



**PARTNERS**ALBANIA  
FOR CHANGE AND DEVELOPMENT

## **Monitoring Matrix**

on Enabling Environment  
for Civil Society Development

**COUNTRY REPORT**

**FOR ALBANIA 2017**

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# I. Executive Summary

## CIVIL SOCIETY AND CIVIL SOCIETY DEVELOPMENT IN ALBANIA

### Basic Legal Guarantees of Freedoms:

Civil Society Organisations in Albania enjoy freedom of association and expression based on the current legal framework. Even though the legislation did not change during 2017, it still needs improvement as regard to the registration procedures of the non-profit organisations.

As per official information received by public institutions and referring to the consultations with the sector representatives throughout the year, there are contradictory data as regard to the registration, composition and activity of the CSOs: Tirana Court of First Instance report to have registered around 7,383 CSOs, while only 4,136 are registered in the Tax Administration.

During 2017, 345 new CSOs were registered (198 Associations, 61 Foundations and 86 Centres) and only 238 of them have been registered in Tax Administration<sup>1</sup>. Building an integrated database with detailed information from several institutions for civil society organisations in Albania, a key priority activity of the Road Map for Drafting Policy and Measures for Enabling Environment for Civil Society 2013-2017, is still far beyond. This database will not only provide accurate information on the sector, but would also allow for a differentiated tax treatment of CSOs in accordance with their non-profit nature and type of activities. CSOs reported to have been subject of frequent audits by tax officials due to the campaigns against informality initiated by the government during 2017.

Even though they agreed that behavior and communication with tax officials has improved slightly, limited knowledge and understanding of

<sup>1</sup> Information received upon official requests sent to institutions by Partners Albania

the non for profit nature of the CSOs remains a problem. Attempts of the state officials (central and local government institutions) to treat the sector same as businesses are reported to be a permanent risk to the viability of the CSOs, especially the newly established ones. Clear examples of this behavior are: 1) imposing fines for unregistered employees to volunteers during tax inspections, 2) prepayment request before an appeal to tax authorities same as businesses, 3) classification of CSOs same as business as regard to local fees and tariffs etc.

With regard to freedom of peaceful assembly, improvements are needed within the current legislation, which is not changed since 2001, mainly in terms of recognition of spontaneous assemblies, communication of the notice prior an assembly, unification of the sanctions in the law and the Penal Code and also clarification of the appeal procedures to be followed by organizers in cases they feel violated to exercise their right<sup>2</sup>. During 2017 civil society organisations have been engaged in numerous assemblies expressing their concerns linked with their advocacy efforts, such as protection of the environment, protection of human rights etc.

### CSOs financial viability and sustainability:

No improvements have been made in the current fiscal legislation with regard to tax treatment for 2017. About 60% of the sector is still registered for VAT and the liabilities of the sector toward the Tax Administration have been increased. Interpretation of the fiscal laws from the tax inspectors is still a problem throughout the country and there was no evidence of state

<sup>2</sup> Monitoring Right to Free Assembly – Albania Country Report 2016-2017. Partners Albania for Change and Development, ECNL <http://partnersalbania.org/publication/monitoring-right-to-free-assembly-albania-country-report-2016-2017/>

initiatives to correct the situation even this year. CSOs are not treated according their specific non-profit nature in cases of appeal of the administrative decisions of tax inspectors, by applying the condition of prepayment of the total obligation before the appeal. VAT reimbursement scheme for IPA funded projects did not succeed and there has been no improvement in its scope to regulate. The official data obtained by Tax Administration prove it as only one project was refunded, while eight was the number of projects registration certificates for VAT reimbursement issued for the period 2015-2017. The current reimbursement procedure itself is too long and hampers the financial viability of CSOs, while VAT reimbursement of other EU funding mechanisms and instruments at local, regional, and international level, (such as EIDHR, IPA Cross – Border, Erasmus+, etc), is not yet legally regulated and eligible for the sector. As regards the VAT exemption for activities carried by CSOs classified as “activities of general interest” under the legal framework, has also been unsuccessful due to: prolonged and complicated procedures and also restricted area of these activities. With regard to incentives for individuals and corporate donations, even in 2017, the legislation did not provide any. The sole legislation in force remains the Law on Sponsorship, meanwhile philanthropic activity need to be recognized and regulated in a special law, as a separate activity apart from sponsorship. Only by having the appropriate legislation, the environment for corporate and individual donations can be improved. With regard to public fund allocation to CSOs no published data on total public funds allocated to the sector by all public institutions, central or local ones are available. Agency for the Support of Civil Society (ACSC) however remains the main source at the national level by launching only one call for proposals every year with a total amount of 754,000 EUR, and also 20 CSOs supported with institutional support.

In general, institutions have rules and procedures regarding transparency, while there is no clarity and information on the announced winning projects. Improvements have been introduced in the legal framework as regard to the Public Financial Inspection and supporting procedures and manuals have been enacted. However, in the final inspection reports published in the Ministry’s webpage are not indicated the period and source

of funding, subject to the given inspection. The obligation to report at least one full time employee still applies to all organisations, presenting thus a persistent stumbling block to the free initiative of individuals to establish non-profit organizations and to promote voluntarism as a human value in support of people in need. Additional legal acts stipulated in the Law on Voluntarism to regulate the relationships between the volunteer and the volunteering provider, (such as the register of contracts, booklet, and the ethical code on voluntarism), are not approved yet.

**State – CSOs Relationship:** With the approval of the Road Map for Drafting Policy and Measures for Enabling Environment for Civil Society, Official Gazette 94/2015, the government recognised the importance of the development of and cooperation with the sector. The Road Map was followed by the establishment of the National Council for Civil Society, a consultative body composed of government and civil society representatives that would guarantee institutional collaboration between two sectors, in support of good governance, participatory democracy, and increase of transparency through meaningful participation and involvement of civil society in this process. Unfortunately, the implementation of the Road Map and functioning of the Council did not follow the same speed of their approval. Most of the proposed actions of the Road Map are not implemented yet, while the Council has failed to achieve any result. By the end of 2017, with technical support provided by the EU Delegation in Albania, the Prime Minister’s Office started for the first time from its approval a monitoring and revision process of the Road Map, along with technical assistance for the improvement of the document.

The legal framework affecting CSOs involvement in policy and decision – making did not change in 2017. Law No. 119/2014 “On the Right for Information” and Law no. 146/2014 “For Notification and Public Consultation” are the main laws that guarantee the right of CSOs and citizens to the included and influence policy and decision-making process. These laws have contributed to an increased openness, communication and transparency of public institutions toward the citizens. Also, increased awareness of public institutions on their legal obligations to provide information and include citizens in

their policy and decision making processes is noticed. Regardless, the quantity and quality of the information provided by public institution remains problematic, especially in the cases of sensitive information requested. CSOs have been very active in using these laws for their work, and their awareness to exercise the right to complaint is increased. As evidenced by data from the Commissioner for the Right to Information and Protection of Personal Data, 130 complaints from CSOs have been registered in 2017 on the right to information. The most problematic the transparency situation has been with central government institutions, especially after the parliamentary elections of June resulting in the restructuring of the government, leading to a significant deterioration in the implementation of the law on the right to information.

The level of transparency by municipalities is improving, but still ways of cooperation between CSOs and local government are still limited,

due to limited number of open forums in the municipalities where CSOs engage and give voice to the concerns of the citizens, weak capacities of CSOs to lobby, advocate and influence local decision making, and lack of CSOs established in small municipalities. Problematic remains also the situation with the transparency of the processes for the selection of CSOs representative in the cross-sector bodies, for which there is not a specific legal framework to regulate the involvement of CSOs in policy and decision-making processes and selection criteria.

Regarding collaboration in service provision, the tendering rules are unified and applied equally to CSOs and other private entities, with the price and not the quality, remaining the main awarding criteria, putting CSOs in a disadvantaged situation. The legal framework on the implementation of the Law on Social Enterprises is not completed, and the need for a new social procurement procedure, to ensure an effective contracting of CSOs for service delivery, is not addressed.

## Key Findings

No.	Top 6 findings from the Report	Reference to the Monitoring Matrix		Reference to the EU CS Guidelines	
		Area		Objective	
1	The issues with centralization of the registration procedure of CSOs at the Tirana First Court of Instance presenting high financial and human costs are not addressed, as planned in the Road Map of the Albanian Government Policy toward a more enabling environment for civil society development.	Area	1	Objective	1
		Sub-Area	1.1	Result	1.1
2	There is not legal base and regulation for deregistration of CSOs unfairly registered automatically in the VAT scheme, and for profit tax between 2008 and 2014.	Area	2	Objective	2
		Sub-Area	2.1	Result	2.3
3	There is no legal framework that regulates philanthropic activity and provides fiscal incentives to corporate and individual donations in Albania. In addition, there are no state policies that stimulate cooperation between CSOs and donors for channeling their donations through CSOs.	Area	2	Objective	2
		Sub-Area	2.2	Result	2.2
4	Implementation of The Road Map for Drafting Policy and Measures for Enabling Environment for Civil Society approved in 2015, as the main strategic document of the government that recognizes the importance for the development of and cooperation with the sector, has not progressed in most of the proposed actions.	Area	3	Objective	3
		Sub-Area	3.2	Result	3.1
5	The role of the National Council for Civil Society in the creation of an enabling environment for civil society development in the country in its first year of operation has been weak with no concrete results.	Area	3	Objective	3
		Sub-Area	3.2	Result	3.1
6	The legal and regulatory framework in place is not enabling for a meaningful engagement of CSOs in the delivery of different services through state contracts, and the legal acts for the implementation of the Law on Social Enterprises that is expected to improve the situations are not prepared and approved.	Area	3	Objective	3
		Sub-Area	3.3	Result	3.1



