

Civil Society in Germany: a Report on the General Conditions and Legal Framework

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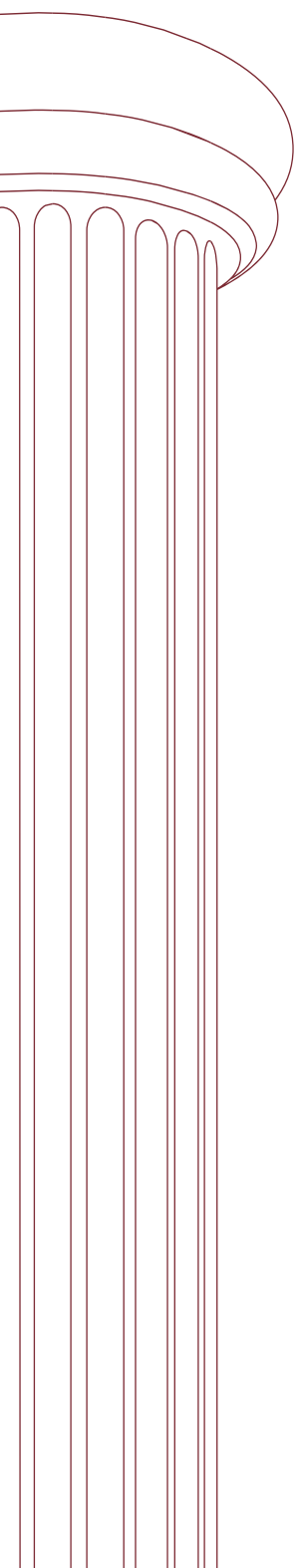
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MAECENATA



Siri Hummel, Laura Pfirter and Rupert Graf Strachwitz

Civil Society in Germany

A Report on the General Conditions and Legal Framework

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The Maecenata Institute for Philanthropy and Civil Society, Berlin, was founded in 1997 as an independent academic institution. The Institute's mission is to promote knowledge and understanding of civil society and the so-called third sector, civic engagement, foundations and philanthropy through research, academic teaching, documentation and information as well as to promote an exchange between academia, politics and practice.

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Abstract

The general political and social conditions for civil society in Germany are favourable.¹ With its democratic, federal system of government and its political culture, Germany offers auspicious conditions for an active civil society, even if current as well as longer-term developments pose a challenge to citizen participation.

The rule of law and the protection of human and civil rights, especially the freedom of association and of assembly, all of which are crucial factors for civil society, are in place. The information rights of those in power vis-à-vis the citizens are legally guaranteed, albeit often characterised by a mentality of goodwill. The media system, with its mix of public and private providers, allows for independent journalism. However, the increasing usage of different social media platforms encourages the division of the public into sub-groups and the compartmentalisation into separate information spaces. A common public sphere, which also allows civil society action to become more visible, only exists to a limited extent. Its visibility within the aforementioned sub-groups of the public therefore varies greatly, and in some cases civil society even assumes the position of a hated figure in spaces of right-wing populist discourse. The social inequality that drives this division is not without its problems, despite the country's overall high economic performance.

The public perception of civil society is characterised by a diffuse image of who or what it is. It generally carries a positive connotation because of its orientation towards the common good and, as one interviewee put it, its potential to make life better. Civil society organisations (henceforth CSOs) as a whole score high trust ratings among the public.

The societal discussion about the role of civil society in the political will and decision-making process is one of the most important current debates. This affects large parts of civil society, not only the politically active watchdogs, but also supposedly 'apolitical' sports clubs or service-providing welfare associations that wish to reflect upon and adopt a social position in light of political polarisation. It is a contested and controversial space. So far, CSOs have had only limited parliamentary consultation rights, although in recent years civic consultation opportunities – for example in the form of citizens' petitions and referenda – have increasingly gained traction at various political levels. There are few institutional participation formats for CSOs, and cooperation and involvement in ministries vary greatly. They make use of traditional forms of lobbying to exert influence where access to political actors is restricted and are often dependent upon personal contacts.

Two current developments explicitly refer to this phenomenon. On the one hand, the coalition agreement for the formation of a new Federal Government of 24 November 2021 emphasises: "A strong democracy depends upon the people who support it. It needs a diverse culture and free media. Volunteering and democratic engagement strengthen social cohesion. It is our task to reliably promote them" (*Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit* 2021:7). On the other hand, the new Lobby Register Act came into force on 1 January 2022. It establishes a set of rules for

¹ On the definition of civil society cf. section 2.2.

anyone who speaks to members of the Federal Parliament (the *Bundestag*) and the Federal Government as well as for senior members of staff from federal ministries in the context of a lobby group. This includes civil society actors.

In recent years we have seen the emergence of the new field of so-called engagement policy (*Engagementpolitik*). As a result, the concerns of civil society, such as favourable conditions for civic engagement, are given greater consideration. In the run-up to the 2021 *Bundestag* elections, for instance, associations, networks and individual organisations have raised their hopes for the next legislative period with the parties more clearly than ever before. However, a trend towards the state taking over and administering civil society can also be observed. Yet, the power of large umbrella organisations remains palpable. Individual, smaller CSOs are also mobilising the public for their issues through demonstrations and increasingly through online networking. Currently, we can see an increasing overlap of both methods.

There is a noticeable trend of repressive measures taken by the state against civil society around the world – often referred to as the shrinking space for civil society – which does not seem to take place in Germany in any systematic way. Nonetheless, instances of this phenomenon can certainly be found in the struggles for recognition and political co-determination. Court decisions such as the one against the organisation *ATTAC* (Federal Fiscal Court 2019/2021) are part of the debate about political engagement and its compatibility with the common good, as seen in the composition of non-profit law in particular. The issues often revolve around small details and examples appear in this report, such as the right to demonstrate. This shows the state's potential to impede civil society action.

Tax law still primarily determines the general conditions of civil society, as most CSOs strive to attain the status of a registered tax-exempt charity, which comes with specific tax advantages. The tax office oversees this status and subjects CSOs to its administrative regulations. While acceptable in principle, the regulatory framework is complex, rigid and highly outdated in many regards. Changes often only lead to an increase in administrative requirements and do not bring about any real improvements; the systematic inclusion of civil society is often lacking. People have been calling for reforms to non-profit law for decades. The 150 year old legal framework has not been properly tailored to the reality of the 21st century. Some legal bodies, such as foundations, have received more support than others in recent years. There is still no standardised register of all CSOs, and advances such as the so-called 'Transparency Register' are poorly coordinated.

Civil society's financial situation is characterised by various forms of income, such as service fees, donations, revenue from endowments, membership fees and public funding. The willingness to donate, as well as income from membership fees, have remained relatively stable over the last few years and, overall, have not suffered significantly, even during the Covid-19 pandemic. The tendering capacity for public funds has grown, but increasingly involves more application work and more competitive conditions, sometimes alongside commercial providers. There is growing pressure to economise. Most CSOs have no financial reserves and are often marked by precarious organisational and working conditions. The power imbalance between donors and recipients, which often leads to dependencies and stands in the way of equal cooperation, poses yet another problem.

Civil society is growing but is marked by change. New fields of engagement are emerging, such as in the formerly purely state-organised educational landscape. Demographic change comes with recruitment difficulties and concerns about finding new volunteers, especially to fill long-term voluntary positions. At the same time, new forms of engagement have developed. In recent years, digitalisation in particular has led to completely new forms of networking and mobilisation of civil society action.

It is too early to predict the effects of the Covid-19 pandemic on civil society, but it is already quite clear that a large part of all CSOs will be affected. Civil society's low level of involvement in the discussion on risk assessment and planning will have consequences for many local CSOs in particular. Among other things, they bemoan a loss of members and have so far pointed out the societal consequences of the loss of voluntary community building caused by the repeated lockdowns – albeit without receiving any noticeable response.

The discrepancy between the framework conditions of civil society, which are shaped by the nation state, and its radius of action, which is mostly non-national, poses a continuing challenge. In many cases, civil society's radius of action is only local or regional, but instances of it being transnational, European and global are on the rise.

This report attempts to describe the current state of the sector. It endeavours to address as many aspects as possible, although it is naturally impossible to cover them all. The concern about a shrinking space for civic action sits firmly at the centre of this report.

N.B.:

This report was originally written in German and for German readers. To render the German original and the English translation comparable, explanations have been kept that could have omitted, and others not added that might have been considered helpful in the English version.

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1 INTRODUCTION

This report is embedded within a multi-year research and policy project on the contested civic space in Europe. In their coalition agreement of 7 February 2018, the political parties CDU, CSU and SPD made the following statement: “We resolutely oppose the increasing and targeted restriction of civil societies (‘shrinking spaces’) that are committed to democracy, the rule of law and respect for human rights” (CDU/CSU/SPD 2018, § 7372). However, they did not match their words with concrete action. A new Federal Government has been in office since December 2021. In its coalition agreement it stated: “We promote a diverse, tolerant and democratic civil society” (*Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit* 2021). It therefore seems appropriate to present a report that not only describes the current situation of civil society from as many angles as possible, but which identifies fields where the state ought to establish improved general conditions. The coalition agreement also emphasises that a thriving civil society is crucial for the social coexistence of people, for democracy and for society's ability to innovate and find solutions. CSOs provide important social services, the space for community building and platforms for voices that might otherwise go unheard. They are considered the “cradle of social capital” (Matthies/Kauer 2004) and critical democratic controlling authorities (Crouch 2011).

Democratic society prides itself on being conceived and constructed by its citizens. They are the masters of the political process, and it is up to them alone to define, expand or limit the mandate given to their state. This is predominantly done through and within movements, organisations and undertakings that are established in the exercise of their own sovereignty and whose sum constitutes civil society. Freedom of assembly and association as a civil right and as a crucial part of civil society are therefore indispensable prerequisites for a democratic society. For the vitality and potential of civil society to unfold, it requires suitable framework conditions.

Although knowledge about the scope and state of civil society in Germany has grown in recent years, it is still insufficient compared to what we know about other areas of society, such as the economic or state spheres. This is partly because civil society is very diverse and thus difficult to capture (Müller-Jentsch 2008). Moreover, it has only emerged as an autonomous social arena in recent decades, partly, but not only because of the increasing differentiation of society. Even today, it is subject to frequent change due to rearrangements in external framework conditions. The availability of data and social contextualisation that require regular updating still urgently need improving.

The observation that civil society action – after a generation of exponential growth – is increasingly restricted worldwide not only by state actors but also by economic interests constitutes the starting point of this report. This phenomenon is discussed under the term shrinking space for civil society. While these observations initially referred to authoritarian states, more and more cases can be observed in liberal democratic states where bureaucratic hurdles, threats or aspects of security policy impede or prevent civil society engagement. Current cases in Germany, such as the withdrawal of the tax-exempt status of *ATTAC Deutschland e.V.* on the grounds of political activity deemed excessive by the Federal Fiscal Court, should be examined and analysed within this context. It is significant, for example, that the Federal Ministry of Finance expressly pointed out in a letter to

ATTAC that political parties are the appropriate forum for political activity. This is tantamount to a one-sided narrowing of the Constitutional provision according to which the parties are to participate in the formation of the political will of the people (Constitution: Article 21, 2).

In addition to this decision, which attracted a great deal of attention, there are numerous cases of mainly smaller CSOs that have been affected and unsettled by such events. They have sparked a larger debate about the extent to which CSOs should be allowed to participate in the political decision-making process alongside political parties. The desire to do so has undeniably increased: Many CSOs have become more politicised over the years and are more assertive in demanding opportunities to participate. The political system in Germany, which is characterised by representative, parliamentary democracy, has so far been reluctant to meet these demands for alternative participation, and in some cases has even reacted to them in a restrictive manner. It remains to be seen to what extent the new Federal Government will follow through with its announcement and change the legal basis for this.

The following examples also illustrate the occasionally problematic relationship between state actors and civil society:

- Cases where the political parties only accept questions from civil society associations, such as the German Cultural Council, about their cultural policy plans in the next legislative period via internet portals, and where they announce unanimously that they will only respond to a maximum of eight questions of 300 characters each, are testament to an astonishingly troubled relationship of these parties to the civic space – and ultimately to the citizens.
- When a sports federation explicitly forbids a member club from carrying the logo of a fund for victims of right-wing violence (Cura) on its player's jerseys, arguing that this move would be too political, this is evidence of an anticipatory obedience based on the fear of losing subsidies rather than on the civic courage that would benefit the federation.
- If, in negotiations between the European Union and the People's Republic of China on an investment agreement (CAI), a phrase is left entirely unchallenged that allows the Chinese government a say in filling leadership positions of EU foundations and other non-profit organisations if they want to become active in China, the representatives of the European Union and the representatives of the member states assembled in the European Council, including the German Government, still have a lot to learn.

As civil society becomes more politicised, there are increasing ambivalences. Civil society is forced to deal with 'uncivil,' anti-democratic and anti-pluralistic civil society actors. Many of these actors belong to the politically right-wing and populist spectrum and exploit social problems such as the issues surrounding refugees and immigration, climate change or the Covid-19 pandemic as starting points for attacks on established political positions. Issues with traditionally strong CSO involvement are often at the forefront. This places civil society at the centre of a confrontation that threatens it from the outside as well as from within and makes tolerant activism more difficult to maintain.

At the same time, many indicators show that German civil society is still growing and that new alliances and coalitions are forming within it. For instance, there has been a strong revival of social movements, which we have seen, among other things, in the demonstrations for improved climate protection and climate justice. Whilst civic engagement may take on different forms, it is not decreasing overall. The same applies to the amount and number of donations and membership fees that are a main source of funding for many CSOs.

The impact of the Covid-19 pandemic on (civil) society is expected to be huge and likely to be associated with profound social change. Previous pandemics have taught us that the long-term economic, social and political aftereffects only become apparent after the public health threat has reached its peak. Therefore, we cannot predict them at this point in time. This report therefore limits itself to recording the already demonstrable effects of the pandemic and must be cautious about making predictions for the future.

This results in a broad picture of the base of civil society and in the following questions:

- To what extent have civil society spaces expanded in the past?
- Where have they grown and to what extent are they in danger of disappearing?
- What are the major issues that currently preoccupy civil society actors?
- What general conditions do they find and how have those changed in recent years?

The report presented here essentially analyses these general conditions or, in other words, the relationship between civil society and the state. The core of each CSO's work, the fulfilment of its own mission, is only dealt with as it relates to the general conditions.

2 ABOUT THE PROJECT

2.1 Approach, Methodology

This study aims to provide an updated picture of the scope of action that civil society in Germany enjoys. It builds on the project 'The Strength of Civil Society in Germany: An Analysis,' conducted by the Maecenata Institute for Philanthropy and Civil Society from 2003 to 2006 as part of the CIVICUS Civil Society Index Project (Reimer 2005).

The main focus of the study is on interviews with civil society activists and experts, and on the compilation and analysis of relevant secondary data that can provide information on the conditions for action, the nature and the state of civil society in Germany. In this respect, this report is a meta-study. In order to analyse the relevant framework conditions and thematic areas, the project was able to draw methodologically on both the aforementioned CIVICUS report (Reimer 2005) and on the study design of the Vienna University of Economics and Business (More-Hollerweger et al. 2014; Simsa et al. 2019). In some cases, current trends and developments were incorporated into the categorisation in advance through a workshop with experts. The interviews were conducted in a semistructured and guideline-based manner, and the categorisation and sampling of the interviewees were carried out in accordance with the criteria of theoretical sampling of grounded theory (Glaser/Strauss 2008). The aim was to have a heterogenous sample regarding the areas of activity and size of the CSOs interviewed. For this purpose, a total of 17 interviews were conducted between October 2020 and April 2021.

The interviews were conducted with active members (either managers or division heads) from CSOs in the areas of

- Education and research (3),
- Citizen and consumer interests (4),
- Health and social services (2),
- Arts and culture (2),
- Sport (2),
- Environmental protection and nature conservation (1),
- Children and youth welfare (2) and
- Intermediary platforms (1).

Some of the CSOs surveyed operate across sectors. For the purposes of our research, they were assigned to one focus area. The study presents the general conditions of civil society in Germany as a whole. It was only possible to deal with differences between the individual federal states or special characteristics such as East and West Germany to a limited extent.

2.2 Terminology

The word *Zivilgesellschaft* has been used as the German translation of the universal term civil society since the 1990s and is increasingly replacing older terms such as third sector, non-governmental organisation (NGO), non-profit organisation (NPO), charitable organisation, etc. However, the terms Third Sector and NGOs are still commonly used to describe the organised part of civil society. Civil society has become accepted as a term for one arena of collective action in society alongside those of the economy and the state. Moreover, civil society distinguishes itself from the individual and his or her immediate family environment (Simsa 2013; Strachwitz et al. 2020). Civil society thus refers to the social sphere in which people collectively try to shape and represent their own concerns. It is the main arena of civic engagement.² The collective actors of civil society are called civil society organisations (CSOs).

Civil society takes on many diverse forms. These include formally constituted movements, organisations, enterprises and institutions as well as unorganised or spontaneous collective activities. The analytical definition used by experts worldwide takes a broad concept of civil society as its basis while still clearly determining the affiliation. However, the academic debate on whether the definitional characteristics should be adapted or whether they should be evaluated differently regarding individual movements, organisations and institutions, still continues.

The common characteristic features of CSOs consist of them

- being based on voluntary action,
- understanding themselves as pursuing goals pertinent to covering state tasks that generally fulfil the welfare of the public and as aiming to distribute surpluses from their activities to members, partners or third parties,
- acting in a self-empowered and self-organised manner.

Their focus of work can be different and their relationship to the other arenas (state and economy) can be marked by cooperation or conflict (Hirschman 1970). In any case, civil society, like the other arenas, participates in the struggle for the distribution of power in society and in this respect always has a political dimension (Klein 2002).

In its ability to function, civil society is guided by several parameters, as it is in its claim to constitute an equal arena of collective action in the public sphere, complete with definable and distinguishing characteristics. These include, for example:

- The specific legitimacy determined by commitment, accountability and interest in the common good,
- the quality of interaction with the other arenas,

² The term civic engagement is used synonymously with volunteer work and honorary position.

- its legal framework, which, according to democratic self-perception, is not set by civil society itself, but by democratically legitimised legislators,
- its access to resources, and
- its perception by the public.

In this respect, its activity and legitimacy are independent of the political system in which civil society operates. Indeed, meaningful civil societies exist in the 21st century under varying general political circumstances. However, if one takes as a basis the premise that the existence of a lively and quite critical civil society in the sense of the concept of deliberative democracy forms the prerequisite for a functioning state based on the rule of law and democracy (Habermas 1992/Dahrendorf 1995/Nanz 2020), it follows that, in addition to a commitment to general human and civil rights, such as freedom of association or freedom of expression, the possibility of collective political participation as well as the willingness of citizens to share this through civic engagement, including the willingness to provide voluntary co-financing, are important indicators of the vitality of the civic space. According to Ralf Dahrendorf, this also includes a permanent confrontation between the state and civil society (Anheier 2012). The trend-setting effects of the processes of internationalisation and digitalisation, and not least the effects of the Covid-19 pandemic on civil society, must be considered. Likewise, the crisis of democracy, of the nation state and of capitalism, already invoked many times before the outbreak of the pandemic, must be assessed as well.

Civil society is as heterogeneous as the other arenas. Civil society actors can be grouped into different subsectors according to a variety of aspects:

(1) According to their function (NB: Many actors fulfil several functions.)

- services (e.g. help for the socially needy and the vulnerable)
- advocacy (e.g. for nature conservation)
- guardianship (e.g. consumer protection)
- intermediaries (e.g. charitable foundations)
- self-help (e.g. patient self-help)
- community building (e.g. amateur music)
- political participation (e.g. protest movements)
- personal fulfilment (e.g. religious communities)

(2) According to their relationship to society

- supporting society (e.g. complementing/replacing state action)
- setting themselves apart from mainstream society (e.g. associations of minorities)
- raising their voice (e.g. human rights groups)

(3) According to their degree of formal constitution and continuity

- spontaneous (non-constituted) civil society
- movements
- organisations

- d. enterprises
- e. institutions.

Groups b) to d) can also be assembled under the term organised civil society. The distinction between organised and unorganised civil society, which is common in English, has been translated into German with the terms *organisiert* and *unorganisiert*.

(4) According to their form of organisation

- a. Associative (heterarchical) organisations (associations)
- b. Constrained (hierarchical) organisations (foundations)
- c. Organisations owned by external parties (companies)

(5) According to their aims, such as

- a. Welfare
- b. Research
- c. Education and training
- d. Culture
- e. Nature conservation and environmental protection
- f. Sports
- g. Human and civil rights
- h. Religion

(6) According to their relationship with the other arenas

- a. Corporatist (part of an overarching system, often associated with dependencies)
- b. Pluralistic (acting independently)

The latter classification is of particular importance for German civil society insofar as corporatism or neo-corporatism in the old Federal Republic (1949-1990) was seen as a defining characteristic of a large part of the voluntary sector and of society as a whole. The state was referred to as a democracy of umbrella organisations, meaning that political decisions were largely made in negotiations between parties, administration, chambers, churches, business associations, but also welfare and sports associations and other actors organised in associations (Alemann 1981). Historically, civil society in Germany has been characterised by corporatism, the important role held by the churches and a strong focus on welfare work. Only in recent decades has the corporatist concept receded into the background. This shift is partly due to the emergence of a coherent civil society on the one hand and an increasing penetration of all areas of society with the principles of capitalism on the other. Nevertheless, associational democracy continues to have an effect, for example, in the appointment of bodies in the sector under public law (*der öffentlich-rechtliche Sektor*) and participation in parliamentary processes, which often excludes pluralistic civil-society actors.

Annette Zimmer³ recently introduced a new classification of actors into the debate, separating CSOs into

- those with a positive relationship to multipolar liberal democracy, and
- those that are nationalistic, identitarian and tend to be anti-democratic.

Many civil society actors only regard actors who are part of the same sub-sector and take a similar position on social issues as they do as belonging to civil society. However, civil society is a broad and analytical concept that has nothing to do with civility or other normative categories, nor with specific goals and purposes. It therefore has a dark side. On the other hand, civil society is sometimes perceived as so heterogeneous that common characteristics are deemed to be non-existent or not applicable to all.

In politics, the media, the public and academia, one often encounters the phenomenon that only a certain section of civil society is considered part of it. Even where efforts are made to be comprehensive in one's view of it, it is rarely considered in its entirety. On the one hand, the focus of attention is on traditional large-scale organisations with their affiliated associations, e.g. the umbrella organisations of welfare organisations, the German Olympic Sports Federation, the German Nature Conservation Association, the German Cultural Council and the Association of German Foundations. Together with a number of other umbrella organisations, they are members of the Alliance for Charity, which was founded in 2005 and is particularly concerned with developing and presenting joint positions on civil society's legal framework and its reform. This alliance cannot, however, claim to speak on behalf of civil society as a whole. On the other hand, attention is focused on the particularly visible public advocacy organisations, including the protest, human rights and civil rights movements, which are rarely affiliated with any umbrella organisation. The following examples are intended to present a small sample of organisations that are seldom thought of in connection with civil society.

- (1) *ADAC e.V.* (an Automobile Association) is a registered association founded more than 100 years ago. It has the largest membership of any association in Germany. It is not a charity and has never sought this status, because it does not primarily serve the general public, but instead provides its more than 20 million members with services such as breakdown cover.
- (2) Since 2015, the Alliance for Legal Security in Political Decision-Making (*Allianz Rechtssicherheit für politische Willensbildung e.V.*) has been fighting on behalf of its approximately 200 members for a modernisation of German non-profit law, especially regarding the right of charitable corporations to engage in political activities.
- (3) *Arbeiterkind* (translating as 'working-class child') is a private initiative that supports young people from so-called educationally disadvantaged backgrounds who strive to start or complete a university degree.
- (4) The National Network for Civil Society (*Bundesnetzwerk Bürgerschaftliches Engagement*) is an association of actors from civil society, state and business that was founded in 2003 as an outcome of the Parliamentary Commission on the Future of Civic Engagement. Its aim is to

³ Annette Zimmer in a lecture held at the Maecenata Institute (online) on 13 Dezember 2021.

sustainably promote civil society and civic engagement in all areas of society and politics. The legal entity behind it is a non-profit limited company (German: *gemeinnützige Gesellschaft mit beschränkter Haftung*, or *gGmbH*) of the same name.

- (5) The Federal Association of Independent Alternative Schools, founded in 1988, is an association of over 150 independent alternative schools and founding initiatives in Germany, whose basis is self-determined learning, democratic co-determination and mutual respect.
- (6) The German-British Society, founded in 1949 by seven committed citizens of the city of Dusseldorf, is one of many bilateral societies dedicated to relations between Germany and another country.
- (7) The German Trade Union Confederation consists of eight affiliated trade unions with a total of around 6 million members. It is part of the tradition of the German labour movement and has existed in its present form for more than 70 years.
- (8) The German Central Institute for Social Issues (*Deutsches Zentralinstitut für soziale Fragen*, DZI) traces its tradition back to an enquiry office on Berlin charities founded in 1893. It has been a foundation under civil law since 1964 and is now the central provider of information on fundraising organisations in Germany. It has been awarding a well-known donation seal since 1992.
- (9) The Honourable Society of the 101 Citizens of Meersburg traces its roots back to the Brotherhood of St. Anna in the 15th century and was probably founded in its present form around 1600. The purpose of this society is the cultivation of Christian and civic values.
- (10) The Protestant Church in Germany (EKD) unites 20 Protestant regional churches with around 21.1 million members.
- (11) *Faktura gGmbH Berlin* is a workplace that offers an opportunity for participation to those who, due to a disability, are temporarily or permanently unable to meet the benefit requirements of the general labour market. Since 2006, its employees have found work opportunities in small groups that match their abilities and interests.
- (12) The Institute for Protest and Movement Research (ipb) aims to provide social science research on protests, social movements and their interrelationship with democracy with a (virtual) space. The responsible body is a registered association of the same name founded in 2012.
- (13) In 1789, doctors, pastors, lawyers and teachers from the city of Lübeck founded the Society for the Promotion of Charitable Activities, today called *Die Gemeinnützige*. It supports social and cultural causes.
- (14) From 1956 onwards, the *Heimkehrerstiftung* took care of soldiers who returned to Germany after being POWs, especially so-called late returnees. The foundation, which was established and financed by the Federal Government, was dissolved only a few years ago, long after the last members of the aforementioned group of people had passed away.
- (15) The Upper Lusatian Society of Sciences (*Oberlausitzische Gesellschaft der Wissenschaften*) in Görlitz is one of the oldest existing scholarly societies in Central Europe. Twenty scholars from Upper Lusatia founded it in 1779. Its aim is to promote the study of history and nature.
- (16) The association *Otium – Verein zur Förderung des Müßiggangs* (Association for the Promotion of Idleness) – has been in existence for 30 years and is active nationwide. Anyone who feels they belong is considered a member without any formal procedure. *Otium* pursues the goal of offering an alternative to the idea that everything can be defined through work.

- (17) *Pegida*, short for Patriotic Europeans against the Islamisation of the Occident, was originally an informal group, and is now a registered association. It has been organising demonstrations since 2014 against what it claims to be the Islamisation of Germany. It represents islamophobic and xenophobic, national-ethnic, racist and extreme right-wing goals.
- (18) Founded in 2006, the registered association *Policy Innovation e.V.* is a student initiative with the aim of making politics tangible for young people and helping to shape it through ideas and perspectives. The main task of the association is to support the G7 and G20 dialogues, including the selection process, content preparation and training of the German delegation. The association sees itself as a neutral platform for the promotion of youth participation in the negotiating spaces of international politics and the strengthening of civil society dialogue in the G7 and G20.
- (19) *Stiftung Warentest*, a foundation under civil law with legal capacity, is a non-profit German consumer protection organisation and by far the best-known foundation in Germany. It fulfils a state mandate to examine and compare goods and services from different providers. The Federal Minister of Economics acts as its contracting entity.
- (20) Transparency International Deutschland is the international NGO's German chapter, dedicated to the fight against corruption.

The fact that the Protestant Church, the Catholic Church and other religious communities, as well as the trade unions, form part of civil society may seem odd at first. However, these organisations have so many definitional elements of a CSO that their inclusion seems justified (Strachwitz 2020a). This classification also largely corresponds to their self-perception. However, they are usually not taken into account in surveys of the number of members, employees and assets of CSOs. In contrast, political parties are not counted as part of civil society because they are directly involved in the exercise of political power (through the selection of candidates for mandates and their commitment to political positions). The majority of researchers (including the authors of this report) do not share the practice of the European Economic and Social Committee, for example, of classifying employers' and business representatives as well as chambers of commerce as a whole as part of civil society.

3 STATE OF RESEARCH

Starting in 1991, the Johns Hopkins Comparative Nonprofit Sector Project was the first – and so far the only – attempt at an international comparative, in-depth study of the size, structure, financing and role of the civil society sector in various countries. Germany is among the countries it studied. However, the data collected at that time is now almost 30 years old. In Germany, no standardised register for CSOs exists to this day. As a result, there is a considerable lack of reliable and up-to-date data on German civil society; all available studies are largely based on extrapolations. The *ZiviZ* survey (short for *Zivilgesellschaft in Zahlen*, Civil Society in Numbers), for example, lists approximately 630,000 associations, foundations, non-profit corporations and cooperatives (Priemer et al. 2019a:10). The survey does not include unincorporated associations, foundations without legal capacity and informal organisations. The Maecenata Institute therefore estimates the total number of CSOs at around 800,000 in 2020 (Strachwitz 2020a:5). To date, there has been little research into the area of informal civil society, i.e. those collective movements and actions that have no or only a low degree of organisation. Valid data on organised civil society is almost exclusively collected by umbrella organisations. In terms of its economic performance, the number of employees and organisations, civil society has not yet been systematically and comprehensively captured.

The *ZiviZ* studies are nevertheless an important analytical tool. The *ZiviZ* survey is an attempt to quantitatively record organised civil society in Germany. Using random selection, organisations are surveyed at intervals on relevant topics; structural data and indications of new developments and trends are then extrapolated (Krimmer 2019; Priemer et al. 2017). The 'Data Report on Civil Society' published by *ZiviZ* presents the results in a condensed form. Other important long-term studies and reports are the German Volunteer Survey (published since 1999, most recently in 2019, Simonson et al. 2021), the CIVICUS Monitor (CIVICUS 2021), the WZB data report (Federal Institute for Population Research 2021), and the engagement reports of the federal and state governments (*Deutscher Bundestag* 2020).

3.1 Civic Engagement

Civil society depends upon civically (voluntarily) engaged people. According to the *ZiviZ* survey, 72 per cent of CSOs only work with volunteers (Priemer et al. 2017). Many sports and cultural associations make do without any paid staff, often for financial reasons (Breuer et al. 2020; DAKU 2019).

The number of people involved in civil society and their rate of engagement have been on the rise since 1990, although there are considerable differences between social groups and milieus (Alscher et al. 2021: 402; Simonson et al. 2021). The engagement rate is often estimated generously, as the definition and recording of civic engagement are handled differently. The German Volunteer Survey assumes a participation rate of 40 per cent of the resident population aged 14 and over for 2019 (Simonson et al. 2021:4). The Socio-Economic Panel (SOEP) bases its survey on a narrower definition of engagement as "voluntary activities in clubs, associations or social services" and therefore puts the engagement rate for 2018 at 32 per cent (Burkhardt/Schupp 2019). In the 2017 European Value

Survey (EVS), 22 per cent of respondents stated that they had volunteered in the past six months (EVS 2020). A significant increase in engagement can be observed among people who are still at school or have a high school education (Simonson et al. 2021:4f.). For the first time since 2019, there is no longer a statistically significant gender difference in the rate of engagement (ibid.:15). Participation is significantly higher in the western German states than in the eastern German states formerly belonging to the German Democratic Republic, but the rates are converging (ibid.:19). People without a migrant background are proportionately more likely to get involved than people with a migrant background, and the better educated get involved more often than the less educated (ibid.:17f.). In 2016, half of all citizens were members of an association or a club (Kausmann et al. 2019:63). The EVS notes a significant increase in membership between 2008 and 2017 in all fields of civil society activity, although most volunteers are still active in the areas of sport, culture and music, religion and churches (EVS 2020). The social sector also shows very high rates of engagement (Simonson et al. 2021:21).

Accordingly, the number of members and volunteers can generally be regarded as stable, although some sub-sectors of civil society have suffered heavy losses. As associations in traditional fields of activity such as sport, leisure and socialising as well as culture and the media depend on voluntary engagement more than average, it is all the more concerning that a quarter of them have lost and are losing members and volunteers. Sports and other recreational clubs in particular, as well as civil protection and disaster control organisations, are lamenting a decline in the number of volunteers that threatens their very existence. However, the negative trend gradually slowed until 2020 (Priemer et al. 2017). Organisations that are active in multiple fields of action are recording an increasing number of volunteers. In addition to more volunteers, organisations that act as advocates or watchdogs, for example in the fields of citizen and consumer interests, the environment and international solidarity, are attracting an increasing number of members (Alscher et al. 2021:402ff.). Likewise, the number of people involved in the fields of education and training, as well as in the provision of public services in the health and social sectors, is increasing (Kausmann et al. 2019:63).

In the long term and on average, the commitment of volunteers to a CSO decreases, as does their time invested in it (Simonson et al. 2021:5). Mobilising new volunteers is therefore a major additional effort for an increasing number of organisations and was identified as a growing problem by 61 per cent of organisations surveyed by *ZiviZ* in 2017 (Priemer et al. 2017). In a survey of 12- to 25-year-olds in 2019, increased mobility and limited time were named as particular obstacles to getting involved (Albert et al. 2019).

