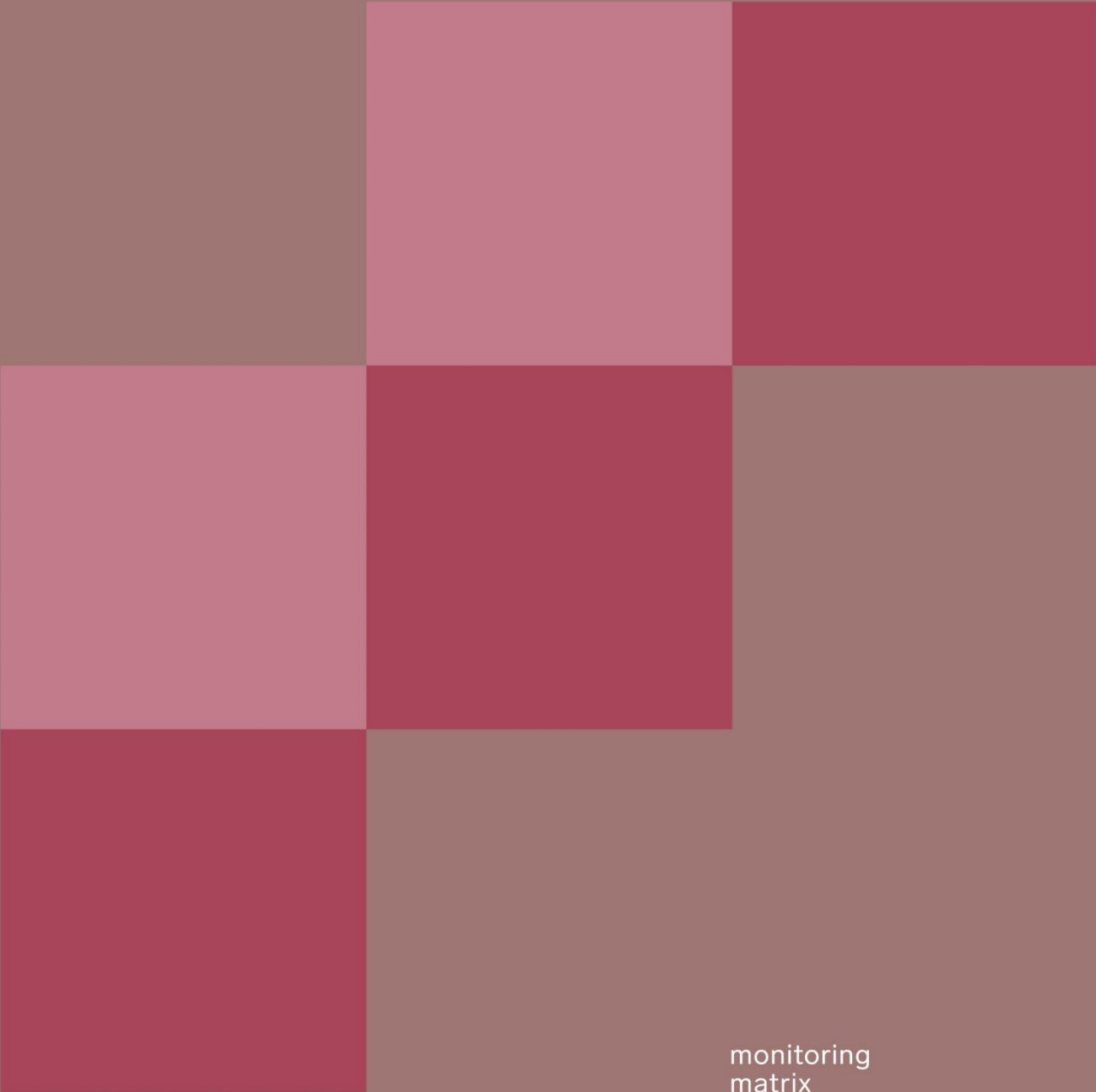


# Monitoring Matrix on Enabling Environment for Civil Society Development

Country Report:  
Montenegro  
2020





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Country Report for Montenegro 2021

Bojana Rakočević  
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# List of abbreviations

<b>BCSDN</b>	Balkan Civil Society Development Network
<b>CRNVO</b>	Center for Development of Non-Governmental Organizations
<b>CSO</b>	Civil Society Organization
<b>EU</b>	European Union
<b>MM</b>	Monitoring Matrix
<b>NGO</b>	Non-Governmental Organization
<b>PBO</b>	Public Benefit Organization
<b>TACSO</b>	Technical Assistance for Civil Society Organizations

# Introduction

CRNVO and the Balkan Civil Society Development Network (BCSDN) are pleased to present the eighth edition of the *Monitoring Matrix on Enabling Environment for Civil Society Development*, covering developments in Montenegro in 2020.

