

## Commentary

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# The Government – Civil Society Relationship Dichotomy: The Case of Germany

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**Abstract:** While intergovernmental bodies are increasingly worried about their members not upholding basic principles like the rule of law, national governments are reluctant to grant CSOs the independence needed to pursue their mission. This is particularly visible when it comes to government grants to CSOs. This paper presents Germany as a case study.

**Keywords:** rule of law; Germany; legal framework

## 1 Introduction

In its 2025 Rule of Law Report to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions, the European Commission, not for the first time, reprimanded a number of member states on account of various deficiencies. Given that the members of the European Union are generally thought of as having attained their membership because of their adherence to the principles of human and civil rights, the rule of law, and democracy, this may seem surprising. But as the case of Hungary, and for some years of Poland has shown, democratically elected governments may indeed fall short of upholding the principles that the country had committed itself to uphold when joining the Union. However, while these cases have become widely known, other countries too have failed in developing adequate legal frameworks and administrative procedures, among them a number of long-standing members and paragons of Western European ideals.

The European Union worries that these failures mark a backsliding of democracy, and assigns a special and important role to civil society in this context. “Civil Society organisations [...] play an important role in fostering the rule of law on

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the ground.” (European Commission 2025, 6). This is in line with a range of views presented by other intergovernmental bodies. OECD, the international Organisation for Economic Cooperation and Development, published a document titled, *Enabling Civil Society* in 2024, and stated: “CSOs are important agents of change. They have a vital role in bringing the voices of those on the frontlines of poverty, inequality and vulnerability into development and humanitarian processes, thus helping to meet the 2030 Agenda promise to leave no one behind. Enabling environments for civil society and effectiveness principles are necessary if CSOs are to maximise their contributions to development.” (OECD 2024, 3, see Bozzini and Dapena 2025). Also, at a high level conference organized by the Finnish government to mark the 50th anniversary of the signing of the CSCE Final Act on 1st August, 1975, the specific role of civil society in advancing the OSCE’s principles and commitments was highlighted.

It would seem, however, that a marked contrast exists between the positions entertained by intergovernmental organisations and by many of their member states. And while it is obvious and well known that in Hungary, not to speak of Russia, Belarus and others, the position of independent CSOs has become increasingly difficult and that governments in these countries have attempted to create a system of allied and loyal non governmental organisations, the dividing line between government organised NGOs (GONGOs) and independent CSOs may also be becoming increasingly blurred in other European countries like Germany, government funding of CSO activities providing the central argument. With CSOs being appraised for accepting government funding in order to promote the government agenda and for meddling in politics in general, governments in turn are being held responsible for making undue use of the precarious financial situation of many CSOs and actually blackmailing them to uphold and support government policies, thus violating basic principles of the rule of law by undermining the principles of freedom of speech and freedom of association by making grants conditional to supporting government measures and positions.

In actual fact, this also affects funding by the European Commission itself, as was made clear in a report on the ‘Transparency of EU funding granted to NGOs’ published by the European Court of Auditors in 2025 (European Court of Auditors 2025). The report also touched on a point that had always been disputed, the EU generally considering CSOs to include those the purpose of which was to promote their members commercial interests. But although the report made a point of saying it was directed at the grantor, not the grantees, it was used by some members of the European Parliament to call for a special investigation into the behaviour of those CSOs/NGOs who had accepted EU funding. The MEPs concerned are members of the German CSU party, and their proposal is part of a German battle fought by members of several parties against the notion of civil society acting in the public space. MEP Monika Hohlmeier, parliamentary secretary of the CDU/CSU group in the European

Parliament, remarked: “Our laborious, long-standing work on the Budgetary Control Committee, investigating problematic EU Commission contracts with NGOs, is finally bearing fruit. [...] The acronym NGO must not be a blank cheque for arbitrary and unregulated use of taxpayers’ money.” (Herbst and Hohlmeier 2025)

In this paper, recent developments in Germany are presented as a case study on the ambivalence of government – civil society relations. In the case of Germany, the European Commission recommended that the government “take steps to adapt the tax-exempt status for non-profit organisations with a view to address the challenges which the currently applicable rules present for the organisations’ operation in practice, taking into account European standards on funding for civil society organisations” (European Commission 2025, 2). It will be demonstrated that regulation in rule of law terms and government grant making may point in different directions of a government – civil society relationship.