## Key Policy Recommendations

No	Top 6 recommendations for Reform	Reference to the Monitoring Matrix		Reference to the EU CS Guidelines	
		Area		Objective	
1	Preparation of the new legal framework on the decentralization of registration and re-registration process of CSOs at the local level.	Area	1	Objective	1
		Sub-Area	1.1	Result	1.1
2	Creation of a unified electronic register of CSOs providing information on CSOs (the number, scope of work, geographical distribution, legal form, number of employees and volunteers, annual turnover, sources of funding, etc.) to be used by all relevant institutions responsible for CSOs registration and regulation of their activity.	Area	1	Objective	1
		Sub-Area	1.1	Result	1.1
3	Preparation of a special and clear procedure for de-registration of all CSOs that are wrongly registered under the VAT system during the period of 2008-2014. The procedure should be provided within the legal framework and published, accompanied by specific guidelines for the responsible structure for its application. Trainings of CSOs representatives and tax inspectors would be necessary for the successful implementation of the procedure.	Area	2	Objective	2
		Sub-Area	2.1	Result	2.3
4	Recognition of philanthropic activity in the legal framework to promote and regulate it as a separate activity apart from sponsorship. In this context, it is important to increase the fiscal incentives for corporate donations and to introduce fiscal incentives for individual donations. Preparation of policies and introduction of incentives that encourage the partnership between CSOs and private sector, as two important actors in the development of philanthropy in the country, based on existing local models and international experience.	Area	2	Objective	2
		Sub-Area	2.2	Result	2.2
5	Preparation of a concrete action plan for the implementation of the proposed actions of the Road Map for Drafting Policy and Measures for Enabling Environment for Civil Society, within the deadlines. Increased interaction and accountability of the members form civil society in the National Council for Civil Society with their consistencies to ensure wide representation of the sector in the dialogue with the government.	Area	3	Objective	3
		Sub-Area	3.2	Result	3.1
6	Preparation and approval of the legal acts in support of the implementation of the Law on Social Enterprises, through an open consultative process and taking into consideration the recommendations provided by CSOs.	Area	3	Objective	3
		Sub-Area	3.3	Result	3.1

## About the Matrix

This Monitoring Report is published on a yearly basis since 2013. The monitoring is based on the Monitoring Matrix on Enabling Environment for Civil Society Development (CSDev) developed by Balkan Civil Society Development Network (BCSDN) and European Center for Non-profit Law (ECNL). It is part of a series of country reports covering 7 countries in the Western Balkans and Turkey.

The Monitoring Matrix presents the main principles and standards that have been identified as crucial to exist in order for the legal environment to be considered as supportive and enabling for the operations of CSOs. The Matrix is organized around three areas, each divided by sub-areas: (1) Basic Legal Guarantees of Freedoms; (2) Framework for CSOs' Financial Viability and Sustainability; (3) Government – CSO Relationship.

The principles, standards and indicators of the toolkit have been formulated with consideration of the current state of development of the sector and the diversity in the countries of the Western Balkans and Turkey. They rely on the internationally guaranteed freedoms and rights and best regulatory practices at the European Union level and in European countries. The Matrix aims to define an optimum situation desired for civil society to function and develop effectively and at the same time it aims to set a realistic framework which can be followed and implemented by public authorities. Having in mind that the main challenges are faced during implementation, the indicators are defined to monitor the situation of the legal framework and its practical application.

## II. Introduction

### About the Monitoring Report

Partners Albania carried out for the fifth consecutive year the research to develop the Monitoring Matrix Report 2017 (MM Report 2017). The scope of this monitoring report is to give an overview of issues concerning the enabling environment of CSOs in Albania, including current legal framework, its practical implementation, and to provide recommendations on how these issues can be addressed and tackled down.

The MM Report 2017 prepared by Partners Albania is based in the review of Albanian legislation, policies, studies, and reports used to evaluate the legal indicators of the Monitoring Matrix Toolkit, as well as consultations with CSOs to evaluate the practice indicators of the Monitoring Matrix.

### The Monitoring Matrix on Enabling Environment for Civil Society Development

The Monitoring Matrix presents the main principles and standards that have been identified as crucial to exist in order for the legal environment to be considered as supportive and enabling for the operations of CSOs. It underscores the fact that enabling environment is a complex concept,

The Matrix is organized around three areas, each divided by sub-areas:

1. Basic Legal Guarantees of Freedoms;
2. Framework for CSOs' Financial Viability and Sustainability;
3. Government – CSO Relationship.

which includes various areas and depends on several factors and phases of development of the society and the civil society sector.

This Matrix does not aim to discuss all enabling environment issues, rather it highlights those that the experts have found to be most important for the countries which they operate in. Therefore, the standards and indicators have been formulated with consideration of the current state of development of the sector and diversity in the countries of the Western Balkans and Turkey. They have been drawn from the experiences of the CSOs in the countries in terms of the legal environment as well as the practice and challenges with its implementation. The development of the principles, standards and indicators has been done with consideration of the internationally guaranteed freedoms and rights and best regulatory practices at the European Union level and in European countries. The areas are defined by key principles which are further elaborated into specific standards. In order to enable local CSOs, donors or other interested parties to review and monitor the legal environment and practices of its application, the standards are further explained and measured through indicators. The full Matrix is available at [www.monitoringmatrix.net](http://www.monitoringmatrix.net).

The development of the Monitoring Matrix on Enabling Environment for CSDev was part of a collective effort of CSO experts and practitioners from the BCSDN network members and partners and with expertise and strategic support by ECNL. The 11-member expert team from 10 Balkan countries, spanned a variety of non-profit and CSO specific knowledge and experience, both legal and practice. The work on the Matrix included working meetings and on-line work by experts, which was then scrutinized via focus groups and public consultations.

## Acknowledgements

The Monitoring Matrix Report 2017 on Enabling Environment for Civil Society Development, Country Report for Albania was prepared with collaborative effort and generous support of CSOs, experts and individuals.

Partners Albania would like to express its

gratitude to the executive directors and high level managers of CSOs who participated in consultations, for their cooperation, time and contribution. Partners Albania acknowledges the cooperation and correctness of public institutions that responded to PA requests for information and provided the required information.

## III. Methodology

### Overview of the methodological approach

For the preparation of the Monitoring Matrix Report 2017, Partners Albania employed a set of methodological tools, including desk research, acquiring primary data and information through consultations with CSOs. The overall goal was to monitor the legislation and practice indicators of the MM, aiming to identify progress or regress in the enabling environment, including overall climate, legislation and its effective implementation for the operation of CSOs in Albania.

The methods for the preparation of the MM Report 2017 included as follows:

#### Desk Research

Since the Monitoring Matrix includes indicators for the evaluation of legislation and the practice, the literature review was carried out during the year, through:

**Legislation review** – aiming to monitor the legal framework and regulations drafted and approved during 2017 for an enabling environment for CSOs. It included an overview and analysis of Albanian legislation (including implementation of regulations), as well as analysis of the implementation of international conventions and regulations adopted by the state.

**Assessment of the practice indicators based on secondary data, such as:** media reports; progress reports prepared by donors, international organisations, and national agencies – aiming to identify the implementation of legislation in practice.

### Official Requests for information to public institutions

Due to the lack of official data publicly made available by state institution, Partners Albania sent official requests for information to all ministries inquiring information on public consultations with CSOs and financial and non-financial support provided to CSOs. Official requests for information have been sent to the Tirana First Court of Instance and Tax Administration on the number of the registered organisations in 2017 and other related data for the sector.

### Participation of the CSOs community

Partners Albania utilized its own database of CSOs to inform and invite CSOs to participate in several consultation meetings held on different topics that contributed on the preparation of the MM Report 2017.

All the findings for the practice indicators are based on the information and detailed comments from the contacted CSOs regarding the implementation of the legal framework.

## IV. Findings and recommendations

### Area 1: Basic legal Guarantees of Freedoms

#### Sub area 1.1. Freedom of association

Freedom of association is a constitutional right, it is therefore guaranteed and regulated through the legal framework and is exercised freely by individuals and legal entities to establish and participate in organisations. All individuals and legal entities without discrimination regardless of their nationality, gender, age etc. can freely associate and/or participate in different organisations.

The legal framework and procedures as regard to registration of CSOs in Albania did not changed during 2017, even though **“Legislative framework for CSO registration and its work”** was one of the key priority are of The Road Map for Drafting Policy and Measures for Enabling Environment for Civil Society. Proposed actions in the Road Map have not been initiated during this period with regards to registration of CSOs, regardless of the several initiatives from the sector to address this issue. The electronic register of nonprofit organisations that would not only provide accurate information on the sector, but would also allow for a differentiated tax treatment of CSOs in accordance with their non-profit nature and type of activities, is not developed yet. This database would enable the measurement of impact and contribution of the sector to the economic development of the country.

The issues related to the decentralization and an adequate registration process, along with the lack of accurate data in a dedicated register affect the availability of a clear and accurate picture of

the entire sector. Referring to the official data reported for 2017<sup>3</sup>, 345 new CSOs are registered at the Tirana First Court of Instance (198 Associations, 61 Foundations and 86 Centers), while only 238 are newly registered at the Tax Administration.

