

# **Legal environment and space of civil society organisations in supporting fundamental rights and the rule of law**

**Germany  
January 2022**

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# 1 Civic space developments in 2021

<b>1.1 A legal framework for the promotion of democracy and combatting extremism</b>	
Area	Financing Framework
Topic	Funding Landscape
Impact	Major

The German government has taken decisive steps towards a long anticipated legal framework to protect democracy and strengthen the democratic engagement of civil society organisations with its governmental proposal for a Democracy Promotion Act (*Demokratieförderungsgesetz*)<sup>1</sup> on 12 May 2021. Besides new programmes and concrete measures to prevent extremism, the proposal mainly intends to create a reliable legal framework for federal funding activities in this area.

Sustainable and long-term funding from the federal level for civil society structures to promote democracy has been remaining an unsolved issue in Germany due to its sole competence on state level in the federal system. Funding by the federal level for civil society organisations is usually limited to the maximum of a three- or four-year project cycle.<sup>2</sup> With the *Demokratieförderungsgesetz*, the federal level would gain a legal mandate to maintain and expand support for civil society.

The federal government currently supports civil society's engagement for democracy and against all forms of extremism with various funding programmes. The largest and most prominent programme is "[Live Democracy!](#)" (*Demokratie leben!*) through which 150.5 million Euro have been made available to civil society organisations in 2021. *Demokratieförderungsgesetz* should achieve more planning security for the potential grant recipients by expanding the programmes with longer-term, supra-regional measures with national relevance.

To the regret of many NGO active in this area and representative civil society networks who have been advocating for this law for some years already, the last legislative period of German Parliament (*Deutscher Bundestag*) has not taken up the governmental proposal before the federal election in September 2021. The *Demokratieförderungsgesetz* however has been included in the coalition agreement of

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<sup>1</sup> Bundesministerium für Familie, Senioren, Frauen und Jugend (BMFSJ): [Eckpunkte für ein Gesetz der Stärkung und Förderung der wehrhaften Demokratie](#)

<sup>2</sup> die tageszeitung (2020): [„Geld gegen Rechts – SPD und Demokratieförderungsgesetz“](#), 22.11.2020

the new German government<sup>3</sup>, and it is expected that a draft law will be presented soon in 2022.

<b>1.2 Charity Law: Undefined legal situation creates legal uncertainty</b>	
Area	Freedom of Association / Financing Framework
Topic	Political Campaigning / Charitable Status
Impact	Major

Legal uncertainty over their charitable status remained a central concern for civil society organisations active in advocacy and political campaigning in Germany in 2021. Since the decision of the German Federal Fiscal Court (*Bundesfinanzhof, BFH*) in 2019 against the anti-globalisation association attac<sup>4</sup>, political activities can lead to the loss of the charitable status of an NGO.

Many civil society organisations reported in 2021 that they failed to find a suitable charitable purpose for their work from the criteria catalogue in the German Fiscal Code (*Abgabenordnung*).<sup>5</sup> Other civil society organisations cannot achieve their charitable purposes, such as climate protection or child protection, without the use of political means (e.g. demonstrations or petitions).<sup>6</sup> Despite acknowledging the problem, the previous German government has not managed to find a satisfying solution to this issue of political activism and its impact on the charitable status of an association in its last annual review<sup>7</sup> of tax regulations (*Jahressteuergesetz 2020*) on 29 December 2020, and no draft reform for German non-profit law has been brought forward yet.

The expectations of civil society organisations are high with regards to the new German government. The coalition agreement of the new German government resolves to make “clear by law that a non-profit organisation can be politically active within its tax-privileged purposes and can occasionally also comment on current political issues without endangering its non-profit status”.<sup>8</sup>

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<sup>3</sup> Koalitionsvertrag zwischen SPD, Bündnis 90/Die Grünen und FDP: [Mehr Fortschritt wagen](#)

<sup>4</sup> Bundesfinanzhof (2019), [Urteil vom 10. Januar 2019](#), VR 60/17

<sup>5</sup> Sueddeutsche Zeitung: [,Vereine bleiben im Ungewissen'](#), 2. Mai 2021

<sup>6</sup> Information acquired via [Allianz Rechtssicherheit für politische Willensbildung](#) (Alliance Legal Security for political activities)

<sup>7</sup> Bundesgesetzblatt 2020: [Jahressteuergesetz 2020](#), Teil I Nr. 65, 28. Dezember 2020

<sup>8</sup> Koalitionsvertrag zwischen SPD, Bündnis 90/Die Grünen und FDP: [Mehr Fortschritt wagen](#), p. 165

<b>1.3 New Lobby Register for interacting with German Parliament and Government</b>	
Area	Freedom of Association
Topic	Transparency
Impact	Minor

In May 2021, the German Parliament (Deutscher Bundestag) has passed a law introducing a lobby register<sup>9</sup> which will come into force on 1 January 2022. The law intends to create a regulatory framework for cooperation between politics, business and civil society. The aim is to foster transparency with regards to contacts with the federal government and federal ministries. Specifically, an obligation to register in the “lobby register” is created for those who represent interests vis-à-vis the German Bundestag and the Federal Government (Chancellor, Federal Ministers and Parliamentary State Secretaries, department heads and sub-department heads) and participate in the democratic decision-making process.