Volunteering has not only changed in terms of its duration and scope, but also takes on new forms. For example, more volunteers are involved in loosely organised structures such as initiatives or completely outside of existing organisational structures (Alscher et al. 2021:404f.; Simonson et al. 2021:32, 35f.). The fourth Survey of Volunteers surveyed both formal and informal engagement and put the share of citizens engaged in "less organisationally linked structures" at 16 per cent and the share of informally engaged citizens at 26 per cent in 2014. Engagement that is less linked to formal structures increased by 5 per cent from 1999 to 2014 (Simonson et al. 2017). Participation in (protest) movements declined in general, but increased especially among younger people, for example in the Fridays for Future (henceforth FFF), Extinction Rebellion, *Ende Gelände* movements (*Deutscher Bundestag* 2020:47). The use of social media has not only increased the scope of political debate,

but new options for online volunteering are also emerging (Kiefer/Schwegel 2011, cited in Strachwitz et al. 2020:304). These options are particularly suitable for addressing new target groups and offer opportunities for time-limited engagement, as well as for mobilising people with disabilities (Strachwitz et al. 2020:304).

3.2 Areas of Activity

Although civil society is the arena of civic engagement (volunteering) *par excellence* and the vast majority of CSOs work with volunteers, civil society is also an important field of employment. In 2016, it provided jobs for a good 3.7 million people employed with social insurance contributions, i.e. just under 10 per cent of all employees. If marginally employed people, i.e. people working limited hours and earning a low salary, were included, the number would increase by 25 per cent (Hohendanner et al. 2019:94). The share of paid employees varies greatly depending on the size of the CSO, its legal form and its field of activity. At 61 per cent (1.65 million, 2016), the majority of employees work in the area of welfare services, more specifically in the health and social services sector (ibid.:96). Most of the organisations active in this sector also employ paid staff (ibid.:103). The fields of education and training, as well as interest groups and religious associations also account for a significant part of civil society employees (ibid.:98). Out of all the employees in the economic sectors of "lobbying groups and religious associations," 84 per cent work in civil society. In the areas of services of general interest, research and development, employees in CSOs make up a good 41 per cent of those employed in these areas nationwide (ibid.:96). Paid employees tend to be the exception in CSOs that operate in the areas of leisure and social activities, as well as population protection and disaster management. Three quarters of the CSOs in the fields of international solidarity, environmental protection and nature conservation, arts and media, sport, citizens and consumers' interests do not employ any paid staff at all (ibid.:103).

We can see a trend towards more paid employment in civil society, due to the growing number of CSOs and the increasing professionalisation of many organisations (ibid.:101). In this context, CSOs as employers differ from those in the private sector. Part-time and alternative work models receive strong support. CSOs favour the labour market integration of refugees and people with a migrant background, as well as that of members of other marginalised groups. Many organisations (about 75,900 in 2016) offer low-threshold work (Priemer et al. 2017:42). In 2014, 347,000 people with disabilities were employed in their workshops (Hohendanner et al. 2019:94).

One of the most important fields of activity of German CSOs that has grown over time is that of social services and health care, including independent welfare work. Since 1970, this sector has grown continuously and offers services for people who find themselves in extraordinary social situations, youth and disability assistance and care for the elderly (BAGFW 2018). In 2017, more than 11 per cent of associations operated in these areas (Priemer et al. 2019a:17). The organisations working there are just as diverse as the fields of action themselves, and so are their ideological and religious goals and motives. Most of the organisations are clustered in the six umbrella organisations of welfare (*Arbeiterwohlfahrt*, the German Red Cross, *Diakonie*, *Caritas*, *Paritätischer Wohlfahrtsverband*, the Central Welfare Board of Jews in Germany). These in turn are the members of the Federal Association of Welfare (BAGFW). Welfare associations not only have considerable socio-political relevance, as

they support the welfare state and cooperate closely with it, but also great political weight and opportunities to influence society (Schlüter 2021). However, due to changes in social welfare and tax law, their power has diminished in recent years (Strachwitz et al. 2020:175).

The area of sports is not only a traditional field of action in Germany's civil society, but also its largest organisational area. Sports clubs, hiking clubs, fishing clubs, marksmen's clubs, chess clubs and sponsors of sports clubs and facilities made up more than a fifth of all CSOs in 2017. This is reflected in the number of members and volunteers and partly explains the great number of larger than average sports clubs (Priemer et al. 2017:12).

Another major field of action is education and training. In 2017, 18 per cent of all associations and 35 per cent of all foundations were dedicated to these issues (Priemer et al. 2019a:17, 41). A similar number of associations and foundations are active in the field of culture and media (ibid.). Finally, the area of leisure and socialising, comprising just under 8 per cent of all associations, represents another important field of action for German civil society (ibid.:17).

Migrant organisations play a socially, culturally and politically important role in Germany (Brinkmann/Sauer 2016). They are extremely heterogeneous (Reinecke et al. 2010:92) and usually work in many sectors simultaneously (especially in the social sector, in education, counselling, refugee support and in the intercultural sector (SVR 2020b:4). In 2011, their number was already estimated at 16,000 (Pries 2013).

Just as it can be differentiated along its areas of activity, civil society can also be differentiated according to its functions (cf. section 2.2.). Only around 13 per cent of German CSOs see themselves as service providers (Priemer et al. 2017:21f.). The phenomenon dubbed "from voice to service," which is dominant in Scandinavian countries, does not apply to civil society in Germany (Wijkström/Zimmer 2011). There has "not been a "decline of movement-based organisations with political interest articulation in favour of purely service-orientated" providers" (ibid.:22). Rather, the development has been the other way around. Over the years, political goals such as democratic decision-making or the mediation of interests have clearly grown in importance (ibid.). Studies show that informal groups and movements in particular have a stronger political self-perception than the average of organised civil society (Hutter et al. 2021:21).

3.3 Value Creation and Impact

In Germany, it is not possible to make statements about the economic performance of civil society due to the lack of current and valid figures. Based on the evaluation of the business register, the Bertelsmann Foundation estimated the personnel expenditure of the CSO sector for 2011 to be €90 billion and thus 4 per cent of Germany's total GDP (Bertelsmann Foundation, n.d.). Increasingly, attempts are being made to measure the impact of civil society on the basis of so-called social return on investment analyses (SROI). A meta-study by the Centre for Social Investment and Innovation (CSI) at the University of Heidelberg on all SROI studies written in English between 2002 and 2012 showed that the number of such studies in OECD countries has grown exponentially (Křlev et al. 2013:2). Most of the studies focused on the return on investment in NGOs, less often in social enterprises and foundations (ibid.:43). SROI studies calculate the effort and return/benefit and

evaluate their relationship, which is why both aspects are monetised. To calculate the social return on investment, the effects of a programme (in euros) are divided by the required investments. Coefficients of more than 1 therefore signify a “positive social return” (Péron/Baldauf 2014:7). Non-monetary aspects can also be included in the evaluation.

Corresponding evaluations for German CSOs are so far non-existent, but they are already being used at the regional level. The city of Münster, for example, used them on a trial basis to evaluate public investment in integration projects by civil society and business organisations. The non-profit *Belmer Integrationswerkstatt*, for example, achieved SROI values of 2.39, while private sector organisations reached 1.24 and 1.42 (Köhnke 2010). The association *Balu und Du e.V.* conducted its own study to determine the social return on investment of its mentoring project for primary school children. It was predicted at €4.25 to €8.08 per invested euro (Péron/Baldauf 2014:7).

The Best Available Charitable Option (BACO) and The Social Impact Measurement for Local Economies (SIMPLE) (Mildenberger et al. 2012) offer an alternative approach to measuring the social impact of civil society activities. However, they are less common in Germany.

4 THE GENERAL CONDITIONS OF CIVIL SOCIETY

4.1 Germany's Political System

The nature of the political system and the fundamental rights, the rules and conventions of interaction as well as socio-economic conditions and the structure of the public sphere are all important aspects for civil society, insofar as they provide and thus determine their political and social systemic framework conditions. Germany's Constitution (the *Grundgesetz*) is clearly marked by the country's totalitarian past and contains Constitutional safeguards to prevent authoritarian rule. In this context, German democracy is sometimes dubbed an argumentative or defence democracy. Article 14 of the Constitution allows certain fundamental rights to be restricted in order to protect the free democratic constitutional order. Preventive action may be taken against individuals and groups carrying out anti-constitutional activities. In addition, the emergency laws (Article 20) offer the possibility of extending the Federal Government's legislative powers and authority to issue directives in situations of crisis. The restrictions on freedom of assembly and other fundamental rights put in place by the Federal Government, which were supported by parliament, the protests against them and the decisions of the Federal Constitutional Court over the course of the Covid-19 pandemic have shown how difficult it can be to balance fundamental rights and restrictions against each other.

The Federal Republic of Germany is organised as a federal state made up of the *Länder*, or federal states. The *Länder*, as the primary bearers of state sovereignty, have thus transferred substantial parts of their legislative competence to the Federal Government, although they participate in federal legislation through their governments, represented in the *Bundesrat*, the second chamber of the federal parliament. At the same time, Germany is signatory to some 300 international treaties that involve waivers of sovereignty. In particular, essential sovereign rights have been transferred to the European Union. European Community law intervenes to a considerable extent in the German legal system (Glaeßner 2006; Ruzio 2011).

Germany's political system is also a parliamentary, representative democracy and has increasingly developed into a democracy of parties and associations. The participation of citizens in "elections and votes" (Article 20 (2) of the Constitution) at federal level is *de facto* limited to elections; limited elements of direct democracy exist in the *Länder* and municipalities. The right of political parties to "participate in the political decision-making of the people" (Article 21 (1) of the Constitution) has, over time, developed into a claim to a monopoly in participating in decision-making. The umbrella organisations of civil society and the economy, as well as employers' associations, trade unions and churches, have been granted formal consultation rights within the framework of legislative procedures.

The political system is characterised by a sophisticated system of separation of powers and a complex relationship between the *Bund*, i.e. the federation, and the *Länder* (Ruzio 2015). Almost every piece of legislation is preceded by relatively difficult negotiation processes. Likewise, party competition is highly pronounced, hence why Germany is considered a party democracy. Mostly, parties rule in coalitions with one of the major popular parties SPD and Union (the latter consisting of the CSU and the CDU), or the popular parties form coalitions themselves. However, the importance of these mainstream parties, which dominate the political spectrum, has been declining

sharply in recent times, as new political groupings have been able to attract considerable shares of the vote in elections at all levels and over the course of several waves.

The opposition parties hold a central, active control function in parliament. The *Bundestag* works primarily in committees, subcommittees and other subdivisions, such as parliamentary commissions. They provide the opportunity to discuss issues in hearings with experts and representatives of different interest groups – one of the central participation opportunities for civil society actors. In addition, the parties can force a public hearing. The possibility of appointing a committee of enquiry, which also includes a public hearing, is also crucial. Moreover, through a formalised way of submitting questions (*kleine and große Anfrage*), parliamentary groups can force the state or Federal Government to take a position. In this way, the *Bundestag* checks government action in terms of political direction, efficiency and compliance with the law (ibid.:235f.). However, in practice, this checks-and-balances system is overlaid by strong internal party voting processes, which are fraught with multiple complex positioning processes as a result of frequent election campaigns at different political levels.

In recent decades, instruments of direct democracy, such as citizens' petitions, have been introduced in the Constitutions of several *Länder*. In some *Länder* there is a provision for popular petitions, initiatives and referenda, at least in principle. Germany's federal structure facilitates the use of direct democratic instruments. In this context, Article 268 (1) of the Constitution provides for such elements at the municipal level in the form of municipal assemblies. However, these are rarely held, mostly for practical reasons. Since the 1990s, all *Länder* have provided the opportunity for citizens' petitions and referenda, albeit in different forms (Bovermann, n.d.). Since 1996, all *Länder* have had elements of direct democracy embedded in their Constitutions that consist of either two or three steps. The option of holding a referendum is included in 13 of the 16 *Länder* Constitutions. However, the signature quorums for referenda and citizens' petitions vary greatly between the *Länder* (4-50 per cent) and in some cases they represent a major hurdle to direct participation (ibid.). At the federal level, direct democratic elements are largely absent (Article 29 Constitution, Bovermann, n.d.). Citizens can, however, use petitions to the *Bundestag* to oblige the *Bundestag* Petitions Committee to look into certain issues. Most recently, the petition for a nationwide citizens' council on climate reached the necessary signature quorum at the end of 2020 (*Deutscher Bundestag* 2021d).

Besides federalism, the weak position of the head of state on the one hand and the strong position of the Federal Constitutional Court and the Federal Bank on the other are special features of the German Constitutional structure in an international comparison. Not only does the Federal Constitutional Court have the option of banning parties in order to protect the Constitution (Article 21), which involves direct intervention in the core of parliamentary democracy (Article 21), but the Federal Constitutional Court also plays a central and active role in the process of interpreting the Constitution. Citizens may lodge a constitutional complaint (Glaeßner 2006:422), in which the initiator does not necessarily have to be the complainant. They can also act as representatives of the supporters involved if the latter have issued powers of attorney or have registered on lists of supporters (so-called clientele constitutional complaints, Schreier 2011:58). Between 2000 and 2009, mass and constitutional complaints were used 175,900 times in Germany. Of these, 52,237 came to a decision; 1,102 were successful (ibid.:57ff.). They were often initiated and organised by

citizens' initiatives and their networks, not infrequently with the participation of trade unions (ibid.:57). This legal process is seen as an important instrument for influencing political processes and a "systemic corrective function" (ibid.:67). However, it is rarely used. The independence of the Federal Constitutional Court from parliamentary, governmental and party-political influence is deemed very positive by the public and contributes to the political system's stability.

Germany generally receives high ratings on global comparative democracy indices, such as Freedom House, Polity5, Democracy Barometer or the Democracy Index. Free and fair elections are guaranteed, as are political pluralism and competition, the independence of government and the judiciary, and the protection of the rule of law (Engler et al. 2020; Freedom House 2020; Marshall/Elzinga-Marshall 2017; The Economist Intelligence Unit 2021). However, it should be noted that the right to vote and stand for election is restricted for certain groups such as children and young people, people with disabilities and migrants. Despite the universal right to vote from the age of 18, 12-25 per cent of people living in Germany are excluded from participating in elections (Reuter 2017c; Taßler 2017).⁴ Freedom House further identifies deficiencies in Germany's treatment and political participation of several segments of the population (ethnic, religious, gender, LGBTQI and other groups) (ibid. 2020). The importance of socio-economic resources for opportunities to participate in the political process is also becoming increasingly problematic, and a social division of voters is emerging. People with low incomes and low levels of education vote much less frequently, while those with a higher level of education, who find themselves in a more favourable social position, show above average participation in elections (Schäfer et al. 2014). Likewise, people with a migration background participate less often in politics and civil society (SVR 2020a:4f.).⁵ This carries the risk of serious representation distortions or deficiencies and thus of socially selective politics.

The proportion of women in federal and state parliaments and other political offices is low. At the federal level, it fell even further as a result of the 2017 federal election and was at only 31 per cent (Höhne 2020). The 2021 federal election brought it up to just under 35 per cent (John 2021). On the international stage, Germany still performs poorly in this aspect; hence there are increasing calls for more gender parity. The first federal states have passed corresponding laws (Höhne 2020), which, however, have been met with constitutional concerns.

The assessment of the indicators included in all of the aforementioned democracy indices has hardly changed for Germany in recent years. Freedom House considers the increase in political tensions, which can be observed especially since the large migration movement in 2015, to be a threat to democracy. The election success of the right-wing populist party Alternative for Germany (*Alternative für Deutschland*, short AfD), especially in the *Länder* of the former GDR, is also seen as problematic by the authors (Freedom House 2020). A report by the European Union Agency for

⁴ Mostly because they do not have German citizenship or because they are not registered in the population register and thus are not on the electoral roll. Under certain circumstances, the right to vote is also denied people with disabilities (if they need judicial care) and prisoners (if they are disenfranchised by a judge or if they are considered capable of committing a crime and have therefore been committed to a psychiatric ward) (Reuter 2017c). In 2014, a bill to allow foreigners to vote under certain conditions (the so-called "Foreigners' Voting Rights Act") failed (*Deutscher Bundestag* 2014).

⁵ However, the effect of a person's migration background seems to weaken over time, which indicates a successful 'integration' in this context. Thus, German-born descendants of immigrants participate in political elections almost as often (21 per cent) as people without a migration background (24 per cent) (SVR 2020a:4f.).

Fundamental Rights (FRA) also cites the rise of illiberal, anti-democratic and misanthropic attitudes as key dangers to the civic space (Allenberg/Meyer 2021).

The knowledge of many citizens of the political system is incomplete, and political fatigue is particularly high in some social groups. In a 2018 study, more than a third (37 per cent) of respondents agreed with the statement that "politics overall is so complicated that someone like me can't even understand what's going on" (Baumann et al. 2019:86). A good 25 per cent of respondents got the answers to basic questions regarding political processes and actors wrong. The lack of knowledge on politics at the European level is even greater (ibid.:716ff.) Many people who are not politically well-integrated do not vote (Krause/Gagné 2019:14). At the same time, this "typical non-voter milieu of the lower socio-economic classes [...] is more susceptible than the average to (right-wing) populist mobilisation strategies" (Bertelsmann Foundation 2021:4). This finding has manifested itself in the pandemic. Among people with a migrant background, a lack of language skills has proven to be a hurdle for social and in this sense also for political participation, besides socio-economic factors (SVR 2020b:5).

Around half of Germans believe their ability to effect any political change is low (Baumann et al. 2019:584). The criticism of politics as lacking responsiveness and representation does not only come from right-wing or non-voters, but is found among voters of all political camps (ibid.:110). After a longer period of abstention from voting, this perceived lack of resonance of representative structures has increasingly led to so-called protest elections in recent years, which also prove to be a mobilisation basis for anti-democratic and right-wing populist ideologies.

The identification of citizens with the formerly large people's parties CDU/CSU (often called *Union*) and SPD has been declining for a long time, as have the levels of trust in them. This was clearly demonstrated by voter migration in the 2017 (Brenke/Kritikos 2020) and 2021 federal elections, in which formerly smaller parties were able to achieve increasingly comparable scores with the mainstream parties (*Tagesschau* 2021). The voter preferences of Germans can be explained less and less in socio-economic terms and increasingly in socio-political and socio-cultural terms (Brenke/Kritikos 2020; Rudi/Schoen 2014). The right-wing populist AfD recently benefited massively from these developments. At the time of the 2018 survey, 5 per cent leaned towards voting for the AfD, and for 11 per cent, it was at least an option (Baumann et al. 2019:68, 152). In an attempt to win back the voters lost in 2018, the agenda of the major parties, and with it the political centre, shifted increasingly to the right (Vehrkamp/Merkel 2019). However, there are signs of the AfD electorate's gains weakening in numbers while simultaneously consolidating. In the 2021 federal election, the AfD still received 10 per cent of the vote, after receiving 13 per cent in 2017 (*Bundeswahlleiter* 2022b).

It is not surprising, but therefore no less problematic, that voter turnout in Germany has been declining for many years, although there have recently been signs of an increase. In 1994, 79 per cent of the electorate participated in the *Bundestag* elections, but this figure fell to 71 per cent in 2009 (*Bundeswahlleiter* 2022a). In 2021, participation was again slightly higher at 77 per cent (ibid. 2022b). In state elections, the turnout varies considerably between the *Länder* and was between 60 and 70 per cent in the last elections. At the same time, according to the European Value Survey 2008, Germans support and use voting to an above-average extent, while they reject illegal political participation more decidedly than most other European citizens. Support for legal political

articulation increased between 1980 and 2017 (Dompnier 2017:54ff.; EVS 2020). In 2008, a study classified almost 70 per cent of Germans as politicised, with only Sweden having a higher proportion (Dompnier 2017:61). Since 2008, the relevance of politics has increased again, with it being important or very important for 41 per cent in 2017 (+4 per cent). Similarly, interest in politics has increased slightly over the same period (ibid.; EVS 2020).

Populist attitudes in the political centre have increased in recent years but are now on the decline again. Nevertheless, the Populism Barometer study still finds populist attitudes among 21 per cent of eligible voters (Vehrkamp/Merkel 2020:6ff.). Decker et al. (2019) see the increase in social inequalities as one reason for the growing dissatisfaction with the political system and the dwindling trust in political institutions. Accordingly, citizens who are socially worse off and East Germans in particular are turning away from politics. In this respect, civil society is tasked with sparking more interest in politics and in an open society among citizens. The latter thrives on lively interaction between the social arenas; the civic space is particularly important for this.

4.2 Fundamental Rights – the Basis of Civil Society

The most important freedoms in Germany include the right to life and physical integrity, freedom of belief, freedom of assembly and association, secrecy of correspondence, post and telecommunications, the right to petition, freedom of art and science, freedom of research and teaching, and freedom of expression, of information, of the press, broadcasting and film. These take the form of defensive rights against state intervention. Freedom of assembly and association are the basic prerequisites for CSO activities.

The freedom of association is a central fundamental and human right. In Art. 9 (1), the Constitution stipulates: "All Germans have the right to form associations and societies." Thus, the Constitution provides protection for political activities that are not aimed at participation in elections and take place outside the formation of parties (Constitution Art. 21 § 1; Gärditz 2019). The freedom of association is also enshrined in the European Convention on Human Rights (Art. 11 ECHR) and the Universal Declaration of Human Rights of 1948 (Art. 20 UDHR). In Germany, no one may be prevented from forming associations and societies, provided that the aims of these associations do not run counter to criminal law, the constitutional order or international understanding (Constitution Art. 9 (2)). This article can be traced back to the negative experiences made under the Weimar Republic and forms part of what is called the defensive democracy. So-called fundamental rights checks may be carried out in individual cases if there are doubts about the legality of their objectives. Preventive bans on associations are also sometimes imposed (Gärditz 2019). The formation of a substitute organisation is then automatically prohibited as well (Art. 8 Association Law). However, banning associations is a measure that is applied extremely rarely in practice. The Federal Ministry of the Interior (BMI) has banned a total of 58 organisations and 106 partial and substitute organisations between 1949 and 15 June 2021 (BMI 2021b).

In order to participate in legal and business transactions, associations must be entered in the register of associations kept by the courts. This registration can occasionally prove to be fraught with hurdles, as the courts attach importance to certain wording. In some cases, registration can hardly be distinguished from a licensing procedure. This *de facto* authorisation becomes even more

apparent when examining whether CSOs are recognised as serving the common good in the context of tax legislation and are exempt from income and property taxes. Although there is no direct connection between reaching the status of belonging to civil society and thus exemption from tax liability, charitable status is widely seen as a mark of belonging and is therefore sought by CSOs. This reveals a basic conflict between the civil society principle of self-empowerment and self-organisation in the implementation of freedom of association on the one hand and the regulatory and supervisory activities of the state on the other.

The interviews did not offer any examples of organisations in civil society having their founding prevented or made more difficult. The founding of a CSO is assessed as being problematic to straightforward. A current example that this is not always the case can be found in relation to attempts by Muslim associations to establish their own welfare association. There were difficulties in "granting Muslim associations a status comparable to that of Christian churches and Judaism." The project was also delegitimised with the "claim that the "need for social services [...] for Muslims [...] is completely covered by the existing welfare institutions" (Strachwitz et al. 2020:176).

Foundations are not covered by freedom of association. The right to establish them is implied by a number of other constitutional articles, but if they are to be formed as separate legal entities, they are dependent on state authorisation (called *Anerkennung*, recognition).

The right of assembly is the responsibility of the Federal Government. Since the reform of federalism in 2006, however, the *Länder* have been free to replace the federal regulations with their own assembly laws. The Constitution allows all Germans to assemble peacefully (Art. 8 (1)). In principle, assemblies such as demonstrations do not require a permit, but must be registered beforehand. They can be banned outdoors if they endanger public safety or take place within certain districts (government districts or *Bannmeilen*). Their authorisation may be dependent on certain conditions or restrictions (Art. 15 Assembly Law). Domestic associations of persons such as legal entities can also be holders of the freedom of assembly on the basis of the Constitution (Art. 19 § 3). By the wording of the Constitution, foreigners do not have the right to assemble; however, they also have the right to assemble according to Art. 11 of the Human Rights Convention on the basis of the general freedom of action of the Constitution (Art. 2 (2)) and on the basis of Art. 1 of the Assembly Law.

The freedom of assembly also applies to gatherings that do not remain in one place, i.e. to marches and processions such as demonstrations (cf. right to demonstrate). It also protects activities related to the organisation of the event and the free choice of time and place. Outdoor assemblies must be registered 48 hours before they are to begin, unless they are spontaneous assemblies that take place on the occasion of current events. When registering outdoor and indoor events, an organiser must be named (Art. 7 and 14 Assembly Law). Legal persons, which in this sense also include unregistered associations and trade unions, can also act as organisers, but can then only rely on Art. 19, § 3 of the Constitution. In case of violations of these regulations, stewards can be prosecuted and punished with prison sentences (Art. 25f. Assembly Law). In addition, stewards must be authorised by the police on site, and they must be identifiable (Art. 9 and 18 Assembly Law). The police may make visual and audio recordings of participants at and in connection with public gatherings, provided that "factual indications justify the assumption that they pose a considerable threat to public safety or order" (Art. 12a § 1 Assembly Law). Disguising oneself and wearing uniforms and items of clothing

that serve to express a common political opinion, as well as carrying weapons are prohibited (Art. 2 and 17 Assembly Law).

In general, however, an assembly cannot simply be banned, despite the existing laws and restrictions, even if individual disturbances are to be expected or affiliated demonstrations have turned violent beforehand. This follows from a fundamental decision, the so-called Brokdorf decision of the Federal Constitutional Court of 1985 (69, 315, BvR 233, 341/81). There must be a strong prediction of danger according to Art. 15 (1) and (3) Assembly Law in order to justify a ban.

4.3 Freedom of Information and Transparency of Government Action

Democratic processes and votes require informed citizens. The freedom of opinion and of the press are therefore enshrined in the Constitution. In this sense, all citizens have the right to inform themselves without hindrance using generally accessible sources and to express their opinions publicly (Art. 5 and 20). The rights to information are described in more detail, for example, in the Freedom of Information Act, the Environmental Information Act and the Consumer Information Act. These essentially concern the obligations of state institutions vis-à-vis citizens with regard to information. On the other hand, the obligations in this matter of other social actors are regulated less systematically. For commercial enterprises, regulations on the duty of disclosure can be found in commercial law. In contrast, there are no public information and disclosure obligations for CSOs, not least because civil society associations have fiercely resisted them (Baumüller/Haring 2014; Mühlenbach 2018; Strachwitz 2015b). For some years now, however, European Community Law has increasingly prescribed registration and disclosure requirements.

In order to achieve more transparency, political parties have been obliged to publish the amount of the donations they receive of upwards of €10,000 (Art. 24 and 25 § 3 Political Parties Act) since 2015. Civil society criticises the threshold of the allowances as being too high. In 2014, 76 per cent of all donations remained anonymous. In addition, transparency on who the donors are is considered insufficient (Sawatzki 2016).

The public is extensively informed about the activities of the constitutional organs at the federal and the *Länder* level. The Press and Information Office of the Federal Government, the *Bundespresseamt*, (BPA), together with the Federal Chancellery, is responsible for informing political actors and the public about political projects, objectives and issues. Other public relations and press offices exist at the ministerial level. In addition, there are freedom of information commissioners at federal and state level (Andersen/Woyke 2013). According to a federal Constitutional Court ruling of 1977, the state's duty to inform must be "carried out in a "factual, correct, proportion"te and restrained" manner, as well as comprehensively (Federal Constitutional Court 44, 125). How this is to be done in concrete terms has not yet been clarified either legally or in court (Andersen/Woyke 2013). In a position statement in 2017, the state commissioners demanded that citizens' rights to information be strengthened by including them in the federal Constitution and the Constitutions of the *Länder*, by limiting the regulations on the use of names, and by creating a uniform right to information and transparency law (IFK 2017).

The Open Budget Survey (OBS) is a tool for assessing public access to government budget information. Germany scores 69 points out of 100 for transparency in this survey (IPB 2019). According to the survey, the authorities publish a sufficient amount of material to enable an informed public debate on the national budget. Germany thus ranks well above the global average (45 points) and just above the OECD average (68 points). The rating has hardly changed over the last few years. However, one point of criticism is the lack of a sufficiently simple version of the budget proposal for the public to access. To increase transparency the survey suggested the timely publication of digital semi-annual reports and the provision of detailed and comprehensive information on non-financial data and alternative expenditures in the budget proposal. The OBS also calls for an improvement and completion of the participatory budget (IPB 2019). Furthermore, Germany scores only 15 out of 100 points on public involvement in budget planning processes, lagging behind most OECD countries (average 23 points) and placing only just above the global average (14 points). The survey rated public participation in the formulation and introduction of budget decisions as non-existent (0 points). Budgetary issues are also explicitly excluded from most state regulations on referendums, citizens' petitions and the like.

4.4 General Socio-Economic Conditions

Germany is considered an economically and socially progressive country. The general socio-economic conditions are stable and provide civil society with a secure backdrop for action. As socio-economic and socio-cultural development increase, so do social integration and the degree of civil society organisation, as can be expected (CIVICUS 2013). Since the reunification of Germany, not only the gross domestic product (GDP) but also the real per capita income has been increasing steadily, with the exception of some fluctuations, such as those caused by the global financial crisis in 2008 (World Bank 2019). At the same time, the level of education in Germany is rising (Rudnicka 2021).

Not all citizens have benefited equally from the positive economic development or do so today. To this day, there is a socio-economic gap between the western and eastern federal states (BMW 2020; Bundesagentur für Arbeit 2021a, b). Inequality in Germany has also been increasing for years, for example with regard to education and economic resources, and social mobility is decreasing. In 2018, 19 per cent of German citizens were at risk of poverty according to the EU definition (Federal Statistical Office 2019).⁶ In 2015, this number was still 17 per cent and in the 1990s 11 per cent. Immigrants and pensioners are most affected by poverty (Grabka/Goebel 2019). The GINI index confirms this income inequality in terms of the distribution of household market income and disposable income in Germany. Both values have increased since 2009 but are still below the average income inequality of OECD countries (ibid.). Economic inequality is accompanied by social inequality and increased inequity of opportunity.

⁶ A person is considered to be at risk of poverty or social exclusion if at least one of the following three living situations applies: their income is below the threshold for being at risk of poverty, their household is affected by significant material deprivation or they live in a household with very low participation in the labour force.

State social policy can be traced back to the health, accident and pension insurances that, when created in Germany from 1883 onwards, were the first of their kind worldwide. Their creation came as a result of the welfare principle having been anchored in the Constitution as a state task for the first time in 1867 (North German Federal Constitution 1867). Social insurance financed through contributions is linked to gainful employment (the so-called Bismarck system). Although the social insurance system is formally independent of the state, it is governed by public law and is therefore heavily regulated by the state. According to Gøsta Esping-Andersen's categorisation, Germany is a conservative (or continental European) welfare state (Esping-Andersen 1996). Due to the insurance services being dependent upon gainful employment, some groups, such as unemployed women, are systematically disadvantaged in terms of social entitlements (Oschmiansky/Berthold 2020).

The so-called 'principle of subsidiarity' has been one of the German welfare state's basic principles for about 100 years. It arose from the dichotomy between the state's claim and mandate to guarantee social services on the one hand, and the tradition and willingness of non-state actors to work in this field on the other (cf. for instance Schuppert 2002:189). The state could neither take over nor replace the range of services offered by these actors, namely faith-based welfare organisations with their numerous affiliated professional associations and institutions. This led to an arrangement that was worked out in several phases after 1919, which gave these associations priority in the implementation of services. The Catholic and Protestant associations (*Caritas* and *Diakonie – Innere Mission* respectively), the German Red Cross, which was upgraded to the status of a welfare association, the newly formed associations *Arbeiterwohlfahrt* (AWO – workers' welfare association) and *Paritätischer Wohlfahrtsverband* (Parity Welfare Association), as well as the Central Welfare Office of the Jews in Germany were included in the welfare system. As a result of continuing to operate on the principles of the 'principle of subsidiarity,' the rapid increase in welfare services in West Germany after the Second World War led to exponential growth in all the aforementioned umbrella organisations of non-state welfare and their affiliated organisations and institutions.

4.5 The Policy Field of Engagement Policy

Engagement policy in the sense of a policy field, i.e. "state-initiated "area of regulations and programmes, i.e. policies, that are clearly demarcated according to their content, as they are usually organisationally combined in the area of responsibility of ministries or parliamentary committees" (Pappi/König 1995:111), is still in its infancy in Germany. For a long time, questions about social engagement were marginal issues in politics and were only discussed at the municipal level, in associations and trade unions. A continuous process of negotiation to do with the relationship between the state's ultimate responsibility and civic responsibility emerged with the state's engagement policy (Neumann 2012). The first step in this process was the Parliamentary Commission on the Future of Civic Engagement set up by the German *Bundestag* in 1999. Its work resulted in the presentation of a comprehensive report (Enquete Kommission 2002), the establishment of a subcommittee on civic engagement in the *Bundestag* and the founding of the Federal Network for Civic Engagement (*Bundesnetzwerk Bürgerschaftliches Engagement*). Today, this subcommittee consists of 13 MPs and maintains a dialogue with experts and CSO representatives, among others. It thus represents an institutionalised involvement at the federal level. The subcommittee deals with current legislative proposals and recommendations for action

on civic engagement, but unlike the so-called full committees, it has no direct right of intervention (*Deutscher Bundestag* 2017). Efforts to establish a full committee on civic engagement in the 20th German *Bundestag* (2021) were not successful. Engagement divisions have gradually been created in several ministries at federal and state level. The engagement of citizens is now empirically being surveyed at five-year intervals on behalf of the government (Volunteer Survey). In addition, the Federal Government is required to submit an engagement report to the *Bundestag* once every legislative period (most recently *Bundestag* 2020). This report is prepared by a commission and submitted to parliament with a commentary prepared by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ).

The Federal Office for Family and Civil Society Tasks (BAFZA, formerly the Federal Office for Community Service), a federal authority that reports to the BMFSFJ, describes itself as the central organ of state-civil society dialogue, but in fact exercises this function very poorly. In addition to the Federal Volunteer Service, the Federal Office coordinates various programmes of the European Social Fund, supports services in the field of elderly care, and manages the federal programme *Demokratie leben!* ('Living Democracy!'). The Federal Service Agency 'Action for Growing Together' (*Aktion zusammen wachsen*) and the Service Agency of the Federal Programme 'Multigenerational House' are also affiliated with the BAFZA. This makes it the main point of contact and funding for the CSOs that are active in these areas and receive funding or collect service fees from the Federal Government. However, there is criticism of the lack of sustainable and long-term funding for civil society structures that promote democracy. The programme *Demokratie leben!* which provides for the establishment of coordinating and horizontal cooperation networks, only grants project funding for a maximum of three years (Allenberg/Meyer 2021:5). The BMFSFJ has for some time now been working on a draft for a Democracy Promotion Act, intended to provide firm support to established civil society structures. No agreement was reached by the end of the legislative period in 2021. However, the coalition agreement of the new Federal Government includes the plan of drafting such a law.

