

# ***GERMANY'S CIVIC SPACE PROBLEM***

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## ***Key points***

- Civil Society Organizations (CSOs) are crucial for the proper functioning of a healthy rights-respecting democracy under the rule of law. Their freedom to operate is protected by European and international standards that are legally binding on Germany.
- CSOs in Germany are facing growing restrictions on their work, as certain politicians and commercial lobbyists are exploiting outdated and vague legislation to limit the ability of CSOs to promote public participation in decision-making or promote public interest goals towards decision-makers on issues of human rights and environmental protection.
- As a result, several CSOs have been stripped of their charitable status. This threatens their continued existence because organisations with charitable status enjoy tax-deductible donations, an important source of income, and because this status is also a prerequisite for state funding and funding from private foundations.
- Some tax authorities' decisions to remove charitable status from certain CSOs has led many in the civil society sector to self-censor and curtail their participation in democratic processes, for fear that they may be similarly treated.
- Germany should reform its civil society legislation to create an environment that allows CSOs to facilitate participatory democracy, uphold the rule of law and promote human rights: values that Germany and Europe are built on.

# Introduction

Civil society organizations (CSOs) are crucial for the proper functioning of a healthy democracy because they ensure regular dialogue between citizens and their political representatives. The importance of the role that CSOs play in facilitating participatory democracy is reflected by the fact that freedom of association, expression and assembly are rights guaranteed in European and international human rights treaties, to which Germany and all other EU Member States are party.<sup>1</sup> This role of CSOs in providing a bridge between citizens and decision-makers is further recognized by Article 11 of the [Treaty on European Union](#). Democracy is not just about people voting for their representatives every four or five years. Participatory democracy complements representative democracy, by allowing public interest issues to be brought into public debate in between elections, while elected representatives are in power and taking decisions.<sup>2</sup>

CSOs allow the public to participate in the decision-making process in several ways. First, they inform the population about matters of public interest, promoting a more knowledgeable citizenry, who make better quality choices. Second, CSOs also provide channels and tools for concerned citizens to get involved in political debates, for example by organising online petitions and peaceful demonstrations or by making it easier for citizens to contact their elected representatives through emails, letters and phone calls.

Third, CSOs represent pre-defined public interests, ensuring that they are given due weight when politicians and civil servants take decisions. Public interests, such as the protection of human rights and gender equality, are recognized in the German Constitution<sup>3</sup> as well as a range of legally binding international agreements created and entered into by the German state.<sup>4</sup> As such, they are above partisan politics. They are goals to be pursued and values to be upheld by the state, regardless of which political parties are in government.

Politicians inform themselves with input from a range of actors, such as trade unions, employers, religious bodies, experts and commercial lobbyists. They then take decisions according to their political conscience. But they also need to take the general public interest into account when deciding on the content of law and policy. And for this purpose, the state must facilitate the role of CSOs that represent public interest issues, which have been deemed to be goals to be pursued by the state and thus beyond partisan politics. One important means through which the state facilitates and recognises the importance of the role of CSOs that promote a public interest is to confer public benefit or charitable status, thereby exempting their donations from taxes, and making them eligible for funding from public bodies and private institutions, like foundations. Tax exemptions are, in effect, a public subsidy that recognises the important role CSOs play in a democracy.

Unfortunately, the German legislation that determines which CSOs qualify for such a status is vague and incomplete. To be eligible for charitable status, CSOs must be engaged in specific activities. There are 25 such activities listed in German law. But the list does not include activities related to, for example, the promotion of peace, social justice or gender equality. CSOs working on these issues therefore struggle to fit their work under a recognised activity, which often leads to practical challenges and sometimes serious consequences.

The first such case, which has since been followed by other cases applying this ruling, was decided in relation to the CSO Attac, which lost its public benefit status in spring 2014. This amounts to a restriction on the freedom of association given the impact a loss of the charitable status has on the financial resources, scope of activities and reputation of an organisation. Considering the role that CSOs play in supporting citizens to express their concerns, this also amounts to a threat to freedom of expression. These decisions on the status of certain CSOs are having a significant impact on the civil society sector as a whole because CSOs have begun self-censoring out of fear that they may be subject to similar rulings.