The law provides a legal definition of interest representation for the first time. . Thereby, any contact made for the purpose of directly or indirectly influencing the decision-making process is defined as a representation of interest It requires registration if it is operated regularly, or more than 50 different interest representation contacts have been made within the last three months. Exceptions to the registration requirement are provided for issues of an exclusively local nature, petitions, activities in the performance of a public office, churches, religious or ideological communities or citizen petitions. As part of lobbying, all contacts with the organs, members, parliamentary groups or groups of the German Bundestag or the federal government must be made transparent after registration, i.e. relevant information about identity and concerns must be disclosed.

The introduction of a lobby register has been a demand of many civil society organisations over the past years. The law introducing this mandatory, sanctioned lobby register on a legal basis for the Bundestag, federal government and ministries is therefore regarded as an important milestone towards better transparency and clear rules in lobbying by many organisations such as LobbyControl Germany<sup>10</sup>.

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<sup>9</sup> Federal Law Gazette Part I No. 19/2021: [‘Gesetz zur Einführung eines Lobbyregisters für die Interessenvertretung gegenüber dem Deutschen Bundestag und der Deutschen Bundesregierung’](#), 19/27922, 27. April 2021

<sup>10</sup> LobbyControl: [Statement on the Lobby Register in Germany](#)

However, some organisations point out remaining weaknesses, gaps and inadequacies of the new law. LobbyControl Germany regrets that the lobby footprint for laws (“executive footprint”) was blocked, meaning that it remains invisible which interests were involved in the drafting of laws.<sup>11</sup> Transparency International Germany criticizes that the lobby register is subordinate to the President of the Bundestag and calls for an independent authority.<sup>12</sup>

## 2 Examples of civil society contributions to the rule of law

<b>2.1 Guidelines for non-profit organisations to participate in political debate around the elections</b>	
Topic	Fostering a Rule of Law Culture

In view of the federal elections in Germany in September 2021, *Allianz Rechtssicherheit für politische Willensbildung* (Alliance Legal Security for political Activities) has developed helpful guidelines<sup>13</sup> on what and how civil society organisations can interact with the election campaigns of political parties. This has become a sensitive issue in Germany with regards to the uncertainty created by a 2019 ruling of the Federal Finance Court<sup>14</sup> regarding the charitable status of political civil society organisations. Under this legal uncertainty, *Allianz* points out that it would be crucial that the work of a non-profit organisation is geared towards its charitable purposes. *Allianz* therefore recommends associations and foundations to conduct a self-assessment before a publication or a campaign and provides a checklist.

*Allianz* is a civil society network calling for the charitable status of civil society organisations contributing to political decision-making to be secured. Almost 200 associations and foundations currently belong to the alliance.

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<sup>11</sup> LobbyControl: [Statement on the Lobby Register in Germany](#)

<sup>12</sup> Die Zeit: [‘Transparency International kritisiert Lücken des neuen Lobbyregisters’](#), 30.12.2021

<sup>13</sup> Allianz Rechtssicherheit für politische Willensbildung: [Was dürfen Vereine im Wahlkampf fordern?](#)

<sup>14</sup> Bundesfinanzhof (2019), [Urteil vom 10. Januar 2019](#), VR 60/17

## **2.2 Publication on shrinking space in Germany from the perspective of grassroots initiatives**

Topic	Monitoring the legality and proportionality of laws, measures and practices
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The publication "Democracy is not a petting zoo - Shrinking Spaces for Civil Society"<sup>15</sup> edited by the Youth Council Potsdam (*Stadtjugendring Potsdam e.V.*) and the initiative *mitMachen e. V.* looks deeply at shrinking spaces for civil society in Germany - a global phenomenon that is increasingly felt in Germany. The denial of non-profit status to NGOs, the abuse of the rule of neutrality by right-wing populists, the controversy over the Democracy Promotion Act (Demokratieförderungsgesetz)<sup>16</sup>, are examined in more detail in a series of essays written by both experts and stakeholders. Indistinct funding and financing conditions especially in the time of a pandemic make planning reliability for civil society organisations more difficult, thus restricting their ability to act. The Stadtjugendring Potsdam e.V. and mitMachen e.V. held a series of events on shrinking spaces with a total of six online discussions on six main topics in 2021. The book compiles the results of this project and is aimed at practitioners and multipliers who are confronted with shrinking spaces in their daily work and at those who are interested in a strong democratic civil society.

## **3 Other relevant developments**

### **3.1 Civil society policy after the change of government in Germany**

Due to the change of government in Germany after the federal elections in September 2021, many reform projects have been delayed. This is especially evident for the field of civil society policy. The Democracy Promotion Act or the reform of the charity law are two examples of political projects that were put on hold by the last government or parliament. Civil society organisations have therefore eagerly anticipated the programme of the new government. The coalition agreement of 23 November 2021 was quickly subjected to initial analyses. Civil society comes to cautiously positive assessments, accompanied by

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<sup>15</sup> Stadtjugendring Potsdam e.V.: [Demokratie ist kein Streichelzoo](#), Potsdam 2021

<sup>16</sup> Bundesministerium für Familie, Senioren, Frauen und Jugend (BMFSJ): [Eckpunkte für ein Gesetz der Stärkung und Förderung der wehrhaften Demokratie](#)

criticism and the insight that the impact will depend on the concrete implementation.<sup>17</sup>

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<sup>17</sup> The National Network for Civil Society (*Bundesnetzwerk Bürgerschaftliches Engagement*) has covered numerous statements and analyses of civil society organisations and networks in its recent newsletters [24/2021](#) and [25/2021](#).