The survey confirmed the visibility and impact of the state's engagement policy. The engagement exemption law of the federal states, as well as the otherwise perceptible promotion of engagement, were received very positively (I 13). However, it should be noted that this support extends strongly to civil society tasks that alleviates the state's workload.

4.6 The Civil Law Framework of Civil Society Organisations

The legal framework for CSOs in Germany has grown historically and its principles can be traced back to Roman law summarised in the *Codex Justinianus*. It barely reflects the numerous historical disruptions in German history, but rather shows an astonishing continuity. For example, some foundations can be traced back to the early Middle Ages, and some associations to the early modern period. Accordingly, the legal framework is complex and not overly systematic.

Foundations are often assumed by the public to be older than they actually are, while it is a little-known fact that associations can also be many centuries old. Similarly to the basic principles of any form of organisational formation, CSOs can take on a hierarchical or a heterarchical form. If one takes the democratic character of civil society as a given, it may be concluded that heterarchical

forms, which require a constant process of will formation by the participants, should be in the majority. However, the basic right of free development of one's personality (Constitution, Art. 2 (1)) also includes the right to establish hierarchical organisations, i.e. organisations dependent on the will of individuals, so long as these neither interfere with the rights of others nor violate the requirement of any subordination to given rules to be voluntary. The German constitutional order explicitly does not provide for the democratic basic order to be reflected in the democratic organisation of each CSO (principle of *forma interna/forma externa*). All that is required is commitment to the existing constitutional order as such.

Taking into account these basic principles and centuries-old traditions for communities emerging out of voluntarism (communities of choice), associations and foundations – as well as some secondary forms – can be described as the basic forms of organisational commitment in civil society, each with some variations.

4.6.1 The Framework for Heterarchical Forms of Civil Society Organisations

Associations make up the most important legal form for civil society in Germany by far. With 608,000 registered associations (2018), a good 90 per cent of all CSOs with legal capacity are organised as associations. Since 1960, the number of associations has risen steadily, although the growth curve has been flattening for some years. There are even warnings of the imminent danger of a major decline in the number of associations (see Priller et al. 2021). The Covid-19 pandemic has exacerbated this (see Schrader 2021). The density of associations in 2018 was 731 per 100,000 inhabitants (Alscher et al. 2021:400). In addition, there is an unknown number of unregistered associations, estimated at at least 150,000 (Strachwitz 2020a).

An association, often referred to in its name as a union, society, club or otherwise, is the basic form of heterarchical organisation. It comes into being when several people join together to protect common interests or to act together. Ideally, the core of their cooperation is the permanent decision-making process of the members, who can only exercise this right personally and each have equal rights and duties. In practice, however, there are numerous exceptions to this. For example, a division into members with a right to vote, who actually participate in the decision-making process, and supporting non-voting members, who usually support the association financially, is common. Older by-laws also include a number of special provisions, e.g. multiple votes or – and this is particularly contrary to the system – reservations of approval by third parties, e.g. a state authority, in the election of office bearers. This is particularly the case when an association is not conceived as a decision-making process but is used – and sometimes abused – as a relatively convenient and inexpensive legal form for all kinds of activities, including the running of institutions.

The right to establish an association is a fundamental constitutional right in Germany (freedom of association, Art. 9 (1)). The founding and life of an association are therefore not restricted by any conditions, such as state authorisation or a requirement to register. Associations are constituted by their own statutes, and do not constitute a legal entity *per se*. Associations wishing to engage in legal and business transactions must be entered in a register of associations, which is kept with the local courts (Strachwitz et al. 2020:137). This makes sense insofar as it enables third parties who wish to enter into a legal or business relationship with an association to determine whether the association

exists at all in the form stated, who is authorised to represent it, etc. In order to make it clear that the association in question is a registered association, it bears the suffix 'e.V. ' (short for *eingetragener Verein*, meaning registered association). Entry in the register of associations entails that, for example, the election of new board members, must be certified by a public notary, which involves costs. One particular problem is the liberty assumed by the officials examining the statutes, and in lengthy registration procedures for founders of associations by imposing conditions.

Registration offers substantial advantages in liability and in many other areas. Hence, most associations seek registration and submit to the requirements of the register of associations and the encroachments on their autonomy that come with it without complaint. For the vast majority of associations, these encroachments are nevertheless more drastic than restrictions under constitutional law (Constitution, Art. 9 (2)), statutory law (standardised in the Civil Code, §§ 21 ff., and the Law on Associations) or restrictions brought about by court deliberations. The latter have increased considerably in recent decades. An example of this is the dispute caused by a judgement of the Berlin Court of Appeal as to whether 'common purpose associations' (*Idealvereine*) registered under § 21 of the German Civil Code (BGB) may operate facilities (e.g. kindergartens). The court considered the characteristics of an economic association according to § 22 BGB to be fulfilled; these, however, are not seen as an expression of the freedom of association and are therefore not registered in the same way as the aforementioned type of associations but require approval by a state government. However, agreement among the *Länder* has rarely been granted for decades due to unresolved liability issues. The numerous associations operating as providers of social and educational institutions were thus faced with the option of giving up or changing their legal form until the Federal Supreme Court overturned the decision of the Court of Appeal in its ruling of 16 May 2017 (Ref.: II ZB 7/16). Nevertheless, the future for institutions in the legal form of a common purpose association (according to § 21 BGB) is uncertain. Since then, the planned fundamental reform of the law on associations is still pending.

Even when the law of associations was codified in its present form in the Civil Code, which came into force on 1 January 1900, there were doubts as to whether the principles standardised in it would be suitable for all associations. In the debate in the *Reichstag*, the Member of Parliament for Stadthagen (SPD) remarked: "The law of associations in the Civil Code is the law of gamblers,' bowling players,' drinker'" and smokers' clubs!" (Mugdan 1988:995). He was thus addressing the problems that the provisions would entail for large associations with complex structures. 120 years later, these problems have still not been solved. Associations such as the ADAC (the German equivalent of the British AA), with more than 20 million members, have to make do with this law just as small associations do, which need to have at least 7 members at the moment of their foundation (Strachwitz et al. 2020:174). A small number of so-called old-law associations still exist today. They already existed when the Civil Code came into force and could not be required to adapt their legal form. They have legal capacity without being entered in the register of associations (Prange 2021).

All associations registered under § 21 BGB are fundamentally oriented towards the common good, even if this is not necessarily reflected in a charitable status for tax purposes.

A heterarchical legal form that has existed in its present form since the 19th century is the cooperative. It was not originally created in the context of civil society but in that of the economy,

even though it is close to the former because of its common good component. After the Second World War, the cooperative federations pushed for a stronger orientation towards the economy and made it even more difficult for smaller civil society initiatives to constitute themselves as cooperatives, by employing examination mechanisms. More recently, they have regained their attractiveness as hybrid organisations.

Another heterarchical legal form that has received little attention is the civil law partnership (*Gesellschaft bürgerlichen Rechts*, short GbR), also known as a BGB partnership. Its special feature is that it does not require a formal Constitution through a founding act and the adoption of articles of association but comes into being automatically when a common will is recognisable. This means that the consequences of its actions can be attributed to all its members. Thus, civil society movements can often be classified as a GbR without them even being aware of it. On the other hand, they can claim certain corporate rights. This, for example, could benefit FFF Germany, which in 2020 unexpectedly found itself in a trademark dispute with a private individual, which the latter had apparently brought against the movement for financial reasons. According to section 54 of the German Civil Code, an unincorporated association is treated in some respects like a civil law partnership. Both can be sued, but they cannot sue others (§ 50 (1)).

Trade unions occupy a special position among heterarchical CSOs. After a long debate, no doubt remains that they form part of civil society. However, no one knows for sure what legal form they take. They are certainly not registered associations, but they can act as legal entities in legal and business transactions, acquire real estate, participate in business enterprises, have numerous employees and considerable assets. Generally, they are seen as GbRs with special status. For example, they have the right to sue. Due to their political relevance, trade unions have been granted a great deal of freedom to regulate and have thus been treated unequally in comparison to other civil society actors. It is difficult to explain why, for example, the large welfare associations have to submit to the barely manageable set of rules of the law on associations, while trade unions do not.

4.6.2 The Framework for Hierarchical Forms of Civil Society Organisations

The foundation constitutes the classic hierarchical CSO. In contrast to the establishment of an association, the establishment of a foundation is not considered a fundamental right in Germany but can at best be derived from the right to free development of the personality. However, endowments – as the most far-reaching form of charitable giving – are so firmly anchored culturally and historically that a ban on foundations is hardly conceivable. In addition, the existing foundations (presumably around 150,000 in all forms) enjoy legal protection. In Germany, an orientation towards the common good is not a defining characteristic of a foundation; however, about 95 per cent of all German foundations are recognised as charitable. Their essential defining characteristic "is the commitment of its activity to the founder's will formulated at the time of foundation" (Strachwitz et al. 2020:176).

The foundation also appears in two basic and several special forms. The older (and more common) form is the trust without legal personality, comparable to a trust in Anglo-Saxon law (but not to be confused with the American use of the word trust for large business conglomerates). Surprisingly, trusts have no basis of their own in German law, but derive their framework conditions from general

trust law, which is far less developed than in England, for example. For this reason, the question of whether there can be several trustees and how they are to be constituted among themselves, for example, is unresolved. However, it has been clarified through many years of practice that legal entities may be trustees. In the case of charitable trusts, this is the rule. Ultimately, trusteeship is based on the notion that an idea and the capital necessary to realise this idea are handed over to a third party with the inherent obligation to ensure that the idea is realised. In practice, this third party usually but not necessarily is an already existing legal entity. It is conceivable, however, that several people form a civil law partnership to take on such a task. In this case, the foundation does not become a legal entity; the legal owner becomes the trustee, who is responsible for fulfilment through the trust relationship of the settlor (= founder). In order to minimise this responsibility, a practice has been resumed in recent decades that was common in antiquity and the Middle Ages, especially in the Church, which did not see itself as a trustee, but as a recipient of donations under certain conditions. This consisted of realising the founder's will, but regularly did not include a direct fiduciary relationship. Such an understanding does not seem appropriate to a modern understanding of responsibility, particularly since the option of revocation is reduced to cases of gross ingratitude, which is difficult to prove. A regular fiduciary relationship, on the other hand, includes the possibility of termination for both parties and regulates how that termination is to be carried out. It also includes possibilities for the founder's (settlor's) continuous participation in the trusts's activities. Despite the practical limitations of this form of foundation (inability to be entered in the commercial register or land register, no employer function of its own), it has gained considerable popularity and importance in recent years, especially because it is simpler to set up and manage and is not subject to separate state supervision.

It is this aspect of state supervision which, alongside its characteristic of forming a legal entity, represents the essential difference that sets the trust apart from the foundation with legal personality under civil law. This construction is unique to Germany. It was developed during the 19th century and ultimately anchored in the German Civil Code (§ 81 ff.). It is based on the idea that, in order to realise a foundation idea and as the owner of the foundation assets, a legal entity established (and authorised) solely for this purpose is founded. In order to participate in legal and business transactions, this legal entity is equipped by statute with at least one administrative body (more often two) which, however, unlike the trustees, is not the legal owner, but administers the foundation property. Consequently, the establishment of such a foundation is irreversible. Since in the 19th century it was increasingly the case that neither a church nor any other long-lived body exercised supervision over these foundations, they were declared wards of the state and placed under a specially appointed legal supervision of a state authority. Among other things, these authorities were granted the power to abolish foundations on the grounds of endangering the common good, a provision that was used extensively both during the National Socialist era (in relation to so-called Jewish foundations) and in East Germany (the GDR) (in relation to all foundations). In contrast, the special provisions for the investment of foundation assets (so-called ward-safe investments), which were widely used by the state to create markets for less attractive government bonds (Adam 2018:195ff.), gradually became obsolete after disastrous experiences in the early 20th century.

Foundation law is divided into federal regulations in the (federal) Civil Code and 16 *Länder* laws (Allenberg/Meyer 2021). Foundation supervision is reserved for the *Länder*. Relations between foundations and their supervisory authorities vary greatly. They range from complication-free dealings to sheer endless negotiations on relatively marginal issues arising in the course of the submission of annual reports or amendments to the articles of association. Whereas up to now the foundation laws enacted by the *Länder* to regulate supervision differed, an amendment to the Federal Civil Code in 2021 transferred the regulatory competence almost entirely to the federal level with the consent of the *Länder*. In doing so, the *Bundestag* made use of its competence under §§ 72 and 74, para. 1 no. 1 of the Civil Code. The new regulation will come into force in 2023 and includes a number of additional supervisory and control functions.

Community foundations are a type of foundation that has become popular in Germany since the 1990s. They build on the tradition of medieval trusts in the hands of local governments and combine it with the American concept of independent community foundations. They involve a combination of hierarchical and heterarchical elements. However, they are not a legal form in their own right but are constituted as a trust or (more often) as a foundation with legal capacity.

Not least because of the supervision, alternative foundation models have emerged since the 1960s. The first known attempt is the largest German foundation, the *Robert Bosch Stiftung*, which was founded in 1964 as a non-profit corporation in fulfilment of the will of the entrepreneur Robert Bosch, who died in 1942. It bears the name Robert Bosch Stiftung gGmbH (*gemeinnützige Gesellschaft mit beschränkter Haftung*) as a non-profit limited liability company. In the meantime, numerous other donors have followed this example. In addition to the gGmbH, foundations have also been established in the form of a non-profit joint-stock company, a non-profit entrepreneurial company with limited liability, and a non-profit limited.

4.6.3 The Framework for Special Forms of Civil Society Organisations

Where the operation of enterprises (hospitals, schools, museums, etc.) is the focus of activity, the *gGmbH* in particular, but also the other forms of corporations, have proven to be appropriate and relatively independent legal forms. The scepticism that potential donors would be deterred by the form of the limited company, while long justified, has largely disappeared in recent years.

Special legal conditions prevail for religious communities. This is mainly due to historical reasons related to the separation of church and state, which has been politically desired for 200 years but has never been consistently implemented. By today's standards, religious communities are to be classified as CSOs (Strachwitz 2020c). Due to their intentional foundation and reference to a founder of a religion, they can be described as hierarchical, although some contain heterogenous elements, e.g. by way of a synodical Constitution.

All this is rather straightforward for most Protestant free churches as well as for Islamic Mosque communities and other religious communities, since they are regularly constituted as registered associations. The classification of the Catholic dioceses and Protestant regional churches is more complex, since they became public corporations through the 1919 Weimar Constitution by way of a compromise, which in itself entails their assignment to the state. However, this Constitution also

stipulated the following for religious communities (in contrast to all other public-law corporations): "Each religious community shall organise and administer its affairs "autonomously" (Art. 137, incorporated into the present Constitution via Art. 140). Thus, a legal classification as forming part of civil society seems possible; however, some resulting questions remain. For example, a corporation under public law is not capable of bankruptcy, since the state is jointly and collectively liable. In the near future, the privileged position of the two Christian churches (invitation to hearings, participation in broadcasting councils and the like) is likely to be called into question when less than 50 per cent of the citizens belong to either one of these churches. The Jewish religious community has always been accorded a position comparable to that of the Christian churches, despite a significantly smaller number of members. The coalition agreement for the Federal Government of 24 November 2021 provides for a disentanglement of the relationship between the state and the large Christian churches.

A relatively new problem, on the other hand, is the legal status of Muslim communities, especially since they do not have a common association or community structure for theological reasons. The Turkish-Islamic Union of the Institute for Religion (*Türkisch-Islamische Union der Anstalt für Religion e.V.*, DITIB), for instance, is subject to supervision by the Turkish state by whom it is also largely financed. While the principle of equal treatment (Art. 3 of the Constitution) prohibits unequal treatment of different religious communities, especially since a significant proportion of German citizens are Muslims today, the granting of a legal status and legal form comparable to that of the Christian churches seems pragmatically very difficult and would also represent a step backwards in terms of legal development. However, meeting this problem with inactivity from the German state does not constitute a viable solution.

This complex situation is linked to the question of whether the existing legal forms are generally adequate to provide all CSOs with an appropriate civil law framework — a question that comes up from time to time but is not discussed thoroughly enough.

4.7 The Fiscal Framework of Civil Society Organisations

Since the 19th century, there has been a broad and established social consensus that CSOs should be treated differently from commercial enterprises in terms of taxation because of their social significance. This exemption is intended to facilitate their activities and relieve them of financial hurdles and legal requirements, and to limit the costly cycle of funds between the tax authorities and the CSOs through tax revenues on the one hand and subsidies on the other. For centuries, churches and charitable institutions were not regularly taxed, but were exposed to periodic expropriations by sovereigns. With the development of the welfare state in Germany from 1871 onwards and the parallel development of the modern administrative state, a more general taxation by the *Länder* took its course. This was relatively unproblematic for the welfare organisations and the like as long as they could either secure exemptions or easily shoulder the standard maximum tax rate of 4 per cent. It was not until the beginning of the 20th century, when tax rates were raised more and more and at the same time competition between the increasingly powerful welfare state and the traditional, but also partly new, non-state providers of services in the welfare and education sector became stronger, that a new necessity arose: on the one hand, to define who should be

exempted from income taxation from the point of view of the state and, on the other hand, how this exemption should be arranged in detail.

With the 1919 Constitution, tax jurisdiction passed from the *Länder* to the *Reich*, i.e. the nation state. The applicable German tax law for CSOs thus originates from the *Reichsabgabenordnung* (the *Reich's Tax Code*) of 1919. A thorough revision of the tax law on charitable organisations (*Gemeinnützigkeitsrecht*) last took place in 1941 (Strachwitz 2020d). Since then, this legal framework has remained essentially unchanged, but details have been amended.

European Community Law has so far only marginally affected civil society in the area of tax law. Experts welcome corresponding initiatives by the European Commission and the European Parliament (Jakob 2015:41). However, the Europeanisation of non-profit law has so far always failed in the Council. The principle championed by national governments that the waiver of tax revenue implied in the tax exemption must be closely related to the national community of taxpayers and to the promotion of the common good facilitated by the tax exemption provided the basis for this. For the same reason, the activities of tax-exempt CSOs abroad are subject to restrictions, in particular the so-called "structural domestic connection" (*struktureller Inlandsbezug*, Section 51 (2) Fiscal Code). According to this, the activities of the CSO abroad must contribute to the reputation of the Federal Republic of Germany in addition to realising its tax-privileged purposes. In 2016, the Cologne Fiscal Court ruled that this was unconstitutional and contrary to European law. The dispute is ongoing, however.

European law aiming at freedom of competition and equality, and German now angrily pursuing fiscal interests is a constant bone of contention between European and German law. Thus, tax exemption for advocates, political contributors and watchdogs is desirable from a European perspective, as they contribute to the fulfilment of Article 11 of the Treaty on the European Union. On the other hand, the EU is very reluctant to see non-profit service providers competing with taxable service providers (such as hospital companies). Conversely, the German tax legislator has an interest in the latter but sees the former as competing with political parties.

Article 52 of the Tax Code lists the areas of activity recognised as charitable purposes, such as the promotion of science and research, of religion, youth and old people's welfare or art and culture. Political purposes (influencing the formation of political opinion, promoting political parties, etc.) are generally not included among the non-profit purposes within the meaning of § 52 of the Tax Code. German Tax Law is considered extraordinarily complicated due to its provisions that extend to the smallest detail, the numerous exceptions and many details that aim to account for particular interests (Kellerhoff 2019). Moreover, even with a generous interpretation, some clauses are no longer up to date (e.g. the selfless moral promotion of the general public as one of the prerequisites for a tax exemption, § 52 para. 1 Tax Code) or outright unintelligible (e.g. "the promotion of tolerance in all areas of culture," § 52 para. 2 no. 13 Tax Code).

The tax administration places the individual decision on the recognition and withdrawal of charitable status in the hands of the local tax offices. However, their employees are not trained to do this, but are in essence entrusted with the task of collecting taxes, not waiving them. This is all the more significant because the proof of tax exemption opens up numerous possibilities for CSOs that go far beyond tax liability, e.g.

- access to government grant programmes available only to NPOs,
- access to funding from charitable foundations under private law, which may only make concessions to charities,
- the option of employing volunteers doing a voluntary year of social work (either *Freiwilliges Soziales Jahr* or *Bundesfreiwilligendienst*),
- the possibility of issuing donors with a receipt relevant for deducting the donation from the donor's tax load,
- access to local facilities reserved for local non-profits,
- traditionally an increase in favourable public opinion.

Even joining the civil society transparency *Initiative Transparente Zivilgesellschaft* ('Transparent Civil Society Initiative') was made dependent on this status, until the withdrawal of the non-profit status of *ATTAC Deutschland* and *Campact e.V.* prompted a rethinking of this practice in 2020 and a change in the corresponding regulations.

The financial administration staff essentially base their decision on the following criteria:

- the constitutional, legal and regulatory conformity of the statuland of the actual management;
- the status of the corporation, as defined for tax purposes in § 1 (1) of the Corporation Tax Act. Accordingly, corporations include:
 - corporations,
 - cooperatives,
 - legal entities under private law (e.g. registered associations and foundations with legal capacity)
 - associations, institutions, foundations and other special-purpose assets under private law without legal capacity (which excludes, for example, partnerships);
- the promotion of the common good (of the general public), which excludes, for example, foundations or associations that only benefit members of a certain family or a company;
- the pursuit of objectives that are expressly listed in § 52, (2) Tax Code;
- the existence of a binding provision in the statutes stipulating that members, founders and owners may not partake in any economic success of the organisation (a non-distribution clause), and that on termination of the activity the remaining assets may only passed on to another tax-exempt or public corporation;
- a separation from economic activities, which includes the particularity that these may not be subsidised;
- the prompt use of available funds for charitable objectives with only a limited allocation to reserves (§§ 61-64 Tax Code).

Finally, newly founded CSOs are granted charitable status upon application and submission of their founding statutes, but this status is subsequently only confirmed retroactively, usually at intervals of three years. If the tax authorities come to the conclusion that non-charitable purposes were pursued or that non-profit, tied assets were used for purposes other than those for which they were

intended, the CSO loses this status retroactively and also becomes liable to tax retroactively. This exposes their leadership to an almost unacceptable degree of precariousness.

The list of charitable purposes in § 52 (2) of the Fiscal Code has long been considered particularly problematic. It essentially corresponds to the spectrum of activities that are also classified as charitable in comparable legal systems (an exception is sport, which is considered charitable in Germany, but not in many other countries). The list of purposes has been extended repeatedly, but “it is unsystematic, too detailed in many places (e.g. "radio-controlled model aircraft flying" is specifically listed) and on the other hand contains gaps that result from modern demands on the social function of civil society.

The most recent reform of the law on NPOs took place within the framework of the Annual Tax Act 2020, in which, for example, the provisions on special-purpose enterprises were supplemented. However, there is criticism that the reforms only lead to minor improvements, that, like earlier reforms, they were of a "cosmetic nature" (Strachwitz 2015a:2), and that they tend to reinforce the bureaucratisation and fragmentation of legal principles (Strachwitz 2020c). Moreover, the reform ignored the problem of political activity (Allenberg/Meyer 2021). Since the annual tax reform 2020, holding and investment companies can also be charitable. In future, corporations too will pursue tax-privileged purposes if they exclusively own and manage shares in tax-privileged corporations (§ 57 (4) Fiscal Code). The legislation thus reacted to the economisation of parts of the sector and to the changed operating conditions of the CSOs. The distinction between (tax-exempt) so-called related businesses and unrelated businesses, which may be operated by CSOs but are understandably taxable, is the subject of constant debate and new regulations.

In the interviews, the reforms were assessed in different ways. According to one interviewee, the regulation of the non-profit status of corporations is to be welcomed and opens up sufficient possibilities for action and legal certainty (I 2). However, it is unclear which activities of *gGmbHs* can be accounted for as tax-exempt. This would have to be legally clarified and would otherwise force organisations to use specific keywords in the corresponding activity reports or invitations (I 2). For these reasons, an interviewed employee of a *gGmbH* is considering converting said *gGmbH* into an association in order to avoid the danger of being accused of profit-making (I 15).

The possibility of registering an association as a non-profit organisation without it being listed is viewed positively and reduces restrictions on access to tax benefits (I 4). The legal scope for action is clearly defined but does not always correspond to the realities and needs of the CSO, according to another interviewee (I 11). For example, the lack of opportunities for lending credit to individuals received criticism (I 11). The many reforms are seen as part of an “over-regulation that leads to more bureaucracy” and an “over-complication” instead of real improvements (I 11). Overall, the regulations often do not fit the requirements of civil society, which is why it must be taken into account already when passing new laws (I 10).

As early as 2005, the Maecenata Foundation presented a complete draft for the reform of non-profit law (Strachwitz 2005). It received no attention from policymakers but is cited repeatedly in contributions to the debate. In August 2021, the Society for Civil Rights (*Gesellschaft für Freiheitsrechte*, GFF) also presented a complete draft reform that attempts to bring German non-profit law into line with the requirements of a modern legal framework for civil society (Kube 2021).

Another expert report by the GFF, also presented in 2021, examined the compatibility of non-profit law with European Community Law, namely the European Convention on Human Rights. It concluded that the two are not compatible, especially regarding restrictions on political activity (Wiater 2021).

4.8 Further Regulations

Many CSOs are active in areas that are subject to specific regulatory mechanisms concerning their legal form and tax law regulation that extend beyond civil law frameworks. These mechanisms can have a decisive impact on the life of the organisation. This is especially true for those that receive grants from the budgets of the European Commission, the Federal Government, the *Länder* and local governments in the form of institutional or project grants. For them, the provisions of the budget regulations apply (that is, the budget regulations of the *Bund* or the *Länder*, respectively, in particular § 44 Federal Budget Regulation), which encroach on the autonomy of the CSOs, establish extensive reporting obligations and open up extensive possibilities and necessities for review for the funding agency. For example, even in the case of relatively small funding measures, the use of funds is first reviewed by the authority that awarded the funds in the first place, or, in many cases, by an external administrative office (e.g. the Federal Office for Foreign Affairs), then by the Federal Office of Administration, and finally again by the Federal Audit Office. The ensuing effort is often disproportionate to the amount of funding.

In the case of institutional funding, the principles of good corporate governance and active equity participation often apply in the federal sector (BMF 2020d). In the opinion of the federal ministries, they also apply where there is no equity participation in the legal sense, and they provide for extensive participation rights of the funding bodies in the decision-making bodies of the funding recipients. Furthermore, some *Länder* (such as Berlin) insist on participation in a voluntary civil society transparency mechanism when providing funding. These include, for example, the donation seal awarded by the German Central Institute for Social Issues (*Deutsches Zentralinstitut für soziale Fragen*) or the Transparent Civil Society Initiative (*Initiative Transparente Zivilgesellschaft*) managed by Transparency International Germany.

It is undisputed that participation in these or the fulfilment of one of the association's internal transparency requirements is in the CSO's own best interest (Strachwitz 2015b). However, this must be differentiated from the following legally regulated reporting obligations:

1. The Register of Associations, kept at the registry courts (local or county courts) in execution of the Ordinance on the Register of Associations in the 2021 version;
2. The Trade Register, kept at the registry courts (local or county courts) in execution of the Ordinance on the Register of Associations in the 2021 version;
3. The Transparency Register (since 27 June 2017), kept by the publishing house *Bundesanzeiger Verlag* under the implementation of the 4th EU Money Laundering Directive of 2015;

4. The Lobby Register (since 1 January 2022), kept at the German *Bundestag* in execution of the Lobby Register Act 2021;
5. The Public Benefit Register (from 2024), kept at the Federal Central Tax Office under the implementation of the Annual Tax Act 2021;
6. The Foundation Register (from 2026 onwards), to be kept at the Federal Office of Justice under the implementation of the Foundation Register Act 2021.

Not all CSOs are obliged to be listed in all registers. However, some will be obliged to be entered in up to four registers from 2026. A digital comparison mechanism between these registers is not yet foreseen. The so-called notification function, which exempted CSOs already listed in official registers (e.g. registered associations) from a separate entry in the transparency register, has been abolished as of 1 August 2021. Overall, the year 2021, largely unnoticed by civil society and the public, has brought a substantial increase in registration and reporting requirements with a corresponding increase in workload for the CSOs.

Individual sub-sectors of civil society are also subject to considerable sector-specific regulation, which may relate to publicity, labour standards, quality assurance, reporting, notification, accounting and auditing obligations, governance principles and much more. Some of these are not specific to civil society but derive directly from their sometimes highly regulated areas of activity. Failures and violations may not only trigger claims for repayment or reductions of contractually agreed funds, but also lead them to incur penalties and other specific sanctions (see Krimmer et al. 2014:71ff. for details). Federal and state regulations vary to some extent, and regulations of the European Commission differ considerably from national regulations. What all reporting obligations in this context have in common is that they apply to individual authorities (and possibly social insurance institutions), which, for their part, tend to act in a non-transparent manner. This straitjacket of regulations and reporting obligations is further tightened by the fact that the authorities have a tendency to mix up or confuse contracts and subsidies and in this respect do not distinguish between instances in which they are contractual partners of a CSO with corresponding obligations on both sides and those where they are subsidy providers.

5 THE RESOURCES OF CIVIL SOCIETY

Civil society is the civic sector *par excellence*. Around 80 per cent of civic engagement takes place here. CSOs are predominantly dependent on this engagement, manifesting in the voluntary provision of

- empathy,
- ideas,
- know-how,
- reputation,
- time, and
- financial resources.

5.1 Development of Civic Engagement and Donations of Time

Citizens' volunteer engagement in the civic space is "crucial for societal cohesion" (Klauser 2021). It is also an expression of the fundamental right to free development of the personality under Article 3 of the Constitution and does not call for immediate regulation. However, some aspects appear to be in need of regulation in Germany. Accordingly, the Tax Code, the Income Tax Act, the Social Security Codes and the Ordinance on Voluntary Activities of the Unemployed contain explicit provisions on civic engagement, although the older term 'voluntary work' is usually used here. A voluntary activity is not clearly defined by law, but in general usage it refers to an activity that is not primarily aimed at material gain, takes place in the public sphere, is oriented towards the common good and is carried out voluntarily.

Just as relevant as it is difficult to answer is the question of whether the time invested in civic engagement is on the decline or on the increase. On the one hand, the advanced age of many members of associations and committees reflects the high proportion of older people in the population on average and offers many opportunities for CSOs and those involved to make a joint contribution to overcoming the related challenges. CSOs could work more with older people, especially in the care sector (Burkhardt 2016). At the same time, the aging population presents many CSOs with problems, some of them considerable, in recruiting new staff, difficulties with digitalisation and internal renewal. In practice, there are complaints about the difficulty of mobilising people and a decrease in long-term commitment of volunteers in general, especially younger ones (Alscher et al. 2017). On the other hand, new groups and movements are gaining a lot of traction. The Federal Government's volunteerism reports also speak of a significant increase. What is certain is that the amount of time invested in engagement has shifted. Long-term memberships in organisations have given way to relatively spontaneous and increasingly short-term, issue-oriented forms of engagement, which only partly takes place within organisations at all.

Backoffice tasks such as bookkeeping or maintaining equipment are particularly unpopular, as is the assumption of leadership responsibility, e.g. as a board member. The development of

engagement differs considerably according to the field of engagement in question. While according to the interviews small local associations with a community-building function sometimes have serious recruitment gaps (I 7) and sports and leisure associations also report problems (I 6), educational organisations report a steady increase (I 6). One possible reason for this is that educational work can also take place digitally and has gained further relevance through the Covid-19 pandemic (I 6). There is concern that the pandemic will lead to older volunteers not resuming their activities, so that local associations, for example, could disappear (I 7). In the area of sport, a decline in club memberships can already be seen, although it is assumed that this will ease after the pandemic (I 10). In Berlin, the number of members in sports clubs fell by almost 5 per cent (LSB 2021). In the Sports Development Report of 2020, every second sports club stated that it expected its very existence to be at risk in the coming twelve months (Maas 2021). At the same time, the form that commitment takes is changing. Younger volunteers are organising less and less in associations (I 5). Informal types of engagement and sporting activities are on the rise and must therefore be afforded improved access to resources and politics in the future (I 10).

This finding of a decline in overall volunteer engagement contrasts with findings that short-term engagement for immediate challenges, such as the large-scale refugee movement in 2015, is on the rise, as is engagement with current issues, such as climate change (I 6, 9). Digital forms of engagement are also on the rise. Organisations are therefore specifically trying to offer project-based work and shorter engagement cycles (Kalisch et al. 2014) and to shorten election cycles (I 5). Other structures of participation are also made possible, for example in the form of advisory board structures, professional support or alliance work with very specific assignments (I 5). There is a demand to adapt the statutory association structures to the new conditions and, for example, to allow for a management team instead of a single director (I 5). Two organisations that work a lot with older people report successes through continuous organisational renewal and an active appeal to volunteers (I 7, 12). Even organisations that traditionally work in very rigid structures, such as disaster care organisations and fire brigades, are now partly trying to develop programmes that take these changes into account (Kietzmann et al. 2014).

The reason for declining volunteer numbers is that volunteers do not feel valued enough, complain about a lack of compatibility between volunteering, work and family life, and perceive processes within organisations as insufficiently democratic (Priemer et al. 2017). In the context of engagement policy, reforms such as the Law for the Further Strengthening of Civic Engagement and the Strengthening of the Volunteer Act (*Ehrenamtsstärkungsgesetz*) have attempted to express the political appreciation of volunteers, which sometimes leaves much to be desired in society. Such efforts are also explicitly called for by the interviewees (I 11, 12). Increasingly, volunteers (as well as full-time staff) report a lack of respect, hostility or even threats and assaults, for example in the course of their work for refugees (*Deutscher Bundestag* 2017).

