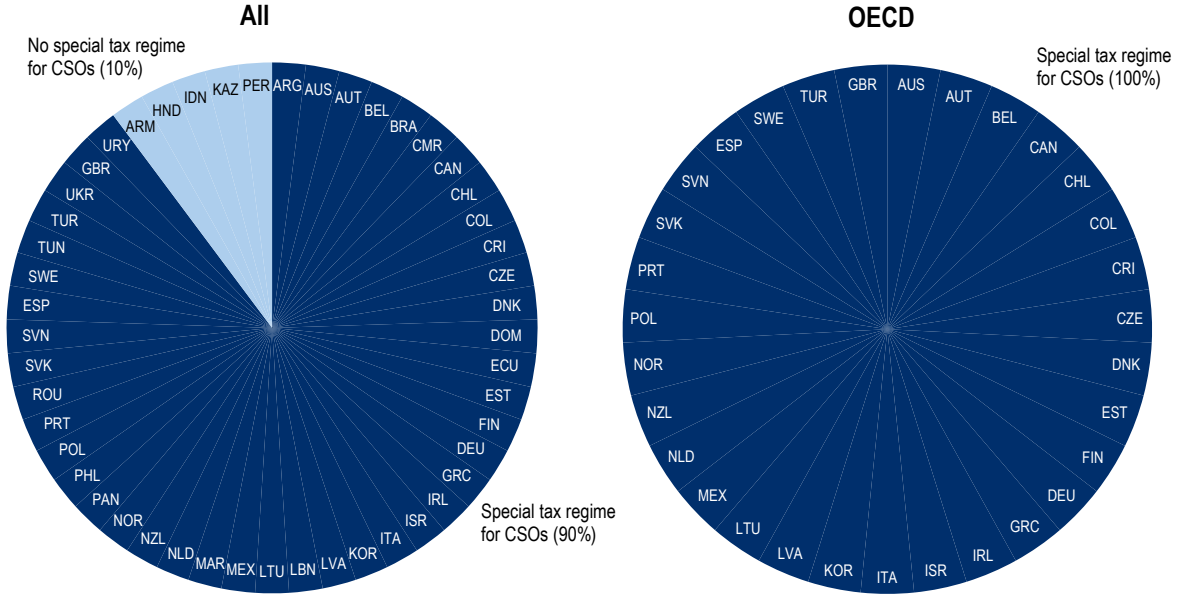
Source: Skoric, V. (2020[132]), *Standards and Good Practices for Public Funding of Civil Society Organisations*, https://ecnl.org/sites/default/files/2020-09/TUSEV%20Public%20Funding%20Report_Final.pdf.

Specific tax regimes for CSOs

Another way for governments to support CSOs is by offering them tax exemptions. In addition to being a good practice, specific tax regimes provide an opportunity to encourage and reward activities that contribute to the public interest. Figure 5.19 shows that 90% of all respondents, including all OECD respondents, have provisions for tax exemptions in place. While the exemptions differ significantly regarding the types of organisations that qualify, the taxes concerned and the extent of the tax reduction, states typically give CSOs a full or partial exemption from corporate income taxes, value-added tax (VAT) preferences and/or tax reductions on donations to CSOs by private individuals or legal persons. Figure 5.20 illustrates that all respondents in Europe have such provisions in place while 83% of countries in the LAC respondents do.

Figure 5.19. Respondents with specific tax regimes to support CSO financial sustainability, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 49 respondents (31 OECD Members and 18 non-Members). Data on Ireland are based on OECD desk research and were shared with it for validation.
Source: 2020 OECD Survey on Open Government.

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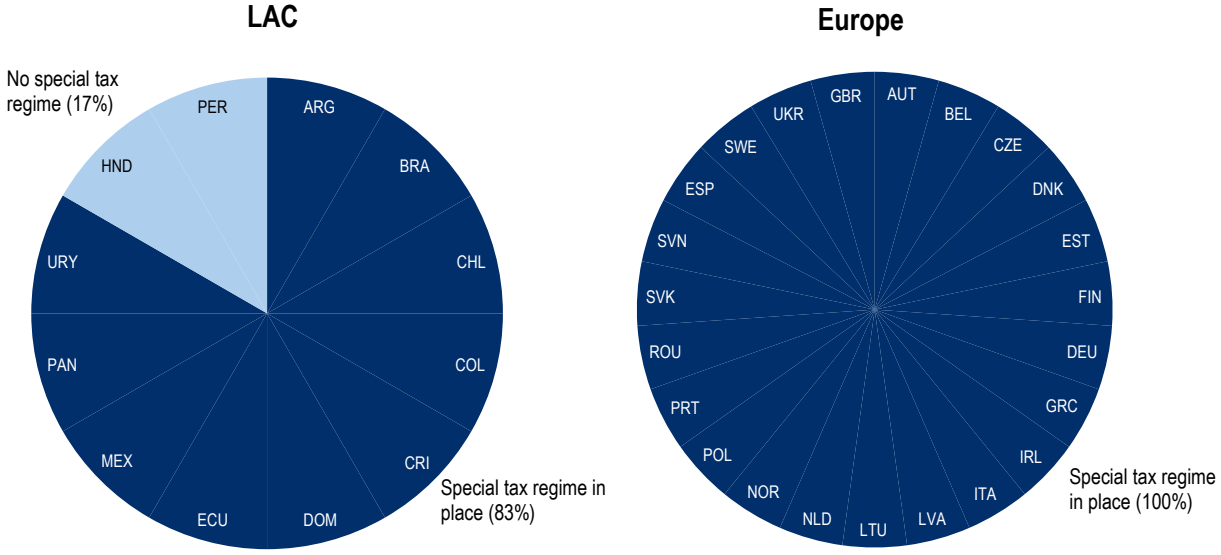
Figure 5.20. Respondents in Europe and LAC with specific tax regimes to support CSO financial sustainability, 2020

Percentage of European and LAC respondents that provided data in the OECD Survey on Open Government



Note: "Europe" refers to 23 respondents, and "LAC" refers to 12 respondents. Data on Ireland are based on OECD desk research and were shared with it for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/gpunz8

Many respondents make a distinction between CSOs in general and public benefit organisations or charities in particular, offering a general tax exemption to all CSOs registered or operating in the country and further tax exemptions and/or other benefits to CSOs that qualify for public benefit or charitable status. Moreover, the definition of public benefit varies substantially between countries, as does the level of detail in the criteria, but it usually relates to the common good. Some of the more frequent types of activities that are considered to be for the public benefit include those related to poverty relief, public welfare, humanitarian work, education, scientific research, arts and culture, healthcare, environmental protection/wildlife conservation, religion, youth and the elderly and sports, hobbies and leisure. **Germany** has a comparatively detailed definition listing 25 thematic areas, while other countries provide less detailed criteria for public benefit status, such as **Denmark** and **Poland**. In **Türkiye**, the definition is very open, providing only that public benefit associations must pursue activities that provide socially beneficial outcomes and that they operate for at least one year.

The choice of regulatory authority for public benefit status is often a trade-off between administrative convenience, level of specialisation and procedural safeguards to ensure that the process of granting public benefit status is not politicised (ICNL, 2005[133]). It is often the national tax agency that is responsible for granting this status, as is the case in **Argentina, Canada,** the **Czech Republic, Denmark, Finland, Germany, Norway** and **Sweden.** In **Poland**, the State Court Register assigns public benefit status and, in **Brazil, Indonesia, Kazakhstan, Romania** and **Slovenia,** it is a government ministry. In **Australia** and **Japan**, it is an independent specialised body. Other authorities range from the Securities and Exchange Commission in the **Philippines** to the president in **Türkiye**. In **Argentina, Guatemala, Ireland** and **Mexico**, CSOs have to register with a tax agency and another authority to establish their public benefit status. The regulatory authorities are usually also responsible for verifying that public benefit organisations (PBOs) meet additional requirements concerning financial accounting, administrative structures and disclosure requirements, as well as restrictions related to political activities, where applicable (Section 5.2.2).

Recent legal developments in tax relief in OECD Members have, in most cases, improved the enabling environment for CSOs. In 2019, **Latvia** increased the tax relief for donations to public benefit organisations from 75% to 85% of the amount donated, valid for 3 years, with the aim of creating a more favourable framework for CSO fundraising for example. **Latvia** also introduced further options for tax benefits for individuals that allow taxpayers to directly donate a portion of their tax returns to public interest organisations. In a few countries, such as **Belgium** and **Slovenia**, legal frameworks include a single definition of associations/not-for-profit co-operatives that enables all CSOs to benefit from tax exemptions. **Germany** has expanded the types of activities justifying charitable status for CSOs by adding climate and protection against discrimination based on a person's gender identity and orientation as a legitimate purpose for CSOs to be granted charitable status (Allianz Rechtssicherheit fur Politische Willensbildung, 2020[134]). **Germany** also reduced taxes on services performed by public benefit organisations.

Funding from foreign and international donors

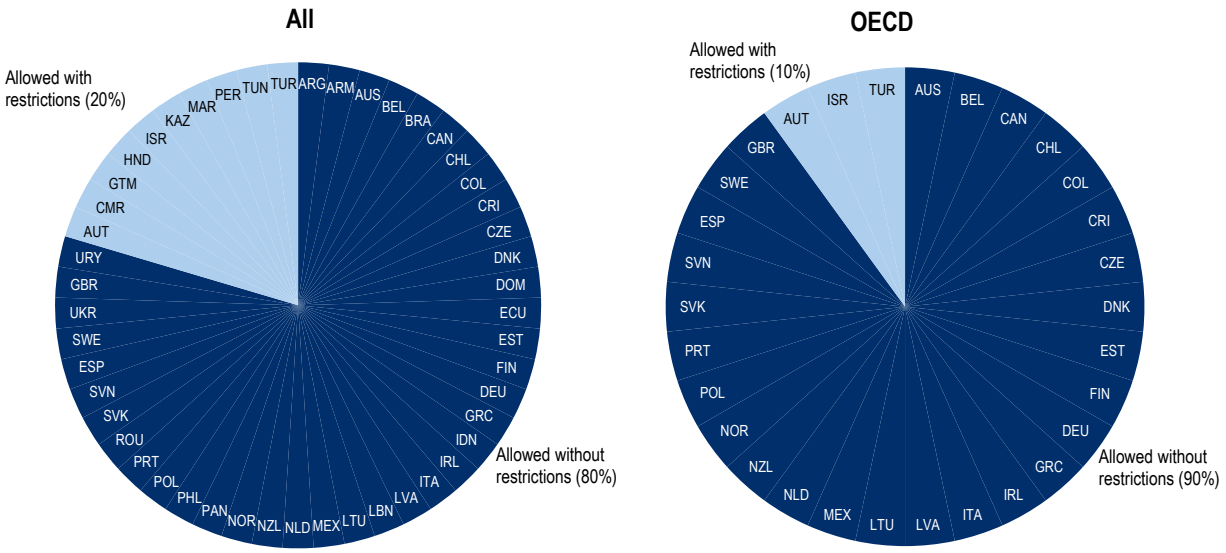
In countries where government funding is limited or unavailable and where there is a lack of private donations, foreign or international funding can be a valuable lifeline for CSOs. Governments can thus contribute to an enabling environment for CSOs by incentivising foreign and international donors to support the sector. They can also protect and defend the provision of foreign and international funding for CSOs in developing countries while sharing good practices for risk-based and proportionate regulation of such funding.

Figure 5.21 illustrates that laws governing freedom of association or other laws directly covering associations restrict foreign funding for CSOs in 20% of all respondents and 10% of OECD respondents.[14] The limitations provided for in relevant association laws apply in different forms and include preconditions or the need for state authorisation to receiving foreign funding, in addition to administrative requirements,

and intensified monitoring and oversight. Reporting requirements can include disclosing the frequency and content of financial statements or information about donors and persons affiliated with the CSO and can be accompanied by sanctions for non-compliance. In **Guatemala**, **Morocco, Tunisia** and **Türkiye**, for example, CSOs are required to declare the origin, amount and purpose of foreign funds to the government within one month of receiving the funds, including donations from CSO headquarters (ICNL, 2021[135]). In **Israel**, CSOs are required to submit financial reports four times a year on support received from foreign government sources. CSOs that receive more than half of their funding from foreign governments must disclose this fact publicly and in communications with elected officials (Freedom House, 2021[136]). In **Cameroon**, funding from international organisations is subject to the authorisation of the minister in charge of territorial administration for donations. In **Kazakhstan**, a 2016 law introduced requirements for CSOs to report on the receipt and expenditure of foreign funds or assets and to label all publications produced with support from foreign funds as such, as well as administrative penalties for non-compliance (ICNL, 2021[137]). In **Austria**, Muslim religious organisations are prohibited from receiving foreign funding.

Figure 5.21. Rules in laws governing associations on receiving funding from abroad

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 49 respondents (30 OECD Members and 19 non-Members). Data on Argentina, Australia, Austria, Belgium, Canada, Chile, Ecuador, Germany, Greece, Guatemala, Ireland, Kazakhstan, the Netherlands, New Zealand, Norway, Panama, Peru, Romania, Sweden, Türkiye, Ukraine and the United Kingdom are based on OECD desk research and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

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Generally, the right to freedom of association implies that associations should have access to sufficient resources, including foreign aid (OSCE/ODIHR/Venice Commission, 2015[10]; IACHR, 2011[118]). The UN Special Rapporteur on the rights to freedom of peaceful assembly and association has voiced concerns, including regarding obligations for associations to route funding through state channels and the need to obtain authorisation from state authorities to receive or use foreign funds (UN, 2013[23]). By avoiding arbitrary restrictions in national legislation, countries can create a more enabling environment for CSOs, which can in turn help build trust with positive outcomes for governments and CSOs alike.

In their *Joint Guidelines on Freedom of Association*, the OSCE/ODIHR and the Venice Commission additionally considered the following practices among the most concerning: outright prohibitions on access

to foreign funding; undue delays in receiving approval for implementation of foreign-funded projects; restricting foreign-funded associations from engaging in human rights, advocacy and other activities; stigmatising or delegitimising the work of foreign-funded associations by requiring them to be labelled in a pejorative manner; initiating audit or inspection campaigns to harass associations; and imposing criminal penalties for the failure to comply with funding constraints (OSCE/ODIHR/Venice Commission, 2015[10]). The UN Special Rapporteur has also emphasised that minor violations of the law, such as a failure to comply with reporting obligations, should not lead to closures of CSOs or prosecutions (Kiai, 2013[138]).

In 2022, the European Court of Human Rights criticised actions such as singling out CSOs receiving foreign funding and subjecting them to excessive and burdensome auditing and reporting requirements in addition to unforeseeable and severe sanctions for non-compliance, stressing that such measures were not necessary or proportionate to the declared aims, and threatened to undermine CSO capacity to engage in core activities (ECtHR, 2022[139]).

While protecting CSOs from undue reporting obligations is critical, transparency and integrity measures are necessary to mitigate the risk of misuse of public funds. Regulations to address these issues should be risk-based and proportionate so as not to disrupt legitimate CSO activities or civil participation and advocacy. The *OECD Recommendation of the Council on Public Integrity* (2017[140]) and accompanying *Public Integrity Handbook* (2020[141]) highlight measures CSOs can implement to ensure transparency and integrity in interactions with the government.

Funding from private sources

In order to maintain CSO independence and autonomy, as well as ensure the space for creative and independent activities, it is strategic for governments to assist CSOs to avoid over-reliance on public grants by tapping into other resources, such as funding by private donors, to boost their financial sustainability. A total of 66% of all respondents reported that private funding is allowed without restrictions, it is allowed with restrictions in 23% and 11% could not specify. OECD respondents reported that private funding is allowed without restrictions in 80% of respondents, with restrictions in 5% and 15% could not specify.

Regulations on how CSOs can conduct public collections were recently updated in a number of countries. In **Belgium**, the **Czech Republic** and **Finland**, among others, measures were introduced that make fundraising easier and more innovative. In **Finland,** the Fundraising Act passed in 2019 makes it easier for associations – particularly smaller ones – to engage in small-scale fundraising (OECD, 2021[142]).