This report is part of a series of country reports covering six countries in the Western Balkans: Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Montenegro, and Serbia. A Regional Report is also available summarizing findings and recommendations for all countries and a web platform offering access to monitoring data per country<sup>1</sup>.

The Monitoring Matrix, developed in 2013 by BCSDN, with the support of its members and partners, sets the main principles and standards crucial for the legal environment to be considered supportive both for the operations and for development of CSOs. The Monitoring Matrix is organized around three main 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 rely on internationally guaranteed freedoms and rights and best regulatory practices at the European Union level and in European countries. The Matrix aims to define the optimum situation for effective operation and development of civil society, as well as set a realistic framework that can be implemented by public authorities. Having in mind that the main challenges lay in implementation, the indicators have been defined to monitor the situation by taking into consideration both the legal framework and its practical use.

The research undertaken with the Monitoring Matrix aims to provide evidence on the enabling environment for civil society development and to influence the support of governments, the European Union<sup>2</sup> and other donors towards more sustainable and strategic development of the sector.

<sup>1</sup> [www.monitoringmatrix.net](http://www.monitoringmatrix.net)

<sup>2</sup> For these purposes, within the findings part, the report further makes references and correlations to the Guidelines for EU Support to Civil Society in Enlargement Countries, 2014-2020.

# Acknowledgments

*Centre for Development of Non-Governmental Organizations (CRNVO) would like to express appreciation to all those who provided the possibility to complete this report with precise data and information.*

*First, we would like to thank the representatives of 52 CSOs that participated in the online questionnaire and provided their insights regarding their work in 2020. In addition, we would like to thank representatives of media, volunteering organizations, informal groups and mechanisms for cooperation with CSOs, who provided data about their work as well as resources for this report. Moreover, we would like to thank all institutions and authorities that provided answers and information asked through Free Access to Information.*

*Without all of them, we would not be able to complete this report and provide relevant data on civil society in Montenegro.*

*Finally, we express our deepest gratitude to the BCSDN team members who enabled the preparation of this report and who contributed with their expertise and knowledge in creating this document.*

# Background - Country overview

For Montenegro, 2020 was a year of changes. Not only that it was impacted by the COVID-19 pandemic, as was the rest of the world, but it was also marked with Parliamentary elections that brought a change in the political landscape after 30 years. This has also brought a reform in the government system, which has introduced 12 ministries instead of the previous 19.

At the end of 2019, a new Law on the Freedom of Religion was adopted, which had sparked months-long peaceful protests in the whole Montenegro, but also prompted counter gatherings of patriotic groups. This led to an even deeper division among pro-Serbian and pro-Montenegrin supporters. Although due to the coronavirus public gatherings were temporarily forbidden, it did not stop many supporters to organize protests.

2020 was a year that did not bring much improvement when it comes to the EU accession. Nonetheless, the last chapter was opened and a new methodology has been adopted that groups chapters into clusters. Many important laws and strategies that were supposed to be adopted, were not adopted due to the pandemic, but also due to the change of government. Positively, the Law on Civil Partnership was adopted, enabling greater exercise of human rights in Montenegro.

When it comes to civil society organizations (CSOs), there was not much improvement either. The pandemic made the situation even worse, as many donors either stopped their donations or transferred them to more urgent issues, leaving many CSOs without financial support. This was especially hard for CSOs that provide services to vulnerable and marginalized groups. The cooperation between the Government and CSOs remained the same in the first half of the year, marked by a rhetorical readiness for cooperation. However, the new Prime Minister and President of the Parliament invited representatives of several recognized CSOs in order to discuss possible improvements in this area.