The legal framework allows for non-profit organizations to exercise their activity independently and without interference from the state. Relationships of non-profit organizations with state bodies have undergone some changes over the last year as regards the tax audit process and issues related to reporting or appealing decisions. The approval of the new Accounting Standard for Non-Profit Organisations by 2016, created facilities for CSOs with regards to reporting to state authorities, while its interpretation from tax authorities remains a problem throughout the country.

Non - profit organisations are subject to **“operational audit inspections”** and **“anti - money laundering and financing of terrorism inspections”** by tax authorities. The first one is conducted by regional tax inspectors while the second one, is conducted by regional tax officials in cooperation with investigation department officials, that is under the direct dependence of the Ministry of Finance and Economy starting 2017. Referring to the changes introduced to the Law on Tax Procedures in 2016, taxpayers must be notified at least 30 days prior to the starting a comprehensive operational and about 10 days prior to a short fiscal verification. The new regulation improved the old way of conducting

<sup>3</sup> Fiscal treatment of NPOs / Partners Albania, 2017  
Link: <http://partnersalbania.org/publication/fiscal-treatment-of-npos-assessment-of-national-legislation-and-practice-for-non-profit-organisations-in-albania/>

audits remarkably, compared to previous years when audits were conducted largely without prior notice and abusively. While new automatic risk analysis has been developed recently within Tax Administration, in terms of selection of the taxpayers for audits, its results for the sector may not be used, taking in consideration that the electronic register of non-profit organisations administered by the GDT is not accurate and very complex, including other entities as universities, political parties, etc.

During consultations, CSOs reported to have been subject of frequent audits by tax officials especially when government initiated the so called “anti – informality campaigns”. Even though they reported slightly improvement of the behavior and communication by tax officials, persisting problems exist such as: frequent change of the tax officials in regional offices, different interpretation of the same legal base from different regions (and sometime within the same tax office), lack of understanding of the non for profit nature of CSOs, and attempt of the state officials to treat the sector same as businesses. Taking in consideration these issues, associated with the failure to meet the reporting requirements, many CSOs have been subject of sanctions resulting in a considerable amount of liabilities to tax authorities<sup>4</sup>.

CSOs have the right to **Appeal the administrative decisions** to a superior complaint/appeal body based in the Law 9920, “On Tax Procedures”. In case an organisation considers unjust decision from the tax authorities, it must officially claim the administrative act within 30 days after receiving it to Tax Appeal Directorate, which functions under the Ministry of Finance and Economy since January 2017. The organisation, same as business entities, must fulfill the preconditions stipulated in the Law on Tax Procedures such as; prepayment of the total amount of the tax assessed stated in the administrative act, or issues a bank guarantee covering all the liabilities and interests. Fines and penalties may not be prepaid or secured by a bank guarantee. Tax Appeal Directorate has the right to refuse reviewing the official complaint, if this condition is not fulfilled. The obligation to prepay

liabilities is considered as a burden for CSOs that do not have the financial means, thus penalizing the sector to exercise the right to appeal.

CSOs can freely seek and secure various financial resources, domestic and foreign ones, to support their activities. Legally, they can acquire funds from membership fees, grants and donations. They can also carry out economic activity only by fulfilling conditions as stated in the law. While **grants from foreign donors** remains the main source of funding for CSOs, registration at the Tirana First Court of Instance and then at the Tax Authorities, as a precondition to open a bank account for the disbursement and use of the funds, limits the freedom of association and exercise of activity without the necessity of being registered as a legal entity. CSOs have the right to carry out **fundraising activities** to accomplish the goals and object of their activity or to support the goals and activities of other non-profit organisations, but the legislation in place is not supportive toward individual and corporate donations and the philanthropic activity is not recognized and regulated in the legal framework. In terms of **public funds**, the Agency for the Support of Civil Society (ASCS) is the main public institution that provides financial support throughout the year, while it is difficult to find the exact information about other financial support allocated to CSOs by other state institutions (central or local ones). CSOs have the legal right to participate in tender and procurement procedures, contracting and sale transactions by state bodies, but due to the barriers presented by the legal framework in place and its implementation in practice, funding for this source are very limited. CSOs may also engage in **economic activities** to generate incomes in support of their mission. Many CSOs in the last years have considered developing fee for services and Partners Albania is offering training and consultancy programs helping CSOs to develop their business model enabling them to be engaged in economic activity. There is no official information on the number of CSOs carrying out economic activity, even though Tax Authorities have the responsibility to maintain a special register for non-profit organisations specifically for the ones that carry out economic activities.

<sup>4</sup> Fiscal treatment of NPOs / Partners Albania, 2017

Sub-area 1.1., reflects also the assessment of the following indicators of the EU CS Guidelines 2014 – 2020

### 1.1. b. Quality assessment of existing legislation and policy framework

- All gaps in the national legislation and policy framework with regard to registration of CSOs are identified.
- Registration processes still exceeds the period of 15 days as the maximum period established by the law.
- Centralization of the registration process remains the main challenge presented by the existing legal framework for registration of CSOs.

### 1.1 c. Progress of the adoption and implementation of relevant legislation

- There is no progress in the adaption and implementation of relevant legislation with regards to registration, termination, and dissolution of CSOs.

### 1.3. a. Quality of the enabling environment for grass-roots organisations

Grass roots organisations are not recognized as a specific type of CSOs by the legal framework in Albania, therefore there are no special policies and rules applied for this type of organisations. The existing environment affects equally all CSOs.

#### 2.1. a. CSOs' perception of the ease and effectiveness of financial rules and reporting requirements (disaggregated by type / size of CSO)

The approval of the National Accounting Standard for Non - Profit Organisation on 2016, has improved CSOs perception on the reporting requirements.

#### 2.1. b. Quality assessment of financial rules (with the focus on built-in mechanisms that financial rules and obligations change as the turn-over and non-commercial activities change)

- The National Accounting Standard for Non Profit Organisations presents simplified reporting rules and requirements for smaller organisations with annual revenues below 5 million ALL (approx. 35,700 EUR).

## Sub area 1.2 Related Freedoms

The right to free assembly is guaranteed by the Albanian constitution and the legislation in place. The primary law regulating freedom of assembly is the Law no. 8773 dated 23.4.2001 "On Assemblies", that has not been subject of amendments since its approval in 2001. The law ensures the freedom of peaceful assembly to everyone without any exclusion, in compliance with the ECHR. In overall, the law is evaluated positive, but there are some issues that need to be addressed through amendments in the law to fully ensure freedom of assembly and to be in line with best international practices. One of

the main issues with the law is the confusion created between the terms **notification** and **permission** used in the law on the organization of assemblies in the squares and public walkways. While it is stated in the Law on Assemblies that the organisers should **notify** in written the State Police, in the Penal Code it is stated that the organisations of assemblies without **permission** from the competent body is categorized as **penal misdemeanor**. Spontaneous assemblies and counter-assemblies are not used and recognized as concepts in the law, therefore not ensuring protection of citizens organizing and participating



in assemblies, as required by international standards on freedom of assemblies. The role of the local government is also an issue that needs to be clearly specified in the amended law, as the practice shows that in some cases they present excessive requirements for the organisers of the assemblies that surpasses the requirements in the law and are in contradiction with the international standards and guidelines on freedom of assemblies<sup>5</sup>.

Assemblies in the last year were mostly led by dissatisfaction towards government and performance of public institutions, addressed lack of transparency and accountability of public authorities to perform and deliver public services, perceiving their work vulnerable towards corruptive practices. Among the most frequent assemblies, especially those organized by civil society organizations are linked with their areas of work and their advocacy efforts<sup>6</sup>. The prevalent concerns addressed through these assemblies are usually related with the protection of environment and green areas, social issues and protection of human rights. Civil society has become more engaged and organized in expressing their concerns with different socio-political issues. The protests against hydro plants on the rivers of Valbona and Vjosa, or opposition to waste imports, stand out as good examples. In the last two years, many of the assemblies organized by civil society organizations have enjoyed weak media coverage, mainly those organized for women's and children's rights, and environmental protection<sup>7</sup>.

Government does not impose any restriction for the use of social media and organizers/participants can use it before, during and after the organization of the assembly. Media coverage of the protests has generally been considered neutral, but superficial. Media reports rarely employ in-depth formats, leaning more towards preserving political correctness, rather than reports that would provide a complete picture of the protests' dynamics and reasons, and address

fundamental problems of the protests<sup>8</sup>. In general there are no restrictions for human rights defenders and other monitoring institutions to participate and observe freedom of assembly in Albania.

With regards on detention, prosecution and accountability of agencies/institutions that are involved in assemblies, more available public information is needed with cases that would enable a clear understanding of their role.

Freedom of expression as a fundamental right is guaranteed by the Albanian constitution. From the consultations with CSOs no cases of limitation to the right of expression have been reported. The overall ranking of Albania in the 2017 Freedom House<sup>9</sup> report compared to the previous year is not changed, while it is emphasized that media had limitations of the right to expression mainly because of political and powerful businesses influences.

Even for 2017, the freedom to use or access different internet platforms was not limited by any state authority. In several meetings and consultations with CSOs throughout the year, they did not report having any problems with the use of communication tools or blockage of websites.

Based on the above, in order for citizens and CSOs to fully enjoy freedom of peacefully assembly, freedom of expression and other related freedoms, the amendment and improvement of the law on assemblies is recommended to make it coherent with the international standard on freedom of assemblies. Improvements are needed at in terms of recognition of spontaneous assemblies and counter-assemblies, communication with responsible authorities that are involved in various stages of the process of enabling an assembly, and clarification of appeal procedures to be followed in cases where the organizers feel violated to exercise their rights<sup>10</sup>.