The European Center for Not-for-Profit Law (ECNL) has outlined ways in which governments can encourage varied forms of financial support for CSOs to reduce over-reliance on any one stream of resources, including by facilitating fundraising and by incentivising philanthropic giving (Box 5.7).

Box 5.7. Contribution from the European Center for Not-for-Profit Law (ECNL)

Enabling the power of giving

Philanthropy amplifies the power of people to create a better world. It supports activism and the engagement of individuals and communities in that process.[1] Philanthropy is also key for the existence of grassroots activists, social movements and CSOs, working to foster open societies, provide services and protect individuals' rights and freedoms. Activists, movements and CSOs rely on private giving to raise awareness and bring voices of those most affected to address and solve challenges to democracies (e.g. the need to regulate emerging technologies, reframe securitised policy approaches, fight authoritarianism and solve the climate crisis). Private giving – people and corporations who want to donate their resources to such causes– therefore needs to be supported. Providing for an enabling legal environment is key for such private giving to materialise and reach its purpose.

The different ways of giving

Soliciting or raising funds from individuals, communities and private companies is also referred to as fundraising from the public. Such fundraising can take place through traditional approaches. Examples include collection boxes at shop counters, face-to-face fundraising on the street or at the door, solicitations by mail, gaming activities, bequests and legacies.

Increasingly, movements and CSOs rely on new, digital platforms (e.g. crowdfunding via the Internet, e-payment systems, email and text-based campaigns) to encourage giving and raise funding. Between 2015-19, over USD 2 billion were raised for personal and non-profit causes using the Facebook causes functionality (Gleit, 2019[143]). The digital revolution and artificial intelligence opened further horizons for donations. Machine-learning algorithms – and automated decision making – help CSOs and movements identify and reach out to potential donors, craft targeted messages, communicate through chat bots and run campaigns across borders. More and more organisations accept donations in cryptocurrencies. The spread of crowdfunding platforms decentralised and democratised philanthropy and offered new opportunities to attract resources without expensive campaigns. The COVID-19 pandemic amplified the role of digital fundraising for groups who could not exercise them in person.

The challenges to giving

Numerous laws regulate the legal and policy environment for private giving (e.g. framework laws on CSOs, money collection, taxation, data protection, consumer protection, accounting, banking, games of chance, anti-money laundering and counter-terrorism financing, online content regulation). This legal environment must be enabling for private giving to happen. Yet, in many countries, it is undergoing a stress test due to restrictive measures adopted by governments across the globe.

The research conducted by the ECNL shows some policy and legal trends that stifle giving (2017[144]). An example might be a group that runs a homeless shelter and wants to launch a public collection campaign to raise funds for food and equipment. In some countries, such a group would first need to obtain permission from the authorities, through lengthy and burdensome administrative processes, to raise funds through boxes in supermarkets or collect donations online. In some countries, banks require additional documentation from such groups to open sub-bank accounts to fundraise through its website, thereby delaying transactions. If the group wants to receive funding from another country, it may need to request permission from the authorities and be subjected to burdensome oversight. Lengthy administrative processes and bank delays may hinder fundraising for emerging needs, such as natural disasters where rapid response would be crucial. In some countries, laws require that all donors are identifiable. This makes using certain fundraising tools, such as collection boxes nearly impossible as one cannot identify every person who has dropped a penny in a box. Instead, the focus should be on the appropriate use of those funds. Prohibition of anonymous donations is a problem for CSOs that work in more restrictive environments or for those who support causes considered controversial in a community (e.g. LGBTI). Being able to accept anonymous or pseudonymous donations and utilise them without being hindered by a local official can make a world of difference in terms of advocacy, safety and security for activists, groups and donors (New America, n.d.[145]). Governments often justify their request for detailed information under the anti-money laundering and counter-terrorism financing framework (Section 5.5.2). However, such measures disrupt the legitimate activities of CSOs and are neither risk-based, proportionate nor effective.

The environment for giving needs support

The challenges in this area require a collaborative effort by societies as a whole. Philanthropy needs to be recognised, enabled and encouraged. Some countries are adjusting their legislation to enable giving. For example, in **Finland**, the 2019 Fundraising Act exempts small-scale fundraising from obtaining a license, thus allowing a freer flow of support (EFA, 2019[146]). In the **Czech Republic** and **Ukraine**, the

legislation exempts text donations to CSOs from VAT. Governments can support an enabling environment for giving in practice as well. For example, in **Belgium**, the Governments of Flanders and Brussels co-finance the operation of a civic crowdfunding platform called Growfunding (n.d.[147]), which has so far mobilised more than 78 000 people to support over 440 local projects. In parallel, CSOs are shaping the environment for giving by adopting higher standards and self-regulating practices. Self- and co-regulatory standards help build and maintain what is most important for people when they donate to a cause: trust.

States have signed international treaties to promote the freedom of association and facilitate access to resources. Under those treaties, restrictions are the exception and only insofar as restrictions are necessary. To support the adoption of progressive frameworks in line with international standards and good country practices, a community of experts formulated the Principles for Statutory Regulation and Self-regulation of Fundraising (ECNL, 2020[148]). These principles highlight recommendations on how to ensure data protection, privacy, cross-border fundraising and accountability, balancing the need for permissions and reporting without stifling the giving and use of funds. In addition, there is an effort to develop more guidance on the use and regulation of digital fundraising tools, an evolving area (ECNL, 2021[149]).

Fundraising online and across borders calls for new approaches and innovation both in regulation and practices. Key measures for countries include the promotion of an enabling environment for private giving and a greater use of new technologies in fundraising. Multi-stakeholder dialogues could be facilitated to engage civil society in policy discussions that affect private giving in order to find the best solutions. It would be also important to review existing laws and practices nationally to make sure that they promote rather than restrict philanthropic giving and can embrace new trends. Finally, it would be beneficial to resource further work of civil society to identify good practices, finding innovative regulatory solutions so that they embrace new trends and explore the full potential of digital fundraising, hence enabling the power of giving.

Key measures to consider on facilitating CSO funding opportunities

- *Adopting and implementing a comprehensive funding strategy for civil society to enhance predictability, reduce funding gaps and barriers and encourage access to different funding sources, facilitated by specific tax regimes for CSOs.*
- *Ensuring that the legal framework governing funding for CSOs facilitates access to a range of funding options, both public and private, as a means of avoiding over-reliance on government funds and enhancing CSO autonomy.*
- *Implementing a balanced combination of targeted project support to respond to existing CSO activities and services on short-, medium- and long-term bases, as well as core funding to contribute to the financial sustainability and long-term development of CSOs.*
- *Enhancing the gathering of statistical data on the length and modality of public funding for CSOs.*
- *Revising legal frameworks, in consultation with CSOs, to make sure that there are no arbitrary or disproportionate legal restrictions for CSOs to access foreign funding.*

5.4.2. Key challenges in practice for CSO funding, according to CSOs and other stakeholders

Research indicates that financial sustainability, and in particular access to public funding, remains a critical challenge for CSOs around the globe, with additional difficulties since 2020 due to the COVID-19 pandemic (ENNHRI, 2021[150]; CIVICUS, 2019[151]; FRA, 2021[12]). In addition, OECD survey data confirm that short-term funding is the overwhelming funding modality for the CSO sector in many respondents.

While secondary sources and evaluations of government funding for the CSO sector are scarce, existing research on CSO funding in Latin America between 2014 and 2017 (CIVICUS, 2019[151]) and in EU Member states between 2011 and 2017 (FRA, 2017[66]) suggests that there has been a trend to concentrate funds for CSO activities that provide social services (health, social or education) at the expense of advocacy and watchdog activities. According to CIVICUS, only 5% of the funds accessible to CSOs in Latin America supported social and political influencing activities, for example, while the overwhelming majority of resources (94.5%) was made available to fund activities focused on providing social and basic services (CIVICUS, 2019[151]). Similarly, a 2021 FRA survey finds evidence that advocacy organisations seem to be more affected by challenges related to funding than CSOs providing services (2021[12]). A 2020 study on how DAC members support CSOs in development co-operation shows similar findings including the preponderance of short-term, project-based funding designed to meet development objectives related to service delivery (OECD, 2020[129]). In a March 2022 resolution, the European Parliament criticised the outsourcing by public authorities of public services to CSOs in areas such as housing, health, education and asylum, and stressed that such practices "use civil society resources for the fulfilment of state responsibilities and do not leave the much-needed space for public participation of CSOs through advocacy, strategic litigation and public education" (2022[22]).

The CIVICUS research also found that funding opportunities for CSOs in Latin America were often simultaneously offered to multiple actors, including international CSOs, private sector actors, national state entities, as well as international and intergovernmental bodies, which, in many cases, have a greater capacity to compete for funds.

The impact of regulations to counter money laundering and terrorism on civic space

A range of sources, including the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, in addition to CSOs, have argued that national security and counter-terrorism laws have had a tangible impact on civic space over the last two decades (OECD, 2021[152]; Ní Aoláin, 2019[153]). In 2021, 11% of CSOs operating in EU Member states reported facing challenges related to counter-terrorism measures (FRA, 2021[12]). While the intended aims of these laws are to ensure security, CSOs and human rights bodies have stressed that the unintended collateral effects of rules and measures to counter money laundering and terrorist financing have also affected access to funding for CSOs.[15] Such collateral effects can be particularly hard-hitting when they impede development co-operation and humanitarian CSOs' efforts to respond to contexts of crisis and fragility where both basic human needs and rights are under threat (Eckert, 2022[154]).

In particular, internationally endorsed recommendations from the Financial Action Task Force (FATF) require states to enact a wide range of legal measures and observe due diligence obligations in order to prevent terrorist financing through the global banking system (FATF, 2012[155]). Research indicates that the over-zealous implementation of these standards has led to significant challenges to the CSO sector, which the FATF recognises and is increasingly trying to address (OECD, 2021[152]).

The FATF is an intergovernmental body that sets standards that aim to prevent these illegal activities and the harm they cause to society, promotes the effective implementation of legal, regulatory and operational measures for combating terrorist financing and identifies national-level vulnerabilities with the aim of protecting the international financial system from misuse. As of 2022, over 200 jurisdictions around the

world have committed to the FATF Recommendations (FATF, 2022[156]). Among the 40 recommendations adopted by the FATF in 2012, Recommendation 8 concerns the non-profit sector and the risk of abuse for the financing of terrorism. The original version of the interpretative note associated with Recommendation 8 stated that it has been "demonstrated that terrorists and terrorist organisations exploit the NPO (non-profit organisation) sector to raise and move funds, provide logistical support, encourage terrorist recruitment, or otherwise support terrorist organisations and terrorist activities" (FATF, 2012[157]). This assessment was repeatedly contested by CSOs, whose position was that despite a few high-profile cases, evidence of registered NPOs being used in support of terrorist activities remained extremely rare (Hayes, 2017[158]).[16] National risk assessments conducted by governments in several OECD Members, such as **Germany** and the **United Kingdom**, also concluded that the risk of NPO abuse for money laundering and financing of terrorism is low or medium-low (HM Treasury, 2020[159]; BMI, 2020[160]).[17] Germany's 2020 risk assessment states that "there are hardly any cases of legitimate NPOs being abused to finance terrorism" (BMI, 2020[160]). Thus, CSOs have underlined the need to make a clear distinction between the "vulnerability" of the sector to abuses (e.g. related to limited transparency) and the actual risk it represents (Charity and Security Network, 2015[161]).

De-risking practices as a threat to CSOs

The obligations placed by the FATF on financial institutions to comply with its standards have led many banks to increase their due diligence threshold. This is in order to avoid economic sanctions, possible withdrawal of their licenses, difficulty in obtaining loans from international institutions and criminal prosecutions if found to be in breach of the rules (Hayes, 2017[158]).

Research has shown that CSOs have experienced delays in transactions and requests for additional information on their activities as a result, significantly affecting their capacity to operate (Hayes, 2017[158]; WO=MEN, 2019[162]; Gillard, Goswami and van Deventer, 2021[163]).[18] In some instances, increased due diligence and reporting requirements have led banks to develop their own risk-averse controls and a shift from "risk management" to "risk avoidance". Consequently, according to research from CSOs, some organisations have faced freezes of transfers, suspension of bank accounts or unjustified terminations of contracts. These practices, known as "de-risking" or "de-banking", are increasingly observed in the banking sector (HSC and ECNL, 2018[164]). While other factors leading to de-risking exist, anti-money laundering and counter-terrorist financing regulatory compliance issues have been identified as the primary reasons for de-risking (Eckert, Guinane and Hall, 2017[165]), with potentially severe impacts. As an example, several CSOs operating in the Middle East and North Africa (MENA) region reported receiving a letter of termination of the bank-client relationship without justification in 2021, after years of working with the same financial institution.[19] Similar incidents have been documented in OECD Members, such as **Latvia**, **Mexico**, the **Netherlands**, the **United Kingdom** and the **United States** in particular, but not only for CSOs operating in countries classified as "high risk" (HSC and ECNL, 2018[164]; WO=MEN, 2019[162]; Charity Finance Group, 2018[166]; Eckert, Guinane and Hall, 2017[165]). According to a 2020 survey conducted by the Latvian Centre for Human Rights (2021[167]), 24% of NGOs faced difficulties opening a bank account in Latvian banks. The CSOs also criticised banks for not explaining why they refused to open or demanded the closure of the bank accounts.

Furthermore, extensive due diligence requirements have pushed financial institutions, intergovernmental bodies, donors and other actors to outsource the screening procedures conducted by private companies, which produce and manage databases of "at-risk" individuals and organisations, with very limited to no transparency regarding the criteria used (Hayes, 2017[158]). Consequently, individuals and organisations have been denied banking services without knowing the underlining cause and with very limited possibilities of redress (Charity and Security Network, 2016[168]). In addition to limiting access to financial services, the "at risk" listing of organisations by private companies can also result in a loss of reputation, stigmatisation and a decline in donations, thus endangering their work (Roepstorff, Faltas and Hövelmann, 2020[169]).

Countries and international organisations have taken a number of initiatives to address these issues. These include the establishment of multipartite dialogues in the **United Kingdom** and a global dialogue led by **Morocco**, the **Netherlands** and the UN Office of Counter-Terrorism (UNOCT) (Ministry of Finance of the Netherlands/HSC/World Bank, 2018[170]; Global NPO Coalition on FATF, 2021[171]; World Bank/ACAMS, 2017[172]; GCTF, 2020[173]).[20] Such initiatives recommend providing good practices and guidance to both CSOs and banks, harmonising due diligence procedures, adopting exemptions for humanitarian activities at the UN level, examining the possibilities of creating economic incentives for banks to provide services to smaller NPOs and ensuring a sustained dialogue between all stakeholders (Ministry of Finance of the Netherlands/HSC/World Bank, 2018[170]).

The growth of these multi-stakeholder fora illustrates that concerns around the financial exclusion of CSOs are increasingly recognised and demonstrates the necessity for greater policy coherence to effectively combat the financing of terrorism while also safeguarding civic space and civil society (Ní Aoláin, 2019[153]).

Emerging good practice: Civil society participation in the context of the FATF's risk-based approach

Before the adoption of the 2012 standards, the FATF did not engage with or consult civil society actors on the potential adverse effects of Recommendation 8 on their enabling environment. Consequently, CSOs joined together in the framework of the Global NPO Coalition on FATF to raise awareness and find collective solutions to mitigate its unintended consequences. This led to a revision of Recommendation 8 and its interpretative note in 2016 (ECNL, 2017[174]). Notably, the NPO sector is no longer referred to as "particularly vulnerable" as a whole and countries are required to undertake a risk assessment process and adopt a risk-based approach to determine which NPOs present a risk of terrorist financing abuse (FATF, 2012[157]). The FATF has advised that countries' measures should be proportionate and called for an increased engagement of governments with NPOs in risk assessment and reporting procedures (FATF, 2012[157]). Following these new guidelines, some countries, including **Germany** and **Tunisia,**[21] launched a consultation process with the non-profit sector to discuss threat scenarios and vulnerabilities (Evans, 2020[175]; BMI, 2020[160]) and to update the risk assessment of the sector. Both are examples of participatory processes that have yielded positive outcomes at the national level.

