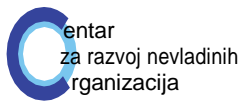




BALKAN
CIVIL
SOCIETY
DEVELOPMENT
NETWORK



**Balkan Civil Society Acquis
Strengthening the
Advocacy and
Monitoring Potential and Capacities of CSOs
Monitoring Matrix on Enabling
Environment for Civil Society
Development**

COUNTRY REPORT FOR MONTENEGRO 2016



B | T | D

**The Balkan Trust
for Democracy**

A PROJECT OF THE GERMAN MARSHALL FUND

Project funded by the European Union and BTD

Table of Contents

I.	Executive Summary	3
1.	Civil Society and Civil Society Development in Montenegro	3
2.	Key Findings	4
3.	Key Policy Recommendations	5
4.	About the project and the Monitoring Matrix	7
II.	Introduction	8
1.	About the Monitoring Report.....	8
2.	The Monitoring Matrix on Enabling Environment for Civil Society Development	8
3.	Civil Society and Civil Society Development (CSDDev) in Montenegro	10
4.	Specific features and challenges in applying the Matrix in Montenegro	11
5.	Acknowledgements	11
III.	Methodology	12
1.	Overview of the methodological approach	12
2.	Participation of the CSO community	12
3.	Lessons-learnt.....	12
IV.	Findings and Recommendations	13
	Area 1: Basic Legal Guarantees of Freedoms	13
	Sub-area 1.1.: Freedom of association	13
	Sub-area 1.2.: Related-freedoms	15
	Area 2: Framework for CSO Financial Viability and Sustainability	17
	Sub-area 2.1.: Tax/fiscal treatment for CSOs and their donors	17
	Sub-area 2.2.: State support	18
	Sub-area 2.3.: Human resources	22
	Area 3: Government-CSO Relationship	24
	Sub-area 3.1.: Framework and practices for cooperation	24
	Sub-area 3.2.: Involvement in policy- and decision-making process.....	25
	Sub-area 3.3.: Collaboration in social provision	27



I. Executive Summary

1. Civil Society and Civil Society Development in Montenegro

Civil society in Montenegro continues to play an active role in the public life and in the processes of social changes. Civil society organizations are working in various areas: health, social, education, science, culture, sport, humanitarian purposes, reducing poverty, environmental protection, protection of persons with disabilities, social care for children and youth, assistance the elderly, protection and promotion of human and minority rights, the rule of law, civil society and volunteerism, Euro-Atlantic and European integration of Montenegro, art, technical culture, sustainable development, consumer protection, gender equality, the fight against corruption and organized crime and the fight against substance abuse. In each of these areas persistent and perseverant CSOs provide their contribution by provision of concrete service, advocating, drafting legislation, supporting vulnerable groups etc.

There is a legal and institutional framework for civil society that creates basic preconditions for the functioning of CSOs, and there are no formal restrictions regarding freedom of association, assembly or expression. However, in 2016 key legislation reforms have been commenced in order to improve financial viability, transparency of CSOs, and involvement in decision making.

Civil society organizations are still facing with almost the same challenges as in previous years. At the moment, there is a lack of the overall national strategic document aimed at development of CSOs. The Strategy is in the drafting phase and it should definitely reflect on the crucial challenges for CSOs. There is a need for reform of the existing institutional mechanisms: Council for development of CSOs, Office for cooperation with CSOs, in order to make their work effective and efficient. In the second half of 2016, the CSOs' representatives in the Council have frozen their membership, dissatisfied with the way the conclusions and opinions of the Council had been presented to the government by the President, but also with the overall treatment of the body. Since July 2016, the Council had not held any session. NGO¹ representatives required resignation of the President as well as other changes in the status and treatment of the Council. The Governments respond is still pending.

Consultation process should be improved and CSOs allowed participating in shaping public policies at its earliest phase. Participation in the decision-making process, through different mechanisms does exist, but it's often reduced to formality, not providing space for CSOs to contribute in a substantial manner. The process of changing the existing Decrees that regulate CSOs' participation in creation of public policies has started in the second half of 2016. The aim of changes is to strengthen CSOs' participation in shaping public policies at its earliest phase.

Civil society activists with critical attitude towards government and politicians in general might still face convictions from their side or event threats, media campaign aimed at breaching honor and reputation. Oftentimes, critical remarks made by civil society representatives are understood as acts of hostility, instead of willingness for concrete improvements. Some civil society members have been facing direct or indirect pressures for expressing their critical attitudes towards the Government.

Financial viability remains a big obstacle for CSOs. In that context, Government will need to provide predictable financing based on sustainable methods and above all in accordance with current public policies. Civil society organizations will on the other hand, need to work on finding alternative financial sources as to reduce its dependence on public funding.

¹ Given the fact that term non-governmental organizations is recognized by the Montenegrin legislation and is in wide use in practice, in order to achieve higher understanding of the findings in the report, as well as to achieve consistency through the whole report, this is the term that will be used rather than the term civil society organizations

It can be noted that the process of European integration has created stronger bonds between Government and civil society, and it has made the Government more open towards the inclusion of civil society in the decision-making processes. The latter implies that the Government is willing to make certain compromises, but only if “pressured” from the outside, meaning that in order for the improvements in the enabling environment for the CSOs to happen, it is necessary for the European Union to continue its pressure.

2. Key Findings

Legal framework regulating functioning of NGOs is in accordance with the international standards.

Public funding is not being conducted in a way that it contributes to the creation of enabling environment for CSO functioning. The Government has started the process of developing Changes of the Law on NGOs a year and half ago, with the aim to improve public funding of NGO projects and programs. However, that is still an ongoing process, and CSO inputs in the preparation phase are not acknowledged in sufficient level. The amount of funds being allocated is not sufficient for the needs and capacities of the sector and it is also not in accordance with the Law. Discordance between the Law on Games of Chance and the Law on Budget continues to cause reducing the amount of funds allocated to CSOs. The other problem is related to how the funds are being allocated. Modest financial resources intended for the NGO projects make Commission for allocation allocate money in a way that it significantly reduces the amount planned by the submitted budget. Projects are supported in amounts that undermine the possibility of realization of quality ideas. Furthermore, in this process of funds allocation, the importance of whether projects are in line with current public policies is not taken into consideration.

Allocation of non-financial support to non-governmental organizations is equal subjected to possible misuses, given the fact that there is no clear legislation regulating this matter. It is very often that state or local bodies give premises to different CSOs, without adequate procedures preceding the act. However, the decision is not based on publically available and wide spread call, but rather on internal procedures that lack transparency and clear criteria.

Current policies are not encouraging the practice of volunteering. On the contrary, current Law on Volunteer Work bureaucratizes and complicates the process of volunteering, causing obstacles for volunteer engagements in the civil sector, rather than promoting voluntarism as one of the key ways of contributing to the community. Law on Volunteer Work treats volunteering as a special form of labor-law relations, rather than voluntary citizens' initiative. The law prohibits employees and minors less than 15 years of age to volunteer even in cases where the action is organized by school or other academic institutions and it is the function of the education of children. That leads to the situation that most of the CSOs are engaging volunteers, but not according to the Law.

Several mechanisms for cooperation have been created, but have been used only for formality and less to practice real and substantive dialogue. Institutional mechanisms such as Council for Development of NGOs, Office for Cooperation with CSOs, as well as contact points in ministries do not possess enough capacities to deal with challenging issues in relation to civil society development. Legal mechanisms that prescribe the participation of CSOs in the decision-making process are being formally fulfilled, but the national and local authorities are still very reluctant to see civil society as a true partner in creation and implementation of public policies.

The Law on Social and Children Protection adopted in 2014 provides possibility for organization to perform social services based on the process of licensing and accreditation of programs. It is commendable that the state recognized, through the new Law, the importance of the NGOs in this field and their contribution as service providers. During the 2015 secondary legislation regarding licensing, accreditation as well as financing has been adopted. Montenegrin CSOs have even in the past year been partner to the state in providing great variety of social services, including those that the state or local social institutions are not providing themselves.

