

The EU Strategy for Civil Society and the Pro Bono Ecosystem

Martina Manzani

Summary of the paper “European Union and the Legal Pro Bono Ecosystem”

Abstract

The 2025 EU Strategy for Civil Society is the first EU instrument to treat pro bono legal support as a structural, cross-sectoral element of civic-space protection. Yet its pro bono commitment amounts to a single paragraph and a footnote naming PILnet, with **no funding and no formal mandate** attached. Using Abbott et al.’s Orchestrator–Intermediary theory and Vivien Schmidt’s throughput/output legitimacy framework, this summary argues the Strategy relies on **weak orchestration**: the Commission enlists clearinghouses as voluntary intermediaries to deliver a goal it cannot pursue directly, while supplying neither the **material support** (funding) nor the **ideational support** (mandate, recognition) that effective orchestration requires. The result is a **throughput legitimacy deficit** (no accountable process) and an **output legitimacy deficit** (no guaranteed reach beyond existing commercial pro bono hubs). Closing this gap does not require binding legislation, but supplying the two forms of backing the commitment currently lacks.

Research question

The report asks to what extent the European Commission’s 2025 EU Strategy for Civil Society (“the Strategy”)¹ successfully orchestrates pro bono legal support to protect shrinking civic space, and what this means for democratic legitimacy. Its core claim: the Strategy’s reliance on pro bono is a case of **indirect governance** in which the Commission, lacking competence and budget for direct legal aid, enlists intermediaries - but does so **without material support and with only weak ideational backing**, risking a regulatory vacuum that undermines throughput and output legitimacy.

¹European Commission, ‘EU Strategy for Civil Society’ (Communication) COM(2025) 790 final.

Theoretical framework

The analysis relies on Abbott, Genschel, Snidal and Zangl's Orchestrator-Intermediary theory,² which distinguishes orchestration (voluntary mobilisation of an intermediary toward a shared goal) from delegation (a conditional, hard-control grant of authority). **Effective orchestration requires the orchestrator to supply intermediaries with material support (funding, resource pooling) and ideational support (mandates, political recognition).** Where both are absent, orchestration risks decaying into "whitewashing" - the appearance of governance activity without capacity behind it. This is combined with Vivien Schmidt's concepts of **throughput legitimacy** (transparency, accountability and procedural fairness of the governance process) and **output legitimacy** (whether the arrangement actually solves the problem)³ to assess the Strategy's design.

From fragmented measures to structural commitment

Pro bono support previously appeared only in sector-specific EU instruments: the 2020 European Democracy Action Plan addressed legal aid for journalists, and the 2024 Anti-SLAPP Directive⁴ created procedural safeguards for targets of abusive litigation, grounded in Article 81 TFEU and thus limited to cross-border matters. The 2025 Strategy **is the first instrument to treat pro bono as a structural, cross-sectoral element of civic-space protection** rather than a reactive, issue-specific response.⁵

²Kenneth W Abbott and others, 'Two Logics of Indirect Governance: Delegation and Orchestration' (2016) 46(4) British Journal of Political Science.

³Vivien A Schmidt, 'Democracy and Legitimacy in the European Union Revisited: Input, Output and "Throughput"' (2013) 61(1) Political Studies.

⁴Directive (EU) 2024/1069 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Anti-SLAPP Directive').

⁵ Latham & Watkins, 'Pro Publico: European Commission's Engagement with Pro Bono Activities' (Legal Memorandum, 29 May 2026) Annex 1

The 2025 Strategy's pro bono commitment

Adopted as a non-binding Communication, the Strategy rests on three pillars (strengthening engagement, protecting civic space, and sustaining CSOs) with pro bono addressed under the third.⁶ Its operative language commits the Commission to “work to connect communities of pro bono lawyers with CSOs across sectors and in need of support”,⁷ illustrated only by a single footnote reference to PILnet. **No institutional mechanism, mandate or funding line is attached.** The report argues this is a textbook case of weak orchestration: the Commission co-opts an existing, privately sustained infrastructure while giving it neither material underwriting nor a formal mandate. Because pro bono depends on corporate budgets and client-conflict policies, **CSOs' access ends up hostage to the risk appetite of commercial firms**⁸ - a firm may readily help with routine compliance work but decline a politically sensitive case. Read against the credit-claiming/blame-avoidance logic of orchestration, and against the near-total absence of monitoring duties, the design is difficult to distinguish from “whitewashing,” and it produces **a clear throughput legitimacy deficit: there is no visible, accountable process to evaluate.**

Clearinghouses as the missing intermediary layer

Bodies such as PILnet and Pro Publico are the intermediaries the Strategy's commitment actually depends on: they intake CSO needs, match them to firms with relevant expertise, and solve a genuine coordination problem that individual lawyers cannot solve alone.⁹ But **their capacity is bounded by conditions the Commission does not control** - the geographic concentration of commercial law firms, uneven pro

⁶COM(2025) 790 final, 1–2.

⁷COM(2025) 790 final, 16 (emphasis added).

⁸Lamin Khadar, The Growth of Pro Bono in Europe (PILnet 2016) 41, 7.

⁹Lamin Khadar, The Growth of Pro Bono in Europe (PILnet 2016) 27.

bono culture across Member States, and the availability of niche national expertise.¹⁰ This reproduces orchestration's central risk: **a willing intermediary that is structurally incapable of delivering at the scale or in the places the goal requires** - producing an output legitimacy deficit alongside the throughput one.

Recommendations

Closing this gap does not require altering the Strategy's soft-law nature, it requires giving the existing commitment **the two forms of backing the theory identifies as missing**:

- 1) **Ideational support** could take a range of forms, from the kind of standardised, self-reported commitments and common indicators associated with Articles 291 and 290 TFEU logic¹¹ to a more formal recognition of clearinghouses' role within existing engagement structures.
- 2) **Material support** could similarly be routed through more than one channel - an existing or forthcoming EU funding instrument such as CERV or the prospective Agora EU strand under the 2028–2034 MFF¹² being one plausible avenue, provided **funding is tied to expanding coverage rather than only sustaining existing activity**, since reach - not just activity - is what the geographic gap requires.

¹⁰Lamin Khadar, 'The Growth of Pro Bono in Europe' (PILnet 2016) 8; PILnet, 'European Pro Bono Alliance: Members'.

¹¹Arts 290–291 TFEU: Consolidated Version of the Treaty on the Functioning of the European Union [2016] OJ C202/1.

¹²European Commission, 'Citizens, Equality, Rights and Values Programme'; European Parliament, 'Regulation establishing the "AgoraEU" programme for the 2028–2034 period'.

Conclusion

The Strategy successfully elevates pro bono from an ad hoc emergency response to a recognised component of EU civic infrastructure, but its operational design suffers from weak orchestration: **minimal ideational support and no material backing**. Clearinghouses are left to perform intermediation whose success depends on supply-side conditions the Commission neither funds nor governs. Targeted ideational measures could repair part of the throughput gap; material support through CERV or Agora EU could improve resourcing and visibility - but neither would fully resolve the output problem, since specialised legal capacity will continue to track existing legal-market geography rather than actual need. **Unless the Commission moves from recognition to genuine backing, pro bono risks remaining an unequal, market-dependent safety net rather than the structural pillar of civic-space protection the Strategy claims it to be.**

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