In February 2020, in response to public pressure, the Ministry of Finance, in coordination with the 16 federal states, promised to issue a decree guaranteeing that no other CSO would lose its public benefit status based on the Attac ruling until at least the end of 2021. By that time, the government plans to reform the rel-

evant tax law. However, this decree was never published.

It is vital that the new law ensures that CSOs that promote public interest issues are entitled to charitable status, and that the law be updated to recognise issues such as the protection of human rights or gender equality, amongst others, as public interest goals.

This report explains the current legislation and how it has led to the removal of charitable status from certain CSOs, following pressure from some politicians and commercial lobbyists. The report ends with suggestions for the planned reform of the civil society law.

The report uses the term CSO to refer to an organization that is non-profit, independent of government and business and aims to promote a public interest. The paper is primarily concerned with CSOs that promote human rights. As noted, the German state is committed to pursuing these goals as set out in its [constitution](#), Articles 2 and 3 of the [Treaty on European Union](#) (TEU) as well as in numerous international treaties to which Germany is a party.

# Overview of the regulatory environment

Germany does not have a single consolidated piece of legislation regulating civil society organizations. Instead, there is a bundle of regulations that apply to CSOs, the most important of which is the Fiscal Code (*Abgabenordnung, or AO*). Local tax offices have the task of deciding whether an organisation promotes the advancement of a public interest and is thus eligible for public benefit status. The status allows its holder to issue donation receipts that donors can deduct from their tax expenses an important financial incentive – without it, far fewer people can afford to give. This status also exempts the CSO from corporate and value added tax and makes it eligible for specific public and private funds. In addition, public benefit status plays an essential role in contributing to the public image of an organisation and is often a prerequisite for accessing certain public services such as the free use of public premises like town halls. The status is re-assessed by local tax authorities every three years. As such, charitable status is essential for the financial viability of the civil society sector.

Section 52 of the Fiscal Code provides that organisations serve the public benefit if they dedicate themselves to the “altruistic advancement of the general public in material, spiritual or moral respects.” The code lists 25 purposes, or domains of activity, considered to be serving the general public (see annex for the full list of purposes). The list includes goals of a specific nature (such as helping those who are politically persecuted) as well as broader activities, such as the promotion of education or science

and research. To qualify, an organization must show that its mission is related to at least one of these 25 purposes. In addition, an organization must also adhere to, and include in its statutes, three main principles:

- 1) the principle of selflessness (activities should not be profit-oriented and potential beneficiaries must not be restricted to private criteria, e.g. family members);
- 2) the principle of exclusivity (the organization must only pursue those purposes listed in its statutes – organisations can list multiple purposes);
- 3) the principle of directness (activities must be carried out by the organisation directly and not through third parties).

To ensure a uniform decision-making process across tax offices, the Federal Ministry of Finance has issued Fiscal Code implementing rules (*Anwendungserlass zur Abgabenordnung, AEAO*). These rules or guidelines are intended to make it easier for tax offices to decide which organisations qualify for public benefit status.

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## ***Shortcomings of the legislation***

The legislation regulating CSOs has two main shortcomings. First, the list of eligible public benefit purposes is excessively narrow. Many organizations find it difficult to assign their goals to one of the 25 points listed in the Fiscal Code – especially those engaged in advocacy. While, for example, dog sports, aeromodelling or youth clubs are listed and find it easy to justify their charitable purpose, CSOs involved in the defence of human rights, the protection of children's rights, gender equality or the promotion of peace and social justice, will have difficulties assigning their cause to one of the 25 listed public benefit purposes.

As a result, these organizations have to choose other purposes. To take one example, the list includes the advancement of equal rights for women and men (purpose 18) and the advancement of the protection of marriage and the family (purpose 19) but it does not include the promotion of a broader notion of gender equality. Thus, an organization working to promote equality for transgender persons, for example, is obliged to select another purpose on the list. To be on the safe side, many choose to include several purposes.