No	Top 6 findings from the Report	Reference to the Monitoring Matrix		Reference to the EU CS Guidelines	
		Area		Objective	
1	Legal framework regulating functioning of NGOs is in accordance with the international standards.	Area	1	Objective	1
		Sub-Area	1.1	Result	1.1.b
2	Public funding to CSOs' projects is currently covering only 6 areas: social protection, protection of people with disabilities, sport, culture, informal education and fight against drug, while other areas such as human rights protection, environmental protection, fight against corruption, European integration, which are defined as states' priorities, remain without any support.	Area	2	Objective	2
		Sub-Area	2.2	Result	2.4.b
3	Non-financial support to CSOs is being allocated in a non-transparent manner, by the unclear, publicly unknown criteria.	Area	2	Objective	
		Sub-Area	2.2	Result	
4	Current policies are not encouraging the practice of volunteering.	Area	2	Objective	1
		Sub-Area	2.3	Result	1.2.c
5	Several mechanisms for cooperation between state and CSOs have been created (Council for development of CSOs, Office for cooperation), but have been used only for formality and less to practice real and substantive dialogue.	Area	3	Objective	3
		Sub-Area	3.1	Result	3.1.a
6	Secondary legislation regarding CSOs participation as providers of social services has been adopted during the last year, and for the first time CSOs are officially recognized as providers of social services.	Area	3	Objective	
		Sub-Area	3.3	Result	

3. Key Policy Recommendations

It is necessary to complete the legal framework for the functioning of CSO, by the adoption of the Changes of the Law on Non-Governmental Organizations.

It is necessary to regulate process of the public funding of NGOs. Apart from current provisions that are related to methods of allocation, it is also necessary to determine the percentage of the budget that will be intended for the allocations to the non-governmental organizations. This is the requirement of NGOs in the country. These new rules in the Law on NGO needs to be aligned with procedures for amending the Law on Games of Chance in order to stop the practice of allocating less money for NGO projects that it is actually stipulated by the Law. This kind of divergence between several legal documents is bad, not only in the context of concrete consequences such as amount of funds, but also in the context of the

legitimacy and plausibility of decisions being made. These documents need to be put in accordance also in order to provide greater credibility and for the questions of legitimacy not to be raised any further. Apart from the fact that it would finally determine the actual amount that is intended to be used for NGO projects, it would also show the seriousness and readiness of the Government to start regulating CSO public funding in a thorough manner.

It is necessary to ensure the implementation of the new Strategy for Development of NGOs.

It is necessary to adopt Decision on criteria and procedure of allocation of state space and property to the non-governmental organizations that would regulate models of non-financial support to them. This kind of regulation needs to be adopted on national and on local level. Several cases of allocation of space and property in the previous year have shown that the lack of criteria and transparent procedures goes in line with Government's tendencies to favor certain NGOs and deprive those that are critically oriented of their right to gain certain benefits. The regulation would affect creating same rules for everybody and introducing transparency and accountability in the procedures.

It is necessary to pass a new Law on Volunteerism according to the deadlines prescribed in the Action Plan for Chapter 23 in order to legally define volunteering in accordance with its actual aim, and that is voluntary contribution to society, instead of complicating and bureaucratizing what it should be basic action of civil activism.

It is necessary to start implementing the procedures prescribed by the Law on Social and Children Care, regarding NGOs being licensed as social service providers. Now that the necessary secondary legislation has been adopted it is crucial that the process itself starts in the shortest period possible.

No	Top 6 recommendations for Reform	Reference to the Monitoring Matrix		Reference to the EU CS Guidelines	
		Area		Objective	
1	Complete the legal framework for functioning of CSOs by adopting the Law on the Changes of the Law on Non-Governmental Organizations that will regulate public funding support to CSO's projects.	Area	1	Objective	1
		Sub-Area	1.1	Result	1.1 b
2	Regulate the percentage of state budget that will be distributed to CSOs' projects, by the Law on Changes of the Law on CSOs.	Area	2	Objective	2
		Sub-Area	2.2	Result	2.4 a 2.4 b
3	Adopt Decision on criteria and procedure of allocation of state space and property to the non-governmental organizations that would regulate models of non-financial support to the CSOs, both on national and local level.	Area	2	Objective	
		Sub-Area	2.2	Result	
4	Develop and adopt the Law on Volunteering that encourages development of civic activism and disable administrative barriers for volunteering.	Area	2	Objective	1
		Sub-Area	2.3	Result	1.2 c
5	Strengthen human and technical capacities, and jurisdictions of mechanisms created in order to facilitate Government - CSOs cooperation.	Area	3	Objective	3
		Sub-Area	3.2	Result	3.1 b
6	Ensure implementation of the procedures prescribed by the Law on Social and Children Care, regarding CSOs being licensed as social service providers.	Area	3	Objective	
		Sub-Area	3.3	Result	



4. About the project and the Monitoring Matrix

This Monitoring Report is part of the activities of the “Balkan Civil Society Acquis-Strengthening the Advocacy and Monitoring Potential and Capacities of CSOs” project funded by the European Union (EU) and the Balkan Trust for Democracy (BTD). This Monitoring Report is the first of this kind and 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 BCSDN and ECNL. It is part of a series of country reports covering 7 countries in the Western Balkans and Turkey². A Regional Monitoring Report is also available summarizing findings and recommendations for all countries and a web platform offering access to monitoring data per country and sub-area at www.monitoringmatrix.net.

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 have been formulated with consideration of the current state of development of and 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 lay in implementation, the indicators are defined to monitor the situation on level of legal framework and its practical application.

² Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, Serbia and Turkey.



II. Introduction

1. About the Monitoring Report

The Monitoring Report on the Enabling Environment for Civil Society Development contains comprehensive overview of relevant factors affecting the nongovernmental organizations in Montenegro. The monitoring period is December 2015 - December 2016. Findings presented in the report represent the result of a research conducted through desktop research and online survey and focus groups. Creation of this report included participants of the civil sector, but also state and local administration.

The Executive Summary gave a brief summary of the findings, highlighting those areas where the improvements are most urgent to happen. Key findings were followed with recommendations on the same issues.

The following part of the report describes the project "Balkan Civil Society Acquis Strengthening the Advocacy and Monitoring Potential and Capacities of CSOs", within whose frames this Report has been done, as well as the basic information on the civil society in Montenegro. It further presents detailed methodology that was used in the monitoring, as well as in defining the recommendations. The core part of the Report is the section "Findings and Recommendations" which in details describes the state on the enabling environment for civil society development in Montenegro and is divided into the following sections:

- Basic Legal Guarantees of Freedoms
- Framework for CSOs' Financial Viability and Sustainability
- Government- CSO Relationship

2. The Monitoring Matrix on Enabling Environment for Civil Society Development

The overall objective of the project is to strengthen the foundations for monitoring and advocacy on issues related to enabling environment and sustainability of civil society at regional and country level and to strengthen structures for CSO integration and participation in EU policy and accession process on European and country level.¹

This Monitoring Report is part of the activities of the "Balkan Civil Society Acquis - Strengthening the Advocacy and Monitoring Potential and Capacities of CSOs" project funded by the EU and the Balkan Trust for Democracy (BTD). This Monitoring Report is the first of this kind and published on yearly basis since 2013. The monitoring is based on the Monitoring Matrix on Enabling Environment for Civil Society Development (CSDDev). It is part of a series of country reports covering 7 countries in the Western Balkans and Turkey³. A Regional Monitoring Report is also available summarizing findings and recommendations for all countries and a web platform offering access to monitoring data per country and sub-

area at www.monitoringmatrix.net.

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

³ Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, Serbia and Turkey.



This Matrix does not aim to embrace 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 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 have 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 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 areas are defined by key principles which are further elaborated by 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 through indicators. The full Matrix is available at 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 of members and partners and with expert and strategic support by ECNL. The 11-member expert team spanned a variety of non-profit and CSO specific knowledge and experience, both legal and practical, and included experts from 10 Balkan countries. The work on the Matrix included working meetings and on-line work by experts, which was then scrutinized via stakeholder focus group and public consultations. The work on the development of the Matrix was supported by USAID, Pact. Inc, and ICNL within the Legal Enabling Environment Program (LEEP)/Legal Innovation Grant and Balkan Trust for Democracy (BTD).