<sup>5</sup> Monitoring Right to Free Assembly – Albania Country Report 2016-2017, Partners Albania, 2017

<sup>6</sup> USAID 2017, CSOs Sustainability Index 2016 for Central and Eastern Europe and Eurasia, pg. 32

<sup>7</sup> USAID 2017, CSOs Sustainability Index For Central and Eastern Europe and Eurasia, Pg. 30

<sup>8</sup> [http://www.media.ba/sites/default/files/policy\\_brief\\_albania.pdf](http://www.media.ba/sites/default/files/policy_brief_albania.pdf)

<sup>9</sup> Freedom in the World 2018: Link <https://freedomhouse.org/report/freedom-world/2018/albania>

<sup>10</sup> Monitoring Right to Free Assembly – Albania Country Report 2016-2017. Partners Albania for Change and Development - <http://partnersalbania.org/publication/monitoring-right-to-free-assembly-albania-country-report-2016-2017/>

In addition, increased awareness and information of CSOs on the requirements of the law for the organisation of peaceful assemblies, duties and responsibilities of the organisers is needed, to

avoid rejection of the right to peaceful assembly and confrontations with state police and other public authorities entitled to ensure successful administration of assemblies.

The assessment of Standard 1, of Sub-area 1.2., reflects also the assessment of the following indicators of the EU CS Guidelines 2014-2020. The findings based on the targets for each indicator are:

#### **1.1.b. Quality assessment of existing legislation and policy framework**

- The existing legislation and policy framework guarantee freedom of association, assembly and expression, for all individuals and legal entities.
- Improvements are needed at the legislation level in terms of having a permission to organize an assembly, recognition of spontaneous assemblies and counter-assemblies, communication with responsible authorities and clarification of appeal procedures to be followed in cases where the organizers feel violated to exercise their rights.
- The role of the local government is also an issue that needs to be clearly specified in the amended law, as the practice shows that in some cases they present excessive requirements for the organisers of the assemblies that surpasses the requirements in the law and are in contradiction with the international standards and guidelines on freedom of assemblies.

#### **1.1.c. Progress in the adoption and implementation of relevant legislation**

- In the recent years, there has been no changes in the primary law regulating freedom of assembly in Albania, namely Law no. 8773 dated 23.4.2001 "On Assemblies".
- There are improvements in the administration of assemblies, maintenance of public order during assemblies, and respect to freedom of assemblies by the state police in 2017.

## **Area 2: Framework for CSO Financial Viability and Sustainability**

### **Sub Area 2.1 Tax/fiscal treatment for CSOs and their donors**

Fiscal legislation did not improve during 2017 as regard to CSOs treatment. The sector depends on foreign donations, while incentives for individuals and corporate donations are not yet introduced in the legal framework.

The sector, despite being known as non-profitable has been and continues to be part of the VAT scheme. Due to several misinterpretations of the laws, and weak initiatives to regulate the VAT treatment, still a large number of CSOs are registered for VAT<sup>11</sup> automatically in the tax registers starting from 2008 to 2014, following

<sup>11</sup> According to data from General Directorate of Taxation about 1,348 CSOs (the majority of this is automatically registered between 2008 and 2014 when new VAT law and additional regulations were enacted) is currently subject of VAT, while the number of CSOs that conduct economic activity is insignificant.

an instruction of the Minister of Finance on tax officials related to the application of VAT for the sector. Even though this situation changed in 2015, 60% of the sector remains registered in the VAT scheme. The General Directorate of Taxation reports to have deregistered from VAT 35 CSOs for the period 2016-2017, referring to the provisions in the VAT law and its guidance<sup>12</sup>. Nevertheless, there is a contradiction in what GDT reports to what the law<sup>13</sup> provides as regard to VAT deregistration, also confirmed by consultations with sector representatives.

Legal base for de-registration from VAT of CSOs that have never carried economic activity and were registered automatically by tax offices is missing, therefore the necessity of drafting changes in regulations and adoption of special procedures for deregistration from VAT in the tax system is imminent. The new regulation and procedure should go parallel with the development of specific manuals that will serve as an orientation document to tax inspectors, CSOs and any interested stakeholder on the application of the new procedure. Joint training programs between the sector and tax inspectors are indispensable so that both parties clarify the issues and ensure its implementation.

While grants, membership fee, and donations are tax-exempted, economic activity of CSOs is subject of taxes according to the legislation in place. Same as business companies CSOs are considered taxable entity and should file every month the VAT declaration (even with zero

<sup>12</sup> Art. 122 of Law no. 92/2014 and Art. 6 of Guidance no. 6 /30.01.2015

<sup>13</sup> Article 122 of the Law no. 92/2014 on "Value Added Tax" refers to the small business that claim to tax authorities de-registration from VAT when his turnover in the last 12 calendar months falls below the minimum registration limit for VAT.

- Article no. 6, point c) of the Guidance no. 6 /30.01.2015 "On Value Added Tax", refers to the cases when a "taxable person" registered for VAT has never been compelled to be registered nor has voluntarily exercised the right to be registered for VAT, claim de registration to tax authorities. As per the same article in the regulation, the entity may be de-registered after it is found out that he has neither been forced nor voluntarily exercised the right to be registered for VAT, but still is responsible for performing any VAT liability from the moment it is registered until the date of de-registration from VAT.

- Referring to the article 8 of the same guidance, another contradiction is evident as CSOs are not qualified as a "taxable person" unless they carry economic activity, and in this case we refer only to organisations that have never performed economic activity but they were automatically registered with VAT.

amounts) accompanied with sales and purchase books for all transactions made during the tax period of the calendar month. There is little space for incentives provided in the legislation for the economic activity of CSOs. Yearly revenues from the economic activity should not exceed 20% of the total income and if the 20% amount exceeds the VAT registration limit, then the CSO must register for VAT. According to the actual Law on Tax Procedures, entities that carry out economic activity and have a yearly turnover of more than 2 million ALL (approx. 15,000 EUR), must register and declare VAT starting April 2018. Although the legal framework allows CSOs to claim VAT refund, this is practically impossible<sup>14</sup> as they may not fulfill the two minimum conditions of claiming a refund because of the non-continuous character of the CSOs activity: (1) having carried forward an amount of tax credit for three successive months, (2) refund amount claimed must exceed 400,000 ALL (approx. 3,000 EUR). Same situation is also with the VAT exemption incentives for economic activities that are carried by the sector considered as "activities of general interest" by the VAT law. In order to benefit from VAT exemption for these types of activities, CSOs should meet all the conditions provided in the regulation<sup>15</sup>. Even this effort to ease the sector has proved to be useless as the procedure is prolonged over time and is not applicable by organisations. Upon request for information at the General Directorate of Taxation, no response was received regarding the number of CSOs that applied and benefited from the exemption. CSOs feedback regarding the law is also critical as the scope of "activities of general interest" provided for by law is very limited.

Regarding local taxes, there is not a differentiated treatment of CSOs, taking in consideration their non-profit nature, mission, financing model, ways of operation, and beneficiaries. Same tax rates for CSOs and small businesses are applied by municipalities in most of the cases are mostly treated like business entities for the application<sup>16</sup>.

As stated in the previous sections, the main source of funding of the sector is from grants by foreign donors. Grants and donations are excluded from

<sup>14</sup> There has been no case of reimbursement of VAT for CSOs by the tax administration for 2017 according to official information of the GDT.

<sup>15</sup> Council of the Ministers Decision No. 953, dated 29.12.2014 For Implementing Provisions of the Law No. 92/2014.

<sup>16</sup> Fiscal Treatment of NPOs, Partners Albania

VAT and several financial and grant agreements are ratified by the Albanian Parliament or the Council of Ministers which provide for the non-utilization of the foreign financial resources to pay taxes. As per these agreements, value added tax paid is reimbursed to foreign donors from the Treasury System, within 30 days, according to the rules set by the Minister of Finance. Only for the projects funded through the Instrument for Pre-Accession Assistance (IPA), there is an instruction of the Ministry of Finance issued in 2013 on the VAT reimbursement procedure<sup>17</sup>, while VAT reimbursement of other EU funding mechanisms and instruments at local, regional, and international level, (such as EIDHR, IPA Cross – Border, Erasmus+, etc), is not eligible. Based on the instruction, contractors (non-profit organisations) of IPA-funded projects shall be reimbursed by the Regional Tax Directorate for VAT paid on goods or services supplied under such projects, following the submission of the VAT-reimbursement application and other relevant documents as provided for in this Instruction. The agreement itself and the instruction in support of its implementation have resulted non-effective<sup>18</sup>, as up to date only one organization has been reimbursed, according to official data received by the General Directory of Taxes. One reason for the failure of the VAT refund scheme for IPA funds is the lack of a standardized application format as well as the different interpretations made to the instruction by the tax officials. The ambiguity in the instruction has resulted in rejection of projects registration for VAT reimbursement by tax authorities. In addition, the reimbursement procedure is too long and hampers the financial

viability of CSOs that have to pay a considerable amount of VAT for goods and services purchased during the project implementation from their own sources, and apply for VAT reimbursement after the approval of the final report by the EUD, which can extend up to 18 months after the implementation of the project.