The FATF has also taken steps to clarify its standards and approach. In December 2020, the FATF Secretariat declared that requests for additional information without grounds of reasonable suspicion are not in line with the requirements set out in its standard, for example (Ní Aoláin, Voule and Lawlor, 2020[176]; FATF, 2020[177]). In February 2021, the FATF announced a new work stream focusing on the unintended consequences of its standards, in the areas of: de-risking; financial exclusion; undue targeting of NPOs through non-implementation of the FATF's risk-based approach; and the curtailment of human rights (FATF, 2021[178]; Skoric and Londras, 2021[179]). Within this framework, the project published a synopsis of the stocktake of these unintended consequences in October 2021 with the aim of informing further discussion with stakeholders on how to mitigate them (FATF, 2021[180]). During a webinar organised by the OECD Observatory of Civic Space in July 2021, the Executive Secretary of the FATF further emphasised that the FATF is committed to promoting proportionate and measured responses to help prevent the financing of serious organised crime. Furthermore, it is in "direct contradiction of the FATF standards when measures are exploited to oppress human rights under the pretext of counter-terrorism" (OECD, 2021[142]).

Key measures to consider on challenges to CSO funding

- Ensuring that existing laws and practices enable CSOs to seek, receive and utilise financial, material and human resources, whether domestic, foreign or international, for the pursuit of legitimate and lawful activities, as these are essential to their existence and operations, and that regulations to address security and terrorism threats are risk-based and proportionate so as not to disrupt legitimate CSO activities.

- Identifying and removing any disproportionate legal restrictions to accessing funding, in addition to reporting requirements that are unnecessarily bureaucratic and unduly obstruct the legitimate work carried out by CSOs.

- Ensuring that government funding for CSOs covers the full range of civil society activities and that an adequate balance is maintained between funding for CSO programmes focusing on public service delivery and other beneficial activities focused on advocacy, public education, research and campaigning.

- Consulting with the civil society sector in order to ensure that funding covers real needs when designing funding programmes.

- Assessing the impact of national policies related to money laundering and anti-terrorism financing policies on civil society and implementing a risk-based approach in their assessments of the sector.

- Systematically engaging in dialogue with civil society actors when designing anti-terrorism and security policies and measures, to reduce the risk of security measures having a disproportionate impact on civic space or leading to unintended consequences for CSOs.

5.5. The promotion of civic space as part of development co-operation

In countries where civic space may be in decline, donor engagement can affect "civil society's capacity to safely contribute to protecting basic rights and social and economic indicators, as well as address humanitarian crises" (Jämtin and Moreira da Silva, 2021[181]). A coherent and sustained policy approach to supporting civic space on national territory, as well as within partner countries, can thus be of great benefit.

The DAC explicitly recognises that engagement with and support for civil society is a development priority. The DAC *Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance* (OECD, 2021[4]) aims to support, guide and incentivise DAC members and other development co-operation and humanitarian assistance providers, to advance policies and practices that reinforce the impact and roles of civil society as critical contributors to the 2030 Agenda for Sustainable Development, and to protect and strengthen democracy (Box 5.8).

Box 5.8. The DAC Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance

The OECD DAC is currently composed of 30 members, representing many of the largest country providers of aid (2018[182]). DAC's mandate is "to promote development co-operation and other relevant policies so as to contribute to the implementation of the 2030 Agenda for Sustainable Development" with a focus on eradicating poverty, improving the standard of living and ensuring inclusive economic growth (OECD, 2018[182]). In this regard, DAC monitors and analyses official development assistance alongside other private flows of aid, provides guidance and shares good practices to support its members in enhancing the effectiveness of their development co-operation activities and promotes the importance of policy coherence in this domain (OECD, 2018[182]).

In 2021, the DAC adopted the first international standard for donors to improve the enabling environment for CSOs and maximise the contribution of civil society to the 2030 Agenda. The DAC *Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance* [OECD/LEGAL/5021] recognises that civil society stakeholders are crucial actors in achieving the 2030 Agenda – both as donors' implementing partners and as independent actors in their own right – and establishes three interlinked pillars of how donors: respect, protect and promote civic space; support and engage with civil society; and incentivise CSOs' effectiveness, transparency and accountability (OECD, 2021[4]). Crucially, it recognises that "closing civic space poses real danger" to civil society actors in many countries, which "affects the quality and effectiveness of development co-operation, humanitarian assistance and peacebuilding" efforts (OECD, 2021[4]). As part of the Recommendation, Adherents are encouraged to "develop clear policy positions on the value of an

inclusive and independent civil society and on the importance of respecting, protecting and promoting civic space" (OECD, 2021[4]).

The DAC Recommendation thus "addresses a constellation of challenges impeding civil society actors from reaching their full potential" and, significantly, "is underpinned by a recognition of the diversity within civil society and the varied roles civil society actors play" (OECD, 2021[4]).

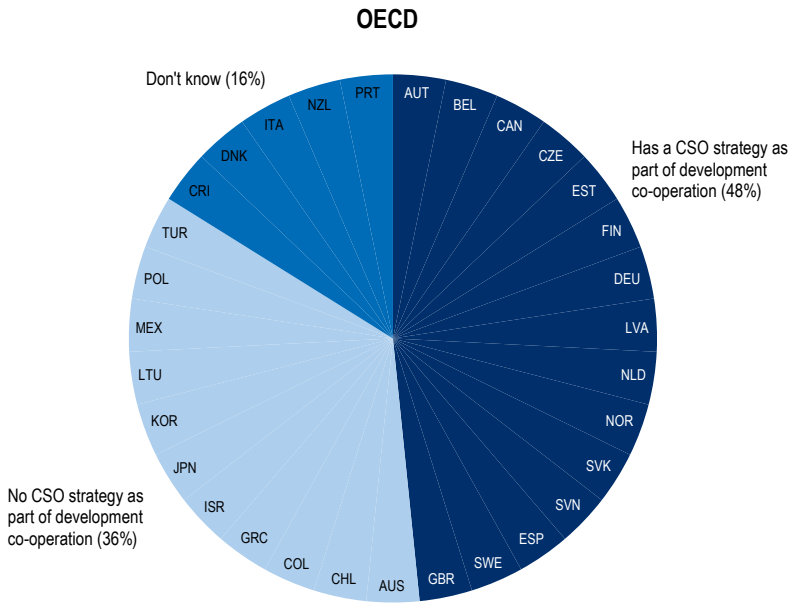
Source: OECD (2018[182]), "Development Assistance Committee (DAC)", https://www.oecd.org/dac/development-assistance-committee/; OECD (2021[4]), *DAC Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance*, https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-5021#relatedInstruments.

5.5.1. Strategies and standards to promote CSOs as part of development co-operation

As part of the Recommendation detailed in Box 5.8, Adherents are encouraged to "develop clear policy positions on the value of an inclusive and independent civil society" (OECD, 2021[4]). A total of 48% of respondent OECD Members have a dedicated policy or strategy in place to promote CSOs as part of development co-operation (Figure 5.22). Many of these policies have similar characteristics, including: sections outlining ways in which the donor is currently supporting civil society and civic space abroad; the importance of partnerships with CSOs; and, in some advanced cases, the need to build autonomy and independence within the CSO sector.

Figure 5.22. OECD Members with a dedicated policy or strategy to promote CSOs in beneficiary countries as part of development co-operation, 2020

Percentage of OECD Members that provided data in the OECD Survey on Open Government



Note: OECD refers to 31 OECD Members.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/q14peb

Frameworks for promoting the role of civil society in development can take various forms. Some OECD Members include relevant provisions in a government programme or specific law, others mention it in an overall strategy or policy document on development co-operation, while still others have dedicated civil society policies, strategies or guidelines. Many respondents have a combination of the above. For example, **Belgium**'s 2020 Government Programme states that, due to the CSO sector's expertise and proven impact, civil society actors are key partners in development alongside public institutions working on development (Government of Belgium, 2020[183]). The **Slovak Republic** has a 2015 Law on Development Cooperation (Government of the Slovak Republic, 2015[184]) alongside a Mid-term Strategy for Development Cooperation for 2019-2023 (Government of the Slovak Republic, 2018[185]). The law stipulates that the implementation of development co-operation should involve "civic associations, non-profit organisations providing services of general interest, foundations and other legal entities that are not involved in the state budget" (Government of the Slovak Republic, 2015[184]).

Many respondents prioritise the promotion of civic space within a wider development policy or strategy, with a variety of goals. The **Czech Republic**'s Development Cooperation Strategy 2018-2030 strives to create strategic partnerships between the public, private, civil society and academic sectors (Government of Czech Republic, 2017[186]). **Latvia**'s Development Cooperation Policy 2021-2027 highlights the country's guiding principles on development co-operation and 55% of the country's bilateral development co-operation financing is used in projects involving CSOs and the private sector in partner countries (Government of Latvia, 2020[187]).

Some OECD Members include ambitious goals in these strategies. The **Netherlands**' Policy on Development Co-operation highlights the need to "invest in activities that create space for dialogue and dissent, making government policy more effective and inclusive" (Government of the Netherlands, 2021[188]). The Netherlands has established specific programmes and funds to co-operate with civil society in this policy area, including Strategic Partnerships in the Area of Lobbying and Advocacy and a Human Rights Fund (Government of the Netherlands, 2021[188]). **Canada** has a specific Civil Society Partnerships for International Assistance Policy, which stresses that fostering strong partnerships with civil society alongside a safe and enabling environment are two essential conditions for achieving its core objectives of reducing extreme poverty and achieving gender equality (Government of Canada, 2020[189]). In addition, Canada involved CSOs in a consultation process to provide input on the policy and its implementation plan and annual meetings are held with CSOs to evaluate progress against its objectives (Government of Canada, 2022[190]).

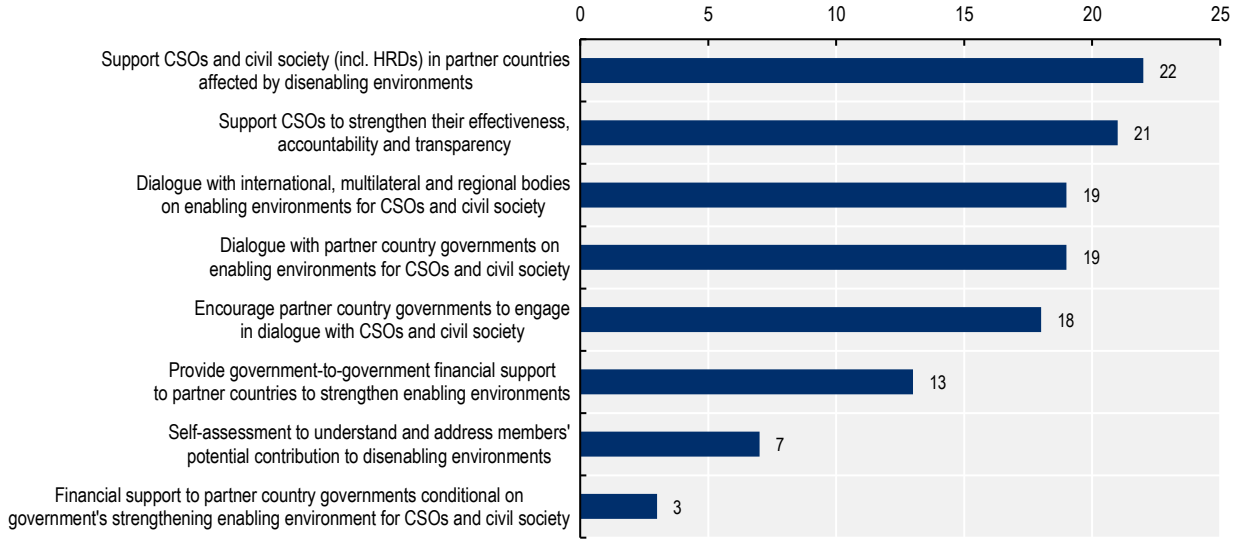
Finland outlines its aim to strengthen civil society in its Guidelines for Civil Society in Development Policy document (Government of Finland, 2017[191]), which also highlights ways to ensure that civil society actors can contribute to achieving Finland's development goals and stresses the importance of a strong enabling environment for civil society. **Sweden**'s Strategy for Support via Swedish Civil Society Organisations for 2016-2022 (Government of Sweden, 2015[192]) aims to strengthen CSO capacity with the twin aim of poverty reduction and improving standards of living. It also intends to accomplish greater awareness of and engagement with citizens to inform them of their fundamental democratic rights and freedoms (Government of Sweden, 2015[192]). It is complemented by a more civil society-specific document, the Guiding Principles for Sida's Engagement with and Support to Civil Society which reinforces the importance of civil society support geared to strengthen a pluralistic and independent civil society in its own right, as well as to reach various other development objectives (Sida, 2019[193]). **Norway** developed its New Principles for the Norwegian Agency for Development Cooperation (Norad)'s Support to Civil Society through an open consultation process, with a particular focus on partnership models that strengthen local civil society and enhance local ownership, decision-making power and legitimacy (Government of Norway, 2018[194]). The objectives of the principles are primarily to enhance democracy and human rights and to eradicate poverty (Government of Norway, 2018[194]).

A 2020 survey-based study from the OECD Development Co-operation Directorate (DCD) provides an analysis of the most frequent practices that DAC members adopt to fulfil their commitments to supporting

CSOs and their enabling environments (OECD, 2020[129]) (Figure 5.23). Stated aims include supporting CSOs in partner countries with "disenabling environments" (22 respondents). Other common aims are to support CSOs to strengthen their own effectiveness, accountability and transparency (21 respondents) and to foster dialogue between CSOs, international partners and governments to improve the enabling environment (19, 19 and 18 respondents). Donor assistance may also explicitly support governments to strengthen the enabling environment for CSOs (13 respondents) and, in a few cases, conditionalities related to CSOs' enabling environment may be attached to receiving aid (3 respondents) (OECD, 2020[129]).

Some OECD Members conducted evaluations of support for CSOs in the context of development co-operation which offers good examples of how to base public decision making on a foundation of sound evidence gained through evaluating public policies (Australian Government, 2015[195]; Norad, 2018[196]).

Figure 5.23. DAC member practices to promote CSOs and an enabling environment for civil society in partner countries, 2019



Note: A total of 24 members responded, with respondents able to select multiple options. The options shown here are shortened versions of the language used in the Survey.
Source: Responses to the *How DAC Members Work with Civil Society* survey of members, conducted between November 2018 and March 2019.

5.5.2. Funding for CSOs as part of development co-operation

In line with the 2030 Sustainable Development Goals (SDGs) (UN, 2015[197]), there is wide recognition among donors that CSOs are a crucial actor in ensuring that a range of voices is represented in policy making and that no one is left behind as part of inclusive and sustainable development.[22] One area that deserves special attention is whether financial support is channelled *through* or *to* CSOs.[23] As discussed in Section 5.4, support *to* CSOs is otherwise known as *core support* for CSOs to pursue their own-defined objectives and, as such, respects CSOs' "right-of-initiative". Core support is deemed most appropriate for strengthening civil society and civic space. Support is provided *through* CSOs when donors seek to work with CSOs primarily as implementers of projects or programmes (OECD, 2020[129]).

While the volume of DAC members' spending on CSOs has increased by 14% between 2011 and 2020, the volume of official development assistance (ODA) going *to* CSOs, thus contributing to strengthening civic space in developing contexts, is much smaller (Table 5.3). Total spending on CSOs as part of ODA

reached USD 18 billion in 2020, with ODA going *through* CSOs being nearly six times the volume (USD 3 billion) of support that flowed *to* CSOs (OECD, 2022[130]). Furthermore, OECD statistics over recent years show that CSO support is predominantly channelled *through* CSOs as programme implementers to meet development objectives unrelated to the broader goal of strengthening civil society as an independent development actor (OECD, 2022[130]). Most ODA allocation through CSOs goes to sub-sectors, such as emergency response, government, health, education and agriculture (OECD, 2020[129]; 2022[130]). Critically, the main beneficiaries of the ODA that is oriented towards the civil society sector are CSOs based in donor countries (65% of total ODA to CSOs) rather than CSOs based in developing countries (OECD, 2022[130]). Overall, only a small percentage of funding is channelled towards developing-country-based CSOs. The majority goes to international or DAC-country-based CSOs acting as intermediaries between donors and CSOs (GSDRC, 2019[198]). In 2019 and 2020, only 7% of ODA flows went to developing country-based CSOs, costing just over approximately USD 1 billion (OECD, 2020[129]).