## 2 The Allegation

The allegation goes as follows: Civil society organisations (CSOs)<sup>1</sup> are interfering too heavily in politics and, because they are predominantly recognised by the state as “tax-privileged”, are exceeding the boundaries of an alleged requirement for political neutrality. They are accused of violating the conditions set out in the German Fiscal Code (Abgabenordnung) for the granting of such “privileges”; indeed, they are said to use state-funded grants to organise protests against the very institutions that provide these funds. This accusation is primarily voiced from the right of the political spectrum. “All funding of non-governmental organisations (NGOs) by the Federal Government must be reviewed. No state financing of leftist front organisations,” reads a line from the CSU’s 2025 election manifesto (CSU 2025, 21), thus making it quite clear that the battle is fought on party political grounds, not as a matter of principle. A widely publicised parliamentary inquiry by the CDU/CSU parliamentary group to the (then incumbent) federal government dated 24 February 2025, stated: “In the view of the questioners, the protests against the CDU of Germany constitute deliberate party-political influence immediately prior to the upcoming federal election, which is no longer covered by charitable law.” (Deutscher Bundestag, 1) Björn Harms wrote: “In reality, what gathers under the cloak of the term [civil society] are primarily left-

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<sup>1</sup> In the relevant documents and publications, these organisations are usually referred to as NGOs (non-governmental organisations). This term is misleading. Originally coined in 1948 in the context of accrediting organisations to the United Nations Economic and Social Council (ECOSOC), it is now deliberately used in a disparaging sense (“non-governmental organisation = not a proper dialogue partner”).

wing lobby groups, dependent directly on the state's feeding troughs. [...] Despite their technically private legal form, these associations and lobby groups are routinely deployed as instruments of state policy." (Harms 2025, 27)<sup>2</sup>

Even within conservative circles, the allegation of CSOs interfering too heavily in politics remains contentious. That it targets progressive politically active CSOs is hardly surprising – these actors often identify political developments earlier and therefore appear more progressive, which does not suit those who seek to conserve the status quo or restore what has been lost. However, the allegation strikes at the heart of civil society's self-conception, which explicitly includes the active shaping of the commonwealth, a role protected by the catalogue of fundamental rights enshrined in the German Constitution. The allegation extends even to religious communities and serves two purposes: first, it seeks to exclude all but political parties from participating in the political decision-making process. This is not confined to Germany. This wording reveals the second aim: it is implied that those in power use public funding as a tool to preserve their power. This has always been, and still is, the case. But to derive from this a wholesale attack on civil society is unjust, shortsighted, and counterproductive in times of societal crisis.

### 3 Why Attack Civil Society?

It is the watchdog role even more than the advocacy role assumed by some CSOs that is contested by political parties. They do not want oversight – they want to be the overseers. But it is clear that political competition is being waged at the expense of a third party that has limited ability to defend itself and has obvious and very tight restrictions in attaining the funding deemed necessary to pursue its mission. The funding policies at the heart of the accusations are crafted by political authorities and administrations – not by the CSOs themselves. Funding programmes, and particularly financial regulations (such as the Federal Budget Code), funding guidelines, and instructions for expenditure verification are all set solely by political and administrative bodies. CSOs that are even tangentially linked to public funding can attest to the strict, burdensome, and increasingly narrow regulatory framework they must navigate. If any party is to blame for misuse of funds for political purposes, it is not the CSOs, but the authorities coercing them into lobbying for pre-planned measures. Attacking those who are systemically precarious and forced to compromise in order to fulfil their mission, and portraying them as lawbreakers, is an abuse of power. For

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<sup>2</sup> According to the dust jacket, Harms completed a traineeship with the conservative weekly *Junge Freiheit* and now works for the online medium NIUS, which is categorised as right-wing populist and right-wing conservative.

democratic parties to adopt such arguments is playing with fire. And the fact that political parties are adopting strategies laid out by someone like B. Harms who is linked to the far-right scene, is cause for deep concern.

## 4 Who is Affected?

The attack aligns with other restrictions and accusations seen globally: in Hungary and Russia, “foreign agents” are accused of political interference; in the USA, ideological accusations such as “woke” or “DEI” are accompanied by sweeping funding cuts. In Germany, civil society comprises around 700,000 collective actors. Most are largely unaffected – focused as they are on services, mutual aid, or community-building. The majority fund their activities through membership fees, philanthropic donations, corporate sponsorship, and foundation endowments. Some, like sports clubs, receive public subsidies due to the broad societal consensus around their public benefit. As long as federal, state, and municipal authorities, and the state social security system honour their contracts and compensate CSOs (such as welfare organisations or school operators) fairly, the major service-providing CSOs are also not targeted. However, looming fiscal constraints may put these relationships to the test. Public authorities have a record of giving preference to their own interests, programmes, and staff, to mean that non-state contractors habitually experience budget cuts first. Furthermore, the line between sovereign and contractual action is often blurred to the advantage of authorities. The same applies to CSOs that have become state partners through outsourcing – e.g. in development cooperation.

The current allegations largely affect a relatively small segment of CSOs – those that irritate political parties and the state. This may change if the federal government were to challenge the fundamental principle that non-profit bodies, which do not distribute profits and serve the common good, are treated differently from for-profit companies and individuals for tax purposes. Terms like “privilege” or “tax benefit”, relics from the nomenclature of pre-democratic authoritarianism, are misleading, as they imply a discretionary favour rather than legal differentiation based on the rule of law.<sup>3</sup> Nonetheless, all CSOs must engage with these allegations – because they could be affected next, or because some criticisms, even when targeting specific organisations, may ultimately refer to civil society as a whole. For instance, the aforementioned Harms’ definition (“Despite their technically private legal form [...] instruments of state policy”) applies equally to the Goethe-Institute, formally a CSO that serves the German government’s international cultural and educational aims, and

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<sup>3</sup> Recently, U. S. President Donald Trump has spoken of a form of privilege which he himself may grant or revoke when taking action against universities or organisations.

many other CSOs subsidised or compensated by tax money over decades, due to public interest and parliamentary decisions.