During 2017, the legislation did not provide any incentives to individuals or corporate donations even though the law on Non-Profit Organisations grants the right of the CSOs to receive grants and donations from any private or public person, Albanian or foreign. Only the amount of donations in the form of sponsorship by private companies is recognized as a deductive expense between 3% and 5% of the earning before tax, provisioned in the Law on Sponsorship. The deduction is recognized by tax authorities based on the sponsorship contract and related proofs of the sponsorship. Foreign companies as well might apply for deductions under the law in case of sponsorship to CSOs, only if they are legally registered in the Albanian institutions and also provide the required proofs. Even in the case of sponsorships, companies do not apply for any tax deduction as they might be penalized instead of being treated preferably, as donations are considered often by tax officials as an attempt to tax evasion by companies. Philanthropic activity of individuals and corporate donors is not recognized and regulated through a special law; therefore tax incentives schemes for their contributions to CSOs are not available. Promotion and encouraging of philanthropic activity as a contribution to the financial viability and sustainability of CSOs, is also recognized as one of the areas of development in the Road Map. Through the work of Partners Albania on monitoring the philanthropic activity by individual and private businesses, it is noticed a decrease in the total value of private donations for 2017 compared with the previous year, but an increase in the number of donations. In 2016 individuals had the highest share of donations, while for 2017 the highest number of donations was carried out by businesses. The main field of donations was *Support to Marginalized Groups*, differently from a year before where the highest number of donations went for *Poverty Relief*. The main channels of donation are Social Institutions (public ones) with 171 of the cases (49%), 76 (22%) of the donations went directly to the

<sup>17</sup> The Minister of Finance's decision was enacted based on the Article 26 of Law No. 9840 dated 10.12.2007 "On the ratification of the Framework Agreement between the Government of the Republic of Albania and the Commission of the European Communities on the Rules for Co-Operation Concerning the EC - Financial Assistance to the Republic of Albania in the Framework of the Implementation of the Assistance under the Instrument for Pre-Accession Assistance (IPA)"

<sup>18</sup> As per official information of Tax Administration: only 8 (eight) Registration Certificates for IPA-funded VAT reimbursement purpose are issued in the period 2015-2017 (the first step of the VAT reimbursement procedure is registration of the project within the Regional Tax Directorate and receipt of the certificate for reimbursement purpose), only 4 (four) CSOs have applied for VAT reimbursement (after the implementation of the project, the CSO submits to the Tax Authorities the application for VAT reimbursement concerning operations falling under the contract, along with the supporting documents as provided in the instruction). Three applications of CSOs for VAT reimbursement, out of four (4) have been refused for not meeting the legal criteria foreseen in the instruction, according to GDT.

Individual or Family, meanwhile only 57 (16%) were carried out through CSOs. It confirms that private sector demand transparent and capable CSOs as a pre-condition for their donations, also identified in the study “Philanthropic Activity of Enterprises in Albania 2016”.

Some of the measures that would contribute to increasing the philanthropic activity have to do with more effective efforts recognizing such activity, better fiscal incentives and applications procedures for corporate donations and

introduction of individual donations as a form of philanthropic activity. On another note, the need for increasing the awareness and capacities of the tax inspectors on the philanthropic activity, and the nature of CSOs activities, should go in line with introduction of a new legal framework on the matter.

Creation of collaborative platforms between CSOs and private sector is an additional factor contributing in increasing the volume of donations to CSOs.

The assessment of Standard 2, of Sub area 2.2., reflects also the assessment of the following indicators of the EU CS Guidelines 2014-2020. The findings based on the targets for each indicator are:

### **2.2. a. Number and kind of donations to CSOs from individual and corporate donors (specified in monetary values)**

- Data from the monitoring of philanthropic activity in Albania conducted by Partners Albania shows that there are in total 317 cases of donations from individuals and corporate donors in the amount of 48,715,121 ALL (approx. 389,000 EUR), out of which 57 cases are made to CSOs. The main donors are companies (89 cases) and individuals (89 cases)<sup>19</sup>.

### **2.2. b. Quality and applicability/practice of the legal framework for individual and corporate giving**

- The Law on Sponsorship is the only law that provides tax incentives for corporate donations. The amount of sponsorship is recognized as a deductive expense from 3% up to 5% of the profit before tax.
- Donations from individuals are not recognized by this law.
- The legal framework is not favorable and is not encouraging for individual and corporate giving.

### **2.3. a. Quality of the system of tax benefits for the CSOs' operational and economic activities**

Tax benefits are not considered effective for the CSOs operational and economic activity.

- The new VAT law that entered into force in 2015, introduced the state obligation to reimburse VAT for all donor funded projects, which have such clause in their bilateral agreement with Albanian government. In fact this was just a recognition of an obligation the Albanian government already had, born by such agreements in place. Despite that, the procedure used to make the reimbursement effective did not change and there was no CSO project reimbursed during 2017.
- Deregistration of CSOs as legal entities from VAT system is recognized by VAT Law 2015 but is not regulated by clear normative acts and thus immediate changes are needed.
- Introduced VAT exemption procedures for activities classified as “to public interest” did not work and very few CSOs benefited from it. The procedure is long and not very clear, which has created hesitation in the sector to use it.
- No incentives for individual or corporate donations are introduced during 2017.
- Incomes from CSO's mission-related economic activity up to 20% of the annual revenues of CSOs are tax free.

<sup>19</sup> Facts on Philanthropic Activity 2017, Partners Albania <http://partnersalbania.org/programs/philanthropy-and-social-responsibility>

## Sub Area 2.2 State support

Referring the Law No. 112/2015 on Public Financial Inspection, “**Public funds**” are all funds, including European Union and others donor funds, which are collected, kept, distributed and spent by the public units and that consist of revenues, expenditures, credits and grants for public entities”.

Based on data received officially by state institutions and desk research, the figures regarding public funds allocated to CSOs remains weak. It is impossible to calculate the exact amount of public funds distributed to CSOs by state institutions, at central and local level of governance, as there is no public information available and only few of them publish data. During the monitoring, PA has identified the following public institutions that have distributed public funds to CSOs in 2017, as follows:

The **Agency for the Support of Civil Society (ACSC)**. It is the main mechanism at the national level for distribution of public funds to CSOs, aiming to support their institutional development, projects, and co-financing of EU and other grants. There is a similar amount of funds allocated in the state budget to the Agency for distribution to CSOs each year, approximately 700,000 EUR (100,000,000 ALL). Based on the data published, ASCS launches on average one open call for proposal per year. The open call for proposals for year 2017 was launched in January and had two main components:

1. Projects funded only by ACSC
2. Projects co-funded by ACSC and other donors

The call for proposals addressed a wide range of priority areas to be supported: initiatives that strengthen the capacities of marginalized groups (LGBTQIs, minorities, women, unemployed, paraplegic, elderly, etc.), initiatives in empowering the rule of law (justice reform, fight against corruption, equality before the law, etc.), economic empowerment of women entrepreneurship, youth, disadvantaged groups, etc. A total number of 124 applications were submitted under this call, while 35 CSOs were awarded<sup>20</sup> with the total amount of 101 million ALL (approx. 754,000 EUR). The minimum amount awarded was 1, 5 million ALL (approx. 11,200

<sup>20</sup> Upon official request for information by Partners Albania to ASCS

EUR), while the maximum amount awarded was 4, 5 million ALL (approx. 33,600 EUR).

Referring to the information received by Partners Albania, the Agency for the Support of Civil Society reports to have provided institutional support to 20 CSOs, out of 64 applications. Nevertheless, in the official website of the institution, no call for proposals was launched under this component of support in 2017, and there is no information on the organisations benefiting institutional support from the agency.

Another source of public funds for CSOs in 2017 has been the **Ministry of Culture**<sup>21</sup> According to the official information received by the Ministry, 123 CSOs have been awarded with a total amount of 157, 6 million ALL (approx. 1, 1 million EUR) out of 269 applications submitted in total. The minimum amount awarded was 200,000 ALL (approx. 1,500 EUR), while the maximum amount awarded was 1,6 million ALL (approx. 12,000 EUR). The Ministry provided non-financial support to 43 CSOs consisting in the use of the spaces of the Ministry, human resources, and promotion of their activities in the communication means of the Ministry. There is not any published data on the nature of the projects, nor do the names of the winners of these grant schemes.

**The Agency for Administration of Sequestered and Confiscated Assets** has provided support with public funding to two CSOs in 2017. Pursuant to the provisions of Article 37 of the Albanian “Anti-Mafia Law”<sup>22</sup>, a total amount of 25 million ALL (183.000 EUR)<sup>23</sup> was allocated to the Special Fund for Criminality Prevention and Law Education. This special fund is created when the Agency takes over new properties and may allocate funds for their use by civil society organisations or state entities. In the last five years, with a decision of the Minister of Finance the fund was only created for 2013 and 2017. Only 20% of the available fund has been allocated to CSOs, while the rest was granted to state institutions as: the State Police, General Prosecution Office and National Centre for Supporting Victims of Trafficking, even

<sup>21</sup> Upon official request for information by Partners Albania to Ministry of Culture

<sup>22</sup> Law No. 10192, dated 2009, and amended on 2017, “On combating and preventing organized crime, trafficking, corruption and other crimes through preventive measures against property”

<sup>23</sup> Upon official request for information by Partners Albania to AAPSK

though the law does not foresee any rule on funds distribution. In 2016, in the frame of collaboration with Partners Albania for the implementation of **C.A.U.S.E - Confiscated Assets used for Social Experimentations**, an innovative initiative funded by EU, the Agency started the procedures for the social re-use of the confiscated assets for social enterprises by CSOs. The overall objective of CAUSE is the sustainable re-use of the confiscated assets and the support to strengthen CSOs in the management of the confiscated assets. Through this initiative, at least two confiscated assets from the organised crime will be re-used by CSOs in the frame of a usufruct contract with the AAPSK for a period of at least 5 years, to implement their social enterprise ideas funded by the project. This initiative, will serve as a model to be used by the Agency for the re-use by CSOs, of the confiscated assets from the organised crime, and their transformation into spaces for local communities to be used for social, cultural, rehabilitation purposes, and to benefit the communities as a whole.