The work of volunteers, part-time and full-time staff and employees in special employment relationships alongside one another always poses a challenge for management and often has consequences for working conditions e.g. insurance protection. Another difficulty is that full-time staff in CSOs are often also active as volunteers in the same organisation, which can lead to a clash of different rights to issue instructions, but also obligations to provide services.

5.2 Remuneration of Civic Engagement

The remuneration of volunteers, not to be confused with the reimbursement of expenses incurred in the context of their engagement, is regarded critically under the label of the monetarisation of engagement. In certain areas of activity, remuneration is increasing and is perceived as a problematic development that is changing the culture of engagement as a whole (*Deutscher Bundestag* 2017:51). In this context, the interest in engagement that is remunerated is increasing, and engagement options are increasingly advertised as additional earnings (*ibid.*:54), particularly in care, organisations with paid "volunteers" try to offer their services as cheaply as possible, mixing low-wage work and volunteering (*ibid.*:56). During this development, the increase in allowances has also been reviewed critically (*ibid.*:52ff.). This creates the additional problem that the compensation of volunteers is often considerably below the legal minimum wage (€9.60 per hour as of 1 July 2021). Whether minimum wage is applicable is a matter of dispute (Strachwitz et al. 2020:199).

The boundaries between voluntary and part-time work are fluid. For example, functionaries in larger organisations, who are described as volunteers and consider themselves as such, often receive considerable compensation, which is taxed as income and which objectively makes them appear to be working on a part-time basis, in some cases even as full-time employees (Sandberg/Mecking 2008). The legislator has created relatively generous exceptions to the tax obligation through the so-called lump-sum allowances for trainers (*Übungsleiter*) and voluntary work. The Parliamentary Commission on the Future of Civic Engagement rejected the idea proposed by then Federal President Rau of taking civic engagement into account in the assessment of statutory old-age pensions as an encroachment on the singular quality of engagement (*Enquete Kommission* 2002:669). On the other hand, the statutory social insurance institutions insist on demanding a (preferably high) share of voluntary service in the formulation of collective agreements with CSOs. They are willing to finance expense allowances; however, as these are usually considerably lower than personnel costs, they simply regard these volunteers as cheap labour. Measuring the monetarisation of civic engagement often runs into difficulties (Sprengel/Strachwitz 2008:21ff.) e.g. because many activities can only be taken up at all if they are carried out on a voluntary basis or because the appropriate level of remuneration cannot be derived from the activity itself.

The legal provisions were changed by the so-called Act for the Further Strengthening of Civic Engagement (*Ehrenamtsstärkungsgesetz* 2013). This intended to facilitate civic engagement by reducing red tape and rendering the tax and civil law framework more flexible for organisations and volunteers (*Deutscher Bundestag* 2013). The options for remuneration in the form of tax-exempt lump sums were expanded and increased again by the Annual Tax Act 2020. CSOs may only pay out the lump-sums if they are appropriate and only if their granting is anchored in the statutes (Strachwitz et al. 2020:199). Trainers as well as voluntary caregivers may receive lump-sum payments according to Art. 3 No. 26 p. 1 of the Income Tax Act. They can receive up to €3,000 in tax-free remuneration per year. Voluntary work allowances are tax-free up to €840 per year (Art. 3 No. 26a p. 1 Income Tax Act). Such compensation is particularly widespread in the areas of social services, rescue and ambulance services and in the areas of sport and education. However, the mechanisms of these lump-sum compensations mean that large, well-funded CSOs are disproportionately favoured.

The introduction of the voluntary service allowance in 2007 (Art. 3 No. 26a Income Tax Act) and state and federal programmes such as the Federal Volunteer Service (*Bundesfreiwilligendienst*), the Voluntary Social Year (*Freiwilliges Soziales Jahr*) and the Voluntary Service of All Generations (*Freiwilligendienst aller Generationen*) promote the granting of financial remuneration and allowances. The programmes at the state and federal level are well funded (around €327.9 million and with a long-term perspective) and support CSOs very systematically in recruiting and supervising volunteers (*Freiwilligendienste Kultur und Bildung* 2019).

There are some gaps in the insurance for volunteers. Regarding their personal accident insurance, volunteers in the fields of health or welfare care fall under the responsibility of the *Berufsgenossenschaft für Gesundheitsdienst und Wohlfahrtspflege* (BGW, roughly: Employer's Liability Insurance Association for Health and Welfare Services). They are therefore insured free of charge by law. Volunteers in the cultural and sports sectors are insured through the BGW if they are engaged in voluntary work on behalf of an association. Volunteers working on behalf of federal, state and local governments are also insured against accidents by law. Volunteers in other areas, as well as board members and officials such as groundskeepers, are not automatically insured against accidents free of charge (IPBPro 2017:31). In most federal states, however, there are collective insurance contracts that also provide accident and liability insurance coverage for volunteers (BMAS 2018). Those who cause damage in the course of their voluntary work are usually covered by the CSO's liability insurance; in some cases, private insurance takes effect. Voluntary board members can be held liable with their private assets if they have caused damage intentionally or through gross negligence.

Those who volunteer in leadership positions are often, and in some cases handsomely, compensated for their efforts (Strachwitz et al. 2020:199). However, "the honorary office allowance always correlates with the compensation limits within the framework of the liability of § 31a Civil Code" (Federal Association of German Foundations 2021). This means that a limitation of liability is only granted if the remuneration is less than €720 per year. Here, too, the problem of competing and discordant complementary legal bases becomes apparent. Volunteer allowances can be paid in addition to a tax-free so-called mini-job and are not offset against the mini-job, which means that an income of up to €650 per month remains tax- and insurance-free (*Deutsche Rentenversicherung* 2020:14). Pensioners can earn allowances of up to €6,300 per year on top of their full pension. During the Covid-19 pandemic, the tax-free amount was raised to €44,590 (ibid.:19). If pensioners earn more on top, they receive a part-time pension.

Volunteers must largely tolerate a loss of income and pension contributions because of their civic engagement. According to § 616 of the German Civil Code, only volunteers in certain fields of activity must continue to receive payment, provided that they are not absent from work for a considerable amount of time and through no fault of their own. The working time is not counted as time absent from work (Schmid 2018). In some *Länder*, there is an entitlement to time off work with compensation for certain voluntary activities (e.g. in a voluntary fire brigade) (IBPro 2017:10). Rhineland-Palatinate positively stands out here with its engagement exemption law. In general, employers have to release their employees from work for voluntary activities if these are in the public interest e.g. disaster relief workers of aid organisations and voluntary judges. Incentives for

employers to promote the voluntary engagement of their employees, however, are largely non-existent.

The complexity of labour and social security law repeatedly leads to mistakes, especially in the case of less professionalised CSOs, because the boundaries between voluntary, employed and freelance work are often difficult to assess in practice (IBPro e.V. 2017). The employment of freelance facilitators, for example, is often the cause of complaints by social insurance agencies. The assessment of the voluntary association activities of one district master craftsman under insurance law was the subject of a review procedure at the Federal Social Court (BSG 2017, B 12 KR 14/16 R). Based on this ruling, the top organisations from the insurance sector and the Federal Employment Agency have drawn up principles for the assessment of honorary board activities, which are intended to provide guidance for the CSOs (*Deutsche Rentenversicherung* 2018). In most cases, the subject matter of the tasks taken on is decisive for whether the activity is classified as subject to social security contributions (ibid.:4). In addition, there are legal uncertainties about how to deal with board or association members who are also employees (IBPro e.V. 2017:30). This is both permissible and relevant in practice but is not explicitly regulated in association or labour law.

5.3 Special Employment Conditions

A special feature of civil society (and some public institutions) is the legal possibility to employ people within the framework of special employment relationships. While this was primarily the civilian service (instead of military service) until 2012, after its *de facto* abolition (*de jure* suspension), the Federal Volunteer Service (*Bundesfreiwilligendienst*) was established as a new option. This was to complement the existing youth volunteer services, some of which dated back to the 1950s, and to open them up to all age groups. While officially these are seen as educational and qualification measures that are also supposed to offer incentives for a longer-term commitment, in practice they often include the aspect of cheap labour. The duration of the service varies from six months to two years. It can also be accredited as an internship and completed part-time. The more than 100,000 volunteers who get involved every year receive further training and an allowance of up to €309 per month. In addition, they receive various discounts through a Federal Volunteer Service Card. Accommodation and meals are often subsidised (BMFSFJ 2021a). In many cases, accommodation and meals must be replaced by financial benefits, as the organisations are not able to provide these services. The fact that this sometimes makes it an entry option into careers in the social sector and in civil society is a very desirable side effect, especially for those doing community service, members of the voluntary social year and interns work in the social sector (Liebig/Karla 2003:48).

The voluntary service is divided into youth volunteer services on the one hand and the Federal Volunteer Service on the other. The youth volunteer services, e.g. the Voluntary Social Year (FSJ), the Voluntary Ecological Year (FÖJ), the Voluntary Social Year in Culture (FSJ-Kultur) or the Into the World (*Weltwärts*) programme, offer young people the opportunity to get involved in domestic charitable institutions, in nature conservation and environmental protection or in aid projects abroad. Approximately 60,000 such services are performed each year. Together, they represent by far the most extensive opportunity for so-called service learning i.e. they provide experiences and learning processes that are intended to give participants the desire and education for further civic

engagement (BMFSFJ 2021b). They include volunteer service abroad (*Weltwärts*) and the International Youth Volunteer Service. They thus specifically promote the international cooperation of CSOs.

Traditionally, the *Länder* are responsible for the classic youth volunteer services. However, some aspects were federally regulated in 2008 by the Youth Volunteer Service Act, with several federal ministries performing involved. The Federal Volunteer Service, on the other hand, is the exclusive responsibility of the federal government (BMFSFJ) and BAFZA is responsible for its implementation. The Federal Volunteer Service, established by the Federal Government after the suspension of military and civilian service, aims to "impart social, ecological, cultural and intercultural competences and strengthen the sense of responsibility" (BMFSFJ 2021b). The centralised control and direct contact with the places of assignment, bypassing the structures of the respective organisations, were taken over from the civilian service and are an irritant to the organisations, as they undermine their cohesion and governance.

Participants in voluntary services are compulsorily insured in all areas (*Deutsche Rentenversicherung* 2020:9). Contributions must be paid by the host organisations they work for.

Furthermore, some CSOs employ people who have been unemployed for a long time. In the course of the merger of social welfare and unemployment assistance in 2005 (the so-called *Hartz IV* reform), 1-euro jobs i.e. jobs not subject to social security contributions at a salary of €1 per hour, were created along with the welfare organisations with the rationale of reintegrating people into the labour market. One euro jobs do not constitute an employment relationship in the sense of labour law and therefore do not offer workers any protection. The costs for the workers are borne by the state, which makes them particularly attractive for employers.

5.4 Civil Society as a Labour Market

Even if civil society is the arena of civic engagement *par excellence*, it is also an essential component of the German labour market. Overall, according to projections from the Institute for Employment Research, civil society employs around 3.7 million people (Hohendanner et al. 2019:92). Employment in CSOs amounts to approximately 9 per cent of total employment (Zimmer et al. 2017). The most important employers are CSOs in the areas of services of health and social welfare i.e. the umbrella organisations of civil society welfare organisations with their affiliated legally independent organisations (Hohendanner et al. 2019:95). They alone had 1.7 million employees in regular employment in 2012 (ibid.). Most of the data is based on estimates; unfortunately, there is still no continuous coverage of the sector.

CSOs are subject to the same regulations as other employers regarding their paid employees. For example, they are bound by the statutory minimum wage of currently €9.82/h (since 1 January 2022) (Art. 22 Minimum Wage Act). As a rule, smaller independent CSOs have not entered into collective agreements. The fact that collective bargaining coverage in the civic sector is nevertheless higher than in the business sector is due to the welfare associations (Ellguth/Kohaut 2011:16). However, the level of collective bargaining coverage has decreased (Conrads et al. 2016:119f.). Most carers in civil society still work without a collective wage agreement (Rademaker 2021). If CSOs are classified as

Tendenzbetriebe (meaning that they must not only be non-profit, but also predominantly serve "political, coalition-political, religious, charitable, educational, scientific or artistic purposes" (Art. 118 BetrVG) or form a religious community), some regulations of the Works Constitution Act (BetrVG) do not apply to them. This means that the co-determination of the works council is restricted, and in some areas even suspended. Church organisations can enact their own labour law under Article 140 of the Constitution and are therefore independent in their wage setting. This particularly applies to the two largest welfare organisations, *Caritas* and *Diakonie*, which are considered part of the Catholic and Protestant churches respectively. This also restricts their workers' right to strike and largely excludes trade unions from wage negotiations.

For some years now, tendencies towards greater professionalism may be observed in some parts of civil society. This shows, for example, in an increase in full-time staff (Hohendanner et al. 2019:102ff.). Increased administrative and qualification requirements and other reasons also force smaller CSOs to rely more heavily on paid staff. For example, fulfilling the qualification requirements for the deployment of volunteers in rescue services is hardly possible. Welfare work, as the main area of employment, has been studied several times and exemplifies these problems. Increased demand for staff is met by a shortage of qualified nursing staff. In 2011, almost 70 per cent of CSOs in the health sector stated in a survey that they were in strong competition for staff (Priller/Schmeißer 2013:9). They therefore try to cope with the increased demand with fewer staff and partly decreasing revenues. Similarly to Austria (More-Hollerweger et al. 2014:58), they are increasingly employing staff on a precarious, non-standard basis and under problematic working conditions (Schmeißer 2013). Recently, *Caritas* blocked the introduction of a binding wage agreement in elder care, arguing that otherwise they would lose their privileged position on the labour market due to their payment of above-average wages (Rademaker 2021).

The admission of commercial providers in areas in which traditionally only public and non-profit organisations were active had an unintended side effect. As the Federal Fiscal Court ruled in 2020, the question of whether the principles of altruism and the prohibition of third-party beneficiaries are violated if salaries of executives in tax-privileged organisations exceed a certain level and this level is measured by way of a comparison with third parties may not be limited to tax-privileged and public corporations provided the organisation competes with for-profit organisations (e.g. a hospital). The principles that also apply to a potential concealed profit distribution in a commercial enterprise apply, whereby the entire spectrum of providers is considered for comparison. This does not affect the *Besserstellungsverbot* which is often part of contracts with public corporations. This 'prohibition of betterment' stipulates that grant recipients may not remunerate their employees at a higher rate than comparable employees of the grantor, which often corresponds to remuneration according to the wage agreement for the public service. The practice of the administration and the legal development by the courts do not align here.

About half of the employees in CSOs work part-time. One possible explanation is the high proportion of women employees who seek part-time solutions due to the care obligations placed on them (Hohendanner et al. 2019:104f.). This share is estimated at over 75 per cent (Priller/Schmeißer 2013:227f.), and as high as 83 per cent in the social sector (Schmeißer 2013:18). CSOs are often more flexible when it comes to working hours and are therefore popular employers. At the same time, employment relationships, especially in the area of organisations working in the project sector, are

twice as often temporary as in the private sector (Hohendanner et al. 2019:106). The same applies to the employment of temporary workers or freelancers, which is about twice as frequent in civil society as in the private sector (ibid.:108). In 2008, the share of 1-euro jobs in eastern Germany was 16 per cent, the share of short-term contracts 22 per cent (in western Germany 14 per cent; Dathe et al. 2009:1, 4). It is not uncommon for 1-euro workers to also perform care work (Sowa et al. 2012:45). Some of the CSOs using this form of employment are committed to social integration and participation; however, they do not apply these values when it comes to their employees and sometimes even plan their budget based on the availability of these free workers (ibid.:52).

A study on the working and living reality of full-time employees in small and medium-sized CSOs shows that, on the one hand, they assume a high degree of responsibility in dealing with social problems, and on the other hand, they are increasingly under pressure to be efficient. In doing so, they are strongly intrinsically motivated and sometimes take on considerable time or financial constraints in their private lives. At the same time, they often play a very strong role in shaping their organisations (Boubaris 2014).

5.5 Financing Civil Society

Access to financial resources is often, but not always, a necessary prerequisite for civil society action. In principle, organisations in Germany have various options at their disposal:

- membership fees,
- donations,
- grants from foundations and other private donors,
- funds generated through the CSO's own activities (fees for services provided),
- income from the management of the CSO's own assets,
- government grants,
- other.

Only the Christian and Jewish religious communities have access to one other very important source of income (in 2019: €12.4 billion) due to the special relationship between the state and the established churches: church tax (DfrV 2019). State tax offices collect this tax against a fee. Another German peculiarity, which also exists in some other countries, are funds from the state-owned state lotteries and media funds. A certain percentage of their proceeds is spent on projects that promote the common good. The sports promotion laws of the *Länder* are central to the financial and material support of sports clubs (I 13).

The majority of CSOs operate on very little money; very few have sufficient reserves, if only because tax law makes it difficult for them to build any. Two thirds of small associations with up to 100 members had no more than €10,000 at their disposal in 2015. Limited liability companies, corporations and cooperatives are the only ones that have revenues in the millions relatively often (42 per cent of limited liability companies) (Priemer et al. 2019b:114) and relatively regularly dispose

of reserves. This is also because they are legally obliged to keep commercial accounts (with a balance sheet and P&L), which makes it easier for them to build up reserves in accordance with tax law, whereas smaller associations traditionally work with a profit and loss account, which makes this almost impossible for them. Organisations in the traditional areas of activity of disaster relief and civil protection, recreation and socialising, sports and other membership-based associations tend to be poorly funded. Social service organisations, on the other hand, have high and rising revenues, with personnel costs being particularly high in this area (ibid.:115f.). The Association of German Foundations regularly releases data on the capital of German foundations. In 2018, the 11,996 foundations of all legal forms known to the association managed a foundation capital of €67.92 billion (book values – for valuation, cf. Ott 2018). However, the total number of foundations is much higher. At the same time, foundation assets are clustered in a few foundations and distributed very unevenly (Lesberg/Timmer 2017:32ff.).

The data on the mixed sources of funding therefore show considerable differences. While the Johns Hopkins project calculated a share of public funds of almost 65 per cent and donations of only 3.4 per cent (Zimmer/Priller 2001:34), *ZiviZ* arrives at significantly different results. According to *ZiviZ*, membership fees account for 39 per cent, generated funds for 20 per cent, donations for 19 per cent and public funding for 11 per cent of the financial resources (Priemer et. al 2019b:115). The significant differences are partly due to the lack of transparency of CSOs, and partly to the question of which CSOs were included in the respective study in the first place. In the case of public funds, too, a clear distinction between subsidies and contractually agreed service fees is not always made.

Larger organisations are significantly more likely to receive public funding than smaller ones (ibid.:122). Differentiated by areas of activity, the areas of health, social services and education, which are close to the welfare state, are very dependent on public funds. Service-providing organisations finance a high proportion of their work through service fees, which they receive from health insurance funds and social security institutions (ibid.:114). The providers of facilities such as childcare centres, hospitals or youth centres generate their income almost exclusively from fees in special-purpose enterprises. These contrast with membership-based associations in the areas of leisure and socialising, as well as thematic advocacy organisations of all kinds, for which usually only membership fees and donations are of any significance. In the cultural sector, membership fees and donations account for 26 per cent of income (DAKU 2019). Compared to 2015, their share in the income of sports clubs increased by 13 per cent and is thus their second most important source of funding (Breuer et al. 2020). However, with few exceptions, sports and cultural clubs are subsidised by municipal funds. The public sector grants many sports clubs free or very affordable access to sports facilities, without which the membership fees and thus the entry barriers of the clubs themselves would need to be considerably higher (I 10, 13). Throughout the Covid-19 pandemic, the low to non-existent rental costs proved to be important (I 10, 13). However, the need for renovation and the lack of accessibility of many public sports facilities are considerable, which is why CSOs are often unable to offer activities suitable for people with disabilities. They must resort to commercial sports facility providers instead (I 13).

Migrants' organisations often lack full-time staff, which makes it difficult for them to access funding. They also often lack knowledge about funding opportunities. Their funding is rendered yet more difficult by the fact that many of these organisations are still not appreciated and recognised, both

by the public and at the political level. As the members are often financially disadvantaged themselves, these financial constraints make it difficult for them to provide services (Reinecke et al. 2010:93ff.). However, when funding applications are made, they are often successful (SVR 2020b:4).

Differentiated by legal form, foundations depend more than average on asset income, associations more than average on donations. Non-profit limited companies (*gemeinnützige Gesellschaften mit beschränkter Haftung*) rely more heavily on generated funds. Membership organisations, on the other hand, rely primarily on membership fees (Priemer et al. 2019b:114). In view of the ongoing low-to zero-interest phase, numerous foundations are facing financial difficulties. This is one of the reasons why many of them have recently diversified their sources of income; on average, a quarter of their income now comes from public funding and 15 per cent from donations (Lesberg/Timmer 2017:33).

Since the 1990s, the extent to which legislation has favoured CSOs as providers of services over for-profit organisations has decreased. This is particularly relevant for organisations in health care, social services and other care tasks as their source of income consists exclusively of fees. Remuneration is mainly provided by federal, state or local authorities or by the statutory social insurance institutions on the basis of service contracts. There is therefore a considerable need for these CSOs to have a cost-efficient work performance (Meyer 2008:7f.). This not only puts the CSOs under considerable pressure, but also favours a reorientation of civil society from being mission-driven to donor-driven (Strachwitz et al. 2020:184). Furthermore, by focusing too much on the output instead of the outcome (i.e. the longer-term and overall social impact), the cheapest providers are selected rather than the best – a fact that is often criticised (More-Hollerweger 2014:23). For CSOs that do not work in the service sector, service fees are only relevant to a limited extent. However, associations in the areas of media and culture, science and research, recreation and socialising as well as civil protection and disaster control generate a good third of their income themselves, for example through sales revenues or admission fees (ibid.:17).

Many CSOs have a rather ambivalent attitude towards their financial activities, being primarily driven by their mission. Often, there is also a lack of knowledge regarding the acquisition and management of funds. Thus, financing remains something of a hurdle, especially in many smaller CSOs (Strachwitz et al. 2020:155f.). The focus is on short-term liquidity; long-term strategies and questions of profitability tend to be secondary. Bureaucratic and legal requirements as well as the limited predictability of many financial resources add to these difficulties (Priemer et al. 2015:33ff.). This is exacerbated by the fact that membership fees are threatened by trends of membership decline (ibid.:2, 41), which have been exacerbated by the Covid-19 pandemic. At the same time, costs are rising due to requirements that make professionalisation seem necessary (ibid.:36). It is understandable that in the *ZiviZ* study almost half of the organisations surveyed expressed the wish to be better supported by "politics" in fundraising, applying for and managing funding (Priemer et al. 2017:28), but this holds the danger of a further loss of independence, as the conditions for the granting of state funding are constantly being tightened and equipped with ever new instruments of control.

There is increasingly fierce competition among CSOs for public and other funds (Priemer et al. 2015:40). Temporary and earmarked project funding is on the rise. Often, fixed and administrative

costs cannot be covered (Saccani 2008: 9). In addition, many funding programmes require a contribution from the organisation itself, which favours large, established CSOs over smaller, more recently established ones. The increase in hybrid organisations also intensifies competition, as the interviews confirmed (I 7). A clearer distinction between purely service-oriented and other CSOs is therefore called for. In the sports sector, for example, there are more and more organisations that act according to a logic of supply and demand and whose members perceive themselves as customers (I 10). The added value of the non-profit status seems to be almost non-existent here. At the same time, the interviewees emphasised that the common view that CSOs must provide all services free of charge and without making a profit is misleading. Instead, payment for services and compensation for volunteers should be more widely accepted (I 11).

In addition, the so-called nonprofit starvation cycle has a problematic effect, as it favours the risk of investment gaps (Schubert/Boenigk 2019). This refers to the average share of advertising, organisational and administrative expenditure (overheads) in total expenditure. The occasionally unrealistic expectations of institutional and private donors concerning the legitimate level of these expenses lead to the organisations artificially reducing them. A low overhead ratio is often perceived as a key indicator of trust and quality for non-profit work. As a result, organisations face cost pressures and make lower investments in their organisational infrastructure, training, etc. The public sector in particular regularly has strict guidelines regarding the spending structure for CSOs that receive public funds. As in the US, this seems to create enormous cost pressures for CSOs in Germany: "The awareness of transaction costs, organisational development costs, training and other costs, which are necessary for a sustainable and appropriate use of funds, has been lost by most donors" (Strachwitz et al. 2020:160). The interviewees also reported a lack of donor trust in the use of funds by the CSO, following fraud scandals involving executives of a large charity (I 7). The direct, local and visible investment of donations proved to be successful countermeasures here (I 12).

5.5.1 Donations and Endowments

Donations are traditionally regarded as the main funding basis of CSOs. The concept of a donation is not dealt with separately in civil law and only regulated within the concept of a gift (§ 516 para. Civil Code). Donations should be voluntary and not be made with the expectation of any return. They are tax-deductible, if they are granted either to an organisation recognised as tax-exempt (Art. 10b para. 3, Income Tax Act) or to a political party. Donations to foreign CSOs are not deductible. Whether this is in accordance with European Community law, as far as EU member states are concerned, is disputed. A revision is expected in the foreseeable future.

A distinction is made between donations for charitable, ecclesiastical and benevolent tax-exempt purposes and donations to political parties. While donations to tax-exempt CSOs may be deducted from taxable income up to an amount of 20 per cent, donations to political parties (and to party-affiliated foundations) are deducted from the tax due. According to Art. 10b Income Tax Act, membership fees are only deductible if they are paid to political parties and to associations involved in the areas of nature, welfare, gender, animal or monument protection. In addition, the regulation of inheritances and gifts (Inheritance Tax and Gift Tax Act, Art. 13 Inheritance Tax Act) is important,

which exempts from inheritance and gift taxes "donations to domestic corporations, associations of individuals and property funds which, according to their articles of association, foundation or other Constitution and according to their actual management, exclusively and directly serve ecclesiastical, charitable or benevolent purposes" (Art. 13 para. 1 no. 16b Inheritance Tax Act).

Proof of the donation is currently provided via a donation receipt, which the beneficiary CSO must issue to the donors and which they have to submit along with their tax declaration. Since 2021, for small donations of up to €300 (previously €200), the bank deposit slip, a cash deposit slip, or a booking confirmation from the bank is sufficient (Art. 5, para. 4. Law on the Modernisation of the Taxation Procedure). The Federal Ministry of Finance (BMF) is considering fundamentally changing this procedure and switching to direct electronic notifications for the tax office in charge of the recipient CSO's place of residence, due to the high costs involved for the tax office and the tax authorities.

Donations to charitable organisations registered abroad are not tax deductible. In theory, this does not apply to organisations registered in the EU; however, the practice is largely no different than for organisations outside the EU. Donors therefore mainly avail themselves to a German recipient who accepts earmarked donations and forwards them as grants to the foreign ultimate recipient. The distribution of funds by a German CSO to a recipient abroad is permissible if this is anchored in the CSO's statutes and if the foreign recipient corresponds to German concepts of a tax-privileged organisation (TG Newsletter 2021). The acceptance of donations from abroad, on the other hand, is generally permitted without restriction for German CSOs. Political attempts to change this (e.g. initiative of the Free State of Bavaria in 2019) have not succeeded so far. However, German CSOs could attract attention for possible money laundering or terrorism financing if they accept donations from abroad.

There is no precise data on the volume of donations, as the Federal Statistical Office only aggregates donations submitted to the tax offices for tax reduction. Donations made via collections, the internet, street donations and other donations that are not declared are not recorded, nor are crowdfunding and endowments.⁷ According to a study by the German Donations Council (*Deutscher Spendenrat e.V.*), the volume of donations in 2020 was €5.4 billion (Corcoran 2021). In contrast, the DZI Donations Almanac puts the volume of donations for non-profit purposes for 2018 at €8.3 billion, which is significantly higher (DZI 2019). The German Fundraising Association (*Deutscher Fundraising Verband*, DFRV) estimates the volume of private donations at €12 billion per year (ibid. 2019). The DZI mentions a slight increase in the volume of donations, whereas the German Donations Council reports a stabilisation in the volume of donations since 2015. However, the volume of donations increased by 5 per cent in the pandemic year (Corcoran 2021). According to the DFRV, the German donation capacity is "far from exhausted"; it forecasts a potential of €81.4 billion of privately donated funds (DFRV 2019). In contrast to overall volume, the number of donors has been declining continuously since 2005. According to the German Donations Council, 29 per cent of all Germans

⁷ Methodological differences are one reason for the different donation volumes reported by *Dachverband e.V.*, the DFRV and the DZI. For example, the German Donations Council does not take into account individual donations of more than €2,500. Furthermore, the Donations Council surveys the population from the age of 10. The DFRV, on the other hand, also takes large donations and inheritances into account. However, the methodological approach alone cannot explain the disparities conclusively (DZI 2019).

donated in 2020, amounting to 19 million donors. In 2005, more than 50 per cent of the German population made donations (Corcoran 2021). The World Giving Index, which has been published annually since 2009, arrives at a significantly higher donation rate. It compares the type and extent of "giving" in 126 countries and, in a representative study, surveys the behaviour of citizens with regard to their aid to strangers, donations to charitable organisations and voluntary engagement in the past year. Forty-nine per cent of those surveyed stated that they had donated in 2018, which puts Germany in 20th place in the international donation ranking and in one of the first places in the European comparison (CAF 2019:23). The German Donations Council puts the average donation in 2020 at €40, a fairly high figure, which, according to the Donations Council, will continue to rise and thus partially compensate for the declining number of donors (Corcoran 2021). A solid three quarters of donations go to social and humanitarian aid, such as aid for children, people with disabilities or illness and people in need. The causes of animal welfare and environmental protection, as well as religious organisations and churches, are also important recipients of donations. The area of sport, on the other hand, is noticeably losing its donation volume (Corcoran 2019, 2021). People aged 60 and over account for the largest share of donations, accounting for more than half (2020: 59 per cent; 2019: 55 per cent) of total donations. Younger people (under 40), on the other hand, donate disproportionately less and tend to donate less often (ibid.). Germany's ageing society poses a threat to an important source of income for many organisations that rely on donations. Attracting younger donors is difficult for many.

The willingness to donate is undergoing a change. Large donations tend to decrease, whereas micro-donations, project- and crisis-related donations and inheritances are gaining in importance. On the one hand, the interviewees perceive that especially large donors like to donate toward concrete goals such as building a kindergarten and forget about more abstract topics such as promoting democracy (I 4). On the other hand, there is criticism that people rarely donate to local projects such as cultural centres and instead prefer international aid organisations (I 11). At the same time, the interviewees describe a new generation of donors, who donate rather small sums, but increasingly donate for more abstract issues whose impact is not directly obvious (such as democracy and environmental protection) (I 4, 9).

Since the late 1990s, the inclination of citizens to set up charitable foundations has increased considerably. In 2000, donors were the focus of the 'Law for the Further Fiscal Promotion of Foundations'. The conditions for donations to foundations were improved again in 2013. Contributions to the assets of a foundation of up to €1 million can be claimed in full once every 10 years (€2 million for married couples) and deducted as special expenses. The number of both trust foundations and foundations with legal capacity increased considerably. This trend is not expected to continue, not only because of the Act on the Unification of Foundation Law (*Gesetz zur Vereinheitlichung des Stiftungsrechts*), passed in 2021, which will come into force in 2023 and considerably expand the scope of state supervision, but also because of the persistently low level of interest rates. Instead, potential donors will increasingly make use of the instrument of a trust as well as other options for the medium- to long-term allocation of capital for the promotion of common welfare causes.

For citizens, the large number of requests for donations results in uncertainties. Those who are asked for a donation at street and door collections, for example, are usually not in a position to check

on the spot whether the collectors belong to a reputable CSO and then decide whether to give a donation or enter into a supporting membership. Such collections have therefore traditionally been subject to state permission based on collection laws in Germany. In order to reduce the administrative burden and to reduce official controls, the collection laws were repealed without replacement in most federal states since 2009. Since then, only the *Länder* of Rhineland-Palatinate, Saarland and Thuringia still supervise collections. An official permit is obligatory for cash collections in public places in these three federal states. Donors should ask to see the permit, which usually contains information on the collection period, the purpose of the collection and the area in which the collection is allowed. Other forms of collection such as mailings, appeals in the media or setting up collection containers are exempt from the obligation to obtain a permit, as these advertising activities give the person being approached sufficient time to find out about the organisation making the appeal. Collection control is intended to protect donors from improper collection activities.

While donations are generally understood to be primarily financial contributions, in practice other forms of support are just as important and are made use of by every other CSO. These include donations in kind, logistical and infrastructural support, courses or (legal) advice from citizens, companies, state actors or civil society actors. Donations in kind and services are tax deductible if they are used for tax-advantaged statutory purposes in principle (Art. 10b para. 3 Income Tax Law), but the assessment is difficult.

Many, especially smaller CSOs also benefit from grants and services that do not affect the budgets of either donors or recipients, but which can significantly relieve the burden on their budgets. Simplified, reduced or free access to facilities is considered particularly important and is mainly provided by local governments (Priemer et al. 2015:3; *ibid.* 2017:30ff.). This includes, for example, the provision of rooms, grounds or vehicles. Sports organisations in particular emphasised the importance of donations in kind. Likewise, companies often donate equipment and, when approached directly, are important partners for larger investments by local CSOs (*Ibid.* 13). The *pro bono* assumption of accounting or auditing tasks, the waiving of travel expenses, a donated cake for a charity or staff event and many other forms of voluntary support are also important components of the funding sources for small CSOs.

5.5.2 Financing from Public Funds

Due to Germany's federal structure, public funding is divided into subsidies from local, state and federal budgets. There are no reliable aggregated figures on the exact amount of public expenditure in favour of CSOs. Numerous public budgets of German territorial and other public entities as well as the budget of the European Commission contain sums for the financial support of CSOs. As a rule, public funding is provided either in the form of contracts that commission and provide payment for clearly defined services or in the form of subsidies. As a rule, projects are subsidised (project funding), in exceptional cases the organisations as such (institutional funding). For some years now, service contracts have increasingly been used to strengthen competition within the framework of tendering procedures (Simsa et al. 2013). In addition, there are so-called umbrella grants at all levels

of government, which are awarded to associations, societies and initiatives and are of great importance. Subsidies are predominantly awarded in the form of shortfall funding.