The difficulty CSOs often have in identifying the appropriate public benefit purpose under which their work falls is shared by tax offices, which differ from one region to another in their interpretation of the list. The Allianz “Rechtssicherheit für politische Willensbildung”, advocates for legal certainty for CSOs promoting public participation and

representing the public interest on matters that are the subject of political debate. The alliance revealed dramatic inconsistencies in the way the rules are applied by tax offices in a study made in 2017.<sup>5</sup> The study constructed three fictional organisations designed in a way that their aim unquestionably served the public good and which would engage in advocacy. The first would promote art and culture by advocating a new law on music school funding. The second would campaign for a democratic EU based on Germany's federal model. And the third would raise awareness about discrimination against German citizens of colour. The three fictional organizations sent identical letters to 135 tax offices, applying for a public benefit status. Depending on the organisation, between 40 and 70 per cent of the tax offices recognized their cause as serving a public benefit. While some tax offices recognized that the organisations were indeed contributing to the public interest, others argued that they did not fit into one of the 25 listed public benefit purposes or that they were too ‘political’.

This research illustrates how the administrative instructions provided to tax office clerks are unclear and can result in arbitrary and diverging interpretations of the law. This creates legal uncertainty for CSOs, given that every three years tax authorities reassess whether their activities still justify their public benefit status. As such, the list of public interest issues should be revised to reflect the current range of goals that the German state has deemed of fundamental importance. This new list

should include values and principles set out in the German Constitution and international agreements to which Germany is party, such as human rights.

The second problem is that the legislation does not sufficiently protect the role of CSOs in representing the public interest towards decision-makers or facilitating public participation on matters that part of current political debate. When CSOs participate in public debate or represent public interests towards decision-makers, they necessarily enter a realm where political parties are advancing their own partisan positions. The Fiscal Code itself does not restrict the ability of CSOs to facilitate public participation in democratic processes or represent public interest issues towards decision-makers. Nor does it specify restrictions on what means CSOs can employ to carry out these functions, for instance through advocacy or public campaigning. The Fiscal Code only prohibits the use of CSO funds to support political parties. This seems to be an appropriate measure to protect the integrity of the democratic process by ensuring that political parties, with partisan goals, do not benefit from tax-exempt resources intended to advance non-partisan public interest goals.

The implementing rules (AEAO)<sup>6</sup> state that some activities in the context of political debate related to the development of public opinion are acceptable. For example, an organisation benefiting from charitable status is allowed to take a position and communicate with decision-makers about proposed legislation on policy issues that fall in the scope of its statutes. An organisation whose primary

purpose is to protect the environment can, for instance, comment on energy policy. But at the same time, the AEAO also state that pursuing activities with a political intent is generally not considered to be serving the public interest. Section 43.15 of the AEAO states that “political purposes (influencing the formation of political opinion, promotion of political parties and the like) do not count as charitable purposes.” Further, it is not clear whether CSOs may promote the public interest or facilitate public participation on issues that are part of political debate, if this relates to an issue that is not among its primary goals. For example, it is unclear if an environmental organisation could make a public statement about racial equality.

These rules are problematic in two ways. First, they do not draw a clear distinction between permissible activities that promote a public interest goal that happen to be on a topic of current political debate, and impermissible activities that pursue a purely partisan political purpose. This makes it difficult for tax office clerks to assess whether CSOs promoting public interest goals that happen to be part of the current political debate are eligible for charitable status.

The vagueness of the rules has opened the door to the removal of charitable status to CSOs on the grounds that their activities were too ‘political’. The most prominent case concerns the German branch of the campaign group Attac (Association for the Taxation of Financial Transactions and for Citizens’ Action), which lists five different public interest purposes in its statute including the advancement of ed-



ucation and of a democratic government. In 2014 the Frankfurt tax authorities removed its public benefit status on the grounds that it had exercised “generally political activity”. A major problem, they argued, was that Attac performed educational work that is not neutral. The tax authorities based their decision heavily on the fact that Attac has carried out campaigns in favor of the introduction of a financial transaction tax and a universal basic income and against international trade agreements. The tax authorities claimed that the activities of Attac did not conform to its statutory purposes and that their objection to globalisation, due to its impact on social and economic inequalities and the environment, were not in the public interest.