In addition to in-depth and qualitative monitoring, the 2015 introduced the 5-grade scale “traffic light” codes ranging from (1)-fully disabling environment to (5)-fully enabling environment code and (0)-No data available/Missing. The system was created in order to address the need for ‘compressed’ and effective visual communication of findings and systematic presentation of changes in the enabling environment for CSDev on the level of standards across countries and years. This system does not replace, but complements the qualitative assessment, as the narrative country reports are the basis on which the categorization is conducted. Furthermore, the introduction of the categorization system enables standardization of quality of the Country and Regional Reports and contributes to more effective evaluation of indicators with the Monitoring Matrix Tool-kit. While quantitative elements are used in order to make aggregations of scores technically possible, the visual representation of all is provided only with descriptive category labels. Table 1 presents the categories with the descriptive category labels and scores assigned for each, both for legislation and practice.



Category/code	Legislation	Practice	Score
Fully disabling environment	<i>Legislation is fully restrictive and against MM standards⁴. It is restrictive to the operation of CSOs and their representatives and seriously obstructs or hampers their work.</i>	<i>In practice, MM standards are severely restricted or violated and the operation of CSOs and the work of their representatives are hampered. Malpractices and restrictions are common, threats to CSOs/their representatives exist and are heavily affecting their work.</i>	1
Disabling environment	<i>Legislation is restrictive and not in line with MM standards. It is hampering, making difficult the operation of CSOs and the work of their representatives, but still allow some space for operation of CSOs and work of their representatives.</i>	<i>In practice, MM standards are not met/not satisfied. CSOs are hampered; face substantial challenges and obstacles in their operation, but despite serious difficulties CSOs and their representatives can still operate.</i>	2
Partially enabling environment	<i>Legislation partially meets/satisfies MM standards, and there are still some minor legal restrictions or issues which are not regulated.</i>	<i>In practice, MM standards are partially met / satisfied. Severe violations are not common but minor restrictions and difficulties in the work of CSO/representatives are reported.</i>	3
Enabling environment	<i>Legislation is in line with MM standards.</i>	<i>In practice, MM standards are respected/satisfied. No or very few cases of smaller breaches, restrictions or hampering of the operation of CSOs/their representatives have been reported.</i>	4
Fully enabling environment	<i>Legislation is fully in line with MM standards. There can even be cases of legislation surpassing standards and principles enshrined in the MM.</i>	<i>In practice, MM standards are fully respected/satisfied, and implementation of the legislation is a routine process from all parties involved. There are cases of best practices which surpass the standards and principles enshrined in MM standards.</i>	5

3. Civil Society and Civil Society Development (CSDev) in Montenegro

According to the data from the Registry of non-governmental organizations lead by the Ministry of the Interior, there are 4468 registered NGOs, out of which 4201 are associations, 153 are registered as foundations. Most of these non-governmental organizations are registered in the field of culture, a total of 704, agriculture and rural development – 235 social and health care – 249, development of civil society and volunteerism – 287 environmental protection – 273, protection and promotion of human and minority rights – 270, art – 256, institutional and non-institutional education – 247. Fields with the least number of registered NGOs are: business and entrepreneurship – 42, fight against corruption and organized crime – 8, sustainable development – 25, and Euro-Atlantic and European Integration – 25.

Most of the registered NGOs have its headquarters in Podgorica – 1648, Niksic is the center for 389 NGOs, while Bar and Bijelo Polje take third and fourth place with 265 and 222 registered NGOs respectively.

Most of the Montenegrin NGOs are small, municipality-based organizations dependent on public funding. On the other hand, there are a number of big NGOs, mostly funded by foreign donors and EU pre-accession funds and these are mostly located in the capital. Those are organizations that have the strongest advocacy skills and it can be said that they influence the process of creation of public policies on both national and local level. What is important is that those organizations cover different fields, so that all of areas such as civil society, European integration, human rights, youth, sport and culture, prevention of addiction, have at least one organization that is capable of advocating within the Government and help strengthen capacities

⁴ Monitoring Matrix standards are developed with consideration of internationally guaranteed freedoms and rights as enshrined in international law and best regulatory practices at the regional level.



of smaller, locally dispersed organizations.

Financial instability is the biggest obstacle for development of civil society sector. Organizations are mostly dependent on short-term project funding and as such cannot plan for more sustainable actions. The presence of the European structures in the country as well as the pressure of the European Union has significantly help to improve the position of civil society, especially in the context of putting the issue of the civil society on the political agenda. Due to the pressures from the outside, but also for the legal regulations of the matter, NGOs are more active in the process of decision making. This however, is the area that needs further improvements in order to achieve more significant impact to the policies being made. Public still sees the civil sector as a good way to engage in non-party activities and to articulate different interests, social attitudes and initiatives.

4. Specific features and challenges in applying the Matrix in Montenegro

There were no specific challenges in applying the matrix the Montenegro. As the monitoring part is concerned, Matrix covered wide area of questions important for the development of civil society in Montenegro. Given the fact that the report contains comprehensive information about the state of the environment for civil society development, it is often the primary source of information for NGOs active in different fields. The Monitoring matrix provides not only information about basic freedoms, funding or cooperation with the Government, but also the specific sources of information and documents or institutions to be addressed.

Some of the important areas for civil society development are starting to get re-shaped, especially the funding part. But, since the process is still in progress, there are some things that still have not been finalized and it is question what the final decision will look like.

Monitoring matrix, in that context, presented the provisional solutions contained in the Draft of The Changes of the Law on NGO as well as the recommendations.

5. Acknowledgements

Center for Development of Non-Governmental Organizations would like to thank to the Balkan Civil Society Development Network and its members for the logistic and expert support provided thought the process of the development of the report. Also, CRNVO appreciates the effort of all the non-governmental organizations that, by participating in the online survey, provided significant inputs for the report. Finally, we would like to thank the public administration institutions that provided data for this report.

III. Methodology

1. Overview of the methodological approach

Methodology used in writing this report included two methods. One was detailed desktop analysis of different documents concerning legal and institutional framework for CSOs, strategic documents, reports and media articles. The other one was survey conducted with CSOs representatives in 2015. All data gathered through online survey with CSOs in late 2015 are still relevant for 2016. This was checked and confirmed in communication with CSO representatives involved in the survey, who claimed that there is no need to refill the questionnaires since they do not have anything to add to the existing data. This goes along with the fact that in 2016 majority of NGO legislation, trends within the environment remained almost the same as in 2015.

The desktop analysis was used in the review of the documents regulating and assessing the environment for development of civil society. These documents included laws, decrees, regulations and rulebooks which regulate different aspects of civil society. The desktop research also included detailed revision of strategic documents related to civil society with special focus on their action plans and reports on their implementation. It must be stated here that, although the period covered by the monitoring is year 2016, most of the reports on implementing strategies that were published in 2016 are referring to the year 2015 and as such were included in this report. Also, some of the laws that have been adopted during this year will start implementing only in 2017.

From all these reasons, as explained above, the NGOs' perspective relies on data gathered in 2015. As a reminder, in 2015- The survey was conducted in the period of two months-January and February, and was responded by 40 representatives of NGOs. The survey was divided into three sections: a) Basic Legal Guarantees of Freedoms b) Framework for CSOs Financial Viability and Sustainability c) Government – CSO Relationship. Apart from the questions related to the experiences that NGOs had in these fields, the survey also included their opinions on different aspects, such as freedom of speech, financial support, and participation in decision making process. The survey covered NGOs active in different fields, such as human rights, environment protection, European integration, civil society development, promotion of woman and children rights, culture, etc. It also covered organizations acting on national and international level, as well as those active in their local communities. Results of the survey gave an insight in the concrete experiences of NGOs and important inputs in defining the recommendations.

2. Participation of the CSO community

Findings and recommendations from this report fully address the needs and perceptions of Montenegrin NGOs. They were directly involved through the online survey described above. NGO representatives through this method had the opportunity to not only access different aspects of the state of the environment for civil society development, but also to express their opinion on the priorities for further necessary actions. In addition, through its daily work and contact with NGOs on a daily basis, CRNVO regularly assessed the needs of civil society in Montenegro. The everyday experiences of working directly with NGOs provided the significant inputs used in the development.

3. Lessons-learnt

The next monitoring cycle will require re- design of the methodology approach, in the part of obtaining information from non-governmental organizations.