Table 5.3. ODA allocations to and through CSOs by type of CSO, 2011-20

Total *to* and *through*	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
International CSO	3 476	3 624	4 061	4 259	4 644	4 998	5 330	5 510	5 614	6 021
Donor country-based CSO	13 196	12 698	12 455	13 232	14 365	14 546	14 308	13 533	13 602	13 994
Developing country-based CSO	1 151	1 255	1 487	1 474	1 399	1 286	1 407	1 416	1 441	1 458
Undefined	1 042	949	1 001	1 069	417	328	251	183	187	114
Aggregate	18 865	18 526	19 004	20 034	20 825	21 158	21 296	20 642	20 844	21 587

Note: The figures are in USD billion, 2020 constant prices. "Developing country-based CSO" is used in this table as it is the term used in the DAC statistical reporting directives. "Undefined" is used when member reporting does not specify the type of CSOs that receive funds.
Source: OECD (2022[130]), *Aid for Civil Society Organisations,* www.oecd.org/development/financing-sustainable-development/development-finance-topics/Aid-for-CSOs-2022.pdf.

Some donors are working to remove obstacles that prevent developing country-based CSOs from receiving funding by simplifying their procedures and establishing guarantee instruments and shared mechanisms with national authorities to fund local partners. In order to facilitate access to financial support by local, small- and medium-sized organisations, some donors provide multi-year funding, for example, or try to simplify and harmonise funding requirements (GPEDC, 2020[199]). For instance, the **United Kingdom**'s Foreign, Commonwealth and Development Office (FCDO) simplified its guidance and templates for grant applicants in 2021 to provide clarity on eligible administrative costs and ensure consistency in administrative cost coverage (FCDO, 2021[200]).

In a positive development, many donors are also funding a wide spectrum of different CSOs, including advocacy organisations and watchdogs, in partner countries. However, only a few provide funding to informal civil society actors that are not formally registered. For example, the **Swedish** International Development Cooperation Agency (Sida) uses a guarantee instrument to absorb the risks that might make international or Swedish CSOs hesitate to partner with nascent CSOs or informal groups (Sida, 2021[201]).

Several donors are also attempting to balance supporting the priorities defined by the donor (i.e. support *through* CSOs) and CSOs' right-of-initiative (i.e. support *to* CSOs). For example, some have developed funding mechanisms that respond to initiatives launched and led by CSOs in their own right, which may not necessarily align with the donor's priorities. The **Netherlands** activated several such funds and subsidy schemes to which organisations in 52 developing countries can apply directly in order to implement a project. These programmes address different themes, including economic development, infrastructure,

preventing child labour, capacity building for youth and women's empowerment, and the SDGs (Government of the Netherlands, n.d.[202]). The **Austrian** Development Agency has a mix of funding instruments for Austrian CSOs to work in partnership and engage in the capacity development of CSOs or other actors in aid recipient countries. These instruments allow CSOs who have successfully received funding in the past to concentrate on their own initiatives for longer periods (ADA, n.d.[203]).

Donors can provide funding to CSOs based in developing countries either directly or by setting up shared structures that involve national governments through co-financing arrangements led by the state. For instance, in **Cameroon**, the EU delegation has established a national entity for strengthening CSOs (PROCIVIS Active Citizenship Strengthening Programme). The national government is in charge of formulating and implementing a national strategy for citizen engagement, participation and human rights protection, while PROCIVIS is responsible for publishing local calls for allocating grants based on jointly developed criteria. To fund a broad range of developing country-based CSOs, donors are increasingly turning to the use of multi-donor pooled funds (OECD, 2020[129]).

Aside from government funding, private philanthropy also plays an increasingly important role in supporting civic space in the development context, as reflected in the latest data from the OECD Centre on Philanthropy and its 2021 report on Private Philanthropy for Development (Box 5.9).

Box 5.9. Unpacking private philanthropy for civic space in developing countries

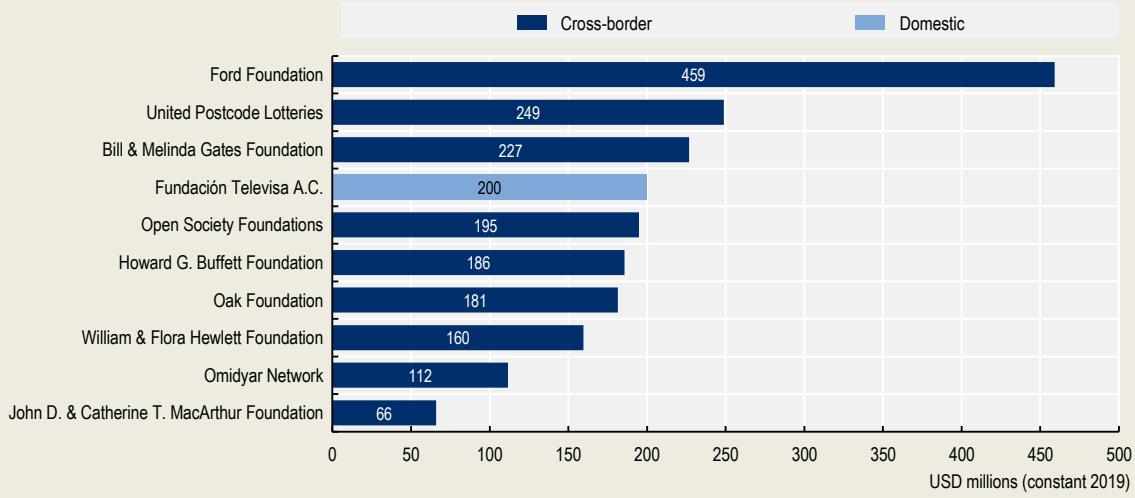
The following provides an overview of philanthropic giving for the promotion and protection of civic space in developing countries between 2016 and 2019.[1] The analysis draws on OECD data from 129 foundations and their financial contributions to the government and civil society sector in developing countries.[2]

Open, comparable and comprehensive data on philanthropy's support to civic space are essential to track financial flows for development, and are the cornerstone for informed decision making and effective co-ordination and collaboration among donors, both private and public. With this information, foundations and other development donors can avoid duplication and explore synergies and co-funding opportunities.

Private philanthropy for development provided an estimated total of USD 2.5 billion over 2016-19, or an average of USD 633 million per year in support of government and civic space. Philanthropic funding for civic space was highly concentrated within a few foundations. The top 5 foundations represented more than half of all funding (53% of total) and the top 10 represented 80% of total funding.

The Ford Foundation was the largest funder between 2016 and 2019 with USD 459 million (18% of total), followed by United Postcode Lotteries with USD 249 million (10%), the Bill & Melinda Gates Foundation (BMGF) with USD 227 million (9%), Fundación Televisa A.C. with USD 200 million (8%) and the Open Society Foundations (OSF) with 195 million (8%) (Figure 5.24). Seven foundations in the top ten are based in the United States, two in Europe (United Postcode Lotteries and Oak Foundation) and one in Latin America (Fundación Televisa A.C.).

Figure 5.24. Top ten philanthropic donors in civic space in 2016-19

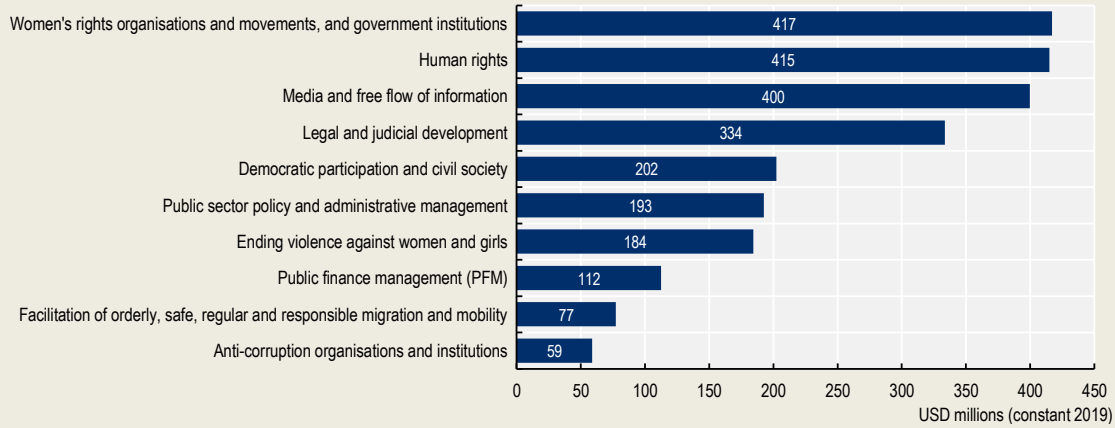


Note: Includes 25 regular reporters to OECD DAC statistics and 88 organisations surveyed for the report *Private Philanthropy for Development* 2016-19 (2021[204]).

Source: OECD (n.d.[205]), *OECD DAC Statistics*; OECD (2021[204]), *Private Philanthropy for Development – Second Edition: Data for Action*, https://doi.org/10.1787/cdf37f1e-en; OECD (n.d.[206]), "The role of philanthropy in financing for development", https://www.oecd.org/development/financing-sustainable-development/development-finance-standards/beyond-oda-foundations.htm; OECD (2022[207]), *Private Philanthropy for Development (CRS)* (database), https://stats.oecd.org/Index.aspx?DataSetCode=DV_DCD_PPFD.

In developing countries, private philanthropy for civic space is concentrated in women's rights organisations and movements, and towards promoting human rights: 68 foundations (out of 129) disbursed USD 417 million on women's rights organisations and movements between 2016 and 2019, while human rights programmes received USD 415 million from 19 foundations – together representing one-third of all funding for civic space. The remaining funding was disbursed to programmes that focused on media and free flow of information (USD 400 million), legal and judicial development (USD 334) and democratic participation and civil society (USD 202 million) (Figure 5.25).

Figure 5.25. Philanthropic funding for civic space in 2016-19, by purpose



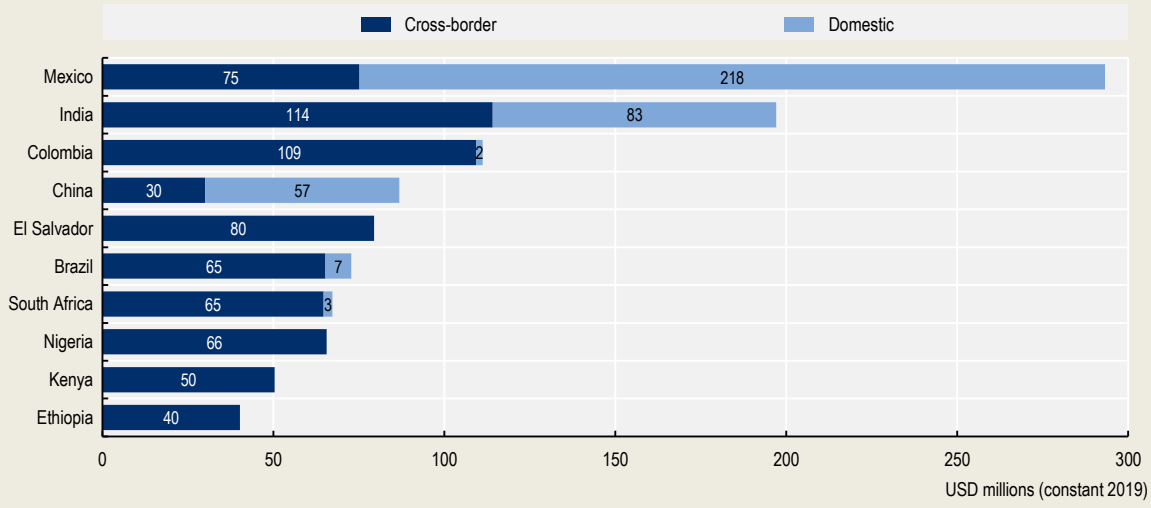
Note: Includes 25 regular reporters to OECD DAC statistics and 88 organisations surveyed for the report *Private Philanthropy for Development 2016-19* (2021[204]).

Source: OECD (n.d.[205]), *OECD DAC Statistics*; OECD (2021[204]), *Private Philanthropy for Development – Second Edition: Data for Action*, https://doi.org/10.1787/cdf37f1e-en; OECD (n.d.[206]), "The role of philanthropy in financing for development", https://www.oecd.org/development/financing-sustainable-development/development-finance-standards/beyond-oda-foundations.htm; OECD (2022[207]), *Private Philanthropy for Development (CRS)* (database), https://stats.oecd.org/Index.aspx?DataSetCode=DV_DCD_PPFD.

LAC received the largest share of philanthropic giving (USD 706 million, 28% of total), followed by Sub-Saharan Africa (USD 312 million, 12% of total), South Asia (USD 220 million, 9%), East Asia and Pacific (USD 169 million, 7%), Middle East and North Africa (USD 134 million, 5%) and Europe and Central Asia (1%). Almost 38% of total philanthropic giving (USD 954 million) could not be allocated to a country or region (i.e. funding was targeted to multiple regions).

Mexico was the largest beneficiary of philanthropic funds for civic space with USD 293 million (12%), followed by India with USD 197 million (8%), Colombia with USD 111 million (4%), China with USD 87 million (3%) and El Salvador with USD 80 million (3%) (Figure 5.26). Domestic giving represented a larger share than cross-border funding for China, India and Mexico.

Figure 5.26. Top ten recipient countries of private philanthropy for civic space in 2016-19, cross-border and domestic financing



Note: Includes 25 regular reporters to OECD DAC statistics and 88 organisations surveyed for the report *Private Philanthropy for Development 2016-19* (2021[204]).
Source: OECD (n.d.[205]), *OECD DAC Statistics*; OECD (2021[204]), *Private Philanthropy for Development – Second Edition: Data for Action*, https://doi.org/10.1787/cdf37f1e-en; OECD (n.d.[206]), "The role of philanthropy in financing for development", https://www.oecd.org/development/financing-sustainable-development/development-finance-standards/beyond-oda-foundations.htm; OECD (2022[207]), *Private Philanthropy for Development (CRS)* (database), https://stats.oecd.org/Index.aspx?DataSetCode=DV_DCD_PPFD.

1. The terms "developing countries" and "developing economies" refer to all countries and territories on the OECD DAC List of ODA Recipients. The list comprises all low- and middle-income countries based on gross national income per capita as published by the World Bank, with the exception of Group of 8 (G8) members, EU Member states and countries with an EU accession perspective. It also includes all of the least developed countries as defined by the UN (OECD, n.d.[208]).
2. All financing from each foundation classified as "government and civil society" is included. The analysis draws on data from two OECD surveys. It features data from a second edition of the OECD Global Survey on Private Philanthropy for Development, led by the OECD Centre on Philanthropy, which capture philanthropic flows and organisational strategies from 91 cross-border and 115 domestic foundations working in developing countries. It is also informed by data from OECD DAC statistics on development finance, which include a sample of 41 foundations active in international development that report to the OECD on a yearly basis. Funding for civic space is understood to cover a range of funding areas, including: anti-corruption organisations and institutions; facilitation of orderly, safe, regular and responsible migration and mobility; public finance management (PFM); ending violence against women and girls; public sector policy and administrative management; democratic participation and civil society; legal and judicial development; media and free flow of information; human rights; and women's rights organisations and movements, and government institutions.