# Executive Summary

## Civil Society Overview

	2019	2020
Number of registered organizations	5705 (417 newly registered in 2019)	6079 (316 newly registered in 2020)
Main civil society laws	The Law on NGOs	
Relevant changes in legal framework	No changes in the legal framework for CSOs adopted during 2019.	No changes in the legal framework for CSOS adopted during 2020.
State funding (for the previous year)	Ministries in the government - 3,457,712.35 EUR	Ministries in the government - 3,241,812.23 EUR
Human resources (employees and volunteers)	n/a	n/a
CSO-Government Cooperation (consultation mechanism)	Council for Cooperation of NGOs with State Bodies	
Other key challenges	Fiscal environment, Insufficient official data about CSOs, underdeveloped philanthropy and donations, Insufficient number of employees in CSOs, Lack of funding diversity	Lack of data on CSOs, as well as lack of records on number of employees in CSOs, underdeveloped philanthropy and donations; CSOs are donor dependent.

## Key findings

Key findings of the report	
1.	There is a lack of functioning, comprehensive register of CSOs. The existing Register has not been updated and it contains only basic and incomplete data on registered CSOs in Montenegro.
2.	Procedures for submitting financial reports, as well as for VAT exemption are burdensome and complicated. Many organizations, especially small and underdeveloped ones, face obstacles and burdensome procedures when submitting annual financial reports. In addition, the existing forms are the same as ones for other legal entities (companies, corporations, etc.) and there are no unified data on CSOs that can be obtained from these reports, such as: number of employees in CSOs (full-time, part-time and external consultants), annual budget, changes in the development of CSOs, etc. VAT exemption procedures are also quite complicated and time consuming, which discourages many CSOs to undergo that process.
3.	No legislation regulating service provisions exists. Service provision of CSOs is not regulated by the Law on NGOs or any other separate Law, but is partially included in laws regulating specific areas of service provision (migration, youth, marginalized groups, etc.)
4.	There is a lack of public funding diversity and institutionalized grants for CSOs. Main donors remain the EU and other foreign donors, although the Government does provide funds for CSOs. These types of funding are usually not favorable for small organizations, as public calls request certain experience and/or annual budget of CSOs applying for funds. Institutional grants are non-existent and, therefore, there are no funds that would allow operational or strategic development of small and medium CSOs.
5.	Inclusion of CSOs in the work of state bodies and working groups is still formal. Although CSOs participate in the work of these bodies, their suggestions and comments are usually not taken into consideration.
6.	There is a lack of incentives for philanthropy and other donations. Domestic framework for individual and corporate giving is not favorable and does not provide incentives for giving.

## Key recommendations

Key recommendations of the report	
1.	Comprehensive register of CSOs should be created, including data on organizations that provide services and whose programs are accredited.
2.	The Government should introduce institutionalized grants and ensure funding diversity.
3.	Procedures for VAT exemption and submission of annual balance sheet and income balance should be simplified.
4.	Philanthropy should be encouraged through tax incentives for individuals and companies.
5.	Effective and meaningful cooperation of CSOs and the State must be ensured.
6.	A comprehensive law on CSOs providing services should be drafted and adopted.

# Findings

## Area 1: Basic Legal Guarantees of Freedoms

### Sub-area 1.1. Freedom of association

#### 1.1.1. Establishment of and Participation in CSOs

Freedom of association is guaranteed under Article 53 of the Constitution of Montenegro. The Article stipulates freedom of association, without the need for approval, through registration at a competent authority. Article 54 prohibits political association in state organs. It is not allowed for judges, state attorneys, Ombudsman, members of Central Bank Council, Council of State Audit Institution, Military, or Police to be members of political associations. Article 55 clearly states that it is not allowed to form any kind of organization that is directed to the “violent demolishing of the constitutional order, violation of territorial integrity, human rights violation or promotion of national, racial, religious or any other type of hate”. It is also prohibited to form any kind of subversive organizations.

Association of citizens is regulated in the Law on Non-Governmental Organizations<sup>3</sup> along with three bylaws<sup>4</sup> that further regulate this area. CSOs are required to register at the Ministry of Public Administration, Digital Society and Media. In order to register, organizations must have at least three founders, whereas registration is free of charge. A CSO can be established by at least three people, of which at least one has to be citizen or resident of Montenegro, or by a legal entity. However, CSOs cannot be established by political parties or state bodies. Foundations can be established by one person regardless of their citizenship or place of residence. Organizations should be registered within 30 days from the day of submitting an application. If a decision is not made in that period, the organization will be considered registered on the next working day after the deadline.

There are no data on number of CSOs that were not registered within the legally prescribed time, as Ministry of Public Administration, Digital Society and Media does not own such information<sup>5</sup>. During 2020, five organisations were denied registration<sup>6</sup>: three requests were not in accordance with the Law on NGOs, in part referring to the fact that religious organisations cannot be registered as NGOs, and two due to the proposed name of the organization not being in accordance with the Law on NGOs (they included “Center” in the name, while one organization

<sup>3</sup> Official Gazette of Montenegro, no. 39/11 and 37/17.