IV. Findings and Recommendations

Area 1: Basic Legal Guarantees of Freedoms

Sub-area 1.1.: Freedom of association

1.1.1. *Establishment of and Participation in CSOs*

Legislation

Generally, NGO legislation is in a line international standards and practice. However, some regulations are subject of permanent discussion within civil society in terms of their validity or even alignment with Human Rights Convention of the Council of Europe. Organizations acquire legal status after registration, which is process under the jurisdiction of Ministry of Interior. Law does not prescribe sanctions in case organizations act without prior registering. Organizations which choose not to register may still act as informal group of citizens, initiatives or similar structures, but without having the legal status. That way, Law decriminalizes informal associations (those that operate without legal status), which is in accordance with Article 11 of the European Convention on Human Rights guarantying freedom for both formal and informal associations. Organization may be established by at least 3 people, one of whom must have citizenship or domicile in Montenegro. Person in charge to represent organization must be a permanent or temporary resident of Montenegro. Organization may be established by legal entities as well. Time period prescribed for registration is ten days and costs do not exceed 30 EUR. Organizations do not have remarks on the process of establishing and registering. Process of registration cannot be conducted online. As far as networking between NGOs in the country and abroad, Law does not impose specific rules, and NGOs use this opportunity in practice.

Practice

The process of forming associations, foundations or other non-profit, nongovernmental organizations by individuals or legal entities is carried out without problems in practice. However, organizations cannot be formed online. There has not been any case of sanctioning Individuals and legal entities for not registering their organizations. At the same time, each organization is registered in accordance with prescribed deadlines. There is couple of networks active on the national level. Some of them are well established networks, such as Coalition of NGOs "With Cooperation to the Goal", functional for several years and active in different areas of relevance for civil society, while other are ad-hoc networks, established with specific purpose, such as coalitions of NGOs for monitoring negotiations in chapter 23-Judiciary and Fundamental Rights, or networks of NGOs gathered for monitoring negotiations in Chapter 27- Environment and Climate Change.

1.1.2. *State Interference [Core Standard]*

Legislation

The legal framework provides guarantees against state interference in internal matters of associations, foundations and other types of non-profit entities. The state provides protection from interference by third parties. According to the Law on NGOs, a fine ranging from 500 to 3000 EUR shall be imposed on a NGO if it does not report to the body in charge about the data changes which ought to be entered in the register within 30 days. The same fine is also envisaged in the event of

failure to publish financial statements within ten days of its adoption. The Law does not cover those organizations that do not have their web sites, and thus have no place to make their reports publically available. There are specific rules regarding NGOs which conduct economic activity. Apart from the limitation to 4000 EUR as maximum income on yearly level, there is also restriction in case when this limit is exceeded. A fine ranging from 500 to 4000 EUR shall be imposed if, during the calendar year it proceeds to conduct economic activity after crossing the allowed threshold of 4000 EUR or 20% of total annual revenue. The minimum amount of prescribed penalties is in dispute, since it does not guarantee that it will follow the principle of proportionality in each of the cases especially when it concerns small associations with minimal property. In such cases, the imposition of even minimal sanctions prescribed by Law may result in termination of the organization. The restrictions and the rules for dissolution and termination are in line with standards of international law.

Practice

In reporting period, NGOs did not report any formal state interference in internal matters, nor cases of invasive oversight which impose burdensome reporting requirements or any kind of sanctions.

1.1.3. Securing Financial Resources [Core Standard]

Legislation

When it comes to seeking and securing financial means to support its activities, Montenegrin NGOs can acquire revenue from membership fees, donations, gifts, grants, bequests, interest on deposits, dividends, rents, income and economic activity in a way that is not contrary to the law. They can also directly engage in economic activities specified in the statute, if they are registered in the Company Register. There are very concrete regulations regarding NGOs` economic activities, starting from the annual income limit, which is set to 4000 EUR, to restrictions in case that limit is exceeded and regulations about the money above the limit which is set to be allocated to the state budget. The money earned by conducting economic activity can only be used for the purposes of achieving goals of the organization. All the above mentioned regulations are regulated by the Law on NGOs. Organizations are free to receive funding from abroad.

Practice

In practice, NGOs registered to engage in economic activities operate in this field without crucial obstacles. However, NGOs find this limitation (4000 EUR) unsustainable, especially from the perspective of ensuring financial sustainability. There are no administrative or other burdens in this respect. NGOs freely receive funding from abroad. However, NGOs and their foreign funding have been subject of media articles in media controlled by the Government. The intention was to present NGOs as receivers of huge amounts of money, concretely from European Union, without any further explanations of how these funding has been used and which projects and results have been achieved <http://cdm.me/drustvo/crnogorskim-nvo-od-eu-cak-pet-miliona-eura/>. NGOs receive funding from individuals, corporations and other sources without any unnecessary cost or administrative burden.

Monitoring matrix findings 1.1

1.1.a. Quality assessment of existing legislation and policy framework

Legislation provides guarantees of freedom of association, expression and assembly. It does not recognize grass roots as such, but freedom of association is a constitutional right, without the need to register. Un-registered organizations can operate freely, but cannot participate in

public funding. They are free to obtain funds from other sources. Maximum days needed for registration is 10, and that deadline is most often respected. Maximum costs for registration of association are 30 euros. There is no accurate data on the percentage of identified policy gaps. However, some of the drawbacks in the legislative framework regulating work of NGOs have been identified by both NGOs and the Government and that initiated the work on the changes of the Law on NGOs, which is in progress. In accordance with the Law on Accounting, which was adopted in July 2016, all non-governmental organizations are required to prepare annual financial reports and submit them to the Tax Administration by March 31 of the current year for the previous year. The form of financial statements for NGOs will be regulated by an act of the Government. The process of the developing the Changes of the Law on NGO is in progress since 2014. The Draft has been made, but due to the political situation there has not been much progress on its discussion. It is expected the process to be finalized in 2017. -Un-registered organizations can operate freely, but cannot participate in public funding. They are free to obtain funds from other sources. Generally, Montenegrin NGOs do not have objections to financial and reporting procedures. Procedures are clear, but are not proportionate to NGOs turn-over. Current legislation prescribes same financial rules for all of the NGOs, no matter their annual income. This can sometimes be burdensome for less developed NGOs. -In accordance with the Law on Accounting, which was adopted in July 2016, all non-governmental organizations are required to prepare annual financial reports and submit them to the Tax Administration by March 31 of the current year for the previous year. The form of financial statements for NGOs will be regulated by an act of the Government.

Sub-area 1.2.: Related-freedoms

1.2.1. Freedom of Peaceful Assembly [Core Standard]

Legislation

The area which concerns the right of *free assembly* is mainly regulated by the Constitution and the new Law on Public Assembly and Public Events which guarantees freedom of peaceful assembly, without a requirement for obtaining permission for it. Those seeking to assemble should prior send notification to competent authority. The new Law was adopted in July 2016. The main reason for creation of a new regulation was to comply with international standards in these areas, especially Council of Europe and Human Rights Convention.

According to the new Law on Public Assembly and Public Events, this freedom may be temporarily restricted by the decision of the competent authority for the prevention of disorder or crime, protection of health or morals or for the protection of people and property in accordance with law, or when it comes to violation of human rights and freedoms, and special minority rights. Unannounced assemblies shall be banned and the organizers of those assemblies can be fined. The ban can be a reason to a late or improper notification. The ODIHR`s Report on the Monitoring of Freedom of Peaceful Assembly in Selected Participating States marks this as a bad practice. In case of a ban, authorities must notify the organizers 48 hours before the start of a planned assembly.

Montenegro`s legislation provides for the possibility of submitting a complaint against a ban to the state authorities, which must make a decision within 24 hours. As stipulated in the law, organizers may be fined 100 to 300 times the amount of the average monthly salary for the following reasons: for holding an assembly without prior notification, for holding it in a location where assemblies are not allowed based on Public Assembly Act, for holding a banned assembly, for failing to inform the public about a ban, for failing to provide sufficient monitors, for failing to take all necessary measures to ensure that the participants are not armed and for failing to ensure an undisturbed passage for

police and other emergency vehicles. In practice, any group of people can assemble at desired place and time, in line with the legal provisions. In case of restrictions, they are justified with explanation of the reason for each restriction, which is promptly communicated in writing to the organizer to guarantee the possibility of appeal.