Key measures to consider on the promotion of civic space as part of development co-operation

- *Non-adherent countries to the DAC Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance are encouraged to adhere to and follow its provisions.*
- *Countries are encouraged to contribute to strengthening civic space and CSOs as independent development actors in developing country contexts by: introducing or increasing funding modalities for developing country-based CSOs to receive donor funding by: simplifying procedures and establishing shared and/or pooled funding mechanisms targeting these CSOs; introducing or increasing the availability and accessibility of direct, flexible and predictable support, including core support, to developing country-based CSOs; ensuring that development policies and programmes support a diversity of civil society actors in developing contexts.*

5.6. Civic space in the European Union: Contribution from the EU Agency for Fundamental Rights (FRA) on key challenges and restrictions for CSOs

5.6.1. Civic space and the enabling environment in the European Union

In the EU, since its establishment, civil society actors have played an important role in bringing to life the values shared between the EU and its Member states, as specified in Article 2 of the Treaty on European Union. Moreover, they make a substantial contribution to the implementation of EU policies in the area of human rights. The EU Agency for Fundamental Rights (FRA) co-operates systematically with civil society actors and reports on the state of civic space in the EU (Box 5.10). Since the FRA's first report, *Challenges Facing Civil Society Organisations Working on Human Rights in the EU* (2018[209]), the agency has consistently pointed to a number of challenges facing CSOs in the EU, as well as to positive developments that foster an enabling environment for their work. This was most recently described in the FRA's 2021 report on *Protecting Civic Space in the EU* (2021[12]).

Box 5.10. EU Agency for Fundamental Rights: Methodology of work on civic space

The FRA co-operates with NGOs and civil society actors active in the field of fundamental rights through its Fundamental Rights Platform. In this context, the agency consults civil society actors on their experiences annually.

In 2021, 398 human rights CSOs from across the EU, including over 50 EU-level umbrella organisations, responded to the FRA's online consultation on civic space. These organisations are active at international, EU, national or local levels, working in a range of different areas, including advocacy, campaigning and awareness-raising, service provision, community engagement, victim support, research and data collection and litigation.

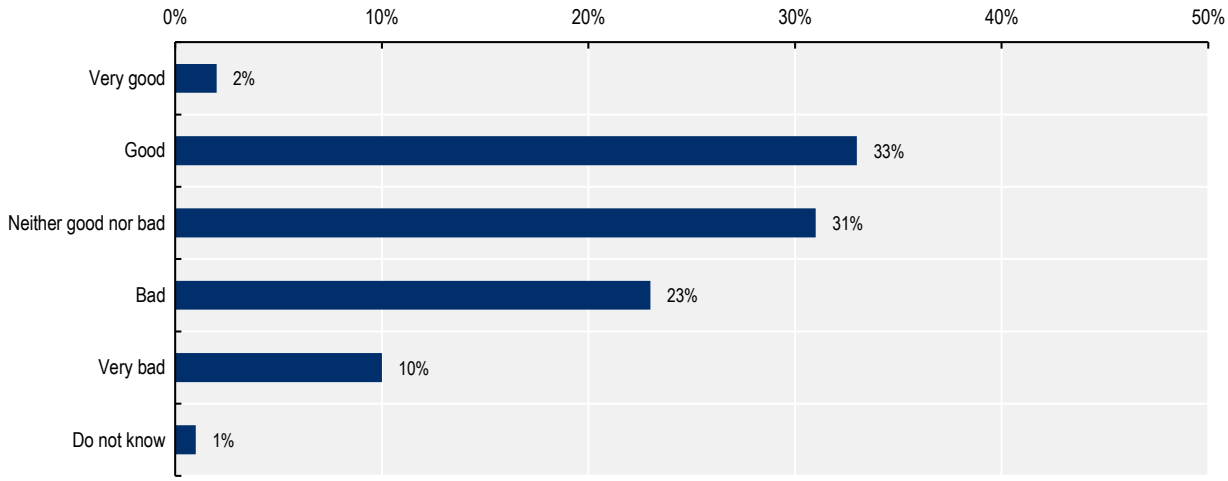
Moreover, the agency's research network FRANET collects information on a yearly basis on legal and policy developments related to an enabling space for human rights civil society across the EU and in the accession countries of North Macedonia and Serbia.

FRA research and the input provided by civil society actors point to challenges facing CSOs in the EU regarding:[24]

- the relevant legal framework
- access to resources
- participation in policy and decision making
- operating in a safe environment.

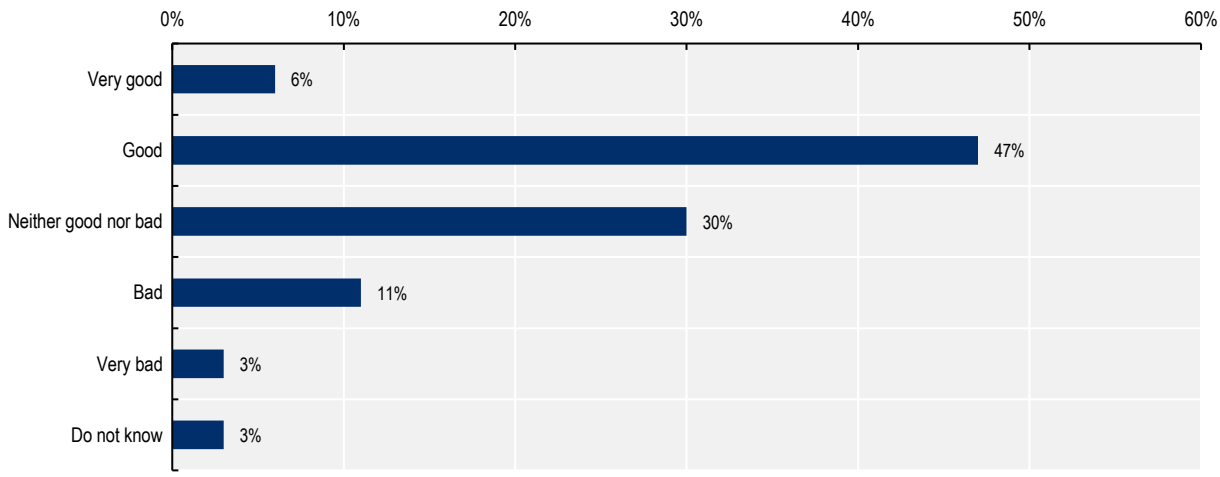
The nature and extent of these challenges, as well as the negative impact of the COVID-19 pandemic, vary considerably across the EU. The figures below illustrate the general conditions for CSOs working on human rights in the EU at the national and local levels (Figure 5.27), at the EU and international levels (Figure 5.28) as perceived by CSOs, and last, the perceived changes in their operational environment (Figure 5.29).

Figure 5.27. General conditions for CSOs working on human rights in the EU at the national and local levels, 2021



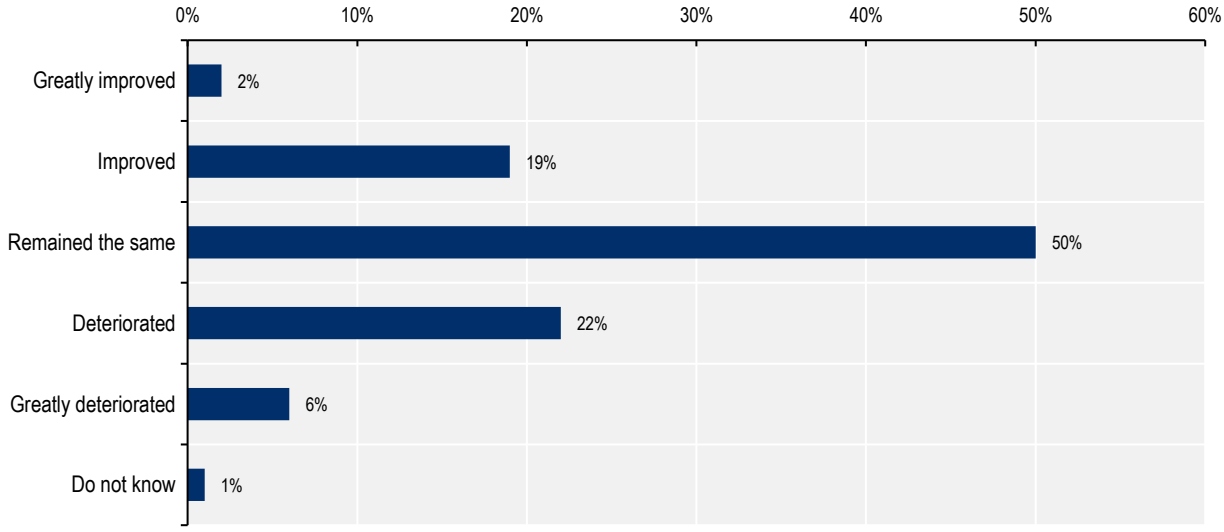
Note: The question was "How would you describe in general the conditions for CSOs working on human rights in your country today?" (N=289).
Source: FRA *Civic Space Consultation 2021*.

Figure 5.28. General conditions for CSOs working on human rights at the EU level, 2021



Note: The question was "How would you describe the general conditions for CSOs working on human rights at EU level (including advocacy and human rights work with EU institutions)?" (N=101).
Source: FRA *Civic Space Consultation 2021*.

Figure 5.29. CSOs' perceived change of situation of own organisations in 2021



Note: The question was "Thinking about your own organisation, how has its situation changed in the past 12 months?" (N=390).
Source: FRA *Civic Space Consultation 2021*.

The above results are influenced by the impact of the COVID-19 pandemic, which continued to pose additional challenges to civil society work in 2021. The results show that the situation has not changed much since 2020, when, in a separate FRA consultation on COVID impact, 75% of responding CSOs stated that measures to combat the pandemic negatively impacted their work, particularly with regard to providing regular services to their beneficiaries, reduced possibilities for participating in decision making and the psychological impact on staff and volunteers (FRA, 2020[210]).

5.6.2. An enabling institutional and policy framework

Governments can support the development of the civil society sector and strengthen mutual engagement between public authorities and CSOs through relevant policy frameworks and permanent dialogue structures. In this regard, the FRA's research reveals both positive and negative developments across the EU in 2021.

Positive steps taken in several EU Member states include policy measures creating a more conducive environment for civil society development and strengthening co-operation between public authorities and CSOs. This, among other things, entails the creation of infrastructures aimed at providing space for dialogue and channelling targeted support to civil society, or including specific commitments to creating an enabling environment in national action plans on open government. In some EU Member states, CSOs are particularly proactive in improving the policy framework in which they operate, including through coalition building.

> ***FRA policy pointers on protecting civic space***
>
> *Governments are encouraged to refer to the UN Guidance Note on the Protection and Promotion of Civic Space, which indicates clear steps to be taken to protect and promote civic space.*
>
> *A conducive legal environment for civil society requires laws that protect and promote the freedom of association, peaceful assembly and expression in conformity with EU and international human rights laws and standards. EU Member states should review, in close consultation with CSOs, existing legislation that directly or indirectly affects the establishment and operations of CSOs, particularly regarding their actions in support of the exercise of the rights to freedom of association, freedom of expression and information, and freedom of assembly.*

EU Member states should ensure that crimes committed against CSOs and human rights defenders are publicly condemned and properly recorded, investigated and prosecuted, including under applicable hate crime provisions when relevant. Politicians and policy makers should avoid statements fuelling hostility towards CSOs and rights defenders that could have a chilling effect or otherwise undermine their work.

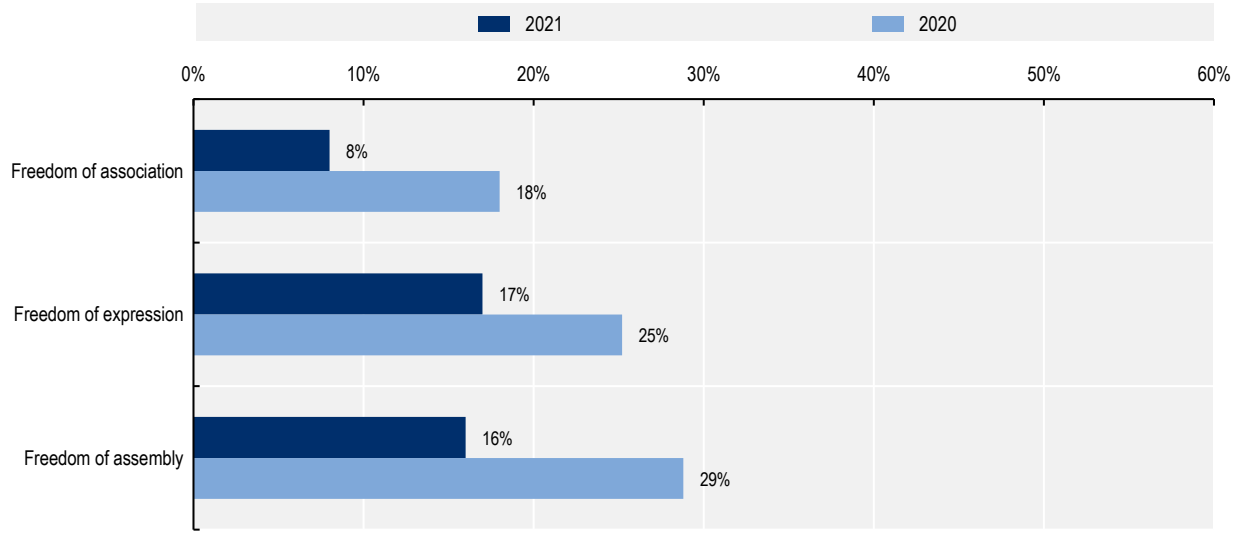
Public and private bodies offering to fund CSOs (donors) should ensure that their support covers the full range of civil society activities, including advocacy, litigation, campaigning, watchdog activities, human rights and civic education, community engagement and awareness-raising. To ensure that funding is targeted and covers real needs, donors should consult with CSOs when drawing up their funding programmes. Donors should consider simplifying eligibility requirements as well as application and reporting procedures, providing core/infrastructure funding in addition to project funding, and introducing longer funding cycles to allow for sustainable long-term impact.

Processes, tools and methods for public participation should be diversified and improved targeting specifically relevant CSOs. Public authorities at the EU, national and local levels should provide adequate human and financial resources, sufficient time and training to public officials on developing and implementing meaningful participation of CSOs. Emphasis should, in this regard, be given to access to information and to the participation of CSOs representing vulnerable and under-represented groups.

5.6.3. The legal environment

In 2021, CSOs across the EU reported difficulties relating to fundamental civic freedoms. However, the situation improved as compared to 2020 (Figure 5.30), when COVID measures had a strong impact restricting freedom of assembly and, to some extent, association and expression. The FRA's Civic Space Consultation 2021 found that 16% (compared to 29% in 2020) of responding organisations reported challenges in exercising their fundamental freedom of peaceful assembly, 17% (25% in 2020) reported challenges related to freedom of expression and 8% (18% in 2020) related to freedom of association.

Figure 5.30. Civic freedoms where civil society faced challenges in 2021 compared to 2020



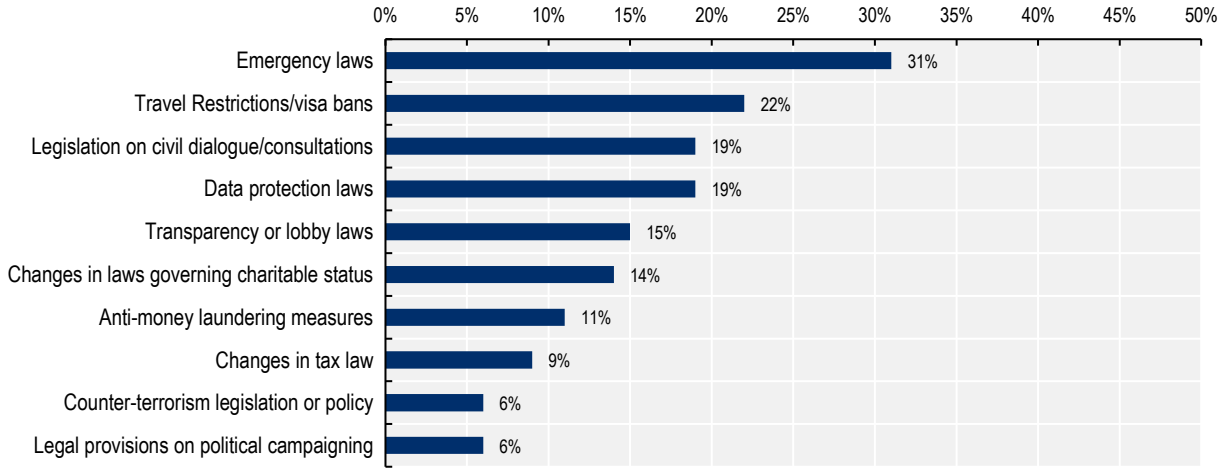
Note: The question was "In the past 12 months, has your organisation faced difficulties in any of the following areas?" (2021 N=334, 2020 N=333).
Source: FRA *Civic Space Consultation 2021* and *2020* (FRA, 2021[211]) https://fra.europa.eu/en/cooperation/civil-society/civil-society-space.