<sup>4</sup> The Decree On the Election of Representatives of Non-Governmental Organizations into the Working Bodies of the State Administration Bodies; the Decree on the procedure and manner of co-financing projects and programs of NGOs supported from EU funds; and the Decree on financing projects and programs of NGOs in areas of public interest.

<sup>5</sup> As per FOI request answered by the Ministry of Public Administration on 23 February 2021.

<sup>6</sup> Ibid.

proposed the name in English language).

In total, 316 CSOs have been registered during 2020, while in 2019 that number was higher – 417. According to the information from the Ministry of Public Administration, Digital Society and Media, 16 organisations were deleted from the register in the 2020, while there were no banned organisations, which is, nonetheless, not under the authority of this Ministry.

Based on the answers from online questionnaire, eight organisations that participated in the survey were registered in 2020. Out of them, six stated that the registration was completed within the legally prescribed deadline (30 days), while two organisations stated it was not the case. All eight organisations stated that the registration was completed impartially and that no additional documentation was required, except for the documentation stipulated by the Law on NGOs. The COVID-19 crisis did not stop, temporarily or permanently, the process of registration of CSOs and networks in 2020. Instead, registrations were completed online (via e-mail).

During 2020, 13 networks, unions, clusters and coalitions were newly established, whereas the total number is 269. The Law on NGOs stipulates the same rules for these entities as for associations. No prior permission or registration is required, but is possible. Networking in Montenegro is one of the successful ways of joining resources, knowledge and capacities in order to achieve the same goal. Coalitions and networks are very often created within a project, which can be an obstacle for sustainability after the project is completed.

71.4% of CSOs that participated in the online survey stated they are members of national or international network(s). Six organisations are members of one national network, five are members of two national networks, three of three national networks, three of four and one is a member of 10 domestic networks. When it comes to international networks, seven CSOs are members of two international networks, two of three networks, one of four and one of five.

None of the organizations surveyed reported that they had to inform a state body on their intentions to join or form a network, but one organization stated that the process for registering a network was complicated. In addition, one organization that participated in the online survey faced complicated procedures for establishing a foundation, and two organizations stated they faced high costs for maintaining a foundation. On the other hand, there are organizations established by persons employed in government institutions or local self-governments and legally there are no restrictions or limitations in this regard.

### 1.1.2. State Interference

The legislation clearly prescribes powers and the limitations of powers of the Government towards the functioning of CSOs. However, there are occasions when the Government directly or indirectly interferes in the work of CSOs, which is done through close monitoring of CSOs or their members, excessive audits, etc. In addition, the National Public Broadcaster RTCG continues to be selective when reporting, by boycotting, attacking, or not inviting critically oriented CSOs to participate in TV shows or news. Although a new Government was elected in December 2020, the management of RTCG remained the same.

According to the Law on Audits, CSOs are subject to audit, inspections, evaluations, and similar types of control and monitoring, in the same manner as companies and corporations. All CSOs

are obliged to submit a balance sheet and income statement to the Tax Administration during first quarter of the year, which contain an overview of all income and expenses for the previous year. During 2020, due to the situation with the coronavirus, this deadline was extended to June 2020, instead of March 2020. The need for creating new regulations for submitting financial reports to the Tax Administration is recognized in the Strategy on Improving Enabling Environment for the Work of CSOs in Montenegro 2018-2020. Although the Strategy has expired, this has not been realized. The Report on the implementation of this Strategy, which was completed in June 2020, states that, according to the opinion of the Ministry of Finance, a working group should be established to analyze the legislative framework and try to find an optimal solution for CSOs in this area.

Penal provisions are prescribed by the Law on NGOs, but also by Criminal Law or any other law that applies to every legal entity. Sanctions stipulated by the Law on NGOs are proportionate to breaches made. These are monetary sanctions that are regulated as misdemeanors. None of the organizations that participated in the online survey stated that they were sanctioned due to breaching the Law.

The Inspection Directorate initiated two offence proceedings against one CSO in 2020<sup>7</sup>, due to breaching the Labor Law (signed an employment contract that was not in accordance with the Law) and the Law on Employment and Exercising Rights from Unemployment Insurance (did not advertise publicly the open vacancy). The outcome of these proceedings is yet to be seen, since the proceeding was ongoing until the end of 2020.