Attac challenged the decision in court and in 2016, a Hessian court confirmed that Attac should keep its public benefit status.<sup>7</sup> The judges agreed that the Fiscal Code only prohibits CSOs from conducting activities that directly support or promote political parties, which Attac had not done. But following a complaint by the Frankfurt tax authorities, the Federal Fiscal Court overturned that ruling in January 2019. The judges interpreted the Fiscal Code purpose of education in a very restrictive way, significantly limiting the scope of activities of NGOs listed under this purpose. While the judges confirmed that political demands may be developed in the course of pursuing the public benefit purpose of education, they also said that this purpose does not allow an organization to shape “public opinion towards their own views”.<sup>8</sup> Once again, Attac challenged the decision before the Hessian Finance Court. But this time, in February

2020, the judges had to follow the new interpretation of “political education” of the Federal Fiscal Court and dismissed the lawsuit. It will however continue: Attac has appealed again to the Federal Fiscal Court against the decision of the Hessian Finance Court.

In October 2019, the campaign group Campact, which is registered under seven different purposes including education, also lost its public benefit status on the same grounds as Attac. Like Attac, Campact facilitates Germans’ involvement in public debate. It campaigns on topics such as the use of pesticides, including glyphosate, cycling lanes, hate speech, stricter animal welfare labelling, diesel driving bans and sea rescue. On their website, Campact highlights that they do this “from a clear, progressive foundation of values – we are independent and non-partisan, but not politically neutral.”<sup>9</sup> The Berliner tax office reasoned that Campact was predominantly active in general politics and carried out campaigns on topics that could not be assigned to a listed public benefit purpose and that the focus of Campact’s work was not to inform people about political processes but rather to influence them.

These decisions fail to recognize the vital roles that CSOs play in facilitating the democratic process. First, their role in enabling citizens to participate in political debates by connecting them with their elected representatives. Second, their role in ensuring that decision-makers, who meet regularly with organizations representing special interests (such as trade unions, corporations and churches) also take recognized public interests into account

in their deliberations. The mere fact that a public interest issue may, at a given point in time, be taken up and debated by political parties, does not mean that work on this topic by a CSO automatically takes on a party political nature. Furthermore, these decisions fail to recognize that promotion of a public interest is not an abstract educational exercise. Thus, the promotion of environmental protection necessarily implies expressing opposition to activities that damage the environment.

It is of course a legitimate purpose to ensure that funds that have been secured through an organisation's charitable status are not fed by the back door towards promoting partisan party-political agendas. This concern is already addressed in the tax code, which states that CSOs may not expressly endorse or associate themselves with a particular political party. If CSOs are penalized whenever a public interest issues becomes part of political debate, then citizens are denied their right to participate collectively in their democracies through non-partisan associations. Their only option to voice an opinion becomes via a political party, which is unattractive to many citizens and is likely to contribute to damaging political polarization.

The second way in which the current rules are problematic, is that they do not expressly allow CSOs to participate in public debate on topics that are not listed among their registered purposes. With the lack of legal certainty following the Attac and Campact rulings, CSOs have now become reluctant to speak out on issues of public interest. For example, a sports club now finds itself at risk if it calls for an

anti-racism demonstration. As such, the current rules should be clarified to allow CSOs to intervene now and then in public debate on issues that are recognized as in the public interest even if the given topic is not among the issues within its statutory purpose.

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## ***Pressure on civil society actors***

Certain politicians have instrumentalized the shortcomings in the legislation for partisan purposes. Some political parties have exerted pressure on CSOs where the public interest issues these organizations represent clash with the interests of powerful commercial lobbyists. The Christian Democratic Union (CDU) and its sister party, the Christian Social Union in Bavaria (CSU) for example tried to make it more difficult for CSOs to get access to justice and participate in governmental decision-making processes on environmental matters.