**The National Lottery Fund** launched one call for proposals in 2017. The total amount of funds available was 15,4 million ALL (approx. 115,000 EUR). Based on the data published at the National Lottery Fund website<sup>24</sup>, only one CSO was awarded. There is no information on the amount of financial support given to the project.

As far as transparency in the distribution of public funds is concerned, the institutions have deficiencies in the production and publication of reports of this nature. This has been and remains one of the issues that have always been associated with open discussions with civil society. In general, institutions have rules and procedures regarding transparency, calls are published on official sites of the institutions, while there is no clarity and information on the announced winning projects, but only statistics in number.

At local level, an important development with regards to distribution of public funds to CSOs in 2017 was launching of the Regional Programme for Local Democracy in Western Balkans (ReLOaD) project funded by EU and implemented by UNDP. The Programme will support 12 municipalities (Shkodër, Lezha, Elbasan, Durrës, Përmet, Korça, Librazhd, Tropoja, Tirana, Roskovec,

<sup>24</sup> <http://lotaria.al/kreu/ceshtjet-e-mira/>

Dibra, and Prrenjasi) through a grant of 1,130,952 EUR, from which 80% is the contribution of the Programme and 20% the contribution from municipalities in a three years period. Around 100 project implemented by civil society organizations (CSO) operating in the municipalities that are part of the programme will implement projects addressing priorities outlined in local development strategies of the municipalities. The funding of the first projects is expected in 2018, when the first results and impact will be measured, not only in terms of contribution in the empowerment and sustainability of local CSOs, but also in the effectiveness of the procedure used in the distribution of public funds to CSOs in line with the legislation in place.

Civil Society Organisations financed by the government are subject of the Law No. 112/2015 on Public Financial Inspection<sup>25</sup> that aims to guarantee the execution of legitimacy in using public funds. Some of the most significant improvements made in terms of procedures comparing the original law are listed as follows:

1. Non-profit organization, subject to the audit is not anymore obliged to terminate all its activities during the inspection.
2. Legal deadline of start and end date of an inspection is now stipulated in the new procedures.
3. The subject of the audit has the right to read the final report, to be heard and also to appeal the decision upon termination of the inspection.
4. In terms of transparency, all the reports are now published in the webpage of the ministry and can be easily accessed.

<sup>25</sup> The law was initially enacted in 2010 after passing for approval in the Albanian Parliament without any consultation with civil society. After many objections and numerous recommendations by EU (in terms of aligning the legislation as a country with candidate status to enter the European Union), it was changed only in 2015 including approval and entering into force of related instructions and orders supporting the law:

- Instruction No.30, dated 27/11/2015 "On Rules and Procedures for conducting Public Financial Inspection"
- Instruction No. 29, dated 27.11.2015 "On the criteria for the commencement of Public Financial Inspection"
- Order No. 85, dated 09.12.2015 "On approval of the Code of Ethics for Public Financial Inspectors"
- Order No.26 dated.17.02.2016 "On approval of the Manual of the Public Financial Inspections"

Public financial inspection may only be initiated once a request, information or complaint has been officially submitted<sup>26</sup> to the protocol of the Ministry of Finances and Economy in compliance with the legal requirements. As per information in the Ministry official webpage, in the last two years are conducted about 28 inspections in total and

<sup>26</sup> The sources of which may be: Requests from Heads of Central and Local Institutions, Supreme State Audit, Attorney General and OLAF (European Anti-Fraud Office); Information on irregularities from internal audit or financial management and control and Complaints from employees in the public or private sector, by any individual/legal person and by anonymous ones.

only one CSO was subject to financial inspection. The information published in the summary-reports for each inspection does not indicate the period where the inspection was conducted nor what source of funding inspected (donors fund, tender contracts etc). Although the regulatory legal framework of public financial inspection has improved considerably, (mainly after request of the European Commission for improvement in the legislation), in the progress reports of the latter, it is mentioned the lack of human resources capacities and limited spectrum of issues covered for 2017.

The assessment of Standard 2, of Sub area 2.4., reflects also the assessment of the following indicators of the EU CS Guidelines 2014-2020. The findings based on the targets for each indicator are:

**2.4. a. CSO's perception of the provision of funds in terms of transparency, fairness and nondiscrimination**

CSOs' assessment of the notification, selection and distribution criteria of the public funding remains to a large degree negative. This reiterates a constant finding of the last years according to which selection criteria is not transparent and merit based and decision-making process suffers from conflict of interest still present and not addressed properly.

**2.4. c. Quality of state funding frameworks for civil society organisations (focusing on procedural document)**

Public funding with regards to yearly budget committed, and administrative rules and procedures regulating its management remains the same. It is still at limited levels and able to support only a small number of CSOs. Because it is not supported by long-term and well-planned strategy, it has failed to address key priority needs of the sector.

**Sub-Area 2.3 Human Resources**

There are no official data on the total number of employees working in the CSOs sector. Based on General Directorate of Taxation information, received upon official request from Partners Albania, the average number of employees in the non for profit sector for 2017 is 9,400, including permanent and part-time employees, around 1,200 more compared with the previous year.

One of the main concerns in this regard is the obligation of CSOs to have a permanent paid employee, despite its nature (i.e. volunteer organization) or activity (i.e. CSOs conducting activity based on funding available).

CSO sector remains donor dependent, with fragmented engagement and activity in most part of it and as a result unable to have permanent paid employee. This obligation, which involves severe fines for the sector, is demonstration of lack of understanding from the state institutions of CSO role and nature of work, equalling them with the private sector.

Volunteers are an important part of human resources of CSOs. After many years of discussions the Law on Voluntarism<sup>27</sup> was approved on April 2016. Sub-legal acts part of legal package are not drafted yet. They are

<sup>27</sup> Law no. 45/2016. "On Voluntarism"



expected to address important issues such as creation of the volunteers register, support for the volunteering centers, establishment of state funding schemes, creation of instruments to collect data on voluntarism activity in the country and the ethical code on voluntarism. As a result, CSOs are still facing difficulties and uncertainties in the involvement of volunteers in their projects

and activities, exposing themselves to the risk of fines.

Considering the situation, two remain recommendations in this area: firstly, lifting the obligation for a permanent paid employee and completing the legal framework in support of voluntarism.

The assessment of Standard 2, of Sub area 2.3., reflects also the assessment of the following indicators of the EU CS Guidelines 2014-2020. The findings based on the targets for each indicator are:

#### **1.2. a. Number of employees in CSO (permanent and part-time)**

There are no official data published on the number of total employees within the non for profit sector. The average number for 2017 is 9,400<sup>28</sup>, including permanent and part-time.

#### **1.2. d. Number of volunteers in CSOs per type of CSO/sector**

There are no official data on the number of volunteers working in CSOs. In the consultation meetings with the sector, several CSOs reported to have been penalized with fines by tax authorities for engaging non registered employees during the “Anti-informality campaign” audits of the last year.

#### **1.2. f. Quality of legislative framework**

The legislative framework on employment and voluntarism is not enabling for CSOs. The legal framework that forces organizations to have permanent paid employee needs to be revised, and the legal framework on volunteering should be completed with all legal sub-acts.

<sup>28</sup> Upon official request sent by Partners Albania to General Directorate of Taxation

## **Area 3: Government – CSOs Relationship**

### **Sub-Area 3.1: Framework and practices for cooperation.**

An empowered civil society is an essential factor for a democratic system in drafting and implementation of public policies. Continuous dialogue and cooperation among the state and CSOs have to become rooted in the operation of the state institutions, recognized through state policies and strategies and accompanied by implementation plans.

In 2015, it was approved the Road Map for Drafting Policy and Measures for Enabling Environment for Civil Society (Official Gazette 94/2015), the

main strategic document of the government that recognizes the importance for the development of and cooperation with the sector. Being in line with “**Guidelines for EU support to civil society in enlargement countries, 2014-2020**” developed by DG Enlargement of the European Commission aiming to develop an enabling and stimulating environment for civil society, it defines the government policy towards a more enabling environment for civil society based on nine priorities areas, that have been defined through a consultative process with civil society, and the concrete actions to be implemented in support of the achievement of each priority area. The Road Map includes 55 proposed actions, and around 80% of these actions have not been implemented by the end of 2017. The actions that have progressed in their implementation

are the ones that have been initiated or strongly advocated by civil society, as the establishment of the National Council for Civil Society, increased transparency of the National Agency for Civil Society Support, approval of the Law on Public Notification and Consultation, approval of the Law on Voluntarism, and the approval of the National Accounting Standard for CSOs. By the end of 2017, with technical support provided by the EU Delegation in Albania, the Prime Minister Office started for the first time from its approval a monitoring and revision process of the Road Map, along with technical assistance for the improvement of the document, which will be finalised by 2018.