Moreover, funds from the EU are becoming increasingly important. Among the recipients there are not only sports clubs at the local level, but also umbrella organisations in the welfare and cultural sectors. The effort required to submit applications is often accompanied by financial uncertainty and inflexibility, as public funds are usually awarded for a limited period of time and must be spent on defined budget items according to the general regulations on public expenditure (Priemer et al. 2017). The legal requirements for the use of funds (§ 55 Fiscal Code) also stipulate that tax privileged CSOs must use the funds raised in a timely manner, which means that they must be used within two calendar or financial years. It is therefore hardly possible for them to build up reserves, and a sustainable and long-term investment strategy is rendered much more difficult (DZI 2019:17). This increases the danger of the aforementioned non-profit starvation cycle (Schubert/Boenigk 2019).

In 2020, the BMFSFJ spent €293 million (2019: €383 million, 2018: €286 million) as part of its measures to strengthen civil society. This was intended in particular to promote voluntary services and improve the framework conditions for civic engagement. In 2019, for example, an estimated €24 million went to support model projects to strengthen civic engagement and central measures, as well as to volunteer and self-help organisations. €275 million went to voluntary services. In 2019, €2 million were spent on tasks of independent youth welfare and €108 million on measures to strengthen diversity, tolerance and democracy (BMF 2020b, 2020c, 2020a). However, not all funds flowed directly to CSOs, but also in part to state and business players. The Federal Ministry for Economic Cooperation and Development (BMZ) invested €1,309 million in 2020 (2019: €1,210 million, 2018: €1,104 million) in development cooperation with civil society and business groups and institutions (BMF 2020a, b, c). Of this, around €340 million went to German political foundations, €301 million to churches and €378 million to organisations active in the field of civic and community engagement (BMF 2020a:19, 21).⁸ As the second largest donor state, Germany not only has considerable influence on internationally operating CSOs, but also on foreign CSOs. The total funds provided have quadrupled since 2014. It is therefore not surprising that the government is sometimes accused of not deploying the funds in a principle-based, effective, strategic and transparent manner (Südhoff/Hövelmann 2019).

The German Foundation for Engagement and Volunteering (*Deutsche Stiftung für Engagement und Ehrenamt*, DSEE), initiated in 2020 by three federal ministries and established by federal law, receives approximately €30 million annually from federal funds to promote civic engagement (Allenberg/Meyer 2021:5). The DSEE is expected to have a significant impact on the landscape of civil society. Its focus will be on developing three areas: financing, services, and excellence (ibid.:5). Whether it seeks cooperation with the existing civil society infrastructure or creates duplicate structures will be of overreaching importance.

If the share of public funding is too high, CSOs are often accused of being too close to and dependent on the state. If, on the other hand, they primarily generate service revenues, CSOs are criticised for

⁸ These are organisations involved in development education, climate protection and community engagement, as well as development exchange and voluntary and peace services abroad.

their proximity to the market (Priemer et al. 2015:17). Therefore, they always find themselves in a certain dilemma in this respect. The situation is particularly acute in the case of welfare organisations, whose facilities have to finance themselves almost exclusively through service fees, and almost exclusively from corresponding contracts with government agencies and statutory social insurance providers. For this reason, the literature, distinguishes between a state-dependent (corporatist) sub-sector on the one hand and an independent sub-sector on the other (Adloff 2010).

The future of the former social partnership structures is under discussion. There are signs of a reorganisation and a subsidiarity that is geared towards economic efficiency rather than corporatism (Priemer et al. 2015:43). CSOs could lose out to business providers in the future, not least due to mandatory EU-wide tenders. In the field of social welfare, the state has deliberately promoted competition between private and association-based providers since the 1990s. Legal changes in what is now the Social Code XII (formerly the Federal Social Assistance Act), the Child and Youth Welfare Act (KJHG and SGB VIII) and the Long-Term Care Insurance Act (SGB XI) were enacted for this purpose (Backhaus-Maul 2002:28). At the same time, CSOs are increasingly perceived as illegitimate competition by profit-oriented providers: For example, hotel associations are uniting against (non-profit) youth hostels (ibid.:40). This development is a consequence of the lack of understanding of the added value of civil society on the part of politicians, but also a consequence of scandals in civil society and budget cuts at ministries, according to one interviewee. She shared the fear that CSOs will no longer receive privileged treatment in the future if they do not manage to show their added value to society more visibly (I 7).

On the part of civil society, such as development and environmental organisations, there is repeated criticism that the funds earmarked for civil society and its goals in the federal budget are decreasing and that drastic cuts are planned for 2022 (DUH 2020; Golterman 2020). In contrast, other organisations in the youth and education sector perceive improvements (Piesche 2020). In a 2015 ZIVIZ study, a majority of CSOs stated that public funding had decreased. However, the development differs greatly according to the field of action: While more money seems to be flowing into education and training, social services, environmental protection and nature conservation, as well as science and research, organisations in all other fields of activity mostly report a decrease in public funding. In the health sector, the amount of available funds seems to have remained almost unchanged (Priemer et al. 2015:22). Funding for tasks required by the welfare state remains the same, while newer and more publicly discussed areas of action such as the environment, research, education and training are being funded more comprehensively. The results of the current survey confirm this. The respondents noted an adaptation of public funding strategies to current debates as well as attention-oriented funding by state actors (I 4, 5, 9). In addition to the Covid-19 pandemic, which overshadows everything, these are currently topics such as gender, the environment or integration (I 4, 9). It is easier to acquire public and other funds for current issues and correspondingly more difficult to obtain project funds for more persistent and overlooked problems. It is natural to doubt the sustainability of such an orientation towards trends.

According to the interviewees, access to public funding differs greatly between the programmes. Some funding lines are characterised by strong competition and are considerably more difficult to successfully implement, others already have traditional cooperation partners and long budgeted funds, while in others still civil society is given a say in the allocation and planning of funds (I 5). At

the same time, allocation times tend to be shorter and often depend heavily on what parties are currently in government. Planning security is therefore at risk (I 1, 11).

An internationally operating organisation reported that access to public funding is nowhere as difficult as it is in Germany (I 2). International CSOs are not considered worth funding in Germany (I 2). Foreign organisations have not been eligible to apply for BMZ funds for some time. Research seems to confirm this, with foreign CSOs only implicitly excluded from funding (BMZ 2016). The agency 'Engagement global,' which coordinates BMZ funding, is perceived as a gatekeeper (I 2). Direct funding by the BMZ had previously been heavily dependent on personal contacts. The establishment of the agency considerably increases the application and administrative workload for CSOs, but the desired transparency still has not been achieved (I 2). Only organisations with a fully German board can apply directly to the BMZ for funding (I 2).

In general, the respondents also perceive the degree of transparency in the awarding of service contracts and subsidies to be in need of improvement (I 15). There are various efforts to make the allocation and use of funds more transparent (I 5) and to prevent misuse of funds (I 4). Overall, however, this may sometimes disproportionately increase the expenditure for the CSO (I 14). Applications are now being rejected due to minor formal errors or a lack of measurability of indicators (I 2). In addition, personal relationships, sympathies and long-standing cooperation still lead to favourable decisions in award procedures (I 1, 2, 5, 8, 9, 12). Who is eligible for funding at all is often only implicitly known, and not apparent on the ministries' websites (I 5). On the other hand, the interviewees criticise the fact that the amount of funding is often not determined according to the actual services provided and the social significance of the CSO, but in the sports sector, for example, is based on the number of members of the CSO. Funding decisions that are more based on data are therefore called for (I 10). In addition, public funding is often not flexible enough to sufficiently adapt funded programmes to current developments (I 15).

5.5.3 New Forms of Funding

In light of changing conditions, such as public budget cuts and membership losses, CSOs are forced to diversify their sources of funding.

For about 20 years, so-called venture philanthropy has been discussed as a new financing instrument (Letts 1998). The term venture philanthropy refers to a strongly entrepreneurial and results-oriented philanthropy, i.e. the strategic use of 'social investments' to address social challenges. In recent years, it has been promoted by social investors, foundations and private sponsors (Ebermann et al. 2010). In addition to direct donations, new forms of financing through loans or equity are also used to support the CSOs' philanthropic goals. In this context, social business or social entrepreneurship, mission-related investment, high-engagement or e-philanthropy and the social reporting standard are also discussed. In Germany, there are only a few social venture capital funds and social entrepreneurship funds (e.g. BonVenture, Capacura, Anada Impact Ventures) that are exclusively dedicated to social impact investing; despite its growth, the market is not yet exhausted (*Bundesinitiative Impact Investing* 2020). Foundations and private individuals are increasingly turning to these new forms of financing (Alberg-Seberich et al. 2018). The theory or movement of effective altruism or effective philanthropy fits in here. People commit themselves to

the goal of "doing as much good as possible" with their income or wealth (Selle 2020). Financial forms of aid dominate, and donations are given according to effectiveness. The philanthropic campaign The Giving Pledge has specifically addressed the "super-rich" to join the movement and donate a large part of their income, sometimes with great success (Ely 2020). One hundred and forty billionaires are said to have made a pledge worldwide. The corresponding investments are often linked to a measurement strategy in terms of social impact (Saccani 2008:11). However, this development also has its downsides, as it largely runs counter to the logic of civil society and imposes a high documentation burden on CSOs. In Germany, the campaign was not very successful and has received a lot of criticism.

Increasingly, CSOs and their funders are trying to find new ways of collaborating. Many ideas come from the US and have not yet gained much traction in Germany. In the context of unrestricted funding, flexible funding, multi-year general operating support and institutional grant making, funding is awarded on a non-project-related, longer-term basis, largely without restrictions and also to finance fixed costs. In Germany, too, the funding strategy of the "super-rich" MacKenzie Scott, who funds CSOs with large amounts without any prior application, is being closely observed (Voytko 2021). These funding strategies can be seen as counter-movements to the funding strategies that are more strongly oriented towards impact measurement. At the same time, they are also oriented towards the goal of maximising social impact. They provide key opportunities for CSOs to counter threats such as the non-profit starvation cycle and to invest sustainably in their organisational development.

At the same time, the possibilities of digital funding are diversifying. Digital donations offer new forms of fundraising. These include peer-to-peer fundraising campaigns, i.e. fundraising in affinity groups, for example in the form of private Facebook donation appeals, donation shops (e.g. the Unicef shop) and donation buttons on one's own website or on social media. There is also the possibility of generating income through QR code scans and NFC (Near Field Communication) tags, through donations for specific causes (e.g. *Helpedia.de*) or of commissioning donations with online purchases or the auctioning of goods in online auctions. Social shopping (purchases via so-called donation portals, e.g. *Bildungsspende.de*) offers indirect support for charitable causes and organisations through the purchase of certain products (e.g. Share-Foods) or donation apps. What these new formats have in common is that they "make it possible to do good in passing" (DZI 2019). This so-called "painless giving" (giving that is not really noticed) often consists of micro-donations. Online donations are made much more often as one-off donations than as permanent donations. They are usually lower than €100. Large CSOs and those in the field of social welfare and human rights especially benefit more than the average from digital donations (Getunik 2020).

Donation platforms still play an important role. They not only take care of the administration and provide the necessary software, but also issue donation receipts and manage ongoing donations. The non-profit website Betterplace.org is the largest German platform of its kind. It acquires donations exclusively for non-profit CSOs.

External providers' platforms also provide crowdfunding for new CSOs or specific projects. Crowdfunding is less aimed at sustaining organisations than at achieving specific goals. It can take the shape of classic crowdfunding with non-financial compensation, but also work with parity loans

that have to be repaid (so-called crowd lending) or with silent participations (so-called crowd investing) that have to be financially compensated. In each instance, many citizens support one project at a time. However, this type of fundraising is strongly centred on a few platforms (e.g. Kickstarter, Patreon, GoFundMe, Indiegogo, startnext), which leads to a high degree of dependency. In most cases, 5 per cent of the revenues, as well as transaction fees, have to be paid to the website operators (Ionos 2019). Crowd investing in Germany's so-called grey market was regulated in an amendment to the Small Investor Protection Act 2015 (BGBl. 2015 I, p. 1114). Crowd-investing platforms criticised that the self-disclosure and the upper limit for donations from private individuals prescribed therein would make fundraising in Germany more difficult. At the same time, the German Crowdfunding Association (*Bundesverband Crowdfunding*, BVCF) welcomed the increase in transparency brought about by the law (BVCF 2016).

The adoption of new and digital forms of funding often leads to additional effort for CSOs, but at the same time enables them to become less dependent on the public sector and other sources of funding. So far, very few organisations have their own professional fundraising tools; only in rare cases do they have explicit knowledge about digital financing (Edinger-Schons et al. 2020). The proportion of donations made via the Internet is still low (DZI 2019) and the potential of digitalisation in the area of fundraising has not yet been adequately exploited (DFRV 2019). However, more and more support services aimed specifically at training CSOs in digital fundraising are being put in place. The survey confirmed the impression that although more and more organisations are using digital funding opportunities, they first have to acquire the necessary know-how or build the corresponding capacities (I 4, 15). In any case, the Internet opens up new, sometimes inexpensive, but also challenging possibilities for acquiring donations (I 4, 15). This form of financing is also perceived as very democratic (I 4). Others perceive it as non-transparent with regard to the projects to be supported (I 11) or criticise the dependence on external (fundraising) platforms that collect large amounts of data. They therefore only solicit donations in a "direct" way (I 14).

6 CIVIL SOCIETY IN THE PUBLIC DEBATE

6.1 Public Perception and Recognition

In Germany, civil society operates in a stable democratic environment. Germans rank peace, human rights and freedom of opinion among their most important personal values (Decker et al. 2019; EK 2019). Despite the increase in right-wing populist patterns of opinion observed in recent years, citizens predominantly stand by the democratic values enshrined in the Constitution. The Gesis Institute's long-term survey on citizens' attitudes and behaviour, for example, shows that in 2018 less than 2 per cent of the 3,477 respondents opposed the idea of democracy (Baumann et al. 2019:96). Despite deepening lines of conflict and differing positions on how to deal with the Nazi past, a study by the think tank More in Common Deutschland concludes that German society can build on a large number of "common sources of identity, including in particular its constitutional, economic and social achievements, above all its voluntary commitment and the Constitution" (Krause/Gagné 2019:148f.). Germans also have an above-average affinity to the EU compared to the rest of Europe. Approval of the EU and its policies has once again increased significantly as a result of the Covid-19 pandemic (Kantar 2021). According to the Standard Eurobarometer, identification with "European citizenship" is also increasing (from 2018 to 2019 to 88 per cent, +4 per cent) and is higher only in Luxemburg (EC 2019).

Satisfaction with the government, democracy and the Constitution remains at a medium level comparatively and in the long-term trend, but according to studies has suffered considerable damage in some cases as a result of the Covid-19 pandemic. In 2019, less than half of all Germans were satisfied with how democracy works in Germany (Decker et al. 2019:2). Seventy per cent of the respondents felt that the country was moving in the wrong direction (Krause/Gagné 2019). Also, 35 per cent would like important political decisions to be made by the people, not by politicians. Direct democratic processes, such as those promoted by civil society, are widely supported. Eighty-four per cent would like to see the introduction of direct citizen participation at federal level (Baumann et al. 2019:66).

Trust in institutions varies greatly. CSOs achieve high approval or trust ratings compared to others, but these are generally only around 50 per cent. Universities and the police, followed by the judiciary, the administration and religious organisations also achieve relatively good trust ratings of over 50 per cent. Germans place considerably less trust in the Federal Government (40 per cent) and the Parliament (42 per cent). European institutions and the media are trusted by less than a third of Germans. Only 20 per cent place their trust in the political parties (Baumann et al. 2019:69ff.). A similar picture emerged in a survey conducted by the Bertelsmann Foundation (Buschhausen 2016) and the association More in Common Deutschland (Krause/Gagné 2019:116ff.). The European Value Survey (EVS) shows that Germans have increasing trust in the army and the police (2008: 50 per cent, 2017: 69 per cent) (EVS 2020; Tournier 2017:139ff.). According to the Edelman Trust Barometer, trust grew by 7 index points in the crisis year 2020 compared to 2019. The 1,150 respondents primarily have trust in the government (59 per cent; +14 per cent), followed by businesses (54 per cent; +6 per cent) the media (52 per cent; +3 per cent) and finally NGOs (46 per cent; +3 per cent) (Edelman 2021). At the same time, however, the pandemic caused a massive drop in the assessment of the efficiency

and fairness of the German healthcare system. The assessment of the crisis response of the German education system deteriorated even further (Maaz/Becker-Mrotzek 2021).

Grasping societal perceptions of civil society is a difficult undertaking. On the one hand, the term is widely used in public discourse. This can be shown by word frequency analyses, for example in the 'Ngram Viewer,' a programme for analysing books that have been scanned by Google, or by a content analysis of the plenary minutes of the German *Bundestag*. Both show that the term civil society is increasingly used in political speeches, academic and popular works from the mid-1990s, with a peak around the 2010s (Biermann et al. 2019; Google). On the other hand, there is a lack of studies that adequately capture public perceptions of civil society, partly due to the difficulty of operationalising civil society (I 1). The interviewees are also of the opinion that the concept of civil society is not clearly defined in society (I 4, 9) or is not sufficiently known (I 7, 8, 15). They question whether the majority of citizens have an awareness of civil society as such and its socio-political significance (I 4, 7, 10, 14). It is partly perceived by many as something self-evident that improves life, but at the same time as a bit of a "strange lot" (I 14). In general, civil society is seen as valuable, but not all of its parts are equally appreciated, according to the general tone of the interviews.

The most meaningful survey data on trust in CSOs are those that compare trust in other institutions. CSOs / NGOs have received comparatively high trust ratings for many years (Buschhausen 2016; Edelman Trust Barometer 2010; Krause/Gagné 2019). The GfK Global Trust Report, which includes figures up to 2017, also shows that around 64 per cent of respondents trust NGOs 'fully' to 'mostly.' According to the report, only 38 per cent trusted the government (Frank 2017). In view of the current crises and the loss of trust in institutions, it can be concluded that civil society actors also need to better justify their legitimacy and to solicit more trust. Even though they are often evaluated more positively than other institutions, they are increasingly exposed to harsh criticism (Strachwitz 2019). It is interesting to note that in the current Edelman Trust Barometer of 2021, the government is named as the most trusted institution in Germany for the first time (59 per cent; +14 per cent). Trust in NGOs increases slightly (46 per cent; +3 per cent) but decreases in relation to the increase of trust in politics. It is plausible to see the effects of the Covid-19 pandemic as the cause of this, with executive politics in particular assuming a prominent role in the public sphere, while the visibility of civil society declined significantly (Hummel 2020b). This effect, also termed rallying around the flag, refers to the increased short-term support of the government in times of crisis or war (Goldstein/Pevehouse 2008).

While the approval ratings and membership figures of trade unions and parties are declining, many citizens are finding new forms of political and social engagement in CSOs. Accordingly, civil society is developing positively in comparison to the aforementioned institutions and thus offers an alternative to them (Priemer et al. 2017:4). At the same time, as the *ZIVIZ* Survey concludes, civil society structures alone cannot compensate for the dwindling social approval of political parties and for other developments that threaten democracy. Above all, civil society action should not be assessed as positive per se, as anti-democratic CSOs too have recently grown in size and influence (see section 6.7.4).

Particularly during the great refugee movement of 2015, the narrative of a strong and crisis-resistant civil society emerged, supported by an unusually large conversation in the media. Where state

structures were inadequately prepared for the events, aid organisations and local networks stepped in; associations were formed and thousands of citizens took on the task of providing initial assistance, orientation and integration for the arrivals. The extensive media coverage in turn led to an increased desire to get involved on the part of many first-time volunteers (Kocka 2016). Through its commitment, civil society was highly visible and its importance was widely discussed in public. On the downside, many CSOs subsequently came under fire from anti-migrant, right-wing populist actors and the concept of civil society was framed by these actors as an enemy (see section 6.7.4).

Less than half (47 per cent) of citizens in Germany feel that NGOs / charities are able to carry out their work free from intimidation when they criticise the government and its actions (FRA 2020:41). While this is a slightly better figure than most European countries reach, it is nevertheless alarming. It is therefore worth taking a closer look at the social climate in which CSOs operate. After all, volunteers increasingly complain that they are not valued for their work (Priemer et al. 2017:29). There are various surveys on the social perception of foundations in Germany. The *Stifterstudie* (Donor Study) of 2015 showed that while most respondents agreed that donors wish to do good (69 per cent), a good third also think that donors have their advantages in mind and wish to save taxes (40 per cent). In contrast, 54 per cent of donors would like to see a culture of better recognition of their work (Lesberg/Timmer 2017). Non-profit corporations are generally perceived, albeit with a decreasing tendency, as business enterprises and not as CSOs. This manifests itself, for example, in the fact that people are less likely to donate to charitable limited liability companies than to registered associations (Strachwitz et al. 2020:377).

Peculiar attitudes are evident with regard to certain fields of engagement, especially towards aid for refugees. Without the services offered by CSOs, the influx of refugees from 2015 onwards could not have been managed. In Berlin, for example, the administration crucially relied on the work of civil society (Edlefsen/Staemmler 2018). Nevertheless, only a few of the organisations engaged in this way stated in a corresponding study that they had received more public appreciation for their work (22 per cent) or better access to financial resources (11 per cent) (Priemer et al. 2017). However, one respondent from this field of engagement reported great media and political attention and broad public support in 2015 (I 10). At the same time, organisations that advocate for refugees are often exposed to delegitimisation strategies, criminalisation and other attacks, especially in the digital space (Kube et al. 2020). For example, one of the organisations interviewed that advocates for minorities reported an increase in right-wing trolling on social media and a general increase in hostility (I 8).

Migrant organisations also complain about a lack of public recognition, rejection and even hostility, especially if they have a religious orientation. The political "danger discourse" of recent years has further exacerbated this problem (Priemer et al. 2017).

The traditional forms of discourse that the state cultivates in its dealings with civil society actors, in addition to regulation, monitoring and financial support through tax revenue waivers, subsidies and contracts, include a patriarchal culture of appreciation and recognition. It manifests itself in lofty speeches by political office holders, visits to organisations and award ceremonies. "The state must be able to say thank you!" was how Federal President Heuss justified the introduction of an Order of Merit, which was awarded for the first time in 1951 and has since been awarded approximately

260,000 times (Jansen 2021). Civic engagement was often the reason for the award. Most states apply a similar approach.

Nevertheless, complaints about a lack of appreciation are part of the standard repertoire of issues reported by volunteers and organisations. In many cases, this is well founded, especially since praise given in speeches and bureaucratic hurdles imposed on their daily work often go hand in hand.

The visits of ministers or mayors to the volunteers for the fire brigade, ambulance organisations, etc. that are staged for the press are more of a disturbance when they are embedded in bureaucratic obstacles and the organisations are denied recognition and cooperation on an equal footing. Today, civil society actors are calling for a better framework and more participation and involvement as a better sign of appreciation. It is questionable whether financial and tax incentives (e.g. the lump-sum allowance for trainers), which are usually demanded by officials for volunteers (especially in sport, but also in the welfare sector), are actually seen as an expression of appreciation, as they state. They are more likely to be a misguided attempt by the state to compensate for deficits in the recruitment of key personnel and officials. Among those involved, the desire for recognition of civil society as a force in society that plays a role in decision-making is presumably more important.

6.2 Media Representation

Civil society's relationship with the media is a reciprocal one, whereby the media can serve to both articulate and control civil society, while at the same time civil society "controls" and helps to shape the media (Filipovic et al. 2012). Mass media are sometimes credited with the ability to promote democratic and civil society structures and anchor them in society (Heyer 2015). Independent and free media are the space in which political issues are discussed and thus constitute both "a condition and an expression" of civil society (Grieffenhagen/Grieffenhagen 1999).

However, the representation of CSOs in the media is rather poor. A study by the MaLisa Foundation and the Maecenata Institute showed, for example, that in the first phase of the Covid-19 discourse in 2020, civil society barely had a voice in the media (Hummel 2020b). At the same time, for civil society, access to mass media and other public spheres is a prerequisite for successful mobilisation. To generate the necessary media response, CSOs use different strategies. Following Dieter Rucht (1994), Kathrin Fahlenbrach (2010:264) identifies the following:

- withdrawal into internal, subcultural sections of the public,
- attacking the traditional media, i.e. criticising their structures, what makes up their ideologies and content, which is often linked to a further strategy, namely
- building alternative public spheres or opposing public spheres, or
- adapting the selection and production conditions of the media.

Strategies to succeed within the media attention economy often include provocation, for example through spectacular, high-profile protests: Activists from People for the Ethical Treatment of Animals (PETA), for example, publicly wore bloodstained clothing, activists from Greenpeace chained themselves to nuclear reactors at great heights. A certain staging of misery and the use of emotional rhetoric are also strategies for generating media coverage. Fundraising NGOs in the field

of humanitarian aid, climate, environment and development policy in particular claim to be dependent on this type of campaigns and activities. To most other CSOs, this behaviour seems alien.

The problem with the media's logic became clear in the interviews. It was described as truncating and sensationalist. Often only a few aspects of certain issues are covered by the press and whether CSOs "make it" into the media depends heavily on the visibility of their activities (I 10). CSOs also often deliberately refuse to follow this logic (I 6, 15). At the same time, there is a demand for civil society to adapt more to the logic of the media to be able to influence its contents (I 1). In general, civil society hardly achieves the professionalism and thus credibility in its press and PR work that actors in business or politics do (I 14). There is a lack of knowledge and resources, but also of the urge to be present in the media at all costs.

Digital media are perceived by almost all respondents as an opportunity to create content in a self-determined and cost-effective way and to reach a broad audience. However, one of the organisations interviewed was sceptical about digital communication; it described it as being aimed at short-term attention that does not allow for serious and sustainable association work or membership acquisition (I 12). According to the interviewees, cooperation with the media is rather difficult, with slightly less than half of the organisations (I 1, 8, 9, 11, 12, 15) reporting a good cooperation. In particular when reporting on very specific or topical issues, journalists contact organisations directly for their expertise (I 8, 9, 14, 15). There are hardly any well-established contacts with media representatives. However, personal relationships with and the interest of journalists often determine whether CSOs are portrayed at all (I 11).

Many CSOs do not perceive the media as a relevant field of action (I 1, 2, 10). In addition, it is rare that they are financially able to carry out their media work in a professional manner and thus compete with that of government agencies and commercial enterprises. Finally, the permanent pressure to seek funding tempts many CSO representatives to use media appearances too much for self-promotion and advertising. The increased tendency towards individualization in media coverage also encourages a focus on a few faces, such as Luisa Neubauer of FFF, which often reduces the visibility of the whole sector to a very small segment (Weber 2021).

There is a lack of corresponding responsibilities in the media, for example in the form of a civil society desk (I 4). Furthermore, interviewees repeatedly complained that the media do not understand civil society and its goals and functioning. Therefore, it is often portrayed selectively, in a truncated, distorted or simply wrong way (I 10, 14). A certain distrust of civil society's selfless actions is also noticeable (I 4). The effort to maintain close contacts in order to be able to obtain media coverage is significant; in some cases, payment or ready-to-publish content is expected (I 2, 14). According to the interviewees, the media have to be actively "fed" with content (I 12) while they dictate the conditions of cooperation (I 15). Also, if CSOs placed (paid) advertisements, this would increase the media's willingness to cooperate (I 11).

These developments are of considerable significance for civil society as a whole. Digitalisation and new social media make it much more viable for CSOs to disseminate information than in the past. Nevertheless, civil society is still the subject of coverage in classic print and audiovisual media at a rate that is far below average. In particular, there is a lack of ongoing, well-informed and critical media coverage. Features dominate, especially in local and regional media and in connection with

visits by politicians or other "celebrities." Scandals also tend to be covered. For example, the incidents of corruption and fraud at AWO in Frankfurt am Main and elsewhere in 2020 were the cause of repeated and detailed criticism, while the increased deployment of CSOs during the pandemic – for example, more than 80 per cent of vaccination centres were run by CSOs – or during the flood disaster in the Ahr valley only received limited attention. Civil society actors are also rarely heard in the numerous talk shows on state television. According to a study conducted by the independent think tank *Das Progressive Zentrum*, only 2.7 per cent of talk show guests represent civil society, while 42.6 per cent are politicians (Fröhlich/Hillje 2020).

The lack of coverage and presence of civil society in the media works towards its marginalisation and thus worsens its chances of securing the ongoing support of citizens whose attention is limited. However, media professionals cannot be blamed for all this; CSOs must also recognise how public relations work and the promotion of media literacy among their staff is more than just nice to have – it is an essential component of successful project work.

6.3 Civil Society as a Participant in Political Processes

Civil society actors usually employ two strategies to gain influence on and access to the political system: Mobilisation of public opinion (so-called pressure politics) on the one hand, and institutionalised procedures and direct interaction with political personnel on the other. The latter is evident, for example, in statements at hearings and in expert committees or by commenting on draft legislation from ministerial administrations (Massing et al. 2020: 187f.). Commentaries on laws are mainly used by CSOs with an association structure or larger, internationally active CSOs. Another central instrument for exerting influence is the right of associations to sue, which enables associations and federations recognised for this purpose to sue on behalf of the general public in the event of violations of the law. Since 2002, this right has been enshrined in the Disability Equality Act (Art. 15 of the Constitution), in nature conservation law (Federal Nature Conservation Act, esp. Section 8), and since 2006 in the Environmental Legal Remedies Act and in civil law. In animal protection, there is only a right of action for associations in certain *Länder*, and at EU level the right of action for associations has been expanded since 2018 (e.g. New Deal for Consumers Initiative). Further institutional participation opportunities for associations and other organisations can be found in Article 70 of the Rules of Procedure of the German *Bundestag*. According to Art. 24 of the Joint Rules of Procedure of the Federal Ministries, umbrella organisations may participate in the preparation of legislation, but cannot demand to be heard (ibid.).

The registration of interest groups with an ability to influence government work, which is also of considerable relevance for CSOs (see section 2.3), has been carried out since 1972 through a list of associations. In addition to the name of the federation, the following pieces of information may be entered voluntarily: address and contact details, names of board members, management and representatives, the general area of interest and the number of members. Registration neither entails any rights to be heard nor any accountability obligations. Rhineland-Palatinate has lobby lists at state level. A lobby register exists in Brandenburg and Saxony-Anhalt and a corresponding law has been in the making in Berlin since April 2021. At the level of federal politics, a law for a mandatory lobby register was passed in March 2021. It came into force on 1 January 2022 and

requires lobbyists to provide information on their employers or clients, as well as the number of employees and the financial expenditure for lobbying the *Bundestag* or the Federal Government. Meetings in ministries are to be recorded down to the level of sub-department heads. Registration is done digitally at the *Bundestag*. The starting point for the legislation was the realisation that contacts between elected officials and decision-makers with influential representatives of the economy and civil society are hardly transparent and are often unequal. For example, it became known that the former Federal Minister of Transport, Scheuer, had met 80 times with representatives of the automobile industry between 2018 and 2021, but only once with an environmental association (Blaser 2021). The law has already attracted criticism for not including the departmental level in the ministries, which is in fact often the starting point for lobbying. Furthermore, relevant associations and organisations, such as churches, trade unions, employers' associations and law firms, are not required to register (Ebener 2021; Lange 2021).

The ministries are of particular importance for civil society influence, "since the emphasis of lobbying [...] in all Western democracies has clearly shifted from parliament to the executive" (Strünk 2004 in Massing et al. 2020:189). The opportunity for associations to comment on legislative proposals is provided by the Joint Rules of Procedure of the Federal Ministries, which stipulate that they be forwarded to associations "as early as possible" (Art. 47). On the other hand, the participation of individual organisations and think tanks is completely unregulated and is further hindered by tax law restrictions (No. 15 on § 52 AEO).

The interviewees attest to witnessing a mutual influence between politics and CSOs only in some areas, and this influence is often described as cooperative (I 7, 11, 12). Accordingly, civil society expresses demands and needs for support to policymakers, and policymakers in turn address certain expectations and requests for support to the CSOs (I 12). According to the interviewees, an increasing transfer of tasks from the state to civil society can be observed. Politicians increasingly perceive civil society as an arena in its own right, as it is becoming more and more important for ensuring that the state's tasks are fulfilled (I 12). The interviewees perceive access to the political system differently. On the whole, MPs are very dependent on the expertise of CSOs and are aware of this fact (I 1, 6). State and local politicians generally seem to be closer to citizens and CSOs (I 9, 10, 12). Many report good, partly institutionalised access to the political system (I 1, 5, 6, 8 to 12, 14, 15). However, the contact depends strongly on the respective parties (I 9, 11) or even on individuals. In addition, the general conditions make cooperation more difficult. For example, due to restructuring at ministries, responsibilities and thus central points of contact sometimes cease to be accessible (I 8). One interviewee reported a reduction in the time available to comment on legislative proposals. It is sometimes limited to one weekend, which makes coordinating a joint response considerably more difficult for associations and other large organisations and in practice entails the exclusion of associations from the legislative consultation process (I 7). This opinion is also supported by an open letter from 15 federations and associations to the Federal Ministers (GI 2020). The alliance behind the letter demands that the deadlines for CSOs to comment on draft legislation be extended. They accuse the government of merely enabling "bogus participation," as comments are increasingly expected "in less than three working weeks [...] – sometimes within a few working days" (ibid.). They therefore demand not only reasonable deadlines but also the publication of draft bills on the ministries' websites and that the participation process be opened up.