At a party congress of the CDU in 2018, the German conservative party filed three motions against the Deutsche Umwelthilfe (DUH), one of the leading environmental protection organizations, to the relevant tax authorities in the city of Singen. The DUH has been successfully campaigning for more environmentally friendly policies, including the introduction of bans on older diesel vehicles and the promotion of a 100% electric rail transport by 2030. The CDU, which has close ties to the automobile industry, argued that the DUH's activities were not serving the public interest and pressed the tax authorities to deprive DUH of its public benefit status. It also attempted to restrict the DUH's options to file suits and cut its access to federal funding, by calling upon the Ministry of the Environment and the Ministry of Economics to stop working with the DUH.

The three motions were all initiated by the CDU District Association of North

Württemberg, whose top three board positions are filled with prominent diesel supporters: the honorary chairman with voting rights, Matthias Wissmann, served for more than ten years as president of the German Automobile Industry Association (VdA); the chair, Steffen Bilger, is parliamentary state secretary in the Ministry of Transport; and the vice chair, Dietrich Birk, is the managing director of the Association of German Mechanical and Plant Engineering (VDMA).

The DUH is not at risk of losing its status because its activities can be clearly assigned to the public benefit purpose of environmental and consumer protection. This distinguishes it from organizations like Campact and Attac. However, the DUH has not received any new grants from CDU-led federal states and a major project that it was successfully conducting on behalf of the Federal Ministry of Economics was terminated.

In another case, the liberal Free Democratic Party (FDP) demanded that animal welfare organizations, such as Peta, have their public benefit status revoked if they did not distance themselves from secret filming in intensive farming sites (to deliver proof of animal abuse). FDP member of parliament Frank Schäffler founded the think tank Prometheus, which promotes and coordinates neoliberal organizations worldwide. Its sponsors include ExxonMobile, Philip Morris and the foundations of the billionaires Charles G. Koch and David H. Koch. The think tank leads a

project called NGO Observer, which was set up to discredit CSOs like Peta, Attac or DUH and others that go against the think tank's pro-business worldviews.

The Attac ruling also came about as a result of commercial lobbying. The business magazine Plusminus of the public broadcaster ARD revealed last year that the president of the Federal Fiscal Court, Rudolf Mellinghoff, and the head of the tax department in the Federal Ministry of Finance, Rolf Möhlenbrock, who wrote the opinion on the Attac procedure for the finance department, both sit together on the board of the lobby association Institut Finanzen und Steuern (Institute Finances and Taxes). The institute has a charitable status. It lobbies for the reduction of corporate taxes – the mirror opposite of what Attac advocates. In addition to Mellinghoff and Möhlenbrock, the board also features representatives from the Federation of German Industries, the Association of German Chambers of Industry and Commerce and the Association of the Chemical Industry.

These cases show that some powerful commercial lobbies (often themselves benefitting from charitable status) are, either alone or together with certain politicians, instrumentalizing vaguely-worded legislation to silence CSOs that promote public interest goals that interfere with their private, commercial goals.

## ***The broader impact of the Attac and Campact decisions***

The damage of the Attac and Campact decisions to participatory democracy is not limited to these two organizations. Subsequently other decisions have begun emerging that applied these rulings more broadly. In September 2019, the social and cultural center DemoZ in Ludwigsburg, **received notice** that its status would be revoked. DemoZ brings together people for a variety of occasions, including concerts, exhibitions, dance and theatre groups, as well as political information events on various topics, from the sustainable use of resources to behaviour during demonstrations. The centre excludes from its activities people who are known to have made racist or ultra-nationalist statements. A corresponding clause can be found on the DemoZ website. There it also states: “we are independent of parties and still position ourselves politically, or precisely because of that.”<sup>10</sup> In its statute, DemoZ is registered under the public benefit purposes of advancement of art and culture and the advancement of education.