Freedom of expression was affected by provisions criminalising speech, including those adopted within the framework of counter-terrorism laws, which risk having a chilling effect on the exercise of freedom of expression. In other cases, governments stepped up enforcement and sanctions in efforts to counter disinformation and fake news in connection with the COVID-19 pandemic. In some EU Member states, attempts to tackle hate speech, in particular online, have raised concern about their potentially disproportionate impact on free speech. Civil society actors in a few EU Member states also noted challenges related to media pluralism and freedom, as well as artistic and academic freedom (FRA, 2021[12]).

Freedom of association was affected by existing or new measures, ranging from the dissolution and deregistration of CSOs to unfavourable rules on their status, strict reporting requirements and attempts to criminalise certain activities to assist migrants and asylum seekers, such as search and rescue operations at sea and humanitarian assistance. Stricter rules on CSOs' establishment and functioning proposed in an effort to reconcile freedom of association and the protection of national security or democratic values attracted criticism in terms of their legality and proportionality in a few EU Member states. However, in a number of other countries, civil society actors reported positive measures, for example, by easing bureaucratic procedures, improving the data protection framework or by simplifying registration systems.

Figure 5.31 shows the proportion of respondents to the FRA's Civic Space Consultation 2021 who reported facing challenges in other legal areas.

Figure 5.31. Challenges encountered by CSOs in the legal environment in the EU in 2021

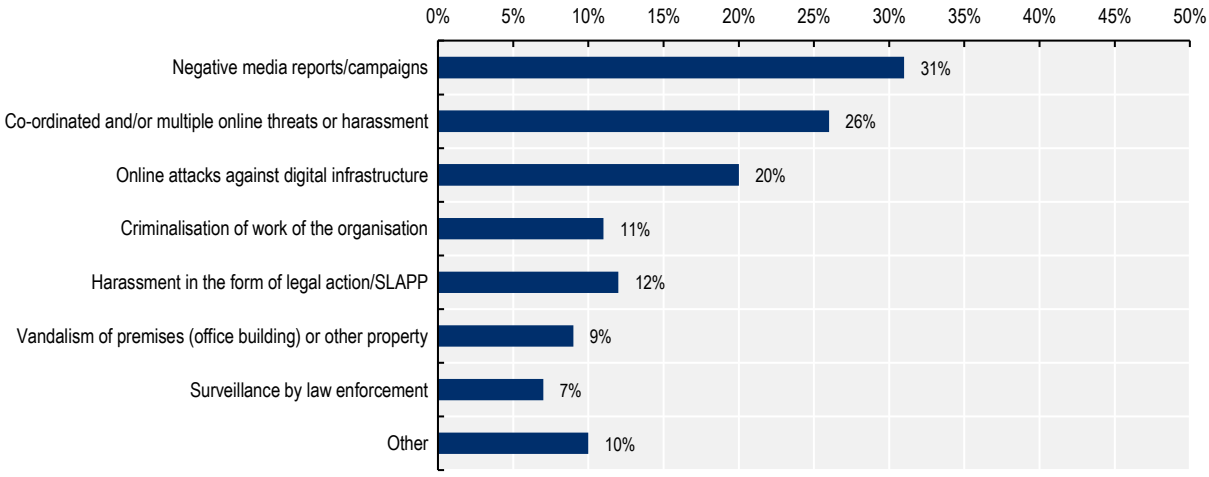


Note: The question was "In the past 12 months, has your organisation encountered difficulties in conducting its work due to legal challenges in any of the following areas? You can tick all boxes that are relevant." (N changes per question, between N=317-328).
Source: FRA *Civic Space Consultation* 2021.

5.6.4. Threats and attacks targeting CSOs

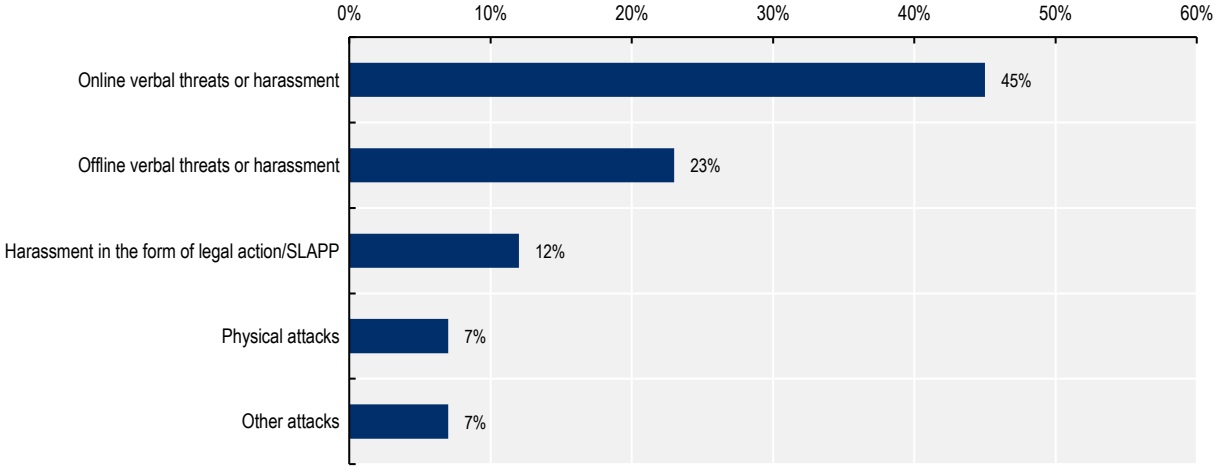
Threats and attacks against CSOs and human rights defenders are outlined in the FRA's civic space reports.[25] They include threats and attacks against organisations, as well as against their staff or volunteers, with instances ranging from online as well as offline intimidation and harassment, allegations of negative public statements and smear campaigns, verbal threats, to physical attacks.[26] Figure 5.32 illustrates the most common threats and attacks experienced by CSOs, ranging from negative media reports/campaigns to surveillance by law enforcement. Figure 5.33 provides an overview of those threats and attacks experienced by individual staff and volunteers.

Figure 5.32. Experiences of threats and attacks by CSOs in the EU in 2021



Note: The question was "In the last 12 months, has your organisation experienced any of the following?" (N changes per question, between N=325-342).
Source: FRA *Civic Space Consultation* 2021.

Figure 5.33. Experiences of threats and attacks by CSO staff or volunteers in the EU in 2021



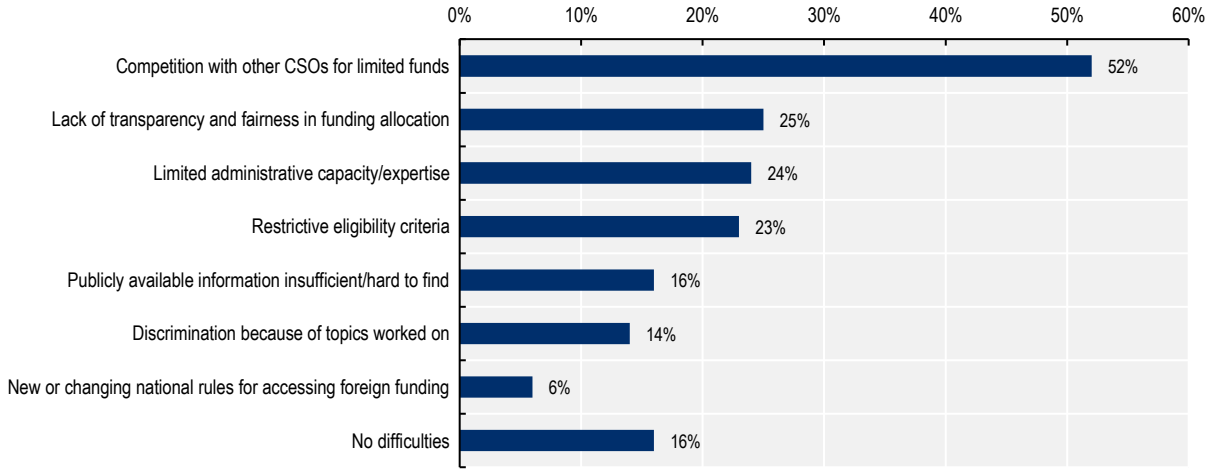
Note: The question was "In the last 12 months, have any of your employees/volunteers experienced any of the following due to their work?" (N changes per question, between N=328-348)
Source: FRA *Civic Space Consultation* 2021.

In around one-third of threats and attacks, responding CSOs claimed that a state actor was known or suspected to be the perpetrator. Hate speech and attacks targeting ethnic and religious minorities, women human rights defenders and LGBTI+ people, sometimes in connection with nationalist and extremist rhetoric, has a particular impact on CSOs and rights defenders engaging in the support and protection of targeted groups.[27] The consultation further showed high under-reporting rates (just over a quarter), with CSOs expressing frustration about how incidents are (not) dealt with by the authorities.

5.6.5. Access to resources

Finding and accessing resources and funding remains an ongoing concern for CSOs,[28] an issue which in 2020 and 2021 was aggravated further by the COVID-19 pandemic. Challenges reported in relation to the COVID-19 pandemic ranged from the diversion of public funds to other (pandemic-related) priorities to a decrease in private donations and the inability to organise fundraising events, as well as a decline in in-kind contributions through volunteering (FRA, 2020[210]). Where funding is available, CSOs face hurdles in accessing it, including competition with other CSOs when funds are limited, lack of public information about available funding, limited capacity to apply for funding and restrictive eligibility criteria (Figure 5.34) (FRA, 2021[12]).

Figure 5.34. Difficulties encountered by CSOs in accessing national funding in the EU in 2021



Note: The question was "In the last 12 months, did you experience any of the following difficulties when trying to access national funding? Please select up to three." (N=180).
Source: FRA *Civic Space Consultation 2021.*

At the same time, the FRA's research identified a range of positive developments at the national level. Several countries set up targeted support schemes for CSOs due to COVID, a few have improved their general financing frameworks (for example Denmark, Finland, Lithuania, Luxembourg and Malta), whereas others explored a more favourable taxation framework for CSOs (such as in Estonia and France).

5.6.6. Participation in policy and decision making

The participation of civil society in policy- and decision-making processes is an indicator of democracy and contributes to the sustainability of laws and policies. Article 11 of the Treaty on European Union defines civil dialogue as an essential component of participatory democracy. This obligation to maintain an open, transparent, regular civil dialogue also applies to EU Member states when acting in the scope of EU competencies under Article 10(3) (EU, 2012[212]).

The FRA's Civic Space Consultation 2021 shows that despite efforts in some EU Member states to improve consultation practices, channels for CSOs' access to and participation in policy and decision making remain patchy. Participating CSOs report, inter *alia*, a lack of information about participation processes (41%), too short deadlines (37%), lack of feedback on the outcome (37%), lack of trust between civil society and public authorities (25%), and lack of capacity in their own organisation (time, skills, knowledge) (23%). The COVID-19 pandemic further aggravated this situation, as most EU Member states had to apply fast-track, emergency legislative procedures with strongly reduced consultation processes. CSOs also

frequently mention that minorities and vulnerable groups are not adequately represented in consultations (FRA, 2021[12]).

FRA research identified some efforts to improve consultation processes, such as the opening of previously closed processes to consultations, as well as some progress on the creation of an infrastructure to facilitate CSOs' co-operation with national authorities and their participation in the development of policies and strategies (FRA, 2021[12]). EU action can serve as a catalyst in this regard, as many EU strategies require the adoption of national action plans, for which the involvement of CSOs is considered good practice. Additional good practices regarding key freedoms and rights and the enabling environment for civic space more broadly are presented in Box 5.11.

Box 5.11. Promising EU practices related to the protection of civic space

Improving government funding processes for civil society

Finland adopted a new Fundraising Act for CSOs in 2020 based on evidence from extensive research (EFA, 2020[213]). In **Germany**, increased funding for activities to prevent extremism and radicalisation was made available (Government of Germany, 2016[214]). In **Lithuania**, the European Social Fund Agency introduced an innovative funding instrument called the Alternative Investment Detector (AID) to support NGOs working in the field of social inclusion (ESFA, 2020[215]). In **Estonia**, returns of income tax can be donated in whole or in part using a simplified procedure in the Tax and Customs Board (*Maksu- ja Tolliamet*) self-service environment e-MTA to a maximum of three associations since 2020 (Government of Estonia, n.d.[216]).

Freedom of association

In **Lithuania**, newly adopted registration rules for non-governmental CSOs revolve around self-declaration and a free-of-charge registration procedure (Government of Lithuania, 2020[217]; 2020[218]). The registry system was streamlined and improved in the **Slovak Republic** to ensure better transparency, in consultation with CSOs (Government of the Slovak Republic, 2018[219]).

Protection against discrimination

In **Belgium**, the Federal Minister for Equal Opportunities announced that civil society and the target groups themselves would be involved in developing a National Action Plan against Racism (NAPAR) (ENAR, 2018[220]). More specifically, the action plan will be developed together with the NAPAR Coalition, a group of 60 CSOs.

Source: (EFA, 2020[213]); (Government of Germany, 2016[214]); (ESFA, 2020[215]); (Government of Estonia, n.d.[216]); (Amnesty International, 2020[221]); (Government of Lithuania, 2020[217]); (Government of Lithuania, 2020[218]); (Government of the Slovak Republic, 2018[219]); (ENAR, 2018[220])

CSOs in the EU play a crucial role in promoting fundamental rights and so contribute to the functioning of democracy. The evidence collected by the FRA shows that it has become harder for them to operate in the past year, despite a range of positive developments. The nature and extent of the challenges CSOs face vary across the EU. Civil society actors need to be able to operate without unnecessary or arbitrary restrictions. In this regard, EU Member states should take measures to create a more enabling environment for CSOs.

5.7. Civic space in Africa: Contribution from the Mo Ibrahim Foundation

Despite significant advances in democracy in Africa in recent decades, restrictions on civic space and wariness among citizens of their governments continue to pose challenges. Box 5.12 shows a general decline in citizen participation, civic rights and inclusion, with COVID-19 exacerbating many existing challenges, such as low trust in political leadership. However, there are also positive drivers of change in several countries (Box 5.12).

Box 5.12. An analysis of civic space in Africa: Contribution from the Mo Ibrahim Foundation

A concerning decline in protection for civic space in Africa

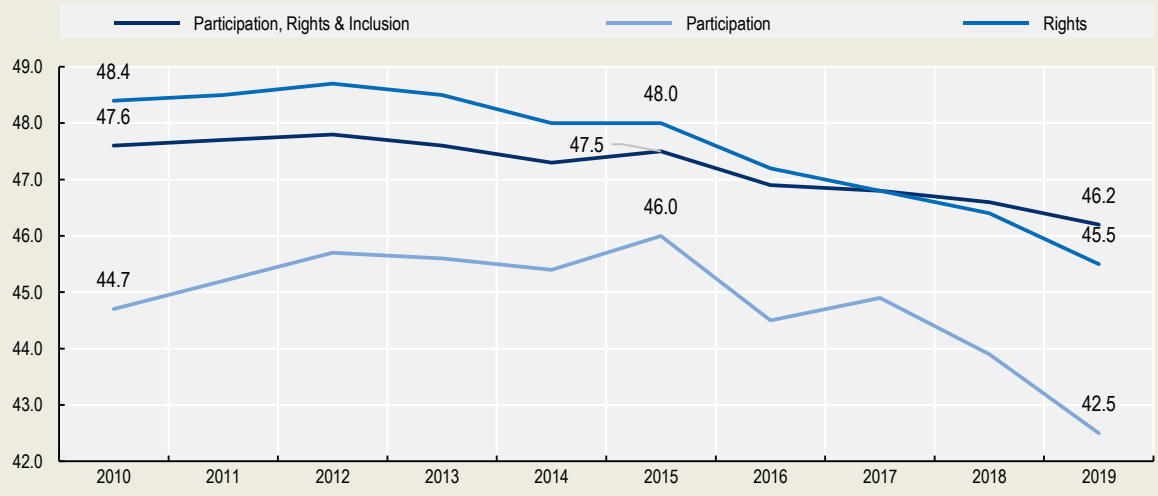
The Ibrahim Index of African Governance (IIAG),[1] which has been published since 2007, assesses governance performance in 54 African countries over the latest available 10-year period. In the case of the 2020 IIAG, this includes the period from 2010 to 2019. The IIAG constitutes the most comprehensive dataset measuring African governance, providing scores and trends for African countries on a whole spectrum of thematic governance dimensions, from security to justice, to rights and economic opportunity, and health and environment.