The National Council for Civil Society, a mechanism for cooperation between the State and CSOs was established in 2015 as a collegial consultative body aiming to guarantee institutional collaboration with CSOs, in support of good governance, participatory democracy, and increase of transparency through meaningful participation and involvement of civil society in this process. The composition of the Council is defined by the law<sup>29</sup> and consists in 13 representatives from the Government institutions, 13 representatives from CSOs and 1 representative from National Economic Council. The law also defines the line ministries (Deputy Ministers in an ex officio) represented as part of 13 seats occupied by the government and the selection procedure of the CSOs representatives. The Council started its work with its first meeting on 23 June 2016, organised in the premises of the Ministry of Social Welfare and Youth where the members of the Council were introduced and the working group for the preparation of the internal regulation of the Council was elected.<sup>30</sup> This was the only meeting of the Council for 2016. The second meeting was organized on 15th February 2017<sup>31</sup> and a third one on 26th December 2017.<sup>32</sup> The meetings of the Council have been open to the public and CSOs have been invited to attend the meeting. The Council has failed to meet the

<sup>29</sup> Law nr.119/2015 "On the establishment and functioning of the National Council for Civil Society"

<sup>30</sup> [https://www.facebook.com/pg/Agjencia-per-Mbeshtetjen-e-Shoqerise-Civile-AMSHC-506935452766029/photos/?tab=album&album\\_id=960960550696848](https://www.facebook.com/pg/Agjencia-per-Mbeshtetjen-e-Shoqerise-Civile-AMSHC-506935452766029/photos/?tab=album&album_id=960960550696848)

<sup>31</sup> [https://www.facebook.com/permalink.php?story\\_fbid=1111370652322503&id=506935452766029&substory\\_index=0](https://www.facebook.com/permalink.php?story_fbid=1111370652322503&id=506935452766029&substory_index=0)

<sup>32</sup> [https://www.facebook.com/pg/Agjencia-per-Mbeshtetjen-e-Shoqerise-Civile-AMSHC-506935452766029/photos/?tab=album&album\\_id=1404970239629208](https://www.facebook.com/pg/Agjencia-per-Mbeshtetjen-e-Shoqerise-Civile-AMSHC-506935452766029/photos/?tab=album&album_id=1404970239629208)

legal obligation of convening three times a year, during 2017.

The Council despite the two meetings hardly had any productive discussion and decisions taken. Its work and decision making process were heavily impacted by the new composition of the newly formed government after the Parliamentary Elections of 25th July. The new Socialist Party Government introduced a restructuring of ministerial portfolios reducing them from 17 to 13. The changes brought merging of the Ministry of Social Welfare and Youth with Ministry of Health, when the earlier one had also the chair of the Council, and the Ministry of European Integration with the Ministry of Foreign Affairs, and two ministerial portfolios of the State Minister for Innovation and Public Administration, and the State Minister for the Relations with the Parliament were dissolved. Such changes created the need for legal amendments in the law for the establishment and functioning of the Council. Until today such amendments have not been introduced. The gap was decided to be addressed through the Council decision of December 26th, 2017, which gave the right to new ministries having increased scope and functions to have more than one representative. Despite that, it is important to be noted that such decision is in violation of the law and Council authority to overpass the law<sup>33</sup>.

In addition, the legitimacy of the Chair of the Council is in question, because the law establishes that such function is filled in by the Minister of the Social Welfare and Youth, while currently the Chair is the Minister of Health and Social Protection.

Another issue identified during 2017 with regards to the functioning of the Council is related with the mandate of its members from civil society. Article 16 of the law on the national Council for civil society stipulates that four (4) members of the Council from civil society will have a one-year mandate, four (4) other members will have a two-year mandate, and five (5) members will have a three-year mandate. On 1 March the members of the Council from civil society organised the lottery process, which decided on the duration of their mandates. But, the mandate of the Council was decided to start only on 26 December 2017 (nine months later). It is based on the decision of

<sup>33</sup> [https://drive.google.com/file/d/1tO\\_vL2TgE2MkrM-mTOz6hVd9Sq2fyGd94/view](https://drive.google.com/file/d/1tO_vL2TgE2MkrM-mTOz6hVd9Sq2fyGd94/view)

the Council that links the duration of the mandate with the approval of its regulation<sup>34</sup>.

In 2017 it is also noticed a lack of interaction of the members from civil society in the Council with other CSOs that they represent. The members from civil society are elected based on three sectors: (1) democracy, rule of law, human rights and EU integration; (2) economic, territorial, and environmental development; (3) welfare, social services, health protection and improving the quality of life. There have been no discussions organised by the members of the Council with other organisations working in these areas on the issues to be included in the agenda of its work. Only as part of the EU technical assistance, the Council has been involved in the consultations with CSOs on the Road Map organised by the

<sup>34</sup> [https://drive.google.com/file/d/1tO\\_vL2TgE2MkrM-mTOz6hVd9Sq2fyGd94/view](https://drive.google.com/file/d/1tO_vL2TgE2MkrM-mTOz6hVd9Sq2fyGd94/view)

technical assistance.

Considering the situation, some immediate actions are needed including the amendment of the Law for the Establishment and Functioning of the National Council for civil society to address the issue of the representation of the government in the Council, as well as to provide more clarity on the mandate of the members from civil society. In addition, an increased communication and interaction with their constituencies is expected from the members of the civil society in the Council. This would contribute directly to a more coordinated and strategic effort from the sector in working with state institutions for the creation of an enabling environment for CSOs operation and improving the life of their beneficiaries.

The assessment of Sub area 3.1., reflects also the assessment of the following indicators of the EU CS Guidelines 2014-2020. The findings based on the targets for each indicator are:

**3.1. b. Quality of structures and mechanisms in place for dialogue and cooperation**

**between CSOs and public institutions in terms of:** - CSO representation in general, - representation of smaller/weaker CSOs, - visibility and availability, - government perception of quality of structures and mechanisms, - CSOs perception on structures and mechanisms;

- By the end of 2017, most of the proposed actions in the Road Map for Drafting Policy and Measures for Enabling Environment for Civil Society are not implemented yet, while the National Council for Civil Society have not been functional with no concrete results of its work since its establishment.

**Sub-Area 3.2: Involvement in policy- and decision- making processes**

The legal framework affecting CSOs involvement in policy and decision – making did not change in 2017. Law No. 119/2014 “On the Right for Information” and Law no. 146/2014 “For Notification and Public Consultation” are the main laws that guarantee the right of CSOs and citizens to the included and influence policy and decision-making process. A discussion with stakeholders was initiated in 2017 by the Commissioner for the Right to Information and Protection of Personal Data, including CSOs, for the amendment of the Law No. 119/2014 “On the Right for Information”, aiming to better enforce the Commissioner role, but no legal initiatives have been taken so

far. Improvement of the law remains one of the priorities of the Commissioner for 2018.

Based on the findings from several reports on the impact of these laws, including the Monitoring Matrix Reports for the previous years, it is assessed that they have contributed to an increased openness, communication and transparency of public institutions toward the citizens. Also, it is noticed increased awareness of public institutions on their legal obligations to provide information and include citizens in their policy and decision making processes. One indicator of this fact is that only 4.7% of the requests for information received from 108 public authorities have been refused<sup>35</sup>. The

<sup>35</sup> [http://www.idp.al/wp-content/uploads/2018/02/RAPORTI\\_VJETOR\\_2017.pdf](http://www.idp.al/wp-content/uploads/2018/02/RAPORTI_VJETOR_2017.pdf)

main issue with the implementation of the law for the right to information remain the quantity and quality of the information provided by public institution. In many cases, especially in the cases of sensitive information requested, the response provided is partial, too general, or not provided at all. In some cases, the public institutions do not have the capacities and resources to gather and produce the information requested.

Referring to the data from the Annual Report 2017 of the Commissioner for the Right to Information and Protection of Personal Data<sup>36</sup>, from the monitoring of all Public Authorities, it results that 181 of them have approved and made public the Transparency Program; 227 have assigned the coordinator for right to information, while 124 have published the register of requests and responses. There were 560 complaints filed with the Office of the Commissioner, out of which 130 from civil society organizations, and 430 by individuals.

The most problematic transparency situation has been with the central government institutions. Although there were significant improvements in the first six months of 2017, when all ministries had appointed their coordinators for the right to information and the transparency programs, this situation changed after June 2017 due to parliamentary elections and the restructuring of the government. Consequently, there was a significant deterioration in the implementation of the obligations deriving from the law "On the right to information"<sup>37</sup>.

Regarding local government, the Commissioner's Office estimates that the level of transparency by municipalities is improving. All municipalities have appointed the coordinators for the right to information and the number of requests for public information handled by municipalities during 2017 is 9,308, while the number of rejected requests is 245. Recent studies show that the average level of transparency regarding access to information from local government units is 57%<sup>38</sup> and about half of the 61 municipalities have adopted a Transparency Program. Most municipalities (44)

<sup>36</sup> Idem

<sup>37</sup> Idem

<sup>38</sup> BIRN (2017), Pushteti Vendor nën Lenten e të Drejtës për Informim: Një vlerësim krahasues i treguesve të transparencës në terren dhe online, Tirana.

have an official web site, but they are updated only with minimal information. Most municipalities do not have the transparency program and the register of requests and responses published<sup>39</sup>. In addition, from the monitoring of the portal <http://www.konsultimipublik.gov.al>, results show that there are no notification published by municipalities on public consultations, even though they have to, based on the Decision of the Council of Ministers no. 828, date 07.10.2015 on "Approval of Rules on Creation and Administration of Electronic Register for Notification and Public Consultation".