The Ludwigsburg tax office withdrew the public benefit status from DemoZ, arguing a lack of “**geistiger Offenheit**” (intellectual or spiritual openness) in its educational work. Here again, the tax office based its judgment on the Attac ruling. The ruling highlights a clear misconception of the nature of public interest goals. The pursuit of equality, by its nature, is opposed to the promotion of inequality, prejudice or discrimination. Thus,

an organization that excludes extremists who promote discrimination is acting consistently with a public interest recognized by German constitutional law. This case illustrates that the legislation needs clarifying to recognize that while education of itself is a public interest goal, educating people about a recognized public interest goal often necessarily involves being in favour of a particular goal or against something that is counter to that given public interest. Thus, organizations whose public interest purpose is education should be permitted to express support or opposition to people, positions or policies that promote or interfere with other recognised public interest goals as part of their educational activities.

The cases of Campact, and DemoZ illustrate the damaging, even if unintended, consequences of the Attac decision, as tax offices are now applying rules that are based on a faulty understanding of the role of CSOs in public life. Because of the tax and funding implications of charitable status, the latter is essential to the survival of most CSOs. Further, most CSOs cannot afford the costs of lengthy legal procedures to contest adverse findings by tax authorities. The court proceedings in the case of Attac Germany, for example, have been ongoing for over six years. As a result, CSOs now have become more reluctant to express themselves on societal issues that are beyond their narrowly defined public benefit purpose. Many organisations now have to think twice

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about speaking out publicly on issues such as trade agreements or the threat of right-wing populists to democracy, unduly restricting their freedom of expression and leading to self-censorship. This is hampering public debate and the engagement of citizens in their democracies.

Another problematic case, although less related to the Attac decision, is the one of Germany's oldest anti-fascist organization, the Association of Persecutees of the Nazi Regime / Federation of Antifascists (VVN-BdA). In November 2019, it received a notice from the Berliner tax office that its charitable would be withdrawn, after a report by the Bavarian state intelligence agency listed it as a left-wing extremist organization – an assessment not shared by any of the 15 other state intelligence agencies in Germany. The report said that the VVN-BdA's agenda went beyond simply fighting far-right extremism and considered “all non-Marxist systems” as “potentially fascist”.<sup>11</sup> It cited an article by VVN-BdA spokesman Ulrich Schneider in support of direct blockades of Nazi demonstrations as evidence that the organisation accepted left-wing extremist groups as allies. The organisation mainly carries out educational and informational work against fascist, militaristic and far-right tendencies. The tax code states that when a domestic intelligence service lists an organisation as “extremist”, the organisation must prove its innocence. This constitutes a reversal of the burden of proof where it is usually required of the state to prove its case, rather than for the accused to prove its innocence. Experts have also called for this aspect of legislation regulating CSOs to be reformed.

## Recommendations

CSOs help ensure that politicians give due consideration to diverse opinions on public interest issues, whether as their primary or as a subsidiary mission. Ultimately, only our elected representatives have the right to take decisions on law and policy. But CSOs improve the quality of law and policy-making by ensuring decision-makers take the public interest into account, alongside private (such as religious, trade union, commercial) interests and their own party political considerations.

Finance Minister Olaf Scholz recognised that CSOs need more legal certainty. In November 2019 he proposed creating a new tax category for 'political corporations', which would act more like political parties with similar kinds of tax exemptions. However, this approach has several disadvantages.

It misrepresents the role of CSOs that promote the public interest towards decision-makers. Advocacy, litigation and public mobilisation on matters of public interest by CSOs is non-partisan and is meant to ensure that decision-makers take the public interest into account when forming law and policy. Equating these forms of democratic participation with partisan politics is likely to create public mistrust - often citizens choose to participate in public life through CSOs precisely because they want to express their opinions free from party political structures. A classification as 'political corporations' is also misleading because it implies that CSOs aspire to political power or support particular political parties.

This damaging narrative alleging that CSOs are attempting to 'interfere' in partisan politics has been used by the Hungarian and Romanian governments as a tactic to delegitimize CSOs and deter the public from organising through CSOs to express their opinion on issues of public interest such as human rights and anti-corruption. Furthermore, such an approach would artificially divide civil society into organizations that are permitted to speak out on issues of public interest and those that cannot. Any CSO is a potential vehicle through which the public can organise to express itself on a matter of public interest. For example, a youth club or carnival association should be allowed to organise peaceful anti-racism demonstrations without having to fear for its public benefit status.

