On Red (Funding) Lines

Conceptualising European *Civil* Society Between Court and Commission

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One of the conceptually most significant innovations by the Court of Justice in *Commission v. Hungary* (C-769/22) is its invocation of European society as a normative referent of the EU legal order, and the characterisation of that society through pluralism. This conceptual step has consequences that reach well beyond the judgement. Within this contribution, I argue that it could place the Court on a potential collision course with the European Commission's recent proposal to explicitly link EU civil society funding to compliance with the values enshrined in Article 2 TEU, such as democracy, the rule of law, and fundamental rights.

In particular, if European society is constituted by pluralism, as the Court suggests, then the Commission's attempt to police the boundaries of "European *civil* society" through funding criteria faces structural limits it has not yet acknowledged. Put differently, the judgement draws conceptual red lines that complicate, and possibly constrain, the Commission's funding strategy.

This contribution proceeds in three steps: First, I give a brief overview of what this recent promise to "link civil society funding to EU values" entails. Subsequently, I unpack the Court's construction of a European society in *Commission v. Hungary*. Finally, I connect these two inquiries and ask whether the judgement might impose certain red lines on the Commission's attempts to link civil society funding to EU values.

The Commission's Civil Society Strategy and its Conceptual Gap

In November 2025, the Commission published its Strategy for Civil Society. The strategy envisages civil society organisations (CSOs) as key actors in defending EU values. Moreover, these values are assigned a role in delineating which CSOs are eligible for financial support in the first place.

The ambition is understandable, and its timing is not coincidental. The rule of law crisis demonstrated the indispensable role that civil society plays in defending liberal-democratic values from a bottom-up approach, and that EU funding can be a meaningful lever of support for those actors. Moreover, the instinct underlying the proposal, that EU money should not flow to organisations whose objectives are incompatible with EU values, is difficult to oppose in the abstract. However, operationalising it within the context of the upcoming Multiannual Financial Framework of 2028–2034 and the new CERV+ programme remains challenging. Moreover, although the upcoming budget for civil society funding will likely be doubled, civil society actors are likely to face increasingly structural challenges in accessing EU funding and an increasingly hostile environment in the context of EU governance.

Furthermore, the proposal is plagued by conceptual omissions. Most importantly, it leaves almost entirely open what understanding of "European *civil* society" the Commission is seeking to cultivate. Notably absent is any clarity on what exact role EU values will play as a normative yardstick in civil society funding, and which of those values will be decisive. In this regard, the existing literature on EU civil society funding has long shown that the Commission's funding decisions have historically favoured transnational, pro-integration organisations over more regional and critical ones. Thus, funding decisions have always been surrounded by a certain vagueness. The current proposal to link civil society funding to EU values is certainly ambitious in its rhetoric, but it only

adds to the existing conceptual uncertainty, as it does not provide a definition of "European *civil* society".

What the Court Said About European Society

This is where the case *Commission v. Hungary* enters the picture and potentially further complicates it. The potential red lines that emerge from the judgement will certainly play a role in further laying out the Commission's 2025 strategy within the ongoing negotiations of the next Multiannual Financial Framework for the years 2028–2034. Of course, the judgement's best-known innovation is unmistakably the self-standing invocability of Article 2 TEU. The reliance on the concept of European society has attracted less comment so far. This is, nevertheless, a remarkable development: for the first time, the Court attributes the EU legal order to a specific social referent, describing EU law as "a common legal order of a society in which pluralism prevails" (para. 551). Subsequently, the Court finds that the Hungarian law marginalised LGBTI persons, which was intensified by the association between, on the one hand, being non-cisgender or non-heterosexual, and, on the other hand, being convicted of paedophilia. As the Court framed it aptly, these measures constitute a "fundamental threat to Hungarian and European society", as such associations encourage hateful conduct towards a minority forming part of our society and reinforce that minority's social invisibility (paras 554 & 555). Thus, the Hungarian government, *de facto*, aimed to exclude part of European society from the public sphere, which is characterised by pluralism.

The Court notably does not claim that the Hungarian law was contrary to a society, in which "pluralism, non-discrimination, tolerance, justice, solidarity and equality [between women and men] prevail". This would have reflected the precise wording of the second sentence of Article 2 TEU. Furthermore, the characterisation of European society through (most of) these values would have arguably been more legally precise in the case at hand. Instead, the Court made a deliberative choice to characterise European society (only) through the pluralism of its parts: European society is framed as constitutively inclusive. On the Court's account, it is defined by its commitment to not excluding, not rendering invisible, the diversity of those who belong to it. Thus, pluralism is not merely one value among others in Article 2 TEU. It is the structural feature of the society in which all the other values are said to prevail.

Implications for European Civil Society

Perhaps unintentionally, the Court's reasoning might tell us something about the way we can understand the concept of "European *civil* society". This argument rests on the premise that the collective singular of the concept of European society also encompasses that of "European *civil* society". If European society is the normative referent of the EU legal order, it is difficult to deny that "European *civil* society" forms part of it. Thus, any norm that characterises European society must also characterise the latter concept. For example, if European society is understood as constituted by pluralism, "European *civil* society" must equally be pluralistic.

But what does a pluralistic European society precisely entail? The Court's reasoning offers no direct answer. Does it simply reflect a descriptive fact, the continent's irreducible diversity of national traditions and value orientations? Or does it carry normative force: an obligation on European institutions and Member States to actively accommodate, and to refrain from marginalising, diverse societal actors? If civil society must be pluralistic, does every strand of civic life, regardless of its normative orientation, carry a claim to recognition? The Court's structural framing is elegant, but the normative content of pluralism it implies remains, at best, underspecified.

That vagueness travels directly into the Commission's funding architecture, and it is there that the tension becomes most acute.

The Ambiguity the Commission Inherits

The judgement only deepens the complexities surrounding the Commission's funding proposal. To reiterate, the Court's central finding was that a Member State violated Article 2 TEU by marginalising and effectively rendering part of European society

invisible. The question then becomes whether the Commission's funding model, even if constructed with opposite intent, reproduces a structurally comparable logic.

As illustrated above, the Commission's disbursement of EU funds to civil society has historically been shaped by a recognisable set of substantive orientations: a preference for transnational organisations promoting European integration. In practice, the Commission thus seems to have an underlying normative understanding of what CSOs must look like to form part of "European *civil* society".

Now, against the background of the judgement, one might wonder whether pluralism, as a constitutive feature of European society, places any constraint on how the Commission may distribute civil society funding. Put differently, in a pluralist European society, does EU funding have an obligation to support the full diversity of "European *civil* society", including organisations whose voices are inconvenient for the Commission? There is no easy answer. The Commission is not constitutionally required to fund its critics. In addition, a reasonable case can be made for excluding organisations that can be qualified as "illiberal" or "uncivil"– those that stigmatise and do not respect the pluralistic democratic discourse the system of liberal democracy presupposes. But the judgement adds a new layer to the discussion. If European society is the normative referent of the EU legal order, and if that society is characterised by the visibility and inclusion of all its members, then a funding architecture that systematically favours a certain category of organisations over a pluralist representation of civil society is in tension with the concept as articulated by the Court.

The Commission has spent decades funding civil society while leaving the concept undefined. Without intending to answer that debate, the Court has now placed European society at the centre of the EU constitutional order and characterised it by pluralism. The gap – the distance between a funding proposal looking for a normative anchor and a judgement that anchors the normativity of European society in pluralism – is the space this contribution has tried to name. Filling it, one way or the other, is the task the Commission cannot defer much longer.

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