Participation, rights and inclusion: Most declined and lowest-scoring IIAG category since 2010

Results from the 2020 IIAG paint a bleak picture when it comes to civil rights, liberties and civic space in Africa. The IIAG category assessing these dimensions – Participation, rights and inclusion – is not only the lowest scoring of the 4 categories but also the one that has decreased the most, losing -1.4 points over the last decade (2010-19), with the rate of decline increasing between 2015 and 2019.

Both the underlying Participation and Rights sub-categories have declined over the 10-year and 5-year period with the rate of deterioration accelerating since 2015. Worryingly, between 2015 and 2019, Participation and Rights are the 2 most deteriorated sub-categories (out of 16) in the IIAG (Figure 5.35).

Figure 5.35. Africa: Participation, rights and inclusion category, Participation and Rights sub-categories, average scores, 2010-19



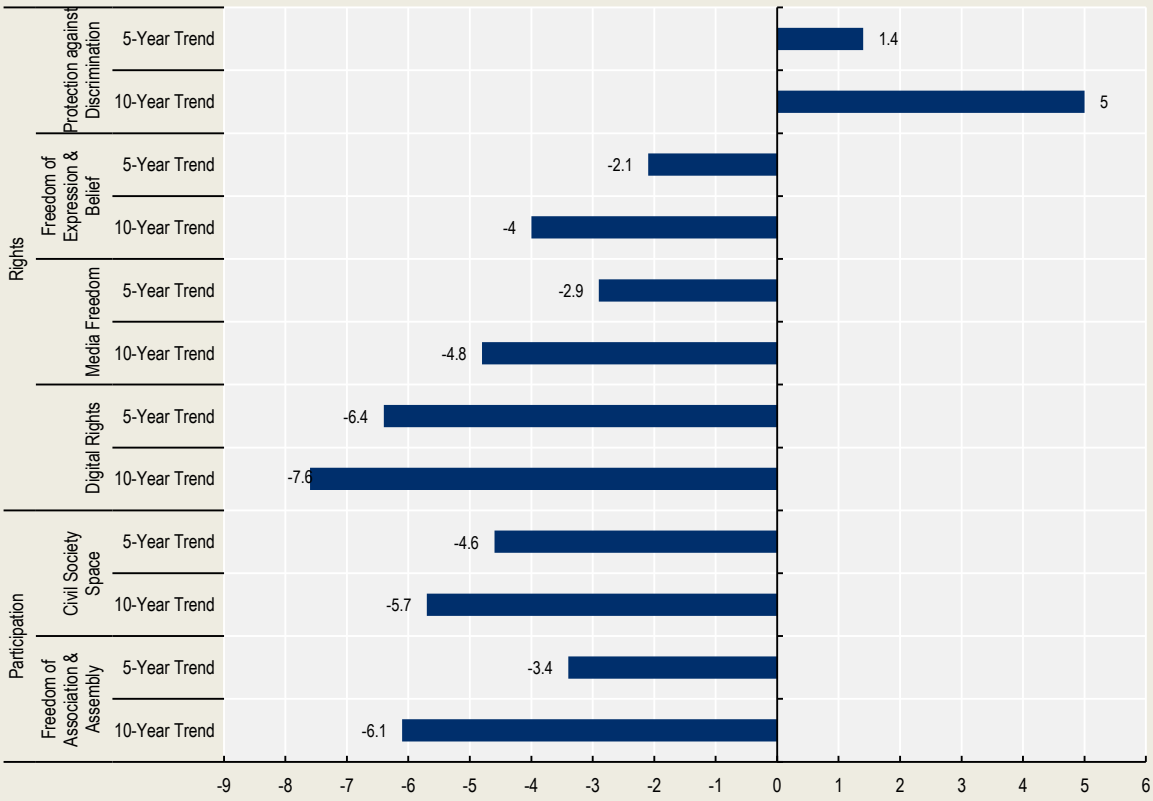
Note: The standardised IIAG index has a scale of 0-100 where 100 is the best possible score.
Source: 2020 Ibrahim Index of African Governance (IIAG).

Closing civic space and restrictions to basic freedoms are the main drivers of continental decline

To assess the drivers of these trends and to provide a more detailed picture of the rights and status of civic space on the continent, the most relevant indicators are the "Freedom of association and assembly and civil society space from the participation" sub-category and the "Digital rights, freedom of expression and belief, media freedom and protection against discrimination from the rights" sub-category.[2]

Worryingly, large downward trends are observed in all these indicators except Protection against discrimination. Across the continent, citizens have seen restrictions on their freedom to associate and assemble and their freedom of expression and belief along with closing civil space and clampdowns on free media and digital space. All of the above indicators from the Participation and Rights sub-categories are among the ten indicators that have declined the most in the 2020 IIAG since 2010. Although the continent has on average made progress in protecting citizens against discrimination, work is still to be done as Protection against discrimination is the lowest-scoring IIAG indicator (out of 79) in 2019 (Figure 5.36).

Figure 5.36. Selected indicator scores for Africa, 5-year and 10-year trends



Note: The above showcases changes in average index scores over time to indicate overall trends.
Source: 2020 Ibrahim Index of African Governance (IIAG).

Deteriorations in most countries, with some positive exceptions

Thirty-eight out of 54 countries have experienced a deterioration in their Participation, rights and inclusion score over the past 10 years and, for 29, this decline has happened at a faster rate between 2015 and 2019. The **Seychelles** is the only country to have improved in all indicators of both the Participation and Rights sub-categories over both time periods. **Gambia** shows a similarly good record apart from declining in Protection against discrimination. Despite declining Freedom of expression and belief and Digital rights over the decade, **Angola** has since 2015 shown improvement in all relevant civil liberties and civic space indicators.

Country cases: Drivers of positive change

Increased freedom of association and assembly, protection against discrimination and wider civil society space are among the main drivers of the **Seychelles**' positive trajectory in Overall governance. In **Gambia**, improvements at the Overall governance level have been driven by the Participation and Rights sub-categories for which the country is the most and second most improved in the decade respectively. Opening up the digital and civil society space as well as increasing media freedom are among the main contributors to **Gambia**'s progress. For **Angola**, the Rights sub-category has driven positive change between 2015 and 2019 in Overall governance the most, in particular, due to improving media freedom, freedom of expression and belief and digital rights.

Country cases: Drivers of negative change

Both **Benin**'s and **Guinea**'s negative overall governance paths have been driven the most by declines in both the Participation and Rights sub-categories. In **Benin**, attacks on freedom of association and assembly, digital rights and the freedom of the media have largely contributed to the Overall governance decline while, in the case of **Guinea**, closing civil society space and limiting digital rights are among the key drivers of the country's governance decline. In **Burundi**, limiting freedom of association and assembly and media freedom are among the main drivers of the country's negative governance trajectory while Liberia's most declined indicator (out of 79) is Digital rights.

Benin has declined in all IIAG indicators relevant to civil liberties and civic space, in particular within the last five years. **Burundi**, **Comoros**, **the Republic of the Congo** and **Liberia** have declined in all civil liberties and civic space-related indicators apart from Protection against discrimination for which there has been no change but the countries already score very low. **Guinea** has limited all civil liberties and civic space between 2015 and 2019 while at the same time receiving the lowest possible score of 0.0 with regard to protection against discrimination.

COVID-19 is exacerbating already alarming trends

The COVID-19 pandemic hit the African continent while it was already set on a negative path of decline in Participation, rights and inclusion over the 2010-19 decade. Analyses from the 2021 Ibrahim Forum Report show that the pandemic has further exacerbated these already alarming trends by justifying repressive measures as a necessity in the response to the public health crisis, for instance introducing excessive measures or keeping emergency provisions in place for an extended time period.

Freedom House has observed a decline in freedom in 23 African countries between 2019 and 2020. For 21 African countries, the decline in their Freedom House score between 2019 and 2020 has been worse than the annual average change in score over the last decade (2011-20). Most declines have happened with regard to freedom of expression and belief.

According to the Pandemic Violations of Democratic Standards Index (PanDem) by Varieties of Democracy (V-Dem Institute), more than two-thirds (38) of African countries have engaged in major violations of media freedom, more than in any other form of democratic violation. In 34 countries, the

media faced limitations when reporting about the government's response to COVID-19. Additionally, journalists and media organisations faced arrests and criminal investigations as well as verbal and physical attacks covering COVID-19 (V-Dem Institute, 2021[222]).

Trust in political leadership on the continent is limited and at risk of being further undermined due to COVID-19

These developments are taking place against the backdrop of low and declining trust in political leaders from Africa's citizens. According to Afrobarometer data covering 34 African countries between 2016 and 2018, only 46.8% of citizens trust their elected leaders, while trust in community leaders, such as traditional (55.8%) and religious (69.4%) leaders is much higher. Overall, however, trust in any leadership has been on the decline. In the previous round of Afrobarometer surveys, conducted between 2014 and 2015, trust levels for political, traditional and religious leaders were all higher (Afrobarometer, 2020[223]).

The wariness of Africans regarding their political leaders is also seen in concerns related to governments' COVID-19 response, with perceptions that governments are abusing power or making opportunistic use of COVID-19, risking to erode public trust further (Afrobarometer, 2020[223]). Afrobarometer surveys across 15 African countries since the start of the pandemic show that over two-thirds (67%) of all respondents believed resources intended for the pandemic response have been lost due to corruption. Mistrust in government abusing their power under the disguise of the pandemic is as high as 70% in Senegal, 68% in Mauritius and 65% in Togo (Mo Ibrahim Foundation, 2021[224]).

A survey carried out by the Mo Ibrahim Foundation Now Generation Network (NGN) in 2021 shows that young Africans have higher trust in civil society and multilateral organisations like the African Union or the World Health Organization than in their national governments for pandemic response and rather disagree that governments have put citizens' interest at the centre of crisis response. More than 90% of respondents also think that corruption and embezzlement are exacerbating the COVID crisis and most of the respondents think that the pandemic has an impact on civil society space, human rights and civil liberties (Mo Ibrahim Foundation, 2021[224]).

A balanced approach to governance is key

The 2020 IIAG findings highlighted that the continent is following an unbalanced path towards governance. Over the past decade, 20 countries, home to 41.9% of Africa's population, while achieving progress in Human development and Foundations for economic opportunity, have at the same time declined in both Security and rule of law and Participation, rights and inclusion. This is particularly concerning as both in 2019 and over the ten-year time series, the indicators showing the strongest relationships with high governance scores span across all four IIAG categories, underlining the need for a balanced approach to governance.

In addition, it is key to underline that some of the most correlated factors with high Overall governance scores pertain to personal liberties, executive compliance with the law, judicial processes, equal opportunities and rights, as well as budgetary management, statistical capacity, quality of education and environmental policies. Apart from Morocco, all of the ten highest-scoring countries for Overall governance also feature in the top ten for the Participation, rights and inclusion category. Similar observations are made at the sub-category level. Eight of the ten best countries at the Overall governance level are among the ten highest-scoring countries in Participation and Rights.

These results are also relevant for governments' approach to dealing with the COVID-19 crisis. To offer citizens an environment conducive to good governance, governments should not neglect civil rights and freedoms and restrict civic space as part of their COVID-19 response when dealing with the health and economic consequences of the pandemic. In doing so, leaders would risk losing even more of citizen

trust as well as aggravating the already unbalanced progress regarding good governance on the continent.

1. The Ibrahim Index of African Governance (IIAG) is a composite index providing a statistical measure of governance performance in 54 African countries. Each IIAG dataset analyses a window of comparable data within a ten-year period. The IIAG governance framework comprises four categories: Security and rule of law; Participation, rights and inclusion; Foundations for economic opportunity; and Human development. These categories are made up of 16 sub-categories, for a total of 79 indicators. The 2020 IIAG is calculated using data from 40 independent African and global institutions. Once collected, raw data for the IIAG are transformed to a standardised range of 0.0-100.0, where 100.0 is the best possible score, before using a simple method of aggregation to calculate the scores. The Overall governance score is the average of the underlying category scores; the category scores are the average of their underlying sub-categories, and the sub-categories are the average of their constituent indicators. For more information, see the 2020 IIAG Report, 2021 Ibrahim Forum report and the latest IIAG report COVID-19 in Africa: A challenging road to recovery.

2. The 2020 IIAG contains 79 governance indicators under four categories: Security and rule of law; Participation, rights and inclusion; Foundations for economic opportunity; and Human development. The Participation sub-category assesses freedom of association and assembly, political pluralism, civil society space and the integrity of elections. The Rights sub-category assesses personal liberties, freedom of expression and belief including academic freedom, media freedom, digital rights and protection against discrimination.

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Notes

1. The OECD Survey on Open Government instrument was developed before the adoption of the DAC Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance in 2021, which defines civil society as "uncoerced human association or interaction by which individuals implement individual or collective action to address shared needs, ideas, interests, values, faith, and beliefs that they have identified in common, as well as the formal, semi- or non-formal forms of associations and the individuals involved in them. Civil society is distinct from states, private for profit enterprises, and the family". CSO is defined as "an organisational representation of civil society and includes all not-for-profit, non-state, non-partisan, non-violent, and self-governing organisations outside of the family in which people come together to pursue shared needs, ideas, interests, values, faith and beliefs, including formal, legally registered organisations as well as informal associations without legal status but with a structure and activities" (OECD, 2021[4]).

2. European Court of Human Rights, Croatian Golf Federation v. Croatia, Application no. 66994/14, judgment of 17 December 2020, paras. 96 and 100. See also Council of Europe, Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, 10 October 2007, para. 44, which also in principle permits the dissolution of non-governmental organisations based on bankruptcy, prolonged inactivity or serious misconduct.

[3] The Electoral Act defines "political purpose" as "any campaign conducted with a view to promoting or procuring a particular outcome in relation to a policy or policies or functions of the Government or any public authority". The General Scheme of the Electoral Reform Bill, which introduced a range of reforms in January 2021 acknowledged that, "[i]t should be noted that the definition of political purposes is the subject of concern for a number of civil society groups who contend that it is too broad and adversely affects the ability of third parties in raising funding in support of undertaking their ordinary day-to-day advocacy work" (Government of Ireland, 2021[229]).

[4] Article 8 of UN General Assembly *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, adopted by General Assembly Resolution 53/144 of 9 December 1998. See also: Kiai (2012[8]), para. 73; Council of Europe (2007[9]), paras. 9, 14 and 55; OSCE/ODIHR/Venice Commission (2015[10]), paras. 102 and 183 and following.

[5] The V-Dem Institute's indicator on CSO repression is based on the evaluation of multiple ratings provided by country experts, of whom about 85% are academics or professionals working in media, or public affairs (e.g. senior analysts, editors, judges); about two-thirds are also nationals of and/or residents in a country and have documented knowledge of both that country and a specific substantive area.

[6] For more information on the Expert Group against SLAPP, see https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?do=groupDetail.groupDetail&groupID=3746.

[7] The "Facilitators Package" refers to Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence and Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.

[8] **Slovenia** is kindly asked to validate (Law on Non-Governmental Organisations was passed on 23 March 2018).

[9] However, due to COVID-19, gambling tax returns were affected (Government of Estonia, 2022[226]).

[10] In **Finland**, gains from gambling activities decreased due to the pandemic, highlighting the need for a sustainable funding model that can withstand shocks and crises (OECD, 2021[142]). In 2021, the government compensated the losses with funding from the state budget (EUR 349 million).