## 5 The GONGO Issue

There can be no doubt that governments including the federal and state governments in Germany have on occasion adopted a practice of creating bodies that are CSOs in form but are totally controlled by government either by special provisions in their deeds, by-laws or articles of association, or, more frequently, by purse strings. The Goethe Institute is a case in point. On the other hand, some civic activities were begun and can only exist due to funding agreements with the government. Indeed, in some cases, individuals who had successfully lobbied the government to support a particular activity and provide a living to the originator, had then to create an NGO in order to be eligible for government funding. On the other hand, government had on occasion sought to create a non-governmental organisation to execute a pre-defined government programme. These organisations are intertwined with the state and may in some cases be termed GONGOS.

However, there is a caveat: in as far as services in health care, education, humanitarian aid, and relief are offered by CSOs and funded by the government (or the public social security system), these CSOs cannot automatically be classified as GONGOS, although this occasionally happens in public debates. Whether a CSO may be termed a GONGO, thus depends on a number of criteria, funding being one, decision making processes being another, and a track record of independent opinion being a third. Indeed, Germany's big welfare organisations, three out of six of whom are faith-based, although depending to a large degree on funding and performance contracts with public bodies, have recently adopted a more independent and outspoken stance on issues connected to their mission.

## 6 What Needs to be Done?

Recent developments have triggered a notable surge in solidarity within civil society. Its self-understanding as a shared, independent, autonomous, and clearly defined arena vital to democratic resilience has grown stronger. Civil society must now decide how to defend itself against attacks and contribute constructively to solutions. It must move beyond mere complaint and develop a joint stance to assert its place in the public sphere – constructively and independently. The state's obligation to fund independent CSOs through statutory mechanisms is not in question. But some CSOs have become overly dependent on these mechanisms and vulnerable to coercion.

They must re-evaluate their watchdog role and reduce their susceptibility to attack, ensuring they can act from a position of independence in defence of democratic morality. The much-derided German corporatism – close state-CSO entanglement – has reached its limits. Civil society must seek greater financial independence to escape the pressure of an overbearing state and party system. This is not a question of permission, but of will.

Specific Goals for Civil Society and the State may be phrased as follows:

- (1) CSOs should be committed to promoting the public good in the sense of democratic morality, and not pursue party-political objectives or call for support of specific parties.
- (2) CSOs should voluntarily refrain from using public funds – received through contracts or grant agreements – for public protests for or against government action.
- (3) CSOs should not be bound by a vague requirement of “political neutrality”, but rather be empowered to contribute actively to democratic solidarity.
- (4) Civil society should join the debate on their independence and help make a distinction between civil society organisations proper and GONGOs, even if these meet the criteria of CSOs.
- (5) Civil society should also be quite clear that CSOs that exist to promote the commercial interests of their members do not classify as NGOs in the strict meaning of the word.
- (6) Donor associations, foundations, and individual donors should prioritise supporting CSOs over supporting public institutions or municipal projects, as CSOs often have a greater need.
- (7) CSOs must advocate for charity law to be updated to meet the needs of a 21st-century open society, ensuring the principle of the rule of law replaces the outdated notion of state “privilege”.
- (8) This reform must prioritise ethical commitment to a free society and the principles of human and civil rights, the rule of law, and democracy, over an expansive list of charitable purposes.<sup>4</sup>
- (9) Civil society, with support from academia, advisory institutions, and non-state funders, must initiate a creative process to diversify and improve funding models – both through self-generated income and innovative fundraising. Independence through a mixed funding model should be the goal.
- (10) CSOs must learn to highlight the issues they address rather than their own needs and achievements in public communication.

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<sup>4</sup> Swiss charity law completely forgoes specifying individual charitable purposes and ties tax assessment solely to the constitutional goals of the Swiss Confederation and to formal criteria, such as the non-distribution constraint.

- (11) Private funders must learn that supporting ongoing processes, including fundraising itself, is often more impactful than funding isolated projects.
- (12) All stakeholders must work to raise public awareness – through media and communication – about civil society’s vital role in the public sphere.

## 7 Conclusions

In times like these, the soft power<sup>5</sup> of civil society plays a crucial role in maintaining democracy’s resilience as a political and social model. Referring to the political scientist cum politician Ralf Dahrendorf, the academic Helmut Anheier asserted: “Organised civil society will have to moderate the transnational conflicts of the early 21st century to counteract the overload of state and market in a globalised world.” (Anheier 2012, 421). For this, it needs support – not obstruction.

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<sup>5</sup> The term soft power was coined by American political scientist Joseph Nye (1937–2025).