When it comes to staffing the hearings, as well as the possibility of submitting opinions, those with long-established reputations and larger organisational structures of the corporatist tradition seem to enjoy an advantage. Two of the interviewees emphasised that political participation as a smaller, newly founded organisation was only possible for them because they operate in a new and topical field of engagement (I 6, 15). Organisations working on current issues have better access to the political system and political decision-making processes (I 3, 5, 6, 14, 15). In the case of established structures, on the other hand, it is the "top dogs" of the associations that routinely receive access to hearings (I 5, 7). In this context, access to the political system is particularly good at election times, while civil society receives less attention during parliamentary terms (I 1). At the same time, the interviewees report that too few resources or time are provided to maintain contact (I 6, 14). They mentioned several times that there is a lack of comprehensive awareness of civil society on the part of politicians (I 5) and that the term remains unclear overall (I 4). At the same time, they complain that even if civil society is understood by politicians as an arena, the heterogeneity of interests is not sufficiently taken into account (I 10). Moreover, maintaining contacts with parliamentarians and parties requires lobbying structures (offices in the capital, staff etc.), which smaller CSOs often find difficult to afford and maintain.

Public mobilisation initiatives tend to be used by groups with a lower degree of institutional consolidation, such as citizens' associations and initiatives or movements (Klüver/Pickup 2019; Rozbicka/Spohr 2016). Since plebiscitary participation instruments have been expanded in recent years, especially at the state and municipal level, this mobilisation can also increasingly be organised within the framework of citizens' petitions or decisions (*Wissenschaftliche Dienste* 2018). Currently, the traditional practices of associations, i.e. classic lobbying, and the practices of citizen initiatives, i.e. mobilising the public, are observed as becoming more intertwined and converging.

The interviewees expressed doubts about the compatibility of the respective operational logics of politics and civil society. One interviewee accused politics of focusing too much on the current legislative period and on re-election (I 5). At the same time, politicians wish to establish contact with people who are in a position to represent groups in the sense of identity politics. However, CSOs are too diverse and not well organised enough to provide such contacts (I 4). As a result, politicians often make do with umbrella organisations in which not all voices of civil society see themselves represented. This is seen as a bogus solution and a means of quasi-legitimation (I 4). A survey on the cooperation of civil society and the administration in Berlin during the refugee summer of 2015 came to a similar conclusion. The inclusion of CSOs was carried out selectively. Possibilities of co-production or "new subsidiarity" (Heinze et al. 2015) were not put to use (Edlefsen/Staemmler 2018). However, at the local level and in subsequent years, cooperation between aid groups and administrative bodies seems to have improved (Bojarra-Becker 2017).

Representing the diversity of civil society in political exchange is therefore a central challenge (I 10). The fact that civil society identifies and articulates problems, but that it is up to politics to tackle them, as well as to take up the solutions that civil society may have already developed, and to implement them on their own or through appropriate funding, was emphasised several times (I 9, 10, 14, 15). There is room for improvement in the responsiveness of politics, as they often only take up problems when public pressure renders this inevitable (I 14).

Civil society also has the role of monitoring the political process (Crouch 2011). Some CSOs have explicitly dedicated themselves to promoting transparency. For example, the website *Abgeordnetenwatch.de* provides the opportunity to question German MPs and view details of their activities (*Wissenschaftliche Dienste* 2009:11). Associations such as Lobbywatch and Lobbycontrol collect information and organise campaigns for greater accountability and disclosure in politics.

6.4 Civil Society in New Forms of Citizen Participation

Whether CSOs have the opportunity to participate in the political process through forms of direct citizen participation has recently been the subject of increasing debate. Can they, one asks, influence decisions by writing petitions, participating in citizens' panels, referenda, and hearings, e.g. providing feedback on building plans, in an organised manner? Various forms of direct citizen participation have been introduced in recent years. In particular, consultative participation has been supplemented by new forms of citizens' fora and dialogues (*Wissenschaftliche Dienste* 2009). Thanks to citizens' councils, more equitable policy outcomes and a stronger link between political decisions and citizens can be achieved. They make it possible to ask for opinions on certain issues directly from society and can counteract disenchantment with politics, as participation beyond the ballot box promises greater self-efficacy and resonance among citizens, even beyond those directly involved (Hummel 2020a). The Federal Government is planning new procedures for dealing with recommendations from citizens' councils, after criticism from the political side, among others, that their recommendations are often not sufficiently taken up (*Deutscher Bundestag* 2021a). This also applies to the recommendations of three citizens' councils organised by civil society (Citizens' Council on Democracy, Germany's Role in the World, Citizens' Council on Climate). The councils' results are usually not binding for the institutions of representative democracy, but they serve an important consultative and representative purpose.

There are approximately 300 procedures for consultation formats. As a rule, invitees are selected by lottery, i.e. randomly drawn citizens are invited, mostly staggered according to criteria of representativeness in order to reflect society as much as possible. The staggered random selection is intended to ensure a higher degree of social heterogeneity than in the classical institutions; the lot levels out the structural advantages in participation access. Since education, financial resources and a higher age are associated with a higher probability of political participation, random selection has the effect of equalising opportunities. More diverse, randomised selection of participants incorporates more diverse perspectives, which can be expected to produce more equitable outcomes and increases the likelihood that the outcomes will be consensually accepted by the majority of citizens (Hummel 2020a).

While these forms of direct democracy were initially welcomed by CSOs, problems for civil society have become apparent in the meantime. The fact that advisory formats are usually filled by drawing lots does not guarantee the involvement of organised civil society. The experience and expertise gathered here are not taken into account in the random selection. Some interviewees expressed concern over being sidelined by the participation formats (a crowding-out effect; I 3, 7). The use of citizen participation procedures was even seen by one interviewee as a deliberate attempt to weaken civil society (I 3). Others welcomed the developments as an expression of a "growing

cooperative state", but also saw the danger that the process of democratising participation would end as a result (I 10). One interviewee stressed that in dealing with stakeholders, policymakers urgently need to adapt the possibilities of participation through appropriate discourse elements to the shift from an information society to a communication society (I 14).

6.5 Civil Society in Europe

The EU and its engagement policy are sometimes seen as a model for German policy (Kube et al. 2020). The consultation processes for the involvement of civil society actors at the EU level have been expanded in recent decades, but still do not include an enforceable right to participation and consultation. In the context of the European Social Dialogue (1985), the European Commission (EC) committed itself to a partnership principle which obliges public authorities to involve representatives of social interests in the preparation and implementation of structural policy measures. It assumes a very broad definition of civil society, equating it with the representatives of social interests. In general, the EU institutions assume a definition of civil society that is based on a pluralistically representative conception of social interests and thus also includes business associations (Kohler-Koch et al. 2011:48ff.).

In 1996, the Civil Dialogue was established in European employment and social policy (Quittkat 2019). Since the adoption of the White Paper on European Governance in 2001, CSOs have been involved in consultation processes in a systematic and highly formalised way (Kohler-Koch et al. 2011:79f. in Quittkat 2019), e.g. through hearings, expert discussions and fora, as well as conferences and online consultations. In addition, Article 11(2) of the Treaty on the European Union (Lisbon Treaty 2009) guarantees European civil society the right to participate in the decision-making process. Overall, networking of EU institutions with CSOs, but also businesses, research institutions and "user groups" has been strongly promoted at the European level. In contrast to the national institutions, the EU has an intrinsic interest in this procedure, as it can gain partners in preparation and implementation who are not dependent on national governments and their own interests and can thus be strengthened. This applies above all to the Commission and the Parliament, less so to the Economic and Social Committee and the Council. The Commission's interest manifests itself in programmes for financial support and networking of European CSOs.

The European Commission has also taken the lead in terms of accountability and transparency. Within the framework of the European Transparency Initiative (ETI), a register of interest representatives with a binding code of conduct was created. It differentiates between four major groups (professional advisors, trade associations, CSOs, others) and focuses on both organisations and individuals with their respective financial resources. With the entry, CSOs formally become consultation partners, although the individual Directorates-General apply their consultation instruments very differently (Kohler-Koch et al. 2011:89). Since 2014, meetings between Commissioners and stakeholders must be disclosed (EC 2014). Furthermore, meetings that influence the design and implementation of EU policies "can only take place if the stakeholders are registered in the EU Transparency Register" (EC 2020). However, there are various exceptions; for example, representatives of churches and religious communities are not required to register (pt. III

no. 13 L 277/11); the law does not cover technical consultations or those with social partners either (pt. III no. 10 L 277/11).

In 2016, the European Commission decided to “establish horizontal provisions on the setting up and functioning of Commission expert groups” (the so-called Transparency Act). With this, it committed itself to “achieving a balanced composition of the expert groups” (EC 2016). To this end, the selection procedures were made more transparent, the experts were recruited through public tenders and applications, and finally the expert register was published (EC 2016:2). However, the impact of the Transparency Act has been limited. Studies have shown that, as before, business associations and corporations together usually make up the numerically strongest group of participants in online consultations and other fora (Kotzian/Quittkat 2014 in Quittkat 2019). It has been shown that the relative strength of the competing coalitions is more important than the strength of the individual interest groups (Klüver 2013). The goal of equal participation of civil society and business interests (and their representation) has therefore only been achieved to a limited extent at the EU level. In addition, the difficulty remains that civil society systemically cannot generate authorised representatives, so that the selection of interlocutors must always be left to the other side. The balance is therefore dependent on their insight.

Interviewees report that the European dimension plays a lesser role in regulatory terms and a larger one in terms of access to financial resources and in building a European civil society. At the European level, there are only partially developed networks of cooperation between CSOs, which are used in particular for the exchange of information and less frequently for mutual support (I 7, 8, 11, 15). The allocation of funding at the EU level is generally described as very complex, but still more transparent than at the national level. It is therefore gaining in importance. Similarly, civil society participation at the EU level is perceived as more transparent than at the national level (I 1). However, EU procurement laws, e.g. the European Law on Aid, are gaining in importance and have an adverse effect on the funding of some CSOs (I 7).

A resolution on the introduction of a European association system is currently being discussed in the European Parliament. The European Economic and Social Committee is conducting dialogues with CSOs and think tanks hailing from or focused on civil society. The European Union Agency for Fundamental Rights (FRA) published a report on the protection of the civic space in the European Union in 2021 (Allenberg/Meyer 2021).

The Council of Europe, whose Council of Ministers adopted a recommendation on the framework conditions for NGOs in 2007 (CM/Rec (2007)14), lists recommendations for their implementation in a recent report (McBride 2021).

6.6 Suspicion of Terrorism and Money Laundering

During the global fight against terrorism and money laundering, which the international community has been pursuing vehemently at least since the ‘War on Terror’ was launched in the wake of September 11, CSOs have also been caught in the crossfire. The ensuing increased accountability obligations quickly push smaller organisations to the edge of their administrative powers. In particular, they have made access to the banking system more difficult, as credit institutions have

shied away from the extra effort and turned away CSOs as clients (Daigle et al. 2016; NYU Paris EU Public Interest Clinic 2021). States have also used the opportunity to place disfavoured CSOs under suspicion of terrorism or to justify anti-CSO legislation.

In particular, governments subsequently used the intergovernmental Financial Action Task Force (FATF) and the “particular vulnerability” of NPOs in terms of their misuse for terrorist financing (Recommendation No. 8), specified in its 2002 recommendations, as an argument for the disproportionate regulation of the sector. In 2015 and 2016, Recommendation No. 8 underwent revisions that clarified that not all NPOs *per se* carry a high risk of abuse. This is also relevant for Germany. According to the regulations of the FATF and the 4th EU Money Laundering Directive, Germany is obliged to regularly conduct a national risk analysis in the area of “combating money laundering and terrorist financing” (BMF 2019). With a sectoral risk analysis, which was last issued by the Federal Ministry of the Interior at the beginning of 2020, the risks of terrorist financing through (the misuse of) CSOs are examined in detail (BMI 2020a). As a result, the risk of misuse of a CSO for the purpose of terrorist financing is assessed as medium to low. The risk of a targeted use of a (supposed) CSO for the purpose of terrorist financing is assessed as medium to high. According to the risk assessment, there have been some cases of (suspected) terrorist financing in Germany in recent years. Nevertheless, hardly any cases are known in which a CSO was misused for the purpose of terrorist financing (*ibid.*).

The case of the association *Waisenkinderprojekt Libanon e.V.* ('Lebanon Orphans Project'), which collected donations for the benefit of the Shahid Foundation based in Lebanon, provides an example of the misuse of a CSO as a cover for terrorist financing. From 2007 until the end of August 2013, the association transferred more than €3 million to the Shahid Foundation – and thus ultimately to Hezbollah, which has been explicitly classified as a terrorist organisation in Germany since December 2019. The association was banned in 2021 along with two other associations collecting donations for the Shahid Foundation.

Like other actors, civil society is confronted with the fundamental difficulty that 'terrorism' is a poorly defined and politically contaminated term that is often misused to defame political opponents. It can therefore also be problematic for civil society to adopt the 'official' use of the term with all its negative consequences (Strachwitz 2021).

Within the framework of the analysis of vulnerabilities carried out by the Federal Ministry of the Interior (2020a), it was determined that the sector is generally well positioned against misuse for terrorist financing through many initiatives and advisory services. However, the fact that CSOs are increasingly forced to use alternative financial transfers (e.g. cash couriers, commercial transfer services) due to so-called de-risking measures in the banking sector makes the sector considerably vulnerable. This particularly affects CSOs in the areas of development cooperation and humanitarian aid. They lament that they cannot fulfil their mandate in part because anti-money laundering and anti-terrorism legislation make it impossible for them to open bank accounts or transfer funds in certain countries. Surveys of humanitarian workers and other studies show that counter-terrorism measures affect organisations and the space for action in the humanitarian sector in many ways (Roepstorff et al 2020). The interplay of international, regional and national legislation

and counter-terrorism measures results in complex and multi-layered regulations that need to be complied with.

In addition, CSOs are increasingly confronted with so-called partner and beneficiary vetting or the need for beneficiary due diligence. These are demands on donors to subject not only partner organisations and suppliers, but also aid recipients, to a security check to ensure that they are not on any EU or UN sanctions lists or can be associated with groups classified as terrorist (Hummel 2019b). Aid organisations are habitually obliged by their contracts with German donors – such as the bank *Kreditanstalt für Wiederaufbau* (KfW), the BMZ or the Federal Foreign Office – to comply with anti-terrorism regulations (Roepstorff et al. 2020). Within the context of the debate, it was also discussed to what extent certain organisational forms, such as foundations, could be particularly affected by this. After all, these are “not only supposed to pursue public-benefit-oriented purposes” and are “more susceptible to abuse as independent asset pools” (Strachwitz 2020b) than, for example, member-supported associations. In this context, increased scrutiny of donors and foundations (donor due diligence) is also being discussed and in some cases already being practised by international recipients.

The fact that banking regulation was tightened by the reform of the Basel Capital Accord (Basel III) after the last financial crisis further complicates access to funding for CSOs. Credit financing for groups with poor credit ratings and low profit expectations, i.e. also for CSOs, has thus become considerably less attractive for banks and loans have become noticeably more expensive (Bächstädt 2016; Berg/Uzik 2011). Among the organisations interviewed, two of the internationally operating ones reported that their partner organisations in the Global South were affected and restricted by anti-terrorism restrictions (I 1, 2).

While due diligence and compliance are central, the relevant laws are a persistent threat to civil society. In the context of financing and otherwise supporting terrorist endeavours and organisations, they shift the risk to CSOs. In doing so, they compromise their ability to process donations and cross-border donations.

6.7 The Shrinking Civic Space

The civic space and thus also the space for action of civil society is globally contested and threatened from many sides. In this context, there is talk of a shrinking space for civil society (Hummel 2019b), which is characterised by increasing controls, restraints, suspicions, harassment and restrictions visited upon CSOs, their staff and volunteers (Alscher et al. 2017; Gnärig 2018; Hummel 2019b). In the literature, the following instruments of restriction are mentioned in particular (Ayvazyan 2019, Strachwitz et al. 2020:249ff.):

1. Restrictive administrative action (e.g. through the introduction of licensing requirements or the tightening or prolongation of licensing procedures);
2. Withdrawal of the financial basis (e.g. through the restriction or abolition of tax exemptions);
3. Police checks and obstructions under the pretext of combating terrorism or money laundering (see section 6.6);
4. Takeover and redistribution of activities (e.g. in the running of schools and social institutions);

5. Philanthropic protectionism (e.g. the obstruction of transnational donations with the so-called foreign agent argument);
6. Restrictions on freedom of assembly and association (e.g. through bans or restrictions on demonstrations);
7. Restrictions on freedom of expression and freedom of the press (e.g. through censorship, selective media information or the withdrawal of advertising revenue);
8. Intimidation and use of violence against civil society actors;
9. Criminalisation and stigmatisation of human and civil rights activists;
10. Targeted discrediting of CSOs or civil society as a whole through (false) accusations.

Assessments of the extent to which Germany's civil society is affected by these phenomena differ from one another. The concept of shrinkage seems inappropriate in view of the increase in important key figures — such as employment figures in the sector, political commitment, and the steady or even increasing funding volume. Instead, it seems crucial to analyse the actors' motives underlying the processes of change (Hummel 2019b). Anheier and Toepler (2019) assume there is a (negligent) reform backlog in Germany's engagement policy and see this as responsible for restrictions. On the other hand, many CSOs see the withdrawal of *ATTAC*'s non-profit status as an act of deliberate political intimidation, and as an example of shrinking space.

These attempts at their restriction affect different areas of engagement to noticeably different degrees (Hummel 2022). At the same time, increased legal restrictions and a change in the state's approach can be observed. The assessment of sea rescue in the Mediterranean constitutes a striking example (Strachwitz 2019; Hövelmann/Strachwitz 2021). There is talk of a “shrinking humanitarian space in Europe” (Roepstorff 2019). Within the context of the treatment and repeated detention of civilian sea rescue ships, Amnesty International criticises not least the German courts. In 2020, the Federal Ministry of Transport (BMVI) attempted to tighten the Ship Safety Ordinance by amending the Sea Rescue Vessels Ordinance. This would mean that small vessels that are “active in the field of environmental protection, sea rescue, including observation missions, or other humanitarian purposes” (explanation 19, Ship Safety Ordinance) would have to implement safety requirements that are difficult to fulfil (FFM 2020). Although the Administrative Court of Hamburg overturned the detention of corresponding ships sailing under the German flag (Hamburg Administrative Court 2020, 5 E 3819/20), many ships were unable to sail for a good four months and incurred high additional costs due to their forced stay in port. The tightening was preceded by fierce verbal attacks by politicians of the right-wing populist AfD and by conservative parties against CSOs active in civilian sea rescue and refugee assistance. For example, Alexander Dobrindt (Member of the German *Bundestag*, CSU) coined the term “anti-deportation industry,” with which he tried to criminalise the engagement of CSOs in refugee assistance.

There were various references to shrinking spaces in the interviews, too, but also the impression of a reform backlog. Among other things, it was reported that it was made difficult for organisations to promote foreign CSOs or to hold conferences if certain CSOs are invited (I 2). The general development of civil society was assessed negatively in fewer instances (I 2, 4) than positively (I 9, 11, 12, 14, 15). A lack of discourse on the importance and framework conditions of civil society was

mentioned in this context and blamed for necessary legislative adjustments not being carried out (1 2).

Overall, it cannot (yet) be clearly shown at this point in time whether the frequent targeting of individual civil society actors should be seen as part of a strategy pursued by political parties, the state administration and the economy which is based on ideas of competition and power interests. In the following, some recent examples will be presented that illustrate the restriction of the scope for civil action and the contested civic space (Hummel 2020c), but also indicate a reform backlog. The right to take to the streets can be used as an example to show how restrictions manifest in practice in numerous small ways.

6.7.1 Restrictions on the Freedom of Assembly

The mobilisation of the public in political protest is usually brokered by the media, but nevertheless also strongly depends on local mobilisation potentials. These are traditionally strong in Germany. “Demonstrations and rallies remain the most frequent form of non-institutionalised political participation nationwide in the period from 1975 to 2018” (Hutter/Schäfer 2020). Germany is considered a movement society (Lahusen/Bleckmann 2015; Neidhardt/Rucht 1993), in which a strong culture of counter-protest is developing, especially in dealing with right-wing protests (Hutter/Schäfer 2020). The great peace movements of the 1950s and 1980s are among the high points of unconventional political articulation. Peace, along with social and environmental issues, was a central protest theme around 1990. Overall, climate and migration-related demonstrations currently dominate among both the left and the right (ibid.).

Controversial encroachments on fundamental rights in connection with the freedom of assembly and the weighting of various freedoms in Germany are a recurring issue (see also section 5.2).

The legislative competences of the *Länder* lead to various differences and ambiguities with regard to freedom of assembly. For example, the Constitution of Berlin guarantees freedom of assembly to “all men and women” (Constitution of Berlin, Art. 26); the Constitution of Brandenburg guarantees it to “all people” (Constitution of Brandenburg, Art. 23), while the Constitution of Hesse guarantees it only to “all Germans” (Constitution of Hesse, Art. 14). In its Assembly Act, the Free State of Bavaria allows the “unobjectionable recording of the entire assembly” (Art. 9, paragraph 2 Bavarian Assembly Act). A Constitutional complaint filed by an alliance of CSOs, trade unions and parties against this article of the law was rejected as inadmissible (Federal Constitutional Court 2012, BvR 2492/08). Other state Constitutions, as well as efforts to tighten them, are and have been the cause of criticism (Alliance to Stop the Assembly Law of North Rhine-Westphalia 2021; RAV 2020; Turß 2021) and lawsuits (Freedom of Assembly for Lower Saxony 2016). A corresponding lawsuit in Lower Saxony was not admitted for decision by the Federal Constitutional Court (ibid. 2013, BvR 238/12); decisions on others are still pending.

The police may issue bans and restrictions on assemblies in accordance with Articles 5 and 15 of the Assembly Act, as can the administration or the courts. In fact, the police mostly decide on the permit in the first instance, applying a rather wide margin of discretion. Unlike in Austria, for example, organisers can initiate summary proceedings against assembly bans or requirements at

administrative courts (More-Hollerweger 2014:42). The dissolution of an ongoing assembly, on the other hand, resides exclusively with the local police and is primarily based on a danger prognosis concerning a previous cooperation consultation (Art. 15 para. 1-3 Assembly Law). Judicial control is usually only possible after the fact (Ullrich 2015:510ff.). In the context of a danger prognosis, investigations and the collection of personal data of demonstration participants can also be carried out, which are relatively often declared unlawful after the fact (e.g. Federal Constitutional Court 2010, BvR 2636/04).

In the case of disproportionate use of force, criminal charges or disciplinary complaints can be filed against individual police officers. In all cases, the complainants incur considerable procedural costs; however, complaints against individual officers are hardly ever successful (Singelstein 2013:23; Wremter/Drepper 2015). Moreover, they almost always lead to a counter-charge for offences under Art. 113 of the Criminal Code (“resistance to law enforcement officers”, Singelstein 2013:17). This has a deterrent effect. As a result, police misconduct is detected less and less often, as a study by the Ruhr University Bochum shows (Abdul-Rahman et al. 2020:12, 66ff.). For this reason, Amnesty Germany has long been calling for an independent supervisory authority for the investigation of complaints against police officers. Moreover, police officers are not subject to compulsory identification in all federal states (Singelstein 2013:26); Amnesty Germany therefore launched a campaign in 2011 for the introduction of compulsory identification (“greater responsibility in the police force,” Amnesty 2017). In 2017, an amendment to Art 113f. of the criminal code increased the level of punishment and punishable acts against violations against law enforcement officers (Federal Law Gazette 1 2017, 1226f.), which is why the risk of counter-complaints and participation in assemblies now have even more of a deterrent effect.

During the protests against the G20 summit in Hamburg in 2017, the courts and police authorities interfered with the freedom of assembly, in some cases on a massive scale (Edlefsen/Strachwitz 2017). CIVICUS regarded this as a significant restriction of the right to peaceful assembly, not least through the establishment of restricted zones that went beyond pacified zones and the banning of several demonstrations (CIVICUS 2017a, b). Many police officers did not wear identifying tags when on duty. The lack of judicial oversight was also criticised by the European Court of Human Rights but is permissible in Hamburg (Reuter 2017c). Finally, it became known that in the context of the G20, various surveillance measures were applied to the demonstrators and data of peaceful protest participants was unlawfully stored (Reuter 2017b), although the videotaping of assembly events is only permissible in the context of criminal offences (OVG N-W, 2019 - 15 A 4753/1). In the aftermath of the protests, foreign demonstrators were treated differently from Germans. For example, an Italian protester was held in pre-trial detention for four months without trial, the only basis being his participation in a demonstration and the accusation of violence. The deprivation of his liberty was retrospectively declared unlawful (*dka Rechtsanwälte* 2018).

The general criminal offence of masking and protective armament, which refers not only to the demonstration itself but also to the routes to it (Art. 17 para. 27 p.2 Assembly Law), is also under criticism, for example from left-wing groups (*Initiative Vermummung; Rote Hilfe*), but also from Green party politicians (Wedekind 2017). What counts as masking, as passive or active arming and the wearing of uniform, is again at the discretion of the police. This led, for example, to a conviction,

confirmed in two court instances, and with it to a fine for the use of plastic foil in front of the face as a prohibited protective weapon against pepper spray during Blockupy protests in 2015 (Ruß 2020).

Inconsistencies between courts and the *Länder* in the assessment of demonstrations were also evident during the Covid-19 pandemic. It was up to the *Länder* to weigh up Assembly Law against their own infection ordinances (Keilani 2020). Thus, demonstrations by deniers of the Covid-19 pandemic were allowed to take place in some cities, while in others they were banned on the grounds of health protection (MDR 2020). In this context, courts repeatedly contradicted police and judicial bans and orders on demonstrations even before the pandemic (including Federal Constitutional Court 2001 1; BvQ 28/01 -, §§ 1-28; Federal Constitutional Court 2012 1; BvR 2794/10 -, §§ 1-24; Federal Constitutional Court 2020 1; BvQ 55/20 -, §§ 1-12).

In particular, new movements increasingly use decentralised means such as social media to organise events (Gaßert in Berg 2019). At the same time, social media is used as a substitute or supplement to street protests. Permission is not required here, but at the same time visibility is contested. This is because online demonstrations lack the “necessary physicality” to invoke the right to demonstrate. This led, among other things, to 106 home searches being carried out on activists in the aftermath of an online protest, a procedure whose legality is political parties question, too (Pany 2021).

Overall, there are gaps in the law regarding the handling of new forms of protest. This leads to different approaches in practice. In particular, hybrid forms of protest, “in which the private and the public cannot be clearly distinguished from each other” (Thurn et al. 2018), pose new challenges for the courts. For example, it is still unclear whether protest camps count as (a part of) assemblies. In a first ruling, the Federal Constitutional Court confirmed this and approved the anti-capitalist protest camp in the context of the G20 protests, after the Hamburg Constitutional Court and the Higher Administrative Court failed to reach an agreement on the matter (ibid.). The court justified the decision by stating that otherwise “the applicant's right of assembly during a particularly significant and large-scale political event would be permanently devalued” (Federal Constitutional Court 2017, 1 BvR 1387/17). In practice, however, protest camps have been evicted repeatedly under the pretext that they do not constitute assemblies. The anti-capitalist protest camp was also broken up by the police under pretexts such as the alleged lack of security measures, despite having a permit (Thurn et al. 2018). Later, this procedure was first found to be correct by the State Constitutional Court (VG 75 G 8/17), then unlawful by the Higher Administrative Court (ibid. 4 Bs 148/17). Due to the unresolved legal situation, authorities often do not see themselves as responsible for regulation, which considerably reduces legal certainty and the ability to plan such forms of protest (Thurn et al. 2018).

The interviews confirmed the view that freedom of assembly is declining in Germany. Interviewees stated that the police were taking more liberties and interfering more in the assembly process (I 4). At the same time, the perception of a protest as being carried out by the general public works to protect said protest from police intervention (I 9).

6.7.2 The State's Parallel Structures

In Hungary and other countries with authoritarian government systems, there have been known attempts by the state to juxtapose self-empowered, critical civil society with an organisationally and financially state-dependent equivalent by building up a loyal and cooperative civil society of its own. This raises the question of whether something similar may be said for Germany.

In answering this question, it should first be pointed out that parts of German civil society have always been largely dependent on the state due to their mission. Welfare organisations and sports clubs, for example, are completely dependent on financial contributions from or contracts with the Federal Government, the *Länder*, municipalities or statutory social insurance institutions. However, traditional alliances between associations and individual parties have dissolved. For example, the decades-old relationship between the CDU/CSU and the Catholic Church, including *Caritas*, which in part dates back to the 1920s, has today broken down as a result of opposing positions on the refugee issue. At present, the most pronounced link appears to be between the SPD, trade unions and AWO.

In contrast, there has been an increasing trend, regardless of party affiliation, for the state administration to gain more insight into or control over civil society. This is attempted in particular through the instrument of financial support. In addition, there is an increasing number of state-initiated foundations of CSOs, as well as increasingly obvious attempts to influence their governance of. For example, in the final phase of the 19th legislative period (2017-2021) alone, the Federal Government has launched the following foundations, among others:

- German Foundation for Engagement and Volunteering (*Deutsche Stiftung für Engagement und Ehrenamt*, DSEE; Federal Ministry of the Interior/ BMFSFJ /Federal Ministry of Food and Agriculture),
- A federal foundation dedicated to places representing the history of democracy (*Bundesstiftung Orte der Demokratiegeschichte*; Federal Government Commissioner for Culture and the Media),
- Legacy Landscapes Fund (Federal Ministry for Economic Cooperation and Development),
- A foundation dedicated to the memory of former Federal Chancellor Helmut Kohl (Federal Government Commissioner for Culture and the Media),
- Federal Foundation for Gender Equality (belongs to BMFSFJ),
- A foundation dedicated to data protection (*Stiftung Datenschutz*; Federal Ministry of Finance).

A special case of misuse of the civil society label for political interests occurred in Mecklenburg-Western Pomerania: The state government established the Climate and Environmental Protection Foundation in 2021 with the purported aim of promoting projects in environmental, nature and climate protection. However, the statutes allow the foundation to become active in business for a limited period of time to support the construction of the natural gas pipeline Nord Stream 2. The foundation is predominantly funded by the operator of the Nord Stream Baltic Sea pipeline; the state only provided the start-up funding of €200,000 (NDR 2021). In the eyes of experts, its establishment is an abuse of this legal form. It is being used to receive and pass on funds from

Russian companies for the construction of the Nord Stream 2 gas pipeline and thus circumvent the US economic embargo. The organisation German Environmental Aid therefore filed a lawsuit against the recognition of the foundation (NDR 2021), so far without a decision. Criticism of this “label fraud” also came from environmental organisations, politicians and from abroad (Machowecz/Nejezchleba 2021, NDR 2021, *Welt* 2021, *ZEIT* online 2021).

Considerable state influence is also exercised in traditional large organisations initiated by the Federal Government, but formally classified as part of civil society. For example, the Federal Ministry of Education and Research interferes in personnel decisions, as well as in setting the course and even in factual decisions of the Max Planck Society, the Fraunhofer Society, the German-Italian Centre for European Excellence Villa Vigoni and other large, state-affiliated CSOs (BMF 2020d, I 17). The Federal Foreign Office acts similarly with regard to the Goethe Institute, the Institute for Foreign Cultural Relations and the German Archaeological Institute (BMF 2020d). The state not only uses the leverage of institutional funding, but also the influence of individuals to assert its own ideas in what are formally independent organisations. In the umbrella organisations of civil society, who receive institutional funding to maintain offices and the like, the influence is not as extensive; however, the state tends to try and keep critical opinions on planned measures at a low level. Moreover, in some associations, such as AWO and the German Red Cross, top positions are often occupied by active or former politicians.

A special focus was given to the founding of the DSEE in 2020. Only nine seats were allocated to civil society on the 27-member board of the foundation, which moreover were allocated by the ministries to top functionaries of their liking. Of these, three are politicians who hold honorary positions in a CSO. In addition, the foundation was essentially conceived as an operational foundation, which, for example, is to carry out training and further education measures for civil society on a large scale and plans to establish an academy to this end. The financial weight of this foundation — it is to receive around €30 million annually from the federal budget (not including special allocations due to the Covid-19 pandemic) — will have a considerable influence on the entirety of CSOs through its educational function and other programmes (Allenberg/Meyer 2021:5). The Federal Government had already adopted a similar practice when it introduced the Federal Volunteer Service (and its predecessor, the Civilian Service) by entrusting the issue of education not to the deployment CSOs, but to its own training centres. These developments warrant continued close monitoring.

6.7.3 Non-Profit Status and Political Activism

Non-profit law is of crucial importance for German civil society and the funding it receives. If CSOs obtain non-profit status, they enjoy considerable tax advantages, as well as a better social reputation (see section 4.7). In recent years, civil society, but also its opponents, have criticised the implementation of non-profit law for several reasons. It is also being negotiated under the aspect of shrinking space, especially when it comes to the question of the extent to which CSOs are permitted to engage politically (Allenberg/Meyer 2021).

Both the German Fiscal Code (*Abgabenordnung*, henceforth AO), which defines the purposes and content of non-profit status, and the German Fiscal Code's Application Decree (*Anwendungserlass der Abgabenordnung*, henceforth AEAO) are worded very carefully with regard to political

engagement and are still fed by a spirit that saw the mandate of “forming the political will of the people” (Constitution, Art. 21) as vested solely with the political parties and not also with CSOs. No. 15 to § 52 AO stipulates that political activity is only permissible in individual cases and must remain “far in the background” of charitable activity. This provision was inserted while dealing with the party donation scandal of the 1980s. The provision of No. 15 AEO to § 2 AO had little practical effect for a long time, until a tax office in Frankfurt am Main used it to revoke *ATTAC* Germany's non-profit status in 2014. The vagueness of the provision is also evident elsewhere in the AEO and its judicial interpretation: “If, on the other hand, the purpose of the corporation is political education, which is concerned with the creation and promotion of political awareness and a sense of political responsibility on the basis of the norms and ideas of a constitutional democracy, this is considered to be public education. [...] In contrast, one-sided agitation, uncritical indoctrination or party-politically motivated influence does not constitute political education” (Federal Fiscal Court ruling 1999, XI R 63/98; Federal Tax Gazette 2000 II:200).