[11] The OECD Development Assistance Committee (DAC) is an international forum of many of the largest providers of aid, with the overarching objective of promoting development co-operation to contribute to the implementation of the 2030 Agenda for Sustainable Development. DAC's 30 members are: Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, the United States and the European Union (OECD, 2018[182]).

[12] The **Dominican Republic** established a single entity (*Centro Nacional de fomento y promocion de las asociaciones sin fines de lucro*) within the Ministry of Economics, Planning and Development, with a mandate to register CSO applications and transfer them to the relevant ministries.

[13] **Kazakhstan** established a single Civil Initiatives Support Center under the Ministry of Information and Public Development, with the purpose of allocating government and non-government grants to CSOs to "implement the social projects of the state".

[14] While desk research indicates that many respondents also restrict funding from abroad in anti-money laundering or anti-terrorism laws, these are not reflected in Figure 5.21. According to the Peace Research Institute Oslo, a total of 58 countries, including some OECD Members, had restrictions in place on CSOs' ability to access foreign funding as of 2019 (Baldus, 2019[228]).

[15] The Special Rapporteur on the promotion and the protection of human rights and fundamental freedoms while countering terrorism highlighted this phenomenon in a 2019 report dedicated to the impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors. The report noted that 66% of relevant communications sent to her office between 2012 and 2018 were related to the abusive use of counter-terrorism laws to curb civil society freedom (Ní Aoláin, 2019[153]). Reports show that additional registration requirements, cumbersome administrative processes, increased surveillance and sometimes criminal prosecutions have been imposed on CSOs in the name of compliance with counter-terrorism regulations (Ní Aoláin, 2019[153]).

[16] The UN Counter-Terrorism Implementation Task Force (CTITF) Working Group on Tackling the Financing of Terrorism noted in 2009 that the actual percentage of NPO financial flows abused for terrorism financing was very small and recommended that states "avoid rhetoric that ties NPOs to terrorism financing in general terms because it overstates the threat and unduly damages the NPO sector as a whole" (CTITF, 2009[230]).

[17] The **United Kingdom**'s *National Risk Assessment of Money Laundering and Terrorist Financing for 2020* concluded that "consistent with the findings of the previous NRA, this NRA assesses that the NPO sector is not attractive to money laundering and assesses the risk to be low" and "overall, the risk of terrorist financing through the NPO sector continues to be assessed as low" (HM Treasury, 2020[159]). These conclusions are similar to the findings of the 2020 national risk assessment conducted by the Ministry of the Interior of **Germany**, which stated that "the risk that a legitimate NPO is being abused for purposes of terrorist financing is considered medium-low", adding that "there are hardly any cases of legitimate NPO being abused to finance terrorism" (BMI, 2020[160]).

[18] Requests for additional information can include the identification of beneficiaries of aid, which can be difficult to provide for humanitarian activities targeting vulnerable populations. Many CSOs, especially those that work in, on and around conflict zones, have been affected by these stringent requirements, undermining relief and development work in these regions and thus posing an additional threat to already vulnerable populations (Hayes, 2017[158]).

[19] Interview, CSO operating in the MENA region, 22 February 2021. Some of these CSOs were able to reverse the decision after sending a complaint to the relevant bank.

[20] In October 2020, **Morocco**, the **Netherlands** and the UN Office of Counter-Terrorism (UNOCT) launched an initiative on "Ensuring the Effective Implementation of Countering the Financing of Terrorism Measures While Safeguarding Civic Space" to strengthen the dialogue and co-ordination among counter-terrorism and counter-financing of terrorism actors, the UN, governments, financial intelligence units, civil society, the private sector and supervisory authorities (GCTF, 2020[173]). Another example is the Stakeholder Dialogue on De-Risking set up by the World Bank and the Association of Certified Anti-Money Laundering Specialists in an effort to address financial exclusion, which comprised roundtables between US regulators, NPOs and banks to produce guidance papers on due diligence approaches (World Bank/ACAMS, 2017[172]).

[21] Through this partnership, the country managed to become compliant with Recommendation 8 in 2019 and was removed from the FATF's "high-risk jurisdiction" list (Global NPO Coalition on FATF, n.d.[225]).

[22] Sustainable Development Goal 17 (Strengthen the means of implementation and revitalise the Global Partnership for Sustainable Development) considers multi-stakeholder partnerships as a goal in themselves. Partnerships are recognised as important vehicles for mobilising and sharing knowledge, expertise, technologies and financial resources to support the achievement of the sustainable development goals in all countries, particularly developing countries.

[23] The OECD notes that an "activity is characterised as aid to CSOs when the core contributions and pooled programmes and funds are programmed by the CSOs and include contributions to finance the CSOs' projects. An activity is characterised as aid through CSOs when funds are channelled through CSOs and other private bodies to implement donor-initiated projects" (OECD, 2021[227]).

[24] See in particular reports from the EU Agency for Fundamental Rights (FRA) (2017[66]; 2018[232]; 2020[231]; 2020[233]; 2021[211]).

[25] See EU Agency for Fundamental Rights (2021[12]) and the FRA civic space consultations (2020, 2019, 2018) at https://fra.europa.eu/en/cooperation/civil-society/civil-society-space.

[26] See the FRA civic space consultations (2020, 2019, 2018) at https://fra.europa.eu/en/cooperation/civil-society/civil-society-space.

[27] See, for example, the sCAN Project (n.d.[234]).

[28] See the FRA civic space reports (2021 and 2018) at https://fra.europa.eu/en/cooperation/civil-society/civil-society-space.

Annex A. Methodology

This OECD report, *The Protection and Promotion of Civic Space: Strengthening Alignment with International Standards and Guidance*, is based on data collected through the 2020 OECD Survey on Open Government (hereafter "the Survey") and desk research. The Survey was primarily aimed at monitoring the implementation of the 2017 OECD Recommendation of the Council on Open Government. The Survey was sent to 67 OECD Members and non-Members in November 2020 (43 Adherents to the Recommendation and 24 non-Adherents).[1] It builds on the mandate of the OECD Public Governance Committee and draws on the OECD Civic Space Scan Analytical Framework in the Area of Open Government (GOV/PGC/OG(2020)6).

The Survey included four complementary sections:

- The governance of open government (Section 1).
- The open government principle of citizen and stakeholder participation (Section 2).
- Civic space as an enabler of open government reforms (Section 3).
- The open government principle of transparency and access to information (Section 4).[2]

This first OECD report on the protection and promotion of civic space is primarily based on data gathered in Section 3 and complemented with data gathered in Section 4.

A total of 51 OECD Members and non-Members (of which 32 are OECD), (Table A A.1) responded to Section 3 of the Survey and 51 responded to Section 4 (of which 33 are OECD Members) between February 2021 and May 2022, giving a total of 52 survey respondents overall. An OECD team validated the data over the same period and the data reflect the situation as of June 2022.

Table A A.1. OECD Members and non-Members referred to in this report

OECD Members	ISO code	Non-Members	ISO code
Australia	AUS	Argentina	ARG
Austria	AUT	Armenia	ARM
Belgium	BEL	Brazil	BRA
Canada	CAN	Cameroon	CMR
Chile	CHL	Dominican Republic	DOM
Colombia	COL	Ecuador	ECU
Costa Rica	CRI	Guatemala	GTM
Czech Republic	CZE	Honduras	HND
Denmark	DNK	Indonesia	IDN
Estonia	EST	Kazakhstan	KAZ
Finland	FIN	Lebanon	LBN
Germany	DEU	Morocco	MAR
Greece	GRC	Panama	PAN
Ireland	IRL	Peru	PER
Israel	ISR	Philippines	PHL
Italy	ITA	Romania	ROU
Japan	JPN	Tunisia	TUN

OECD Members	ISO code	Non-Members	ISO code
Korea	KOR	Ukraine	UKR
Latvia	LVA	Uruguay	URY
Lithuania	LTU		
Mexico	MEX		
Netherlands	NLD		
New Zealand	NZL		
Norway	NOR		
Poland	POL		
Portugal	PRT		
Slovak Republic	SVK		
Slovenia	SVN		
Spain	ESP		
Sweden	SWE		
Republic of Türkiye	TUR		
United Kingdom	GBR		
United States	USA		

Note: OECD Members: 33, Non-Members: 19.

For the purposes of this report, Survey respondents were divided into regions. The majority of survey respondents are based in Europe (23)[3] and Latin America and the Caribbean (LAC)[4] (13), with a number of responses coming from other geographical regions, namely in Asia and the Pacific (6),[5] Africa (3),[6] the Middle East (3),[7] Central Asia (2)[8] and North America (2).[9] The report's overall analysis focuses on civic space in the respondents to the Survey but is informed by global trends.

The large sample sizes from Europe and LAC permitted a focus on regional trends and Chapter 5 presents a series of comparative graphs showing different approaches to supporting civil society in the two regions.[10] Smaller samples from other regions did not permit a similar regional trend analysis of OECD data. However, a contribution from an external contributor, the Mo Ibrahim Foundation, provides a detailed regional analysis of civic space in Africa (Section 5.7 in Chapter 5).

Relevant considerations

The aim of relevant sections of the Survey was to understand the legal, policy and institutional frameworks and practices that protect and promote civic space and citizen and stakeholder participation in decision and policy making at the national level. More specifically, it aimed to provide a baseline of information on government practice in relation to protecting and promoting civic space, in addition to identifying good practices, trends and discussing implementation challenges.

The resulting baseline of government data on which the report is based provides a unique perspective on civic space that complements the rich literature, data and analysis that are available from civil society. The data are presented as follows:

- **Chapter 2:** The protection and promotion of civic freedoms (e.g. freedoms of expression, peaceful assembly, association and the right to privacy).
- **Chapter 3:** Protecting and promoting the right to access information.
- **Chapter 4:** Media freedoms and civic space in the digital age.
- **Chapter 5:** Fostering an enabling environment for citizens and civil society to effectively participate in public life.

The impact of the COVID-19 pandemic on civic space is discussed as a cross-cutting issue throughout the report, as are the themes of equality, inclusion, non-discrimination and democratic participation.

Based on the Survey, the report conducts an exploratory analysis across a wide variety of themes, while acknowledging that complex implementation challenges cannot be grasped through a limited number of survey questions. Given this limitation and the need to focus on gathering quantifiable and verifiable data to facilitate the OECD's rigorous data validation process, the Survey focused on *de jure* aspects of civic space. The data provided by governments are complemented with data and analysis from independent sources (e.g. civil society organisations [CSOs], research institutions, United Nations [UN] bodies, regional human rights bodies and academic sources). Data and analysis from sources other than governments are clearly indicated as such throughout the report.

The Survey and report benefitted from inputs from different teams within the OECD Public Governance Directorate, including teams working on digital government, gender, rule of law, policy coherence for sustainable development, public integrity, youth, and governance indicators and policy evaluation, in addition to other OECD directorates working on development cooperation, science, technology and innovation, and the Office of the Secretary-General. Members of the Observatory of Civic Space Advisory Group, the European Union (EU) Agency for Fundamental Rights (FRA), the Office of the United Nations High Commissioner for Human Rights (OHCHR) and Access Info also provided comments on the Survey.

Crucially, survey respondents were explicitly requested to provide data based on national legal frameworks that were applicable in normal circumstances, not emergency or temporary measures, e.g. due to the onset of COVID-19. This is because, when the Survey was drafted in 2020, temporary emergency measures had just been introduced in many countries. Recognising that in some respondents, measures are in fact still in place or have been partially or fully reintroduced, discussions on the impact of the pandemic are mainstreamed throughout the report and addressed in dedicated sections (see in particular: Section 2.1.5 in Chapter 2 on COVID-19-related changes to legal frameworks in OECD Members; Section 3.3 in Chapter 3 on trends, challenges and opportunities for strengthening access to information; and Section 5.3.2 on good practice in supporting CSOs in the context of COVID-19 and Section 5.6 in Chapter 5 on key challenges and restrictions for CSOs operating in the EU during the pandemic.)

The recommendations and suggested measures that are included in the report are drawn from a variety of sources, both descriptive (e.g. government data provided by respondents to the OECD Survey, analysis from CSOs and academia, good practices) and prescriptive (e.g. existing OECD standards, international standards). Sources are clearly identified throughout the text.

Given the complexity of the Survey and the fact that the COVID-19 crisis unfolded in parallel to the data collection process, some respondents did not provide answers to all questions. Wherever a respondent did not provide data on a specific question, the OECD either undertook desk research to fill the gap or noted the absence of data under the respective figure and adjusted the calculation baseline. Respondents were requested to validate the data based on desk research.

The report includes contributions by Reporters Without Borders (RSF), the EU Agency for Fundamental Rights (FRA), the Mo Ibrahim Foundation, the International Center for Not-for-Profit Law (ICNL) and the European Center for Not-for-Profit Law (ECNL).

Structure of relevant sections of the Survey on Open Government

Section 3 of the Survey included 33 questions for national governments, divided into 3 sub-sections – civic freedoms, digital freedoms and the enabling environment for CSOs – based on the OECD analytical framework for civic space. Section 4 examined access to information (ATI) in detail, as a core component of protected civic space. This section included 29 questions, divided into 3 sections on relevant legal frameworks, implementation of ATI laws and institutionalisation and governance of ATI laws.

Wherever possible, the report complements aggregate data with boxes and examples of good practices to reflect different country experiences, as well as background and context on specific topics. While it was not possible to include all insights and practices in the report, all input was thoroughly assessed to help contextualise the findings and interpret the data.

The data cleaning and validation process

In 2021, the OECD Secretariat conducted several rounds of validation with the survey respondents. The large size of the Survey and the onset of COVID-19 during the data collection process presented challenges and not all countries were able to respond to the follow-up, or only responded in part.

Some of the graphs and tables in the report go beyond the questions asked in the Survey and are based on a detailed analysis of laws and strategies that were provided as part of the Survey response process. Wherever this is the case, it is clearly indicated as such. On some issues, a qualitative analysis of data is presented based on a random selection of laws or policies from respondents.

Part of the data for Japan is based on the OECD Secretariat's research/secondary research in agreement with Japan.[11]

Notes

[1]. This document as well as any data and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

[2] The questionnaire was piloted in 2020 by Brazil, Denmark, Finland and Korea.

[3] Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Ireland, Italy, Latvia, Lithuania, the Netherlands, Norway, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden, the UK, Ukraine.

[4] Argentina, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Panama, Peru, Uruguay.

[5] Australia, Indonesia, Japan, Korea, the Philippines, New Zealand.

[6] Cameroon, Morocco, Tunisia.

[7] Israel, Lebanon, Türkiye.

[8] Armenia, Kazakhstan.

[9] Canada and the United States.

[10.] Data points that were analysed on other aspects of civic space did not reveal differences of approach between Europe and LAC and are therefore not featured in this report.

[11.] The following survey answers for Japan are based on OECD desk research: Q1 on the legal basis for civic freedoms/rights and for their legally mandated exceptions (Q1.2); Q3 on defamation; Q7 on data protection; Q19 on CSO registration; and Q27 on special tax regimes to support CSOs' financial sustainability.

The Protection and Promotion of Civic Space

STRENGTHENING ALIGNMENT WITH INTERNATIONAL STANDARDS AND GUIDANCE

The past decade has seen increasing international recognition of civic space as a cornerstone of functioning democracies, alongside efforts to promote and protect it. Countries that foster civic space are better placed to reap the many benefits of higher levels of citizen engagement, strengthened transparency and accountability, and empowered citizens and civil society. In the longer term, a vibrant civic space can help to improve government effectiveness and responsiveness, contribute to more citizen-centred policies, and boost social cohesion. This first OECD comparative report on civic space offers a baseline of data from 33 OECD Members and 19 non-Members and a nuanced overview of the different dimensions of civic space, with a focus on civic freedoms, media freedoms, civic space in the digital age, and the enabling environment for civil society. It provides an exhaustive review of legal frameworks, policies, strategies, and institutional arrangements, in addition to implementation gaps, trends and good practices. The analysis is complemented by a review of international standards and guidance, in addition to data and analysis from civil society and other stakeholders.

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