The concern that the charitable status accorded to CSOs could be abused for party political purposes are ultimately based on legitimate constitutional considerations. Namely, that the principles of party financing could be circumvented, i.e. the regulations that exist for parties to guarantee democratic equality. As Professor Dr. Sebastian Unger from the University of Bochum elaborated in a legal opinion,<sup>12</sup> CSOs are distinct from political parties in two main ways: they do not seek political power and they do not take part in elections. However, it is possible to prevent CSOs' charitable status from being abused to circumvent rules on political party financing while allowing them to play their important role of facilitating public participation and representing the public in-



terest in debates conducted between political parties. This can be achieved by expanding the transparency obligations of CSOs and preventing CSOs from expressly endorsing or associating themselves with a particular political party.

As of the moment of writing, a change in legislation is being discussed as part of the Annual Tax Act (JStG 2020). Germany's 16 Federal States agreed in September that CSOs that promote public interest issues are entitled to charitable status. But only two weeks later, the proposal was opposed in the Federal Council by CDU- and CSU-led states. The JStG 2020 will be voted on in Parliament and in the Council in November 2020.

The German government should be encouraged to implement the following recommendations in its future reform of national legislation. Following these recommendations would help to create a supportive environment for CSOs so that they can facilitate public participation in democracy.

First, the list of public benefit purposes in the Fiscal Code must be updated to include public interests recognised since the second half of the 20th Century that remain valid today. This is a relatively simple undertaking. Germany's 16 Federal States have already agreed to some additions, including climate protection and the maintenance of cemeteries. Other issues, such as the advancement of human rights, peace, social justice and gender equality should also be included. These matters are recognised in the German Constitution and in international and European agreements Germany helped

create, signed up to and promotes towards other countries. These goals are non-partisan because they are to be pursued by the German state regardless of the political colour of the government in power.

Second, the government should adopt consolidated legislation on the civil society sector, that recognises the important role that CSOs play in facilitating public debate and in promoting the public interest towards decision-makers. Such a law should include provisions for the following:

- CSOs should be allowed to express themselves and participate in activities that promote a recognised public interest, including occasionally beyond the public benefit purposes under which they have registered;
- the legislation should acknowledge that when carrying out educational activities in relation to other public interest goals, a CSO may express opinions that are consistent with promotion of that given public interest goal and not be limited to simply disseminating information about that topic in an abstract manner;
- CSOs should be allowed to exercise public mobilization activities, such as peaceful assemblies and petitions, on public interest issues, as well as advocacy and litigation regardless of whether these issues are part of current party political debate;
- the legislation should clarify that only when CSOs expressly endorse or support a po-



political party will this activity be considered  
pursuit of illegitimate political purposes.

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## ***Annex: list of public benefit purposes in the Fiscal Code***

The Fiscal code recognizes the following as advancement of the general public:

1. the advancement of science and research;
2. the advancement of religion;
3. the advancement of public health and of public hygiene, in particular the prevention and control of communicable diseases,
4. the advancement of assistance to young and old people;
5. the advancement of art and culture;
6. the advancement of the protection and preservation of historical monuments;
7. the advancement of upbringing, adult education and vocational training including assistance for students;
8. the advancement of nature conservation and of landscape management within the meaning of the Federal Nature Conservation Act and the nature conservation acts of the Länder, of environmental protection, of coastal defense and of flood defense;
9. the advancement of public welfare, in particular of the purposes of the officially recognized voluntary welfare associations (section 23 of the VAT Implementing Ordinance), their subsidiary associations and their affiliated organizations and institutions;
10. the advancement of relief for people persecuted on political, racial or religious grounds, for refugees, expellees, ethnic German repatriates who migrated to the Germany between 1950 and 1 January 1993, ethnic German repatriates migrating to Germany after 1 January 1993, war victims, dependents of deceased war victims, war disabled and prisoners of war, civilian war disabled and people with disabilities as well as relief for victims of crime; the advancement of the commemoration of persecutees, war and disaster victims; the advancement of the tracing service for missing persons;
11. the advancement of life saving;
12. the advancement of fire prevention, occupational health and safety, disaster control and civil defense as well as of accident prevention;
13. the advancement of internationalism, of tolerance in all areas of culture and of the concept of international understanding;