The tax offices oversee the granting and ongoing monitoring of non-profit status. Due to the ambiguous legal situation, they enjoy considerable room for interpretation in assessing the legal compatibility of political engagement and non-profit status. A study conducted by the organisation “Alliance for Legal Certainty in Political Decision-Making” sent identical applications to all tax offices and exposed considerable differences of opinion (Diefenbach-Trommer 2018). The study found that “selfless political engagement for the realisation of human rights, for the strengthening of democracy or for the benefit of charitable projects is often not recognised as charitable. [...] It becomes clear that the cause of the problems is not application errors on the part of the administrators, but that the AO and the AEO systematically produce these differences” (ibid.). This gives rise to the danger of disciplinary abuse on the part of state actors. This prognosis is based on a number of experiences in recent years where associations have had their non-profit status withdrawn or a withdrawal audit has been sought on the initiative of political parties:

- The FDP's 2018 motion entitled “Criminal offences and non-profit status do not go together” was aimed at withdrawing non-profit status from organisations if they violate the law or call for violations of it. The motion was prompted by incidents involving the animal rights organisation PETA, one of the largest fundraising organisations in Germany, which was accused of such actions (*Deutscher Bundestag* 2018). The Finance Committee of the *Bundestag* dealt with the motion in a public hearing but did not see any concrete need for action. According to the committee, incitement to or participation in criminal offences, as long as they are not included in the organisation's statutes, are not sufficient grounds for withdrawing charitable status (*Deutscher Bundestag* 2021b).
- The Federal Fiscal Court ruled conclusively against *ATTAC* Germany in 2021. A legal opinion prepared on behalf of the *Gesellschaft für Freiheitsrechte* (Society for Civil Liberties) concludes that the legal situation would also have allowed for a different assessment (Unger 2020). The ordinary legal process having been exhausted, *ATTAC* was now able to file a constitutional complaint, which the organisation went and did (Alliance for Legal Certainty in Political Decision-Making 2021b).

- The withdrawal of Campact's non-profit status stems from an AfD initiative (DFRV 2018). It was preceded by the association's "educational campaign" about the AfD's electoral programme. AfD *Länder* factions also sought an audit of the anti-racist CSO *Miteinander e.V.* and the Amadeu Antonio Foundation, as well as the withdrawal of their public funding (Rosenbach 2018). In the motion *Keine Gemeinnützigkeit für politische Agitation* ('No non-profit status for political agitation'), members of the AfD demanded that the basic ruling on ATTAC be extended to other organisations (*Deutscher Bundestag* 2021c).
- In addition to their activities, AfD politicians use the salaries of CSO staff as a pretext to demand the withdrawal of their non-profit status, for example in the case of AWO. In their district associations in Frankfurt and Wiesbaden, staffers had indeed received inflated salaries (Becker 2020).
- Since the beginning of 2019, the non-profit status of Environmental Action Germany (*Deutsche Umwelthilfe*) has been repeatedly questioned by the CDU and the FDP under the influence of the automobile industry (Bähr 2019), because this organisation had taken a clear position in its assessment of the diesel emissions fraud scandal. In the wake of this, CDU member of parliament Gitta Connemann said in a speech at the 2018 party conference: "We have to pay close attention when there are institutions that operate under the guise of non-profit activity." She thus cast doubt on the entire non-profit sector (Bolz et al. 2019).

This results in considerable legal uncertainty for all CSOs. Consequently, they limit their own actions for fear of having their non-profit status revoked. In addition to the examples of obvious political instrumentalisation, it is above all this legal uncertainty that restricts the actions of politically committed CSOs. It is also problematic that so-called chilling effects, i.e. a deterrent effect of the accusations and pending court cases on other CSOs engaged in similar fields of activity, are to be feared. A motion by the *Bündnis 90/Die Grünen* parliamentary group "Charitable work needs legal certainty, not political arbitrariness" (*Deutscher Bundestag* 2019) therefore called for more legal certainty and better protection of CSOs from restrictions by the government and political parties. However, it did not gain a parliamentary majority, although the SPD later also declared its support for the principle that CSOs should be allowed to engage in political activities. The governing parties of the CDU/CSU and several opposition parties were unwilling to compromise (Kreutzfeldt 2020). How the Federal Government formed in 2021 will position itself on this issue remains to be seen.

The behaviour of the tax authorities and tax courts has also led to uncertainty among "many fundraising organisations" (DZI 2019:9). Experts, politicians and NGOs (such as the Alliance for Legal Certainty and the Society for Civil Rights) have sharply criticised the rulings of the Federal Fiscal Court. Both CIVICUS and Freedom House see this as a threat to many CSOs (Bähr 2019). The association 'Citizens' Movement for a Financial Turnaround' accordingly announced in spring 2021 that it was renouncing its non-profit status in order to gain freedom of action that it would otherwise be denied (ibid. 2021).

Problems also arise regarding the causes considered to be charitable: A commitment to human rights, for example, is not listed as a charitable purpose. The Committee on Human Rights and Humanitarian Aid of the German *Bundestag* concludes that in the case of a "restrictive interpretation

by the tax offices [...] they are forced, if necessary, to include further purposes in their statutes or to inadequately subsume human rights within other categories [...]” (Krennerich 2016:8).

The Annual Tax Act 2020 brought some changes to the law on non-profit organisations. However, there are still complaints that not much has changed. It is true that new non-profit purposes such as climate protection have been included in the already sprawling catalogue in § 52 para. 2 AO; in addition, efforts to promote equality for certain minorities (such as transgender people or other members of the LGBTQ community) are now included in the purpose of “assistance against discrimination due to gender orientation/identity,” after the AO previously only listed the promotion of equality between men and women as a non-profit purpose. However, the promotion of human rights and a legal clarification on the political activity of CSOs are still missing (Alliance for Legal Certainty in Political Decision-Making 2021a).

The problem of non-profit status and the lack of clarification of political commitment emerged clearly in the interviews (I 4, 5, 6, 11, 14). The related threat of retroactive withdrawal of said status was also criticised. This creates a great deal of uncertainty (I 14) and is particularly problematic for organisations with a specific and limited field of activity (I 5). A representative of a large welfare organisation said that in connection with political engagement beyond the purposes of its statutes, it acted “as if [it were] walking on eggshells” and very cautiously (I 7); a smaller consumer protection organisation reported that it had first checked back on its own statutes with regard to political statements (I 14). The purposes of the statutes are more closely monitored by the tax authorities (I 4). Ease of access to non-profit status differs greatly from one state to another (I 4). Therefore, the demand for legal clarification and recognition of political commitment was expressed (I 4, 6, 14). At the same time, interviewees acknowledged that non-profit status is susceptible to abuse and that there is a gap in the legal enforcement of the AO. Compliance with the canon of values of the Constitution is insufficiently monitored. The employees of the tax offices are not trained to do so and consequently are not in a position to carry it out; it would therefore be desirable to create corresponding positions in the administrative offices. CSOs who act in any way that is discriminatory, anti-democratic or does not comply with fundamental rights should have their status withdrawn. Politicians see it as the task of the associations to control non-profit status, but they have neither the capacity nor the competence to do so (I 10).

6.7.4 Civil Society and Right-Wing Extremism

The CIVICUS Monitor as well as a recent FRA report consider the aforementioned rise of right-wing populist extremism as an increasing danger for civil society in Germany (i.a. Allenberg/Meyer 2021; CIVICUS 2020). The threat is twofold: On the one hand, organised civil society is in danger of being attacked and discredited by right-wing populist actors and parties. On the other hand, the danger comes from within civil society itself, in that extremist actors organise and build a 'counter' civil society.

The discrediting strategies against CSOs are mostly based on one of the following accusations: On the one hand, accusations of elitism are raised against charities, but also churches, trade unions and the state-subsidised cultural sector. Specifically, the accusations range from belonging to the ‘establishment,’ to wasting and embezzling tax money (Schroeder et al. 2020). On the other hand,

the image of CSOs as 'naive do-gooders' out to ruin society is used. Often, campaigns are conducted on a very personal level against individual activists or public figures, who are subsequently subjected to massive insults, threats of violence and attempts at intimidation, especially via social media (Hummel 2022). Certain areas of engagement, such as refugee assistance and gender justice, come under attack particularly often (ibid.).

The questioning of non-profit status is often part of the discrediting strategies. In addition, right-wing actors threaten civil society and social cohesion by spreading hate speech and fake news online (Pfirter 2022). So far, democratic CSOs lack adequate counter-strategies and the necessary media competence (Mulhall/Khan-Ruf 2021). The traditional, corporate-anchored CSOs are often attacked by right-wing populists with accusations of misusing taxpayers' money. These accusations amount to an attempt to publicly discredit them. On the other hand, the same forces try to fill these organisations with staff of their own. Behind this hijacking of existing civil society structures is the idea of a "march through the organisations," as formulated in an AfD strategy paper from 2019: "An AfD that wants to be a people's party must focus more than before on anchoring itself more strongly in civil society in order to assert its influence there. Just as the '68 movement was about the 'march through the institutions,' the AfD must also be about the 'march through the organisations'" (AfD 2019). These attempts at hijacking can be observed in various CSOs, such as trade unions, educational, sports and cultural organisations, as well as churches. They offer right-wing actors various structures of opportunity and connection. The supposedly apolitical field of sport opens access to broad sections of the citizenry through the use of narratives of national pride and competition. In the area of the church, conservative value patterns on issues such as family policy, same-sex marriages and abortion can be hijacked, as can tradition-oriented local associations and those dedicated to the preservation of customs. Environmental protection too is being hijacked, and thus an actually 'green' issue is being appropriated (Heinrich Böll Foundation 2012). In the trade unions, the strategy of hijacking takes place, for example, through the appointment of honorary or full-time functionaries in companies and workers' councils (Schroeder et al. 2020). A recent study on the resilience of trade unions, churches, sports clubs, charities and cultural institutions against such attacks shows that they are sensitised to and usually resistant to interventions, but are unsure how to deal with them. Networks and internal support are being built up, but civil society responses are often inadequate to the danger: They are highly 'situationally reactive' and rarely strategic (Schroeder et al. 2020).

The demonstrations against the regulations concerning Covid-19 since the spring of 2020 represent another case of hijacking. Here, an increasing occupation of the movement of the *Stuttgarter Initiative Querdenken 711* through right-wing mobilisation could be observed (Nachtwey et al. 2020). Meanwhile, the State Office for the Protection of the Constitution of Thuringia speaks of the radicalisation of large parts of the movement (DPA 2020a). Time and time again, the demonstrators have been the source of hostility, threats and even physical attacks on media representatives and counter-demonstrators (RSF n.d.).

In addition to the examples of attempts by extremists to delegitimise and hijack civil society, liberal democratic civil society is also threatened when right-wing populist and extremist networks formally correspond to civil society structures or civic engagement. This is the case both with newer phenomena, such as the Identitarian movement, as with some traditional structures, such as

associations of displaced persons and some student associations and heritage societies (Hinterhuber/Strachwitz 2010). If one investigates networks of right-wing agitation, one finds almost the entire range of possible legal forms of civil society, from non-profit associations to foundations (Fuchs/Middelhoff 2019). These include the Working Group for German Poetry, the European Institute for Climate and Energy, and the Erich and Erna Kronauer Foundation. The Desiderius Erasmus Foundation constitutes a special case. It was explicitly founded as a party-affiliated foundation of the AfD, following models such as the Friedrich Ebert Foundation (SPD) and the Friedrich Naumann Foundation (FDP), and will, according to the rules of party financing, be entitled to considerable federal funding from 2022, because the AfD is sending MPs to the *Bundestag* for the second time. It can expect to receive around €50 million annually in funding.

These structures, which exist in the characteristic legal forms of civil society and in some cases claim the status of NPOs, offer their actors operational possibilities (e.g. through legal capacity) on the one hand, and the chance of a “wolf in sheep's clothing effect” on the other, in that they can feign a supposed deradicalisation through the reputation and trust that CSOs enjoy in society. “After their actions had long been dominated by the struggle for parliamentary seats on the one hand and acts of violence on the other, the radical right in united Germany has rediscovered grassroots work.” (Teune 2008) Thus, civil society forms of protest such as demonstrations or petitions are increasingly used. But the digital space is also increasingly used to organise. The Identitarian Movement Germany and the *EinProzent* association initially started out as social media phenomena before they began bolstering their visibility with analogue action (Speit 2018). At the same time, public resistance to these developments and corresponding demonstrations has a broad base in society (DPA 2019). Many CSOs, such as the alliances *Unteilbar* (‘Indivisible’), *Aufstehen gegen Rassismus* (‘Rising Up Against Racism’) and *Seebrücke* (‘Sea Bridge’), also joined corresponding counter-protests.

The intervention of right-wing populist actors in civil society is being pushed deliberately and leads to the politicisation of existing conflicts and the promotion of existing resentments. Misconduct by CSOs is systematically used as a pretext to question their general legitimacy and to divide civil society (Schroeder et al. 2020:118). In this respect, a stronger polarisation within civil society can currently be assumed. It raises questions about its normative guidelines and confronts many CSOs with the challenge of reflecting on their own positions and dealing with questions of politicisation.

Anti-civil and anti-democratic CSOs such as *Pegida* or so-called *Querdenker* groups (deniers of the Covid-19 pandemic) were also mentioned several times by the interviewees as key issues (I 3, 4, 10, 12), as was digital hate speech (I 15). According to the interviewees, CSOs are becoming increasingly active against this, as more financial resources are also being used to fight it (I 3, 4, 15). Others see a need for catching up on the part of CSOs in this area (I 12) as well as in dealing with digital data protection (and data rights) (I 14).

7 ISSUES FOR THE FUTURE

7.1 New Areas of Engagement

The high number of dissolutions and establishments of new associations reflects a structural change that is not only evident in the association sector but is representative of the entire civil society and attributable to a changing society. How citizens get involved and for what causes is changing. For example, the number of sports clubs has been decreasing since 2005. In contrast, the areas of social affairs, leisure and advocacy have been growing since 2008 (Alscher et al. 2021:400). In this context, the *ZiviZ* Report speaks of a “pluralisation of types of organisations and legal forms, of self-conceptions and thematic fields, but also of regionally specific organisational patterns” (Priemer et al. 2017:46). While sports, leisure and social clubs still predominate in rural regions, non-profit corporations and foundations are gaining importance in urban areas (ibid.:23).

Social (large-scale) processes such as demographic change and the refugee movement are creating new fields of action for civil society. In the recent past, many CSOs have increasingly provided services for refugees and migrants and have made a decisive contribution to coping with the migration movement. Since 2015, almost 2,000 new services such as initial reception facilities have been created (BAGFW 2018:3). At the same time, the number of self-help groups and civic engagement groups in the voluntary welfare sector increased from 35,469 to 51,114 between 2012 and 2016 (ibid.:10ff.). Community foundations, which have existed in Germany since 1996 and are typical instruments of locally defined philanthropy, also increasingly turned their attention to the integration of refugees in their catchment areas in 2015 (Lesberg/Timmer 2017:27). In addition, more and more migrant organisations have been founded since 2015. The organisations interviewed named environmental protection, education and the fight against anti-democratic movements and right-wing populism as their current areas of activity (I 1, 3, 4, 7).

7.2 Professionalisation und Bureaucratisation

The growing internal economisation of CSOs is increasingly discussed alongside the fact that entrepreneurial considerations are gaining importance within the sector (Alscher et al. 2021:402). What is meant here is that economic structures of thought and action are adopted in the implementation of the purposes or the development of CSOs. In this context, there is also talk of managerialisation, marketisation and monetisation of civil society (Meyer/Maier 2018). This goes hand in hand with a push towards greater professionalisation and brings about more administrative work (Meyer 2008). CSOs increasingly use planning and control systems, for example tools to quantify the social impact of civil society work (see above; More-Hollerweger et al. 2014:23).

The reasons for this are manifold. For example, the complexity of the activities and organisational management of many CSOs has increased. In the socio-economic triangular relationship, the basic principle of state service provision in the welfare sector, which describes the relationship between the NPO providing the service, the recipient of the service and the grantor (Grunwald et al. 2018),

economisation is deliberately intensified. Increased competition⁹ and higher demands in public and other procurement procedures are just as important in this context as increased demands from stakeholders and the public for transparency and quality in civil society work (see above). For example, the use of voucher systems, sometimes stipulated by the state, promotes the marketisation of the relationship between the CSO and the recipient of services (ibid.:7). These developments are driven by the idea that “commercial patterns of action are also clearly superior to non-commercial or civil society ones in social and ecological terms” (More-Hollerweger et al. 2014:23). As a result, a tendency towards impact measurement can be observed in service-providing CSOs, which, due to its difficult operationalisation, places a great administrative burden on many CSOs, especially small ones. Furthermore, it is of very dubious use and, moreover, threatens to betray the basic empathetic patterns of action of civil society. The question is: How can the social success of an institution that promotes science, education or culture be measured in an adequate manner? (Repp 2013) More and ever better and more specialised personnel for the implementation of projects results in additional optimisation stress and makes it difficult to maintain the specific logic of civil society activity.

This results in several problems for CSOs. As expected, the lack of suitability of the commercial instruments and assumptions is evident, for example, in the fact that the classic business management indicators of controlling, accounting (e.g. EBIT) and liquidity are basically meaningless in the context of CSOs. The quality criteria of classic companies – profit or turnover – cannot serve as a basis for non-profit organisations (Schwien 2009). This makes for a very stressful situation for CSOs, where precarious working conditions often prevail. The requirements are in stark contrast to their level of organisation and resources on the one hand, and to the claim of realising goals of the common good on the other. The survey confirms that smaller and local CSOs face the greatest challenges in this regard (I 7, 8, 12). On the other hand, the increasing quantification leads to greater transparency of the sector, which enhances its credibility.

Accepting third party funding imposes a high level of monitoring on organisations (I 4, 12). Funding is often planned within a certain project logic and comes with the risk of funds having to be returned if donor goals are not met (I 4). The effort required for applications and project documentation is often disproportionate to the funding itself (I 1, 2, 4, 12, 15). The administration of grants consumes more time than the projects themselves (I 2, 11, 12). The problem of bureaucracy is particularly evident in connection with application procedures for public funds and the associated access to financial resources (Priemer et al. 2017).

This was also mentioned in the interviews (I 2, 4). One interviewee even expressed the sense that public funds were only tendered *pro forma*, but that the hurdles were deliberately set at high levels (I 12). Migrant organisations in particular often lack the knowledge or the degree of professionalisation to overcome these hurdles (Reinecke et al. 2010:93ff.). Compliance with legal requirements, such as hygiene and data protection regulations, became a challenge not least during the Covid-19 pandemic. However, even before that, most CSOs (66 per cent) called for a reduction in the bureaucratic workload (Priemer et al. 2017). If the administrative burden increases due to

⁹ For example regarding donations, volunteers, professional staff, public funding, clients, members and public opinion (Meyer 2008:6).

additional requirements for the CSOs, especially with regard to their own administration, application and approval procedures with authorities and agencies or tax law (ibid.:66f.), this can trigger considerations as to whether it is still reasonable or appropriate to continue the activity. The interviews confirm this view. This, in turn, can result in classic public service tasks shifting to the private market. The social capital component would be brought to a standstill.

One of the main tasks for the future will therefore be to find a reasonable middle ground between adhering to the specifics of civil society action, standing up to commercial and state competitors in the comparison of performance, the necessary professionalisation and legitimate transparency requirements. Ultimately, however, in some cases it will also have to be admitted that civil society action is not or no longer necessary at one point or another. In such a case, a goal-oriented enterprise – in contrast to a profit-oriented one – must possess the courage to discontinue an activity.

7.3 Internal Democratisation and Equality

CSOs are often expected to act in a participatory way not only for society as a whole, but also internally.¹⁰ This expectation stems from the long tradition of participatory decision-making and appointment structures anchored in associations or cooperatives. “It is an element of every association [...] that the members are and remain its rulers. The permanent decision-making process according to basic democratic rules forms a constitutive element of every association” (Strachwitz et al. 2020:174). However, the way associations work varies greatly, despite the corresponding provisions in the Law on Associations. There are associations that operate on a grassroots democratic basis and others that tend to be run by a strong board and only involve the members in electing the board and receiving an annual report. In many large associations, a distinction is made between (a small number of) voting ordinary members and (numerous) non-voting sustaining members. The latter have the main task of contributing to the organisation's finances, sometimes also to increase the organisation's weight in the public eye. In addition, large associations cannot hold general meetings for practical organisational reasons, but work with different models of delegate assemblies, which regularly lead to the formation of an ‘inner circle.’ This *de facto* ensures the participation of its members, but also limits it.

Thus, not all CSOs can meet the expectation of democratic structures. A Europe-wide CSO survey in 2017 revealed that the involvement of CSO members in internal organisational decision-making processes varies greatly depending on the decision-making area. In 31 per cent of organisations it was moderate, in 42 per cent it was strong, and in 19 per cent full involvement was reported. In most cases, participation concerned the election of board members and chairpersons as well as changes to the Constitution or bylaws, less often the selection of election candidates and the political orientation. Involvement in the admission and expulsion of members, as well as in questions of

¹⁰ “According to Robert Putnam, only where a network of informal social networks enables communication with a low level of hierarchy and the free development of familiarity and trust can a liberal democracy exist at all. The logic of action of hierarchy formation, which is predominant in the state despite parliamentary control, but also in the economy, is contrasted here with a hierarchical or at least low-hierarchy logic of action, which consciously builds on the principle of spontaneity and accepts instability and volatility” (Strachwitz et al. 2020:180).

funding and budget, was much less common (The Regulating Civil Society Project 2017:5f.). Yet stronger involvement and participation of members is seen as a strategy to counteract the decline in membership (ibid.:10).

Migrant organisations proved to be places where “migrants can employ their own resources and thus gain access to areas of education, work, health, etc. as well as opportunities for participation in mainstream society” (Reinecke et al. 2010:92). They are central to the integration, empowerment and enabling of immigrants in the larger society. The civic engagement of refugees in Germany is not just a pastime for them, but a central vehicle for inclusion, which can be considered equal to integration into the labour market (Speth 2018). Many migrant organisations work intersectionally and are more successful than other CSOs at aligning their services and activities with the needs of their members while remaining participatory (Reinecke et al. 2010:93ff.). They speak of a “culture of cooperation in the migrant organisations, in which full-time and voluntary staff work as equals” (ibid.:97).

Foundations are not democratically constituted, as they have to fulfil the will of their founders on a permanent basis; moreover, they have no members. Their legitimacy in democracies is therefore disputed (Hummel 2019a). Their statutes structure them hierarchically, especially since the legislator prevents the formation of stronger democratisation structures in the foundation bodies by obliging them to precisely delimit the purpose of the foundation. The growing proportion of community foundations, i.e. the joint foundation enterprise of many citizens, can be understood in this sense as a democratic change of a traditional form, although here too studies point out that the networking and steering of community foundations are in part heavily dependent on and directed by individual persons. And although community foundations often hold periodic meetings with their donors, the latter are not or only to a small extent involved in the decision-making processes (Krikser 2013). A recent survey of 553 foundations in the Foundation Panel of the Association of German Foundations shows that democratic principles play a central role in external actions but are hardly implemented within the foundations. In most foundations, employees participate actively, are informed transparently and can contribute their ideas. However, participation in the form of surveys takes place only in a little over one fifth of the foundations. This is particularly due to the lack of institutionalised participation formats and processes; for example, only 3 per cent of foundations have a workers' council (Association of German Foundations 2019b).

According to the interviewees, however, democratic principles are largely integrated into CSOs. Beyond the law on associations and foundations, more and more CSOs are committing themselves to participation and transparency, for example with regard to cooperation with partner organisations or internal processes (I 1, 8). In addition, according to the statements, there is a different way of dealing within and between the organisations than was previously the case. It is less about individuals and more about the organisations themselves; communication has become ‘softer,’ more cooperative and less confrontational (I 1). In some organisations, a consensus principle is even applied to important decisions (I 8, 9, 11). National associations and other intermediary organisations promote democratic principles through good governance policies (I 10).

The interviews show that internal processes in CSOs are very heterogeneous. In some (I 10) but by no means all CSOs, work is being done to integrate informal actors. But as with the democratisation

of processes, binding policies are lacking in many places. Thus, implementation depends strongly on the will of individuals (I 4). It was mentioned several times that democratic co-determination also has its limits, delays decision-making processes and cannot always be applied sensibly (I 7, 8, 11, 12, 14). In umbrella organisations, it is often difficult to grasp the heterogeneity of the interests and needs of the member organisations and to reach joint decisions (I 10). It also happens that partner organisations do not want to accept their co-determination and the responsibility associated with it or are unable to do so because of their expertise (I 4, 10). Therefore, the stakeholders must first be empowered to act. This requires better processing and accessibility of knowledge and data (I 10).

7.4 Gender and Diversity

In addition to co-determination, the issue of gender equality, and increasingly racial equality, is an important aspect of development within CSOs. Other issues related to the diversity of members, staff and volunteers, as well as executives, are also becoming more prevalent.

Despite its predominantly female employment structure – about three quarters of all employees are female – “positions with decision-making power, prestige and public standing [...] are predominantly male. In contrast, the less influential areas of activity and levels of participation are predominantly reserved to women” (Hinterhuber 2007:14). According to a 2017 study, the average proportion of women on full-time executive boards was 27 per cent, on supervisory boards 28 per cent and on boards of trustees 33 per cent (Zimmer et al. 2017). Only in full-time management boards is the proportion of women at least levelling out at 50 per cent; their proportion in bodies with an advisory function (such as advisory boards) is also gradually growing (ibid.).

In 2019, the non-profit association FAIR SHARE of Women Leaders e.V. was founded in Germany with the aim of bringing more women into leadership positions in CSOs worldwide. The FAIR SHARE Monitor measures the proportion of women on management and supervisory boards of CSOs annually and makes transparent which organisations achieve an appropriate proportion in their own structures. The 2021 Monitor finds that in the 159 German organisations surveyed, around 70 per cent of the workforce but only 39 per cent of the members of management teams and supervisory bodies are women. Only 36 per cent of these CSOs are headed by a woman (FAIR SHARE 2021).

Like the values prevailing in the economy and in politics, a gender-related representation gap in decisive bodies and leadership positions is thus also evident in civil society. Despite the fact that the working hours are much more flexible compared to the economic sphere, appointments to the leadership levels of CSOs remain trapped in conservative role patterns. Women – as the main group working part-time – are all too often passed over or paid less for doing the same job (Zimmer et al. 2017). This is shown, for example, in a study on the field of fundraising staff (Reese/Hummel 2018).

In civic engagement, too, it is evident that women take up committee or leadership positions (e.g. on association boards) much less frequently. They take on 19 per cent of volunteer offices and permanent tasks in civic engagement, while men take on 26 per cent. On the other hand, the shares of less permanently involved volunteers among women and men are about the same, at 22 and 23 per cent respectively (BMFSFJ 2016). In addition, the outward appearance of engagement is shaped

by the different preferences of the sexes: Men are more often active in the sports sector than women. Other male domains include politically active CSOs and trade unions as well as occupational associations. Women, on the other hand, are much more involved in the health and social sectors, in schools and kindergartens as well as in church and religious communities (ibid.). In migrant organisations, too, women are more often involved than are men (SVR 2020a:4f.). These organisations prove to be safe places where women can (re-)discover their own voice (Reinecke et al. 2010:97).

There is room for improvement in many German CSOs regarding the diversity of staff, members and volunteers. In the *ZiviZ* Survey, many organisations described their members and volunteers as largely culturally homogeneous (Priemer et al. 2017). Organisations from the fields of sports, education, international solidarity and religious associations stand out positively. These are able to attract members with a migration background relatively often (ibid.). A recent survey on diversity in cultural institutions shows that the respondents from federally funded cultural facilities and institutions can be described as diverse. The proportion of people with disabilities and migrant backgrounds in these organisations corresponds roughly to the population average. Older people are clearly overrepresented (Priller et al. 2021).

The problem of societal ageing, especially in leadership and full-time positions, is also present in many other CSOs. It is often said that this is due to the lack of commitment and engagement of younger people. Studies show that the organisations themselves also contribute significantly to the problem and do too little or the ‘wrong’ kind of youth development. The central point, however, is that younger people want more involvement and co-determination from organisations (Alscher 2017). Other studies have come to similar conclusions. In some cases, individual and social preconditions for young people's involvement, such as sufficient time resources, are also lacking. School proved to be the most important starting point for young people getting involved (BMFSFJ 2016:3). At almost 50 per cent, the proportion of young people between the ages of 14 and 25 who were engaged in 2017 was higher than that of the average citizen. What is more, the willingness of young people who are not currently involved in volunteering is relatively high (BMFSFJ 2016:4). Regarding the participation and involvement of people with disabilities, a survey shows that they are still barely involved in inclusive types of engagement. Persons with disabilities are still perceived by organisations more as recipients of services than as active participants (Holzhauer 2020).

The interviews clearly confirm the lack of equal representation and participation. Many organisations have recognised these issues but have not established a corresponding statement of intent, policy or practice (I 1, 2, 10, 11, 14,15). One large health organisation includes diversity as part of the internal change management process and its current association paper (I 8). One welfare organisation integrated diversity as part of quality management in 2021 and now specifies that the management and staff structure must be diverse, the board at federal level be led by a leadership duo rather than by a single person, and gender quotas be observed in the voluntary committees (I 7). However, the same organisation reports not being able to implement this policy in its local branches (I 7). Similar problems exist in sport, although the umbrella organisations lack data on membership and committee composition, preventing them from intervening in a targeted manner. In general, the values are lived very differently (I 10). In addition, the organisations' understanding of diversity differs considerably, also in terms of its depth. The organic development of CSOs from

informal, loose structures seems to be a possible advantage (I 11, 14). In smaller, younger and movement-oriented organisations, aspects of diversity and gender equity are often more strongly taken into account (I 9, 15); for consultative organisations they proved to be central (I 15). Many of them also take an intersectional approach to diversity and inclusion.

7.5 Cooperation

“The independence of civil society as an arena of autonomous, self-empowered actors is based, among other things, on its network character. [...] Following Manuel Castells (2017), who speaks in general terms of a network society, Friedrich Fürstenberg (2011) calls for the ‘integration of networks into a comprehensive institutionalisation process of globally relevant action by a wide range of actors’” (Strachwitz et al. 2020:180).

According to the interviewees, general cooperation and networking within civil society do exist, but could be expanded. The Alliance for Non-Profit Organisations (*Bündnis für Gemeinnützigkeit*), a network of umbrella organisations (including the German Nature Conservation Association, the German Cultural Council, the Federal Association of Non-Statutory Welfare, the German Olympic Sports Federation, the Federal Association of German Foundations), has only existed since 2005. By no means does it encompass all subsectors of civil society, rather encompassing its more corporatist subsectors. The Alliance essentially concentrates on streamlining demands to the legislator and often finds it difficult to formulate common positions. Civil society is also characterised by great differences in terms of levels of formalisation. It includes very strongly institutionalised players as well as dynamic member associations and spontaneous, informal collectives (e.g. movements and initiatives). This and the heterogeneity of the CSOs make broad and cross-sectoral cooperation and networking of their organisations difficult. Relatively often and to an increasing extent, however, are alliances formed around topics such as environmental organisations or humanitarian aid (I 6, 9, 14, 15). Welfare organisations are increasingly cooperating with alliances against climate change or for democracy, for example, and report that this has a positive effect on their political engagement (I 7). In some areas, such as welfare, many CSOs are integrated into networks through association structures or have even been merged by the state or the social insurance institutions into coercive consortiums. In contrast, traditional alliances, some of which have grown and been cultivated over many decades, e.g. between the CDU/CSU, the Catholic Church and the *Caritas* Association, have been damaged by differing positions on so-called church asylum for refugees at risk of deportation. Others, for example in the cultural sector or in civil rights organisations, are only slowly building alliances or reject them altogether due to autonomy considerations. Migrant organisations are usually characterised by a high degree of networking, both with other civil society actors and state agencies (Reinecke et al. 2010:93ff.; SVR 2020b:4).

Overly established networks can be criticised for giving priority to “corporate institutionalisation at the expense of spontaneous creative action” (Strachwitz et al. 2020:182). Moreover, large institutional networks have a much greater influence on opinion formation and decision-making processes than smaller or spontaneous networks of social movements and citizens’ initiatives. However, formal association structures and cooperation mechanisms are increasingly being replaced by ad hoc coalitions of like-minded CSOs.

The influence and regulatory competence of umbrella organisations, particularly in welfare and sports associations, has declined significantly in recent years, not least due to competition from commercial providers and, in the welfare sector, the abolition of compulsory membership in social welfare and tax law.

Informal civil society actors are becoming increasingly important. Their characteristics are, among others, the renunciation of any formal Constitution, the often-short-term character and the concentration on a specific (current) field of action. When asked about cooperation with these informal forms of civil society, most respondents from other associations stated that they had an idea of informal civil society but few systematic cooperative relationships (INKA 2014). However, the will to cooperate and the awareness of the growing relevance of informal civil society is widespread (I 2, 5, 6, 10, 12, 14). For example, two organisations are specifically trying to support the Fridays For Future movement and invite representatives as speakers (I 2, 6). The Plant for the Planet Foundation, which has been in existence for a long time, handles donations earmarked for FFF. Engagement advisory boards and sports associations are also working specifically on developing cooperation formats and possibilities for financial support (I 10). One organisation interviewed sees itself as a service provider for informal actors and offers them access to financial resources (I 14). Nevertheless, the closed and ‘established’ nature of some CSOs is seen as an obstacle to exchange with less organised actors such as movements (I 6). The cooperation of informal and formal civil society could not only support the existing structures, but also undermine them. For example, some initiatives are criticised for “creating a lot of noise but achieving little” (I 5). Similarly, informal actors are not always seen as legitimate partners (I 8). It is also more difficult to assess informal civil society in terms of its compliance with the Constitution (I 10).

The interviews confirm that CSO networking varies considerably according to field of activity and organisation. It is not uncommon for CSOs to see each other as the competitors they actually are in many places; they do not necessarily try to explore fields in which they can work together in an objective and goal-oriented way. This is sometimes perceived as a major obstacle (I 14, 15). Personal contacts and trust play a central role. How much a CSO cooperates with others often depends on the commitment or personal network of individuals (I 1). In addition, not all organisations can afford networking due to lack of resources (I 6). Networking, it was stressed, is also cost-intensive (I 11). Sometimes cooperation fails because CSOs do not know each other or because an “entry fee” has to be paid into alliances and networks, often in the form of adaptation to existing rules and conventions (I 6). Smaller and new organisations, on the other hand, are often overlooked when it comes to cooperation. Some of them also deliberately shun the larger umbrella organisations because they do not agree with the need to pay membership fees or the position of power and the resulting dependence of member associations on the federations (I 12).