Practice

Those seeking to assemble should prior send notification to the competent authority. Notification needs to be done 5 days in advance. Montenegrin CSOs in practice use the opportunity and organize public assemblies.

1.2.2. Freedom of Expression

Legislation

According to the Constitution, everyone has the right to freedom of expression. It can be limited only by other persons' right to dignity, reputation and honor, and if it threatens public morality or security of Montenegro. Restrictions, such as limitation of hate speech, imposed by legislation are clearly prescribed and in line with international law and standards. Libel is a misdemeanor rather than part of the penal code.

Practice

There is no sanction for critical speech under the penal code. To our knowledge, there are no cases where individuals, CSOs representatives are persecuted for critical speech. However, CSOs representatives are sometimes being faced with other kind of sanctions or pressures for expressing their critical attitude towards Government. Those organization that had remark to the freedom of expression, stated that most often it is not the case of formal pressure form the Government, but rather individual cases within different state bodies or even individuals. Also, they had the remark of so-called "soft censorship" by certain pro-Government media. There have been three cases of CSOs' activists being subject of smear campaign of these media.

1.2.3. Access to Information

Legislation

Civil society representatives, individually and through their organizations, have the rights to safely receive and impart information through any media. The legal framework provides the possibility to communicate via and access any source of information, including the Internet and ICT.

Practice

There are no restrictions in this area in practice generally. However, when we speak about access to information in a broader sense, it is important to state that on the elections day, 16th October, when parliamentary elections were held, Viber and WhatsApp were blocked for hours by the Agency for electronic communication and postal services⁵. The reason for this blockade was the usage of Viber and WhatsApp by political parties to influence voters on the elections day. Generally, the Internet is widely accessible and affordable. In 2016, NGOs did not report any case of unjustified monitoring by the authorities of communication channels, including the Internet or ICT, as they did in previous years.

⁵ <http://mondo.rs/a948274/Info/Ex-Yu/Izbori-u-Crnoj-Gori-Vajber-ugasen-u-Crnoj-Gori.html>

There has not been any case of police harassment of members of social network groups.

Monitoring matrix findings 1.2

1.1.a. Quality of existing legislation and policy framework

The new Law was adopted in July 2016. According to the new Law on Public Assembly and Public Events, this freedom may be temporarily restricted by the decision of the competent authority for the prevention of disorder or crime, protection of health or morals or for the protection of people and property in accordance with law, or when it comes to violation of human rights and freedoms, and special minority rights. Legislation requires only prior notification (and not authorization) for the public assembly. Freedom of speech is explicitly guaranteed in the legislation. The process of adopting the Changes of the Law on NGO is in progress. The current Law on NGO is not being implemented accordingly, in the part regarding financing.

Area 2: Framework for CSO Financial Viability and Sustainability

Sub-area 2.1.: Tax/fiscal treatment for CSOs and their donors

2.1.1. Tax Benefits [Core Standard]

Legislation

NGOs are, generally speaking, subject to the same VAT regulations (payable at the standard rate of 19 percent as of 2013) as commercial enterprises, although NGOs do not have to register for VAT if their annual turnover does not reach the VAT threshold of 18 000 EUR. Also, NGOs are exempted from VAT in key areas (health, education, sports, culture, and sustainable development). However, key areas do not include human rights, fight against corruption or European integration. Foreign grants and donations are not subject to VAT, nor are imported humanitarian goods. The law does not provide tax benefits for passive investments of CSOs. Some donations are subjected to the tax deduction. There is no legislation for establishing endowments.

Practice

Although tax legislation is limited, its implementation is correct.

2.1.2. Incentives for Individual/Corporate Giving

Legislation

According to the new Law on Value Added Tax, adopted in July 2016, expenditures on health, social, educational, scientific, religious, cultural, sports and humanitarian purposes, reducing Poverty, environmental protection, protection of persons with disabilities, social care for children and youth, assistance the elderly, protection and promotion of human and minority rights, the rule of law, civil society and volunteerism, Euro-Atlantic and European integration of Montenegro, art, technical culture, improvement agriculture and rural development, sustainable development, consumer protection, gender equality, the fight against corruption and organized crime and the fight against substance abuse, are recognized as expenses exceeding 3.5% of the total income. This was a requirement from NGOs that ensured coverage of wide range of publicly beneficial activities. In this way, state policies regarding corporate social responsibility became more enabling for CSOs.

Practice

There are no concrete data regarding CSR when it comes to the specific amounts donated to CSOs

by companies. There have been, however, couple of researches and studies which were mostly concerned with general opinions on CSR and companies readiness to cooperate with CSO. Those researches **indisputably show that the culture of CSR and corporate philanthropy is on very low level.** From this year, CSOs working in the main areas of public interest, including human rights and watchdog organizations, will enjoy tax deductible donations.

Monitoring matrix findings 2.1

2.2.a. Quality and applicability/practice of the legal framework for individual and corporate giving

Legal framework is not supportive towards the individual and corporate giving. It does not encourage corporate giving. Corporations, as well as individuals will have their tax base deducted for 3.5% in case of charitable contribution in one of the areas defined by the law (limited list of areas, excluding for example human rights, fight against corruption, EU integration, etc.)

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

Legal provisions are very limiting when it comes to performing economic activities by non-governmental organizations. Apart from the limitation to 4000 EUR as maximum income on yearly level, there is also restriction in case when this limit is exceeded. A fine ranging from 500 to 4000 EUR shall be imposed on if, during the calendar year it proceeds to conduct economic activity after crossing the allowed threshold of 4000 EUR or 20% of total annual revenue. This is very limiting factor for all those NGOs that want to perform social entrepreneurship.

Sub-area 2.2.: State support

2.2.1. Public Funding Availability [Core Standard]

Legislation

According to the Law on NGOs adopted in 2012, state support towards NGOs is being centralized. The Law prescribes forming of a unique, centralized fund which is to substitute all of the existing funds allocating money to NGOs. However, even after four years, the legal preconditions for this to be achieved have not been met. This law prescribes co-financing of EU funded projects.

Last year saw the process of starting to work on the changes of the Law on Non- Governmental Organizations. There has been created working group in which NGOs representatives have been included. The group has developed the draft Law on the Changes of the Law on Non-Governmental Organizations.

However, although civil society sector welcomes these changes, most of it is still not in favor of this draft Law. First of all, it demands that the Law prescribes percentage of the state budget that will be allocated to the NGOs, so that the financing is predictable and sustainable. Also, civil society sector considers that changes of this Law should go in line with the changes of the Law on Games of Chance. Given the fact that the Law on NGO and Law on Games of Chance are the two documents regulating fund allocation to NGOs, they need to be in accordance

The current legislation on national level, that prescribe availability of funds that are being distributed to NGOs in the Law on Games of Chance, Law on local self-government, as well as the Law on minority rights. According to this legislation, there are several mechanisms for distribution of public funds (described in the chapter 2.2.2). These funds are planned within the state budget. When it comes to public funding cycle, the whole programming phase is missing. NGOs may participate in the process of distribution of funds, but are excluded from planning phase. There is no legislation

that prescribes institutional support to NGOs.

Practice

According to current legislation, there is no institutional support to NGOs. Mostly, state and local bodies support NGO projects, but it is allowed to support project programs. Both on national and local level, there are commissions in charged for distribution of funds but also for monitoring of their implementation. There are clear data on the amount of funds distributed on national and local level. In 2016, from the Commission for Games of Chance, there has been 3.129.477,27 EUR distributed. Minority fund distributed 926.763,00 EUR. While data on the amount from local self-government and other state bodies are still being gathering. Funding is predictable, but also not distributed in accordance to the existing legislation. More precisely, **from year to year, Government is not providing 60% of the real revenues from the games of chance to this fund, showing the amount of the revenues much lower than it really is.** Data shows that in the period from 2013-2015, as a consequence of this, NGOs were deprived for more than 3 million EUR. There are cuts in funding both on national and local level. Available public funding does not reflect needs of CSO sector, since CSO do not have any opportunity to influence the planning process. However, CSO participate in the phase of distribution, in their participation increased at least transparency of the process. But, being minority in commissions formed by state and local bodies, CSO representatives cannot make substantial influence on the whole process.