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14. the advancement of the protection of animals;
  15. the advancement of development cooperation;
  16. the advancement of consumer counselling and consumer protection;
  17. the advancement of welfare for prisoners and former prisoners;
  18. the advancement of equal rights for women and men;
  19. the advancement of the protection of marriage and the family;
  20. the advancement of crime prevention;
  21. the advancement of sport (chess shall be considered to be a sport);
  22. the advancement of local heritage and traditions;
  23. the advancement of animal husbandry, of plant cultivation, of allotment gardening, of traditional customs including regional carnival, of the welfare of servicemen and reservists, of amateur radio, of aeromodelling and of dog sports;
  24. the general advancement of democratic government in the territory of application of this Code; this shall not include endeavors which are solely in pursuit of specific individual interests of a civic nature or which are restricted to the local-government level;
  25. the advancement of active citizenship in support of public-benefit, charitable or religious purposes.

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## Notes

- 1 e.g. Articles 10 and 11 of the [European Convention on Human Rights](#), and Articles 19, 21 and 22 of the [International Covenant on Civil and Political Rights](#).
- 2 See e.g., the recent decision of the European Court of Justice, reaffirming the case law of the European Court of Human Rights, Case C-78/18 Commission v Hungary, 18 June 2020 at para. 112: “the right to freedom of association constitutes one of the essential bases of a democratic and pluralist society, inasmuch as it allows citizens to act collectively in fields of mutual interest and in doing so to contribute to the proper functioning of public life”.
- 3 e.g. [Articles 1 and 3 of the Basic Law](#)
- 4 These include the [European Convention on Human Rights](#); [International Convention on the Elimination of All Forms of Racial Discrimination](#); [International Covenant on Civil and Political Rights](#); [International Covenant on Economic Social and Cultural Rights](#); [Convention on the Elimination of All Forms of Discrimination Against Women](#); [Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#); [Convention on the Rights of the Child](#).
- 5 Stefan Diefenbach-Trommer et al., ‘Engagiert Euch – nicht? Wie das Gemeinnützigkeitsrecht politisches Engagement erschwert’.
- 6 It is to be noted that the AEAO are non-binding but do nonetheless have a considerable impact on the application of the law, as tax offices use them to assess whether organizations are eligible for charitable status.
- 7 [Decision by the Hessian Finance Court of November 2016](#)
- 8 Translated by the author. See: <https://www.zivilgesellschaft-ist-gemeinnuetzig.de/analyse-attac-urteil-bfh/>.
- 9 Translated by the author. See: <https://www.campact.de/gemeinnuetzigkeit/>.
- 10 Translated by the author from DemoZ website.
- 11 Translated by the author. For the full report see: [https://www.verfassungsschutz.bayern.de/mam/anlagen/verfassungsschutzbericht2017\\_180326.pdf](https://www.verfassungsschutz.bayern.de/mam/anlagen/verfassungsschutzbericht2017_180326.pdf). The specific allegations as to why VVN-BdA landed on the list, however, have not been published.
- 12 [https://freiheitsrechte.org/home/wp-content/uploads/2020/05/GFF-Rechtsgutachten-Gemeinnu%CC%88tigkeit\\_Prof-Unger\\_Mai2020.pdf](https://freiheitsrechte.org/home/wp-content/uploads/2020/05/GFF-Rechtsgutachten-Gemeinnu%CC%88tigkeit_Prof-Unger_Mai2020.pdf)



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**Website:**

[liberties.eu](https://liberties.eu)

**Contact info:**

[info@liberties.eu](mailto:info@liberties.eu)

The Civil Liberties Union for Europe e. V.  
Prinzenstr. 103.  
10969 Berlin  
Germany

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