The use of digital and thus more anonymous networking tools in Germany is still limited. The lack of technical know-how of many organisations and the dependence on large providers is perceived as an obstacle (I 1). Studies show the great potential in building civil society network structures through social media (Meissner 2015). However, the organisations also lack comprehensive knowledge management, as well as training in media literacy and in the use of digital tools (I 1). At the same time, there is lack of CSOs dedicated to the task of networking as such (I 6). However, the importance of local networking and cooperation for the success of projects and mutual reinforcement is widely

perceived (I 2, 11, 12, 14). A recent study on the impact of the Covid-19 pandemic confirmed that CSOs with strong and closely knit networks weathered the crisis much better than those that did not try to build them until the pandemic hit or did not try to build them at all. Civil society proved to be an important resource, not only financially, but also in terms of infrastructure and mentally (Schrader et al. 2020; Schrader 2021).

Very few of the interviewees perceive there to be a European civil society, although the EU's efforts in this direction are rated positively. At the same time, studies show that the networking of CSOs with international campaigns, e.g. against TTIP or the GATT agreement, is increasing and that the corresponding networks (e.g. the Seattle to Brussels Network) may well endure beyond the respective campaigns (Kaibel 2021). One of the internationally active organisations interviewed rated international networking as better than national networking (I 2). Two organisations reported close contact with European umbrella organisations in their field of activity (I 5, 11). It was emphasised that the European organisations support each other, sometimes also financially. The German organisation was reported to have a privileged position compared to other European organisations (I 5). However, a fundamental difficulty in the cooperation of such networks with intergovernmental bodies appears to be insurmountable. Civil society hardly knows any authorised representatives and must therefore leave the choice of interlocutors largely to the opposing side. The latter often exploits this deficit in its own favour.

7.6 Hybridisation

The civil society arena has never been entirely and clearly demarcated as separate from those of the market and the state. Trade unions that are close to the economy or the non-profit corporations that have enjoyed great popularity since the 19th century as the sponsors of large public welfare-oriented enterprises are evidence of their overlap and the resulting grey areas (Alberg-Seberich et al. 2018). Cooperatives also ideally combine elements of the market and civil society. Currently, an increasing hybridisation of all three arenas can be witnessed — both in terms of their rationales and their organisational manifestations, whereby the change can emanate from both sides. The state, for example, has tried to integrate the operational logics of the market and, to a lesser extent, of civil society into its processes through new public governance models (Pestoff et al. 2012). In the economy, social enterprises are becoming increasingly important alongside traditional hybrid forms, especially cooperatives (see, for example, Yunus/Weber 2010). At the same time, more and more hybrids are appearing in civil society: “In the sense of a formal classification as civil society, a distinction must be made between approaches that conform to the criteria of affiliation (in particular the ban on profit distribution) and those that do not. Nevertheless, market-based approaches that do not forego distributions or accept a lower profit expectation are legitimate and make exceedingly positive contributions both in fulfilling their business purpose and in illustrating alternative economic activity that does not take profit expectation as the absolute measure of success” (Strachwitz et al. 2020:138).

The application of civil society logic through so-called social entrepreneurship or social entrepreneurs is becoming increasingly common, as the number of hybrid organisations is growing significantly, especially in the area of start-ups (Strachwitz et al. 2020:137). Social entrepreneurship

is characterised by the fact that the corresponding enterprises use market-based methods to provide innovative and sustainable solutions that primarily pursue the goal of creating social or ecological added value. They often address social and ecological challenges that have so far been inadequately addressed by the state and the economy. The whole enterprise is focused on a pro-social purpose, which distinguishes social entrepreneurship from socially oriented corporate social responsibility (CSR) (Yahyaoui 2021).¹¹ Examples of such social enterprises are the beverage producer *viva con aqua*, the start-up *Einhorn*, which produces contraceptives and period products, and the search engine *ecosia*. At the same time, the cooperation of foundations with companies is also increasing. According to studies, these “non-profit inter-sectoral cooperations [...] enable the partners [...] to have a higher problem-solving capacity and greater impact in tackling societal challenges due to their complementary resources” (Tauß 2018:5).

A unique feature of the German foundation landscape is that they can be the sole owners of companies. The corporate holdings of foundations oriented towards the common good not only raise legal questions – for example about asset allocation and return on capital – but also questions of demarcation. The approximately 500 foundations that are sole or majority owners of commercial enterprises clearly show overlaps in mentality, action and interests with the companies they own.

The boundaries between the state, the market and civil society are becoming increasingly blurred as a result of the developments described above – hence the term “fuzzy edges” (More-Hollerweger et al. 2014:23). It may therefore also be appropriate to see individual organisations as being both situated in civil society and in a different arena. Hybrid forms between state, economic and civil society orientation are also traditionally widespread in Germany in the service sector via the guarantee in the welfare area that is characterised by the principle of subsidiarity. For example, one third of all hospital beds in Germany are provided by hospitals run by civil society. They are large enterprises with all the necessary entrepreneurial requirements, are subject to a massive level of state regulation and at the same time compete with state (e.g. university or municipal) and private hospitals, albeit in a regulated manner.

The combination of market instruments and pro-social orientation faces obstacles in practice: “If [social enterprises] choose a profit-oriented legal form, social and financial goals and methods are difficult to reconcile and combine. For example, for-profit organisations do not benefit from any tax relief for their social efforts, and do not have access to (tax deductible) donations, nor to volunteers who mainly work in non-profit organisations. Social entrepreneurs are therefore often forced to set up a complex corporate structure that combines, for example, a foundation with a for-profit legal form (e.g. a limited liability company) in order to still be able to identify a social cause and benefit from its advantages. If a social entrepreneur chooses a legal form deriving from the non-profit sector, for example a non-profit entrepreneurial company (*gemeinnützige Unternehmungsgesellschaft*, short *gUG*) or a registered association (*eingetragener Verein*, short *e.V.*), they again lack

¹¹ An increase can also be observed in these corporate social commitments (Backhaus-Maul et al. 2019). Not only are companies becoming more involved in charitable causes, for example for PR reasons (cf. Corporate Philanthropy, Corporate Social Responsibility); they are also increasingly positioning themselves politically (cf. Corporate Political Activity/Responsibility, Corporate Citizenship). This development is justified by factors internal or external to the company. The former include the costs of undesirable social developments and innovativeness, the latter customers' expectations (Molthagen-Schnöring 2018:19f.).

opportunities to generate and distribute profits” (Yahyaoui 2021). Prosocial start-ups are also less likely to find venture capitalists, which is why they often opt for forms of crowdfunding to secure their financial needs (ibid.). In recent years, models for a two-track approach have been increasingly explored, without any of them being having been able to establish themselves as of yet.

A special feature in this context is the increasing number of associations and foundations founded or initiated and financed by the state, which – despite their legal form falling under private law and their formal affiliation to civil society – remain bound by the administrative principles and directives of the state. These include, for example, the Max Planck Society for the Advancement of Science (24,000 employees), the Fraunhofer Society for the Advancement of Applied Sciences (29,000 employees) or the Goethe Institut (3,500 employees), but also numerous smaller institutions, e.g. the Centre for European Dialogue Villa Vigoni.

Finally, CSOs are adopting economic or administrative logics, for example through the increasing attempts at quantifying solidarity-based action. This includes attempts to measure impact, but also the controlling of needs, increasing project evaluation and the adaptation to administrative work processes (see section 7.2). At the same time, companies are increasingly acting as advocates for marginalised groups, such as LGBTQI people and migrants, and positioning themselves on political issues such as European integration, digitalisation and environmental protection (Molthagen-Schnöring 2018:23). These companies thus become active in the realm of civil society action.

7.7 Digitalisation

Digitalisation offers civil society new opportunities for interaction and communication. It thereby undermines the gatekeeping role held by large media corporations and enables considerable savings to be made. The interview partners also stressed this.

However, not all CSOs are open to digitalisation or perceive it as a field of action so far. Especially with regard to the use of social media, some shy away from the “processes of change towards openness, dialogue and transparency” (Strachwitz et al. 2020:304). For 51 per cent of German CSOs, digitalisation represents a great or enormous challenge, according to the results of a survey of 4,595 representatives of German CSOs carried out in 2019/20. The difficulties are considered to be considerable, particularly in terms of compliance with applicable law and by small organisations (Edinger-Schons et al. 2020:19f.). For example, the EU General Data Protection Regulation (GDPR), which came into force in May 2018, was implemented with great uncertainty, as the transition was marked by a high degree of legal ambiguity, but only few consultation options for CSOs were available.

In addition to aspects of internal organisational digitalisation, the question for CSOs is what they can do to shape digitalisation (Rasmussen 2019:6). In addition to teaching digital literacy, CSOs can also provide access to the network and technology, enable data-based innovations and design digital visions for the future. One of the most important tasks for civil society, meanwhile, is to fight for the protection of personal privacy in the digital space (ibid.). Studies on this, such as the *Digitalreport 2020* and the study entitled ‘Digitalisation Needs Civil Society’ so far assess CSOs as acting in a reactive rather than a proactive way (Edinger-Schons et al. 2020; Rasmussen 2019). There

is a lack of digital sensitivity, competence, speaking ability and necessary investments. Cloud solutions have so far been used almost only for sharing documents, although they offer considerable potential. At the same time, there are major concerns about data security (Edinger-Schons et al. 2020:32).

Overall, larger organisations are considerably more advanced in terms of digital integration and education (ibid.:35ff.). Digitalisation is understood almost exclusively as a means of facilitating work. Less than half of the CSOs surveyed use it extensively to increase their social impact. Digital (co-)design is not yet a genuine field of engagement for civil society (ibid.:24). Associations – with the exception of the Donors' Association for the Promotion of Sciences and Humanities in Germany and the Council for Cultural Education – hardly play a leading role in promoting digitalisation. It does occur but does not change “how associations perceive their role/mission vis-à-vis members and/or politics” (Rasmussen 2019:83).

In 40 per cent of the organisations, it is mainly volunteers who are responsible for digitalisation, and one fifth of the CSOs do not have a full-time person in charge of IT. Only in rare cases do job descriptions expressly cover responsibility for IT tasks. There is a widespread lack of knowledge and resources for acquiring such skills. For the most part, those responsible continue their education through self-study; at least, 29 per cent of them have professional training in IT. Training courses for employees are rarely offered (Edinger-Schons et al. 2020:35ff.).

All organisations interviewed identified digitalisation as a significant field of action and one that has become more relevant as a result of the pandemic. Many organisations have integrated digital tools into their internal processes, some also into external communication processes, and felt relatively well equipped technologically. However, there is still a lot of room for improvement here, both in digital working and digital networking and in digital knowledge management and sharing (I 4). This particularly affects small and less professionalised organisations (I 7, 8). Likewise, the knowledge and technology needed for digital networking are also lacking on the part of volunteers and members. One senior citizen organisation reported that only 55 per cent of its members had an email address, rendering communication much more time-consuming and costly (I 12).

Nevertheless, a vital civil society community has formed in recent years in the field of data protection, digital privacy and in connection with campaigns against hate speech. Some of the leading experts in this field are in fact CSOs. The internationally active organisations Wikimedia Foundation, Chaos Computer Club and Open Knowledge Foundation are considered to be digital specialists at the forefront of this field (Rasmussen 2019:19). Initiatives, campaigns and associations such as *HoGeSatzbau*, *HateAid* and *netzpolitik.org* engage online against acts of hate and also increasingly offer educational programmes in these areas. CSOs also play an important monitoring role in the public commentary on regulatory measures. For example, the Network Enforcement Act (*NetzDG*) passed in 2017 to force social networks to delete illegal posts or posts containing hate speech was criticised by experts as inefficient (guest author 2017). The danger of illegitimate censorship and the threats to freedom of expression on the Internet were emphasised with urgency (Reuter 2017a).

A good example of this is the history of the Federal Intelligence Service Act, which has existed since 1990. It was extensively expanded in December 2016 by the Foreign Telecommunications

Reconnaissance Act, thus also enabling mass surveillance (Federal Law Gazette 2017 1 No. 67). In addition, various new legal bases were created to expand the use of state Trojans or biometric data. The tightening was justified, among other things, with riots around the G20 protests, but also with terrorist threats. They were accompanied by widespread civil society protests (Biselli 2017). The Federal Intelligence Service Act was declared unconstitutional by the Federal Constitutional Court in May 2020, after several CSOs such as Reporters Without Borders had filed a complaint against it, because it violated the freedom of the press (Art. 5 of the Constitution) and the freedom of telecommunications (Art. 10 Constitution) (Federal Constitutional Court 2020, 1 BvR 2835/17 -, marginal no. 1-332).

Skills trainings in the field of digitalisation by civil society for civil society have been increasingly offered of late, e.g. by the Progressive Centre's European Hub for Civic Engagement. Other organisations donate the necessary hardware or software to citizens or CSOs (Rasmussen 2019:20ff.). The partly German, partly international support services of StoryHunt, better-place-lab, helpteers, opentransfer, youvo.org and CorrelAid are central.

The state is also helping shape the digitalisation of CSOs. For example, the BMFSFJ launched conferences, publications and programmes under the heading 'Digital Agenda for a Society Worth Living In'. The Federal Ministry of the Interior worked with betterplace.org and the *Stiftung Bürgermut* (Citizens' Courage Foundation) on digital education and networking in the CSOs (project *D3-so-geht-digital*) and commissioned studies (e.g. 'People.Life.Integration,' Blend Impact). Experts still criticise the lack of a holistic strategy for the digital future and a more proactive approach to digitalisation on the part of German CSOs. The focus should be on more cooperation, networks and a more open way of working (Rasmussen 2019:119ff.).

Many CSOs also lack a sustainable knowledge management system (I 1). Digital means are seen as a possible solution and are intended to prevent knowledge from being lost when individual employees retire from their post (I 1). However, the potential of digital media and platforms is countered by questions regarding the handling of the corresponding programmes and personal data (I 1). There still seems to be a great lack of knowledge and uncertainty among CSOs (I 1).

7.8 Impact of the Covid-19 Pandemic

On 27 January 2020, the first person infected with Covid-19 was identified in Germany. Far-reaching lockdown and hygiene measures followed, essentially on the basis of the Federal Infection Protection Act (*Infektionsschutzgesetz*, IfSG), which had been amended several times. On the basis of the IfSG, the Federal and State Governments ordered contact restrictions and repeatedly closed schools, day-care centres and retailers with the exception of grocery shops, leisure facilities and other venues of public life. Some federal states reacted particularly restrictively. The Saxon State Government, for example, temporarily banned its citizens from leaving their homes unless they had a valid reason to do so. The contact restrictions explicitly also extended to freedom of assembly and religion.

During the Covid-19 pandemic, legal requirements such as hygiene and data protection regulations became an additional challenge for most CSOs. In particular, the CSOs that are usually highly

qualified as hospital providers, disaster and population protection units, providers of outpatient medical units, etc., had to realise that they were at best called upon as facilitators, but not as true partners in the preparation and implementation of protective measures. For example, mainly the traditional rescue organisations (*Arbeiter-Samariter-Bund*, German Life Saving Association, German Red Cross, *Johanniter-Unfallhilfe*, *Malteser Hilfsdienst*) were commissioned with the operation of vaccination centres throughout Germany. However, those in positions of political responsibility did not involve them in either planning or communication of the new measures.

A recent survey of organisations by the Maecenata Institute for Philanthropy and Civil Society shows that more than two thirds of CSOs have been affected by the Covid-19 pandemic to a high or very high degree. This manifested itself particularly in changes in the deployment of staff and the ability of the CSOs to deliver services. In this context, the organisations were affected very differently by problems depending on their field of action and organisational size (Schrader et al. 2020; Schrader 2021). Other studies have confirmed this (Hutter et al. 2021). Here, the division into essential and non-essential activities was used to determine which organisations were allowed to continue their services in person during the pandemic. This showed a lack of understanding of the relevance of many CSOs, as care services for senior citizens were also banned. In contrast, awareness of the importance of the care sector became much stronger, according to one interviewee (I 12).

Initially, many CSOs were faced with formal problems, as they were unable to hold the meetings mandated in their statutes (board meetings, general meetings, etc.) as a result of the lockdowns. However, this was already remedied in March 2020 by a law allowing for virtual general meetings to be held (Federal Law Gazette Part I, p. 3328; Federal Law Gazette I, p. 569, 570). Although only general meetings were explicitly mentioned in the law, this permission was also applied to other bodies and their meetings in accordance with the prevailing legal opinion. In addition, CSOs were exempted from the obligation to convene meetings altogether if it was not reasonable or possible to do so digitally (Art. 5 Para. 2f. *MaßnG-GesR*). In addition, provisions on the use of funds were relaxed in accordance with the agreed economic plan for grants from public funds (I 11).

While many services had to be discontinued or modified, 17 per cent of the CSOs, mostly in the area of services of general interest, were asked by the state to take on (additional) tasks during the Covid-19 pandemic (Schrader 2021). In a study by the Institute for Protest and Movement Research, 40 per cent of respondents said they had provided crisis assistance. Thus, the pandemic not only curbed organisations, but also made them more resilient and active in some cases (Hutter et al. 2021). However, in the studies, those organisations that reported negative impacts prevailed.

More than half of the CSOs interviewed for this survey reported slightly to strongly decreasing engagement numbers, while others reported increasing numbers. Protest movements such as FFF reported a decline in their ability to mobilise and thus in their visibility and impact (Schrader 2021). In particular, community-building organisations such as leisure clubs lost members and also reported, to a greater extent than organisations in other areas of activity, considerably more difficult working conditions due to financial shortfalls, a declining sense of community, limited scope for action and more complicated avenues of contact with volunteers (*ibid.*). Larger CSOs and those headed by full-time staff, as well as informal actors, were able to weather the crisis better than associations organised purely on a voluntary basis. Informal actors proved to be very flexible and

resilient to the crisis. They were among the most able to mobilise, especially in the area of community support, and to digitally reposition themselves (Hutter et al. 2021).

Organisations that depend heavily on entrance fees, course fees or sales revenues to secure their funding saw the greatest loss of income. Many of the CSOs estimated that the amount of public funding remained stable or even increased. However, more than a quarter of the organisations were not eligible to apply for pandemic-related government aid. Accordingly, their assessment of their financial future is rather pessimistic (Schrader 2021). The interviews confirmed this picture. Regarding the donation trends, one organisation reported an increase in donations (I 9), while another had to accept losses (I 11). Losses in income hit cultural and music organisations as well as sports clubs hard (I 10, 11). For most CSOs, however, little changed.

In addition to the area of activity, some requirements such as the status regarding tax relief (non-profit status), proof of a business operation and affiliation to associations or similar organisations proved to impede access to financial aid. Also, aid was not coordinated centrally, but at the level of federal and state authorities, which had a negative impact on transparency, uniformity and the application process. Finally, state aid often took the form of loan programmes in which CSOs could not participate (Schrader et al. 2020).

Many sports clubs were affected by membership losses, some of which were severe, particularly caused by fewer younger members joining. It seems unclear whether this development will continue after the pandemic (I 10, 13). In view of the impossibility of providing their usual services, some associations – especially in the area of sports – tried to retain their members by waiving membership fees. In doing so, however, they entered into legal grey zones, as such a practice would require a prior amendment of the statutes (I 10). In this context, warnings have already been issued about the loss of non-profit status (Geckle 2021). One of the sports organisations interviewed succeeded in digitalising its offers, which meant that the demand for the sports formats was about as high as before when offline. They also had good experiences with offering blended learning for courses and training as well as a digital administration platform for working with member clubs (I 13). Many organisations reported partly successful digital offers.

In the Maecenata Institute's survey, community building and issue advocacy organisations in particular rated their own visibility as limited. However, more than half of the organisations felt that they were in a position to absorb the consequences of the pandemic and to strengthen a sense of community through their work. Civil society has been and remains active during the pandemic, despite its limited scope for action. It is aware of the new needs of its target groups and is exploring new areas of work. The quantitative scope of civil society's work has tended to increase overall in terms of time and complexity. Nevertheless, 17 per cent of respondents reported that the second wave of the pandemic in the autumn of 2020 had rather diminished their outlook (Schrader 2021).

The Covid-19 pandemic turned digitalisation into an acute necessity for CSOs. For many CSOs, this process was an “overwhelming and positive experience in equal measure” (Krimmer et al. 2020:5). In addition to infrastructure, many organisations lack applied knowledge (I 1, Schrader 2021). 27 per cent of the CSOs experienced strong to very strong difficulties during the pandemic due to insufficient digitalisation (Schrader 2021). Data protection and security, too, posed unsolved problems for many, along with a lack of grid expansion (I 1, 14). Finally, the digitalisation of activities

resulted in additional costs, some of which were considerable (Hoff et al. 2021:4). Financial support for digitalisation therefore constitutes a topical issue for more than half of the CSOs surveyed (Schrader 2021).

From choir rehearsals to games clubs, from sports clubs to senior citizens' meetings – communities of choice with regular opportunities to meet, talk to each other and do things together beyond concrete common goals, constitute a type of glue that no society can do without – in Germany as elsewhere. Community building is one of the essential functions of civil society. For society as a whole, the extensive loss of the community-building function of many CSOs due to the lockdowns, contact restrictions, etc. over a period of almost two years is likely to prove particularly grave.

Political activists and movements were also limited in their ability to generate public attention and support for their issues, to hold demonstrations or protests. Protest movements such as Black Lives Matter usually showed their solidarity and adhered strictly to hygiene requirements, limiting the number of participants and thus their public outreach. Fridays for Future (FFF) for instance could not generate nearly as much momentum with online campaigns as they had previously with large-scale demonstrations. Moreover, peaceful and pandemic-related smaller demonstrations lost out on media attention to large-scale anti-Covid events (Schrader et al. 2020:46).

The effects of the Covid-19 pandemic are therefore of great importance regarding societal freedom of action. Even if the long-term consequences are not yet entirely foreseeable, the indirect restrictions of civil rights, but also the reactions to them, have become plainly apparent. The measures against the pandemic restricted the rights and freedom of action of civil society on several levels:

1. There were restrictions on the freedom of assembly, as demonstrations were often not organised at all or ended up being prohibited.
2. The accelerated legislative procedures significantly limited civil society's opportunities for participation and consultation.
3. Protests against the restrictions sparked considerable disputes within civil society, as the protest movements showed a very peculiar mixture made up of peace activists, esotericists, 'regular citizens,' but also right-wing activists such as the *Reichsbürger* movement and conspiracy theorists. Many of the initiatives, such as the so-called *Querdenker* movement, are now being monitored by the Office for the Protection of the Constitution. The fine line between the danger of instrumentalisation and the necessity of creating a critical public becomes apparent.
4. Civil society was prevented from carrying out the democratically important task of community building. As a result, sports clubs, for example, suffered a considerable loss of members.
5. Civil society services could not be provided, which naturally also led to a loss of revenue.

According to the German Judges' Association, there were more than 10,000 court cases related to the pandemic by April 2021 (ETL *Rechtsanwälte* 2021). The Federal Constitutional Court recorded more than 880 submissions on this topic in 2020 alone, 240 of which were fast-track applications (Harbarth 2021). Most of the partial lockdown measures have so far been upheld in court, with the

protection of citizens' health having been prioritised over restrictions on those affected. In general, the measures met and still meet with broad approval (Research Group for Elections e.V. 2021).

In April 2020, the Federal Constitutional Court declared that demonstrations may not be banned without examining each concrete case individually (1 BvR 828/20). In doing so, it continued its previous practice. Freedom of assembly and protection against infection are not *per se* incompatible, then; rather, a balancing of interests must take place in each individual case. This requires hygiene concepts for assemblies, sufficient precautions to maintain the minimum distance between participants and, if necessary, further protective measures, such as the wearing of masks. According to the Society for Civil Liberties (*Gesellschaft für Freiheitsrechte*, short GFF), case law has become more favourable to assemblies overall (GFF 2021). As early as the end of May 2020, assemblies were only rarely banned, but were allowed to take place under certain conditions. The number of participants deemed permissible by authorities and courts also grew increasingly (*ibid.*). It remains to be seen to what extent this trend will be maintained against the backdrop of increasingly radicalising movements of Covid-19 deniers.

The rallies against the measures put in place to curb the pandemic, which have become known as 'hygiene demonstrations,' pose a dilemma to democratic civil society. On the one hand, it has to exercise its function as an advocate and stand up for civil and human rights. At the same time, however, it must make it clear that it has nothing in common with ideological conspiracy narratives and with attempts to hijack the crisis in order to fight the democratic and pluralist system. Since the spring of 2020, there have been protest movements, especially in the major cities of Berlin, Leipzig and Stuttgart, which criticised the restrictions on freedom, fundamentally denied the existence of the virus, belittled it or suspected a secret plot behind it (Amadeu Antonio Foundation 2020:10ff.). Protest movements such as *Querdenker 711* attempted to harness conspiracy narratives to gain interpretive sovereignty among the public, to denounce politicians and scientists and to cast doubt on the health measures put in place (Nachtwey et al. 2020:56ff.). Those with a general conspiracy mentality, a tendency towards unconventionalism, who attest a lack of legitimacy to the political system, who have an authoritarian personality or are superstitious seemed to be particularly susceptible to these narratives (Schließler et al. 2020:303). The different movements are interconnected by a shared mentality, so that several, often disparate social groups (peace activists, esotericists, fundamentalist Christians, right-wing *Reichsbürger*, neo-Nazis and vaccine critics) act in conjunction with each other. Many supporters also hail from a rather 'left-wing' spectrum but are increasingly moving to the right. Unlike populist movements such as *Pegida*, the movement is not outspokenly xenophobic or islamophobic; it tends to be anti-authoritarian and leans towards the teachings of anthroposophy (Nachtwey et al. 2020:51ff.). "The open form of mobilisation that takes up a virulent and unsettling topic [...] politicises groups that were not active before; a Manichean offer of interpretation at the same time opens the space for anti-Semitic and right-wing extremist interpretations" (Hutter 2021:117). Thus, the demonstrations against the Covid-19 ordinances represent an example of hijacking, in which an increasing occupation of the movement through radical right-wing mobilisation can be observed (see section 6.7.4).

In the spring of 2021, the police's handling of the different types of demonstrations was increasingly discussed. The police were criticised by the media, politicians and civil society (Carstens 2020; Klein 2021; Reisin 2021) for acting too cautiously during the violent demonstrations of the opponents of

pandemic measures. The police allegedly let some aggressive demonstrators go, while tackling peaceful counter-demonstrators.

8 OUTLOOK

Despite many criticisms and limitations, there can be no doubt that civil society in Germany, as in other countries, has become a factor in shaping the public sphere; it can be described as one of the three arenas that collectively constitute this space. Opinions expressed years ago that it was a fad that would soon give way to the next and that it was therefore not worthy of any serious appraisal have proven to be erroneous. Nevertheless, much remains to be done scientifically, politically, in the media, and practically to position this arena as an equal.

It should not be forgotten that civil society is made up of actors with whose positions and actions others sometimes disagree more or less, and sometimes fundamentally. Civil society is not *per se* the prerequisite of or in support of a democratic or 'good' society, which we consider desirable. Rather, we have acknowledged that there are actors who want to radically change or even destroy this society. The enforcement of the rule of law, the further development of democracy, the struggle for human and civil rights is not necessarily a common guiding principle of civil society as a whole. Rather, its actors – just like those of the state and the market – must be scrutinised in detail to see whether they can contribute to a social coexistence, the promotion of democracy and the solving of social problems. To this end, the focus must go far beyond those CSOs generally thought of when the term 'civil society' is used. In addition, it is important to ask exactly who is meant by the term civil society. There is no umbrella organisation of all CSOs in Germany; there would be too little consensus to found one. In this respect, there are no (authorised) representatives of civil society; each actor can at best speak for itself and its members or functionaries. Thus, although there is such a thing as a 'civil society,' it has no common positions and no one who would have the legitimacy to represent it.

Many of those who make statements on behalf of civil society are not themselves members of any kind of association. This is especially true for civil and human rights organisations or for those dedicated to strengthening and defending civil society as such. It is true, for example, that around 200 organisations have now joined the Alliance for Legal Certainty in Political Decision-Making (*Allianz Rechtssicherheit für politische Willensbildung e.V.*). Nevertheless, this alliance can ultimately justify its legitimacy 'only' on the basis of its competence, not on the basis of any kind of representativeness. However, competence and acceptance are equally legitimate and democratically sound bases of legitimacy, as long as no sovereign power is exercised. Where sovereign power is exercised, in order for a sound democratic self-understanding to be viable, decision-making processes need to take place on a representative, i.e. a democratic, basis.

In this respect, the democratically constituted state must create framework conditions and establish a practice of communication with civil society that fully recognises the right to exist and the political dimension of co-determination of a self-empowered and self-organised civil society, making it the subject of all considerations regarding the design of public space. Germany still has a long way to go to achieve this aim.

In the run-up to the election of the 20th German *Bundestag*, numerous CSOs drafted proposals, demands and suggestions for the revision of general conditions. The Federal Network for Civic

Engagement published a large part of these in August 2021 (*Bundesnetzwerk Bürgerschaftliches Engagement*, BBE 2021). This also includes the catalogue of legal policy demands updated by the Alliance for Non-Profit Organisations (*Bündnis für Gemeinnützigkeit*, 2021). The Society for Civil Liberties has presented a complete draft for a new non-profit law (Kube 2021). The demand for a fundamental revision of non-profit law, which must be rendered compatible with the concept of a modern civil society, remains a central aspect.

Other demands on the legislator have been around for years or have been newly defined. They include:

- the exemption of assemblies from conditions such as the formation of opinions (Gusy 2010);
- the alignment of the legal basis for assemblies between the *Länder* (Heinrich 2019);
- an end to the exploitation of accusations of extremism and the tools of the ban on assembly (such as the ban on masking) to obstruct undesirable events;
- the introduction of compulsory identification for police officers in all Federal States (Amnesty Police 2017);
- the introduction of an independent complaints unit to serve victims of police violence (Amnesty Police 2017);
- ensuring freedom of the press in all forms of assembly. This should include: appropriate training of the police and an extension of protection against assaults, for example by participants of the assembly;
- the participation of civil society in the digital transformation and the provision of adequate resources for this;
- a reinforcement of consultation rights in the run-up to legislative proposals;
- the integration and consideration of new forms of protest such as protest camps in existing legislation;
- the creation of funding systems that also cater to small, volunteer-run CSOs and do not result in precarious working and organisational conditions;
- greater transparency in funding programmes and the allocation of funding;
- a change in funding conditions with the aim of rendering CSOs more resilient and strengthening them organisationally.

In addition, there is currently an urgent call for civil society to participate as partners in measures to overcome the Covid-19 crisis.

Whether “politics [...] is actually called upon to take regulatory action as a legislator and

- to create incentives for women to work close to full-time,
- to make the presence of women in the management and supervisory bodies of non-profit organisations mandatory, and
- to limit cooperation with private service providers (non-profit organisations, companies) to those whose “management bodies meet the women's quota” (Zimmer et al. 2017)

remains the subject of controversial debates. Ultimately, civil society cannot let the state regulate everything for it but must also pursue social change internally as actively as it proclaims it externally.

Gender equality and diversity can be developed independently by the CSOs and integrated into all areas of action.

Civil society must also prove in many other ways that it views self-empowerment and self-organisation in such a way that civil society itself helps to consolidate and, where necessary, improve its position in the public sphere. In any case, the call for the state can only ever be a stopgap solution. The first priority is to act on one's own, even where old positions have to be revised. For example, citizenry as a whole can demand that the state improve the transparency and accountability of civil society through appropriate regulation. What is decisive is the will of the actors themselves to no longer evade this demand. Likewise, a policy that aims to strengthen trust in civil society is essentially an issue for its actors themselves. Bringing empathy, relevance, orientation towards the common good, quality of performance, and public responsibility into a meaningful balance, thereby also clearly marking differences to state and economic action, cannot be achieved through regulation, but only through one's own actions.

However, civil society remains dependent on outside assistance in two important respects. On the one hand, its actors must not be forced out of public debates, not even through new forms of citizen participation that give preference to random selection over the know-how of organised civil society. On the other hand, other actors in the public sphere must help to ensure that the voices of civil society actors receive more attention. This also applies to the media, where civil society must not only be the subject of interest in long-form reporting, investigative journalism or reporting from distant countries, but also in the permanent critical monitoring of a social phenomenon that has proven to be constitutive for a modern social order.

Recently, not only FFF has proven that a CSO can fundamentally change the political agenda. Youth7, the youth participation format accompanying the official G7 summit, and many other initiatives demonstrate on a daily basis that citizens are collectively willing and able to participate in a constructive, knowledgeable and imaginative way to shape the community. The *res publica* remains dependent on this participation.

OVERVIEW OF INTERVIEW PARTNERS

Interview number	Name	Category
1	Citizens for Europe	Platform
2	International Civil Society Centre	International/ Education
3	Baden-Württemberg Stiftung	Education
4	Allianz Rechtssicherheit für politische Willensbildung	Citizen and consumer interest
5	Deutscher Bundesjugendsring e.V.	Child and youth welfare
6	Stiftung Bildung	Child and youth welfare
7	Arbeiterwohlfahrt Bundesverband e.V.	Health and social care
8	Anonymous	Health and social care
9	Seebrücke Potsdam	Citizen and consumer interest
10	Stadtsportsbund Halle e.V.	Sport
11	ufaFabrik Berlin e.V.	Culture
12	Senioren- und Heimatverein Feldkirchen-Westerham e.V.	Sociability
13	Sportbund Rheinland	Sport
14	Digitalcourage e.V.	Citizen and consumer interest/ politics
15	Anonymous	Citizen and consumer interest/ human rights
16	Bürgerstiftung	Citizen and consumer interest/ social care
17	Anonymous	Science and research

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