During 2020, there were no adopted amendments to the Law on NGOs, which means that CSOs are allowed to dissolve according to the law. A CSO will be deleted from the register in the following situations: upon expiry of the period for which it was established, within three days from the last day of that period; based on the decision on termination of work; based on the decision to ban the work of a non-governmental organization; on the basis of the decision to terminate the bankruptcy or voluntary liquidation procedure under summary procedure in accordance with the laws governing the procedure of bankruptcy or voluntary liquidation. A network is also deleted from the register at the request of its members, if the number of members of the association is reduced below the minimum number of founders prescribed by law, and the competent body of the association does not make a decision on the admission of new members within one year.

In practice, many organizations faced state interference in their work, according to the survey findings. One organization reported threats by the government, three organizations reported intrusion into their internal work, another three reported harassment or restraint of online groups or their members, while seven organizations reported some other type of state interference. Examples of state interference provided by these organizations include: hacking of a CSO website; attacks on activists through portals and exclusion due to their critical attitude; lack of recognition of a CSO work by ministries evaluating their projects with low scores and giving other organizations that do not operate in that area more points and funds; sabotage of events (cancelling of the premises on the day of organizing an international conference); impossibility to carry out all planned activities due to the involvement of the [former] ruling

<sup>7</sup> As per FoI request answer by the Inspection Directorate, on 26 January 2021.

party, because the mentioned activities did not benefit their policy of governance; ministry representatives communicated directly with one organization's key donor, with an attempt to indirectly discredit their work and influence the further decisions of that donor.

### 1.1.3. Securing Financial Resources

CSOs in Montenegro are allowed to acquire financial resources from membership fees, voluntary contributions, gifts, donations, bequests, interest on deposits, dividends, rents, income from business activities, and other means that are not contrary to the law. The Law on NGOs allows organizations to receive foreign donations (EU funds, embassies, foundations, etc.), as well as donations from individuals and companies. CSOs are also allowed to participate in public tenders for financing their projects from state and local authorities and to raise funds from other legal persons such as commercial companies.

CSOs, as all other legal entities, are obliged to register themselves at the regional tax authority, which has remained the same in 2020, since the Law has not been amended. They are, according to the Law on NGOs allowed to participate in economic activities. In order to do so, they must register at the Central Register of Business Entities. CSOs can generate income of up to 4.000 EUR, or not more than 20% of total annual income from previous year. The number of CSOs in Montenegro that exercise economic activities is 343<sup>8</sup>. During 2020, 11 new organizations were registered for economic activities.

As per the online survey, 5 out of 33 organizations engage in economic activities. Out of them, only one organization reported complex administrative requests in order to engage in economic activities (i.e. complicated licensing procedure), while other four organizations did not face any obstacles in this area.

Regarding the funding base, many different actors provide funds for CSOs in Montenegro, and many organizations are very dependent of external funding. The largest donor in 2020 remains the European Union, as it was the case in 2019. CSOs that participated in the online questionnaire stated they receive funding from diverse sources. More precisely, 48.5% of organizations received funds from the EU. For half of those, the EU funding represents 51% or more of the total yearly budget of their organization. In addition, 57.6% responded they receive other foreign funds (from embassies, foreign foundations, etc.). Around a quarter of these organizations reported that these funds comprise 51% or more of their total yearly budget. Other notable funds that CSOs reported are those from individuals (25.7% of surveyed CSOs), private companies (31.4%), domestic foundations (20%), national sources such as Government or ministries (37.1%), and local self-governments (20%). Only two organizations reported obtaining funds from economic activity.

When it comes to restrictions for receiving foreign funds, four organizations stated they had to register within the state in order to receive funds, one organization stated it was obliged to ask for a permission to receive foreign funds, while five organizations stated that procedures for obtaining VAT exemption are complicated. The Central Bank of Montenegro does not have information that any organization was forbidden from receiving foreign funds, as the only

<sup>8</sup> As per FoI request answer by the Central Register of Business Entities on January 19<sup>th</sup>, 2021.



blocking of a bank account of a legal entity can be conducted in case of a forced collection<sup>9</sup>.

One organization that participated in the online survey said that they were asked to publish names of private donors. When it comes to obtaining funds from other sources, five organizations stated that they had to pay fees to the country in order to receive funds, seven organizations had to pay fees to banks, while two organizations paid indirect tax in order to receive funds.