2.2.2. Public Funding Distribution [Core Standard]

Legislation

Each of the law that regulate distribution of funds to CSOs (Law on NGOs, Law on Games of Chance, Law on local self-government, as well as the Law on minority rights prescribe transparent procedure of distribution, clear criteria that are available in advanced, as well as issues of conflict of interest in decision-making addressed.

Commission for the Allocation of the Revenue from Games of Chance

According to the Law on Games of Chance' concession fees from games of chance belong to the budget of Montenegro. The latter Law further states that the funds from concession fees, in amount of 60% will be used to finance plans and programs that are: dealing with social protection and humanitarian activities; dealing with problems and needs of persons with disabilities; contribute to the development of sports, culture and technical culture; dealing with non-institutional education of children and youth; contribute to the fight against drugs and all forms of addiction. The Law further provides that these funds shall be used to finance plans and programs of non-governmental organizations in the amount of at least 75%. **From year to year, Government is not providing 60% of the real revenues from the games of chance to this fund, showing the amount of the revenues much lower than it really is.** Data shows that in the period from 2013-2015, as a consequence of this, NGOs were deprived for more than 3 million of euros.

In 2016, the amount approved for the allocation was 3.129.477,27 € (including the fees for Commission members). Number of submitted projects was 1409 and out of that number e 535 projects were supported.

Commission for allocation of funds to NGOs

This Commission is still positioned in the budget, although it is not in accordance with the current Law on NGOs. This Commission was established by the previous Law on NGOs and it was formed by the

Parliament of Montenegro. The Law on Games of Chance stated that this Commission will continue to perform its work until the centralized commission is formed. However, the Parliamentary Commission ceased with its work even though the centralized commission is still not formed. It is still positioned in the budget, but now as the Government's unit. **In 2016, the amount of 200 000 EUR was assigned to this budget line.** The amount remained unallocated as it was the case every year since the Law on NGO was adopted.

Fund for the Protection and Promotion of Minority Rights Fund for Protection and Promotion of Minority Rights is independent state institution, aimed to support projects that contribute to the respect of minority rights, preservation of national, cultural, religious, language and ethnic identity. Apart from NGOs, beneficiaries of the funds from this Fund can also be individuals and public institutions. Competitions for the funding are published annually and the list of supported projects is available online. In 2016, the Fund allocated 926.763,00 EUR.

Local self-governments

The legal basis for the allocation of funds to NGOs by local governments is contained in Article 116 of the Law on Local Self-Government, which stipulates that local self- governments participate in financing of local non-governmental organizations that perform activities of public interest. Their cooperation is defined under conditions and procedures prescribed by the general act of the municipality.

Practice

State and local bodies do not apply the procedure for distribution in a harmonized way, since majority of them braches deadlines for publishing calls for projects, and some of them (mostly on local level) don not publish it at all.

Procedures for distributions of funds from the Commission for the Allocation of the Revenue from Games of Chance are being previously known to CSOs. There is a Decision of distribution of funds available. However, NGOs are not satisfied with the substantial part of distribution, since there is practice of supporting as many projects as possible with smaller amounts (from 2000-5000 EUR) that disable implementation of serious projects. Also, a huge number of supported projects are not directly linked to public policies. There were several cases of complaints and court procedures regarding the decisions made by Commission. In one case, the court overturned the Decision made by the Commission. The reasons were related to procedural issues, not to the content of decision. this means that Government may only act according to the court instructions and correct procedural missing parts. But, once the Decision is published and funds are distributed, the process cannot be turned back to the beginning. that is why there is an open question should these decision remain an issue of administrative dispute.

When it comes to Fund for the Protection and Promotion of Minority Rights there have been some public allegations on the lack of transparency in decision- making and the possible conflict of interest. The substantial annual allocations require larger level of transparency in the process.

Some local governments, due to the budget deficit, do not distribute funds to NGOs, regardless of the adopted budget decision. Also, often, the amount of funds actually allocated to NGOs is lower than it was planned with the budget.

Important problem when it comes to financing NGOs from the budget of the local self- governments is that the *money is also being awarded to NGOs by the other legal basis, such as the independent decision of the Mayor. This procedure does not require special criteria or explanations for the allocation, and thus represents field fertile for misuses. Though not often, it also happens that the amount of money allocated this way is higher than the amount allocated through public*

competition. This kind of allocation does not represent violation of legal procedures but establishes non-transparent and unclear practices.

2.2.3. Accountability, Monitoring and Evaluation of Public Funding

Legislation

According to the current legislation, both on national and local level, each body that distributes funds to NGOs is in charged for monitoring and evaluation of supported projects. Legislation prescribes clear measures for monitoring and evaluation.

Practice

In past few years, there were only two monitoring and evaluation processes conducted by the Commission for Allocation of the Revenue from Games of Chance and Capital city Podgorica. In general, monitoring and evaluation remain as a huge lack in the process of distribution of public funds.

2.2.4. Non-Financial Support

Legislation

Allocation of non-financial support to non-governmental organizations is equally subjected to possible misuses, given the fact that there is no clear legislation regulating this matter. It is very often that state or local bodies give premises to different NGOs, without adequate procedures preceding the act. Non-governmental organizations often get to use state property or are exempt from paying the utilities. However, the decision is not based on publically available and wide spread call, but rather on internal procedures that lack transparency and clear criteria. Strategy of Development of Non-governmental Organizations 2014-2016, adopted by the Government of Montenegro, envisaged the activity under number 22 for the second quarter of 2015 as follows: "22. Adopt the act of Government which will serve to establish the criteria and procedure of allocating space and state-owned property for NGOs to use". There is no legislation that prescribe how may allocate free training, consultations and other resources, to CSOs.

Practice

One of the last cases is the case of "House of Civil Society". At its session held on September 17th 2015, Government of Montenegro adopted a Memorandum of understanding between the Government of Montenegro, Capital City Podgorica, Rockefeller Brothers Fund and Foundation "House of Civil Society". With this Memorandum, the Government obliged to cede state land free of compensations for utility equipment of construction land for the needs of constructing the object of Foundation "House of Civil Society". The allocation of land to the non-governmental organizations is novelty in current practice of management of state property.

By this decision, the Government of Montenegro favors group of non-governmental organizations which are founders of Foundation "House of Civil Society" (Civil Alliance, Centre for Democratic Transition and FAKT).

This and similar decisions of Government of Montenegro do not have base in any legal regulation and surely do not contribute to systematic approach and to the improvement of the environment for the operation of non-governmental organizations in Montenegro.

Allocation of office space and now of land practically in the ownership of non- governmental organizations, without any procedures is equally dangerous as the allocation of financial resources to non-governmental organizations without any criteria.

Monitoring matrix findings 2.2

2.4.a. Increase of public funding for CSOs

Public funding is not sufficient for the needs and capacities of civil sector. The biggest fund is the one from Fund of Games of Chance that in 2016 allocated 3.129.477,27 EUR.

2.4.b. Quality of state funding frameworks for civil society organizations (focusing on procedural document)

Legal framework for public funding include clear criteria published in advance, deadlines for decision, merit decision with arguments. However, the process itself is not being conducted according to the legally prescribed rules. Even though the Law on NGO prescribed creation of specialized Commission for allocation of funds to CSOs it has not been formed until now. The biggest source of funds for NGO projects is the allocation of the funds from revenue of games of chance. The Commission in charge for the allocation does not respect deadlines and uses questionable criteria in its decision making. In addition, funding is not in line with public policies.

Sub-area 2.3.: Human resources

2.3.1. Employment in CSOs [Core Standard]

Legislation

Labor Law treats NGOs equally as other employers. On the one hand, this means that NGOs have the same rights, such as possibility to participate in different activities and programs. For the past two years NGOs have been participating in state program for the professional training of young graduates through which they had the opportunity to have an intern for the period of nine months who has been paid by the Government.

Practice

In state program for the professional training of young graduates CSOs are treated like all other sectors. There is no data of the employees in NGOs, and the lack of these statistics remains a huge problem for civil society organizations.