As far as CSOs are concerned, ways of co-operating with local governments to address specific local issues and contribute to local decision-making are still limited. There are very few open forums in the municipalities where CSOs engage and give voice to the concerns of the citizens, while in the small municipalities there is weak or limited civil society activity. The CSO sector still suffers from weak capacities to effectively lobby, advocate and influence local decision making<sup>40</sup>.

In the last years, there have been initiatives contributing to an increased activism of civil society, such as LevizAlbania, a project funded by the Swiss Agency for Development and Cooperation and implemented by a consortium of three Albanian organizations: Open Society Foundation for Albania, Partners Albania for Change and Development, and Co-PLAN. Since 2016, through the sub-granting scheme, LevizAlbania has supported 127 local initiatives of community-based organisations, media, academic institutions, youth and women's groups, and individuals focusing on advocacy, monitoring of Local Government performance, citizen participation in local decision-making, transparency and accountability of municipalities etc. Through the engagement of civil society actors and individuals as the champions of democracy, LevizAlbania has contributed to strengthen local democracy in Albania.

Two online platforms have been created aiming to provide information and assistance to the citizens on their right to information and public

<sup>39</sup> [http://www.al.undp.org/content/dam/albania/docs/LG\\_Mapping\\_al.pdf](http://www.al.undp.org/content/dam/albania/docs/LG_Mapping_al.pdf)

<sup>40</sup> Idem

consultation. One is [www.pyetshtetin.al](http://www.pyetshtetin.al), created as a joint initiative of the Commissioner for the Right to Information and Protection of Personal Data and Open Society Foundation in Albania, and the other is [www.publeaks.al](http://www.publeaks.al), created by Res Publica, which provides also the opportunity to track the responses online.

Another indicator of the effective involvement of CSOs in policy and decision making processes is their participation in cross-sector bodies, for which there is not a specific legal framework that regulates CSOs involvement and selection criteria. Regardless, CSOs are part of some cross-sector bodies, mostly consultative and advisory bodies, as the National Council or European Integration (which by 2018 is expected to expand the participation of member from civil society), National Council for People with Disabilities, National Council on Gender Equality, etc. Lack of clear requirements and procedures for the involvement of CSOs in the cross-sector bodies, results in low participation of CSOs, low transparency on the selection process, and low representation of CSOs by the selected members in these structures.

In 2017, in the frame of the Justice Reform, civil society has been involved with the establishment of the High Judicial Council and the High Prosecution Council. Based on the Law no.115/2016, dated 3.11.2016 "For justice system governance bodies", and the parliament elects one member from civil society for each of these

bodies. The selection is done through an open process, where every member of civil society organisations that fulfils the criteria set in the law has the right to apply. An ad hoc commission composed of 5 members from civil society (also selected through an open application process by the Ombudsman) have been established to do the preliminary verification of the candidates from civil society for both bodies and to forward to the General Secretary of the Parliament the list of the candidates who have received the highest scores, in accordance with the provisions in the law.

Overall, it can be concluded that there is still much work to do in order to meet the indicators that would ensure an effective inclusion of CSOs in policy and decision making process. Improvement of the law on information and public consultations is needed to enforce their implementation and to increase accountability of public institutions, along with the implementation of the proposed actions in the Road Map to increase effectiveness of the organization and reporting on public consultations as well as capacities of civil servants and municipalities' staff. Appointment of contact persons for collaboration with CSOs at ministries, municipalities, and other public institutions and organization of periodic coordinating meetings (proposed actions 2.9, 2.10, and 2.11 of the Road Map) would also contribute to this process. By the other hand, CSOs should be also trained and empowered to effectively participate and contribute in the process.

The assessment of Sub area 3.2., reflects also the assessment of the following indicators of the EU CS Guidelines 2014-2020. The findings based on the targets for each indicator are:

**3.1.a. Percentage of laws/bylaws, strategies and policy reforms effectively consulted with CSOs in terms of:**

- *adequate access to information;*
  - *sufficient time to comment;*
  - *selection and representativeness / diversity of working groups;*
  - *acknowledgement of input;*
  - *degree to which input is taken into account;*
  - *feedback / publication of consultation results*
- There is no available information to measure this indicator. The implementation of the proposed action 3.4 of the Road Map for Drafting Policy and Measures for Enabling Environment for Civil Society would enable data collection and analysis to assess the indicator.

### Sub-Area 3.3: Collaboration in service provision

The amendment of the Law on Public Procurement in 2017<sup>41</sup> did not bring any changes regarding the participation of CSOs in public procurement procedures. The tendering rules are unified and applied equally to CSOs and other private entities bidders. The main criteria for public procurement awards is based on lower price offer, disregarding the quality of services. In addition, the associated bidding costs and contracts' financial conditions (i.e. guarantee fund, expenses reimbursement versus up-front payment, no regular and clear payment schedules) represent a serious impediment to participation of CSO in any tendering procedure.

The situation has not improved even after the approval of the Law on Social Enterprises in 2016, which regulates the organization and functioning of social enterprises. The law is very problematic and there have been several initiatives from CSOs during the drafting phase to influence its design, but recommendations provided were not considered. The law has been approved taking into consideration only the work integration model, which demand at least 3 full-time paid

<sup>41</sup> Law no. 9643, dated 20.11.2006, as amended by Law no. 9800, dated 10.09.2007, Law No. 9855, dated 26.12.2007, Law no. 10170, dated 22.10.2009, Law No. 10 309, dated 22.07.2010, Law no. 22/2012, Law no. 131/2012, Law no. 182/2014 and the Law no. 47/20177

employees or 30% of the employees belonging to marginalized groups (as requested by the law). The law does not provide any fiscal incentives and this aspect is expected to be regulated by a sub-legal act which is not in force yet.

Although public procurement is considered by the law as one of the instruments to support the activity of social enterprises, there is no clear understanding by the institutions how this is going to work, considering all the issues listed above.

Until 2017 none of the sub-legal acts foreseen by the law have been approved and as a result there is no CSOs registered as a social enterprise.

To summarise, even though CSOs are the main stakeholders delivering qualitative social services for a wide range of beneficiaries, still the legal and regulatory framework presents many challenges and issues to be addressed in order to create a supportive environment for CSOs involvement in the provision of social services with public funds. The revision of the legal framework and introduction of a new social procurement procedure, to ensure an effective contracting of CSOs for service delivery, where the quality of service would be considered a selection criteria and not the price, remains the main recommendation in this area.

## V. Used Resources and Useful Links



### List of legal and strategic documents, reports and analyses used:

1. Information received upon official requests sent to institutions by Partners Albania
2. Monitoring Right to Free Assembly – Albania Country Report 2016-2017. Partners Albania for Change and Development, ECNL
3. Fiscal treatment of NPOs / Partners Albania
4. Facts on Philanthropic Activity 2017, Partners Albania for Change and Development
5. USAID 2017, CSOs Sustainability Index 2016 for Central and Eastern Europe and Eurasia,
6. Freedom in the World 2018 Link
7. Law no. 92/2014, "On Value Added Tax in the Republic of Albania"
8. Guidance no. 6 date 30.01.2015 "On Value Added Tax in the Republic of Albania".
9. Council of the Ministers Decision No. 953, dated 29.12.2014 "For Implementing Provisions of the Law No. 92/2014".
10. Law No. 9840 dated 10.12.2007 "On the ratification of the Framework Agreement between the Government of the Republic of Albania and the Commission of the European Communities on the Rules for Co-Operation Concerning the EC - Financial Assistance to the Republic of Albania in the Framework of the Implementation of the Assistance under the Instrument for Pre-Accession Assistance (IPA)"
11. Law No. 10192, dated 2009, and amended on 2017, "On combating and preventing organized crime, trafficking, corruption and other crimes through preventive measures against property"
12. Law No. 112/2015 "On Public Financial Inspection"
13. Law nr.119/2015 "On the establishment and functioning of the National Council for Civil Society"
14. Law no. 9643, dated 20.11.2006, as amended by Law no. 9800, dated 10.09.2007, Law No. 9855, dated 26.12.2007, Law no. 10170, dated 22.10.2009, Law No. 10 309, dated 22.07.2010, Law no. 22/2012, Law no. 131/2012, Law no. 182/2014 and the Law no. 47/2017

15. Law no.8773 date 23.4.2001 “On Assemblies”
16. Law no. 119/2014 “On the right to information”
17. Guidance no.24 dated 02.09.2008 On Tax Procedures, Amended
18. Instruction on Law no.5 dated 30.01.2006
19. Regulation of the NCCS- Approved on 26.12.2017
20. Guidance no. 22. On supervision of NPOs

**Useful Sources on the internet:**

1. [www.thealbaniancrowd.org](http://www.thealbaniancrowd.org)
2. [www.freedomhouse.org](http://www.freedomhouse.org)
3. [www.kultura.gov.al](http://www.kultura.gov.al)
4. [www.al.undp.org](http://www.al.undp.org)
5. [www.idp.al](http://www.idp.al)
6. [www.lotaria.al](http://www.lotaria.al)
7. [www.media.ba](http://www.media.ba)
8. [www.amshc.gov.al](http://www.amshc.gov.al)
9. [www.pyetshtetin.al](http://www.pyetshtetin.al)
10. [www.publeaks.al](http://www.publeaks.al)
11. [www.konsultimipublik.gov.al](http://www.konsultimipublik.gov.al)





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