2.3.2. Volunteering in CSOs [Core Standard]

Legislation

The Law on Volunteer Work treats volunteering as a special form of labor-law relations, rather than voluntary citizens' initiative. The law prohibits employees and minors less than 15 years of age to volunteer even in cases where the action is organized by school or other academic institutions and it is the function of the education of children. It is necessary to adopt Law on Volunteering that will fully correspond to the nature of volunteerism as a voluntary citizens' initiative. Law prescribes the

existence of volunteer books and contracts for every volunteer action. The Law bureaucratizes and complicates the process of volunteering, causing obstacles for volunteer engagements in the civil sector, rather than promoting voluntarism as one of the key ways of contributing to the community. There are no incentives and state supported programs for promotion of volunteering.

Practice

Montenegrin CSOs generally include volunteers in their activities (mostly ad-hoc activities, implementing certain periodical events, for promotional campaigns, etc.). However, they do not do it according to the Law on Volunteer work, just for the reasons explained above (administrative burdens etc.). More than half of the organizations that participated in the survey that said they are engaging volunteers stated that they do not do it in accordance with the mentioned Law.

2.3.3. The educational system promotes civic engagement

Legislation and Practice

When it comes to non-formal education, it can be noted that Montenegrin NGOs are widely active in that field. Number of 233 organizations is registered in the field of institutional and non-institutional education. A large number of NGOs is active in organizing educational activities for young people, raising awareness of important social issues and promoting youth participation. There are also several educational programs implemented by different NGOs that have long traditions and count hundreds of attendants. Also, there are cases of cooperation between formal educational structures and NGOs in initiating and implementing common activities. On many occasions, schools are partners with NGOs on different projects. However, the official education policies do not fully use these capacities. Also, the educational system does not sufficiently tackle the topic of civic education.

Monitoring matrix findings 2.3

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

There is no an effective system for keeping records on employees in CSOs that would provide data for comprehensive information and analysis. Data collected based on CSO research shows that the number of employees in CSOs in 2014 was 774, which makes it 0.37% of the overall employment. This data is however, not accurate.

1.2.b. Number of volunteers in CSOs

There is no an effective system for keeping records on volunteers in CSOs that would provide data for comprehensive information and analyses

1.2.c. Quality of legislative framework

There are no discriminative articles for CSOs in labor legislation (including active employment policy). However, there are neither supportive articles. The current Labor Law does not take into account specific nature of CSOs. Legislation enables reimbursement of expenses volunteer may have during the activity.

Area 3: Government-CSO Relationship

Sub-area 3.1.: Framework and practices for cooperation

3.1.1. State Policies and Strategies for Development of and Cooperation with Civil Society

Legislation

Strategy for Development of NGO for the time period of 2014-2016 and the Action Plan for the same period have been adopted in December 2013. This strategic document has embraced measures that have been developed in consultations with CSOs, and clear allocation of responsibilities.

Strategy's implementation was not at the satisfactory level. Even though some measures realized, there have not been any changes in the areas of the biggest importance of the CSOs development, such as financing of NGOs, volunteering, social entrepreneurship, etc. in 2016 Ministry of interior formed a working group for drafting new strategic document that will cover period from 2017. The process is still ongoing.

Practice

The monitoring of implementation of strategic document was done periodically by the Council for Development of NGOs. An EU funded Technical Assistance project dedicated to, among other things, the preparation of the new Strategy for development of civil society kicked-off in spring 2016 and has provided the huge part of the expertise in preparatory phase. Also, TACSO project in Montenegro provided support in this process organizing consultations with NGOs that lasted three days. NGOs that participated in the process had the opportunity to suggest priorities, areas and activities for the new strategic document. However, there are no examples demonstrating that cooperation between state and CSOs and civil society development is improved and implemented according to or beyond the measures envisaged in the strategic document.

3.1.2. Institutions and Mechanisms for Development of and Cooperation with Civil Society [Core Standard]

Legislation

In July 2014 Government appointed new *Council for Development of Non-Governmental organizations*. The Council is consisted of president and 22 more members, 11 Government representatives and 11 NGO representatives as well as President coming from the ranks of Government representatives. The main task of the Council is to follow the implementation of the Strategy for Development of NGOs 2014-2016, along with its Action Plan as well as the implementation of the Action Plan for Chapter 23, in the part related to civil society. The Council also gives opinion on legislative and strategic documents regarding civil society as well suggesting the areas which are priority for financing.

The Office for Cooperation with NGOs exists since 2012. It is involved in the development of almost all regulations and documents related to NGOs and are facing problems that are primarily related to the "modest" mandate, as a result of its dependent position, i.e. as organizational segment of the General Secretariat.

Contact persons for NGOs in the ministries, other state administration bodies and local self-governments are designed as a specific mechanism of horizontal cooperation with NGOs. This

mechanism was necessary in order to create institutional preconditions for horizontal (decentralized) cooperation between the Government and CSOs.

Practice

Representatives of the NGOs- members of the Council are generally dissatisfied with the way Council functions, having in mind that minority of NGO representatives is in most cases outvoted by the majority of Government representatives. In the second half of 2016, the NGO representatives in the Council have frozen their membership, dissatisfied with the way the conclusions and opinions of the Council had been presented to the government by the President, but also with the overall treatment of the body. Since July 2016, the Council had not held any session. NGO representatives required resignation of the President as well as other changes in the status and treatment of the Council. The Governments respond is still pending.

The Office for cooperation is currently getting a support from the EU funded Technical Assistance project. So far, the numbers of employees have been increased and webpage of the Office renewed. However, it is still unclear what are key duties and responsibilities of this body, and this issue should be solved in the upcoming strategic document.

Most of the appointed contact persons have only been added with this new function to their existing work. Therefore, being contact person is only their secondary engagement. In addition, there are no clear job descriptions, containing list of duties of contact persons.

Monitoring matrix findings 3.1

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 -its visibility and availability –government perception of quality of structures and mechanisms -CSOs' perception of quality of structures and mechanisms

There is Office for Cooperation with NGOs, as part of the General Secretariat of the Government. Office does not have institutional of financial independence and as such cannot contribute to the creation of the enabling environment in substantial level. There is Council for Development of NGOs consisted of Government's representatives and CSOs representatives. However, Council only has advisory function and due to the clear division on representatives of Government and representatives of CSOs and the practice to vote upon the membership in one of those two groups, Council has not been as successful as it was initially planned. Ministries have appointed contact persons for CSOs. However, those positions do not have clear job responsibilities, it is often position added to the previous function and does not include proactive approach.

Sub-area 3.2.: Involvement in policy- and decision-making process

3.2.1. Standards for CSO Involvement [Core Standard]

Legislation

In 2012, the Government adopted two key documents for strengthening cooperation with civil society and their participation in policy and decision-making process.

Those are **Decree on the procedure and manner of developing cooperation between public administration bodies and NGOs**, and **Decree on the procedure and manner of conducting**

public debate in preparing laws. Decrees clearly define standards on the involvement of CSOs in the policy and decision making processes in line with best regulatory practices prescribing minimum requirements which every policy-making process needs to fulfil.

Strategy for Development of NGOs 2014-2016 envisaged for educational programs/trainings for civil servants on CSO involvement in the work of public institutions.

Contact persons for NGOs in the ministries, other state administration bodies and local self-governments are designed as a specific mechanism of horizontal cooperation with NGOs. This mechanism was necessary in order to create institutional preconditions for horizontal (decentralized) cooperation between the Government and CSOs. 19 state bodies obtain internal procedures that regulate position of contact persons.

Practice

In 2016, Government has started the process of changing the existing legislation, according to the lessons learnt from the 4years implementation of the existing ones, and NGOs' suggestions. NGO representatives took part in the working group. The process is still ongoing.

So far, public institutions routinely invite all interested CSOs to participate in the work of the working group for drafting legislation. However, they fail to regularly invite CSOs on broader consultations on public policies, especially in the phase of the programming of public policies. Very often, CSOs are not provided with adequate information on the content of the draft of the document even when they take part in the work of the working groups. That is why this whole process only to ensure formal involvement of CSOs, but substantial part is missing. Majority of state bodies do not provide written feedback to comments they get from CSOs. Those who provide feedback do not refer to each of the comment they get. Many contact persons for CSOs completed the necessary educational program, but the problem is permanent fluctuation of these civil servants that disable continuity of this process. In 2016, through Technical Assistance project, 3 seminars have been organized to public officials, about public consultations with civil society. Altogether, 64 public officials attended the seminars.

3.2.2. Public Access to Draft Policies and Laws

Legislation

Decree on the procedure and manner of conducting public debate in preparing laws regulate public access to draft policies. Existing legislation obliges public institutions to make all draft and adopted laws and policies public, and exceptions are clearly defined and in line with international norms and best practices. There are no sanctions for civil servants/units for breaching the legal requirements on access to public information. There are clearly prescribed sanctions for civil servants/units for breaching the legal requirements on access to public information.

Practice

According to the results of the report done by CRNVO, state bodies are still not familiar with this new concept of public discussion, so there are rare cases of consulting interested parties in the early phase of law preparation. *Traditionally, state bodies make public discussion when the law is already drafted, which decrease the influence of public on its final shape. In 2014, only five out of 16 ministries published on-line list of laws on whose content public debate will be held (in 2012 that number was 3).*

When it comes to number of held public debates in the preparation of legislation development, although Government adopted 73 laws in the year 2014, the process of consulting the general public

was conducted only in the case of 16 laws, by 8 ministries. Cases of the violation of the Decree are not sanctioned. Public institutions do not answer the majority of requests for access to public information within the deadline prescribed by law, in a clear format.

3.2.3. CSOs' Representation in Cross-Sector Bodies [Core Standard]

Legislation

This process is regulated by Decree on the procedure and manner of developing cooperation between public administration bodies and NGOs. It prescribes the obligation for public institutions to invite CSOs to take part in working groups for drafting public policies. Decree envisages clear procedures that ensure quality and legitimacy of CSOs representatives, including measures for transparency and criteria for selection.

Practice

CRNVO monitoring report shows that in year 2014, 55 NGO representatives participated in the work of 36 working groups. Number of 15 state bodies announced 79 calls for participation in the working groups. Out of that number, NGOs did not propose candidates for 42 groups. These numbers show that state administration generally respects its obligation regarding working groups. CSOs are enabled to present and defend their suggestions but are often over voted by majority that comes from state bodies. There have not been any complaints on the process or result of selection of CSOs according to this Decree. CSOs find it clear and transparent. Participation in these bodies does not prevent CSOs from using alternative ways of advocacy or promoting alternative standpoints which are not in line with the position of the respective body.

Monitoring matrix findings 3.2

3.1.a. Percentage of law/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.

Montenegrin public administration has the practice of including CSOs representatives into working groups for developing legal, strategic and other documents. However, due to the fact that the CSOs representatives are minority in the group, their proposals often remain on the level of suggestion. Drafts of the documents are being published prior to public debates and the usual time for comment is 15 days. Public debates are being organized regularly in the process of developing legal and strategic documents. However, this practice is conducted only after the draft of the document has already been made. Public administration does not have the practice of organizing consultations in the initial phase, before the document is drafted, even though it is prescribed by the legislation. Publishing of reports on conducted consultations and debates is not very common, although it is stipulated in the Law. Similar as in the case of working groups, acknowledgment of inputs provided by NGOs is not on a sufficient level.

Sub-area 3.3.: Collaboration in social provision

3.3.1. CSO Engagement in Service Provision and Competition for State Contracts [Core Standard]

Legislation

Large numbers of Montenegrin NGOs are active as service providers. There is no separate legal document regulating NGOs participation in service provision, especially having in mind that there are different areas in which NGOs function providing services. Most of NGOs, service providers are active in the field of social protection and most of the services are provided based on the project funding, often by foreign donors.

Currently, there are no examples of multi-annual funding for the NGOs service providers, and there are no special conditions prescribed for NGOs that provide different kind of services. However, service provision in the field of social and children protection is being regulated by the Law on Social and Children Protection from 2013, and it includes NGOs, which are on equal level as other service providers, with the possibility to acquire license and get their programs accredited.

The Law on Social and Children protection adopted in May 2013 prescribes possibility for other entities, besides from state institutions to provide different social services. Previous Law that was in force since 2005 did not recognize the institute of social protection service. Social protection was limited to the institutionalized one, meaning the one that is provided by the state. The only providers of social work service, as stipulated by this Law were centers for social work.

The new Law prescribes the procedure of licensing of service providers as well as accreditation of programs. The new Law enables organizations, entrepreneurs as well as individuals to provide social services if they fulfill conditions required and thus gain the license. The process of licensing is conducted by the Institute for Social and Children Protection that is to be established as stipulated by the Law on Social and Children Protection. Apart from licensing, Institute will have the role in the analysis of the needs, monitoring and evaluation of the services and programs, as well as in their overall improvement.

When it comes to financing of these services, the Law stipulates that these shall be financed by the state budget, local self-governments budgets as well as by the users themselves. However, the Law prescribes adoption of second legislative that will regulate financing, but also accreditation and licensing

Practice

There are no data of CSOs engaged in provision of services funded by the Government. During the year 2015 all of the secondary legislation necessary for the implementation of the Law was adopted. However, when it comes to implementation, the process has not been launched yet. The implementation started in 2016 and relevant data are not gathered yet.

I. Used Resources and Useful Links

1. Law on NGOs (Official Gazette 39/2011)
2. Law on Public Assembly (Official Gazette 31/2005)
3. Law on Volunteering Work (Official gazette 14/2012)
4. Law on Corporate Income Tax (Official Gazette 65/2001)
5. Law on Local Self-Government, "Official Gazette of Republic of Montenegro", No. 42/2003, 28/2004, 75/2005, 13/2006, br. 88/2009, 3/2010, 38/2012 i 10/2014,57/2014
6. Tax Law (Official Gazette 36/2013)
7. The Law on Administrative Fees (Official Gazette 20/2011)
8. The Law on Value Added Tax (Official Gazette 29/2013)
9. The Law on Budget of Montenegro (Official Gazette 78/2010, 66/2011, 66/2012)
10. Inspection Law (Official Gazette 39/2003)
11. Action Plan for Chapter 23
12. The Strategy for NGO Development in Montenegro 2014-2016:
<http://www.osce.org/montenegro/124433?download=true>
13. Decree on procedure for achieving cooperation between state bodies and NGOs(Official
14. Decree of the procedure method of a public discussion in preparing laws (Official Gazette
15. Decree on criteria for defining beneficiaries and a manner of distributions of revenues from games of chance (Official Gazette 42/2011)
16. Guidelines for the Tax Treatment of NGOs:
http://www.poreskauprava.gov.me/rubrike/Novosti_i_informacije_za_poreske_obveznike/156909/PO_RESKI-TRETMAN-NEVLADINI-ORGANIZACIJA.html
17. Research on citizen`s attitudes on corporate social responsibility:
<http://www.poslodavci.org/aktivnosti/istrazivanja-i-ankete/istrazivanja-upcg/csr-tacso-istrazivanje-2012>
18. Needs Assessment of the Social Enterprises in Montenegro:
http://www.crnvo.me/sites/crnvo/files/article_files/analiza_potreba_socijalnih_preduzeca_u_crnoj_gori_0.pdf
19. Publication: Facts and Prejudices; Financing of NGOs and Political parties from Public Funds: <http://media.cgo-cce.org/2016/02/cgo-cce-cinjenice-i-predrasude.pdf>
20. Report on the Economic Value of Non-Profit Sector in the Countries of Western Balkans and Turkey: http://www.balkancsd.net/novo/wp-content/uploads/2015/11/Report-on-the-Economic-Value-of-the-Non-Profit-Sector-in-the-Countries_final.pdf
21. Civil Society in the Creation of Public Policies:
http://www.crnvo.me/sites/crnvo/files/article_files/civilno_drustvo_u_kreiranju_i_primjeni_javnih_politika.pdf
22. Constitution of Montenegro (Official Gazette 1/2007) Gazette 07/2012)
23. <http://www.vijesti.me/vijesti/usvojen-predlog-izmjena-zakona-o-manjinskim-pravima-835648>
24. <http://www.gov.me/pretraga/150430/Poziv-za-javnu-raspravu-o-Nacrtu-zakona-oo-nevladinim-organizacijama.html>
25. <http://www.cdm.me/drustvo/crna-gora/saradnjom-do-cilja-hitno-urediti-dodjelu-drzavne-imovine-nvo>
26. <http://www.vijesti.me/forum/savjetuj-me-kao-sto-mislim-878612>