#### **Box 1: EU Guidelines assessment here**

**Result 1.1.** In 2020, freedom of association remains to be legally guaranteed in Montenegro. Relevant regulation prescribe that all individuals and legal entities can establish, join and participate in non-formal and/or registered organisations. Although there have been few cases of organisations being banned from registration, it was due to the non-compliance with the Law on NGOs and the fact they did not provide the necessary documentation.

## **Sub-area 1.2. Related-freedoms**

### **1.2.1. Freedom of Peaceful Assembly**

The freedom of assembly is protected by the Constitution of Montenegro in Article 52. It guarantees freedom of peaceful assembly, without approval, with prior notification to a competent authority. The same article also lists cases in which this right can be temporarily limited, i.e. prevention of disrupting public order or crime, protection of health or moral, or safety of people and property, in accordance with the law.

This area is regulated by the Law on Public Assemblies and Public Performances<sup>10</sup> adopted in 2016. The Law defines public gatherings as “any peaceful gathering of more than 20 people outdoors to express political, social and other beliefs and goals, protests, interests and diversity”. In addition, the Law puts clear restrictions on holding an assembly closer than 15 meters from the Parliament, Presidential Building and Constitutional Court, or within 10-meter proximity to the Government building.

There were no any amendments to this Law, so spontaneous assemblies are recognized and allowed, while other assemblies must be reported to the authorities (Police Department) at least five days before they take place. The notification must contain place and date of the gathering and name of the person responsible. The police may also decide not to allow a public assembly to be held if it is not timely and duly reported. The organizer may file a lawsuit to the

<sup>9</sup> As per FoI request answer by the Central Bank of Montenegro on 26 January 2021.

<sup>10</sup> <http://www.katalogpropisa.me/wp-content/uploads/2016/11/Zakon-o-javnim-okupljanjima-i-javnim-priredbama.pdf>

Administrative Court of Montenegro, no later than 24 hours after receiving the decision.

As the Law on Freedom of Religion was adopted at the end of 2019, the beginning of 2020 was marked with religious processions in almost all cities in Montenegro, in which thousands of people participated. With the coronavirus outbreak, all gatherings, including these processions was temporarily stopped. The religious processions caused many counter gatherings, which contributed to a further polarized political and civil landscape in Montenegro. This was especially noticeable after the Parliamentary elections held on 30 August 2020. Namely, one group of citizens, mostly supporting the then opposition parties and coalitions, attended processions organized by the Metropolitanate of Montenegro and the Littoral, while the other group of citizens supported the Montenegrin Orthodox church and the then ruling party, referring to themselves as patriots. Both groups counted thousands of citizens in almost all cities.

During 2020, the Police Department secured 695 public gatherings, whereas 373 were reported in accordance with the law, while 322 were not reported to the department. Six public gatherings were dismissed in 2020. In total, 15 requests for gatherings were denied out of which all but one referred to the religious processions. Reasons for denying were: possible disturbance of public order and peace, request for gathering submitted after the deadline specified by Law, new anti-COVID measures introduced. Three organizers of public gatherings whose request was denied filed an appeal or a lawsuit. Two appeals were denied and one was adopted.

According to the survey, 43.2% of respondents participated in public gatherings during 2020. Out of them, 37.5% participated in 1-5 public gatherings, 18.8% in 6-10 gatherings, while the majority (43.8%) participated in more than 10 public gatherings. Eight organizations stated they were actively involved in the public gathering (as an organizer or speaker), while the other half passively participated. Five out of 18 organizations that participated in public gatherings in 2020 said that administrative procedures for organizers were complicated, seven said they faced restrictions on participating in gatherings, while four stated that due to the restrictions, participants were not able to gather at the agreed time. Two CSOs reported that the police used excessive force during a gathering, and four CSOs noted some of the participants were arrested.

Six organizations reported attending simultaneous assemblies, eight attended spontaneous assemblies, while none of the organizations attended a counter assembly. Moreover, four organizations stated that the police provided security during the simultaneous assembly, two CSOs said that the police forbid the gathering due to the possibility of a counter assembly, and the same number of CSOs said that the police restricted the gathering because it was not reported to the authorities.

Media representatives had access to public gatherings, according to ten surveyed CSOs. Although a significant number of organizations stated that they feel the police did not assure peaceful assembly and did not protect them, none of them reported it to the Ombudsman or any other authority, as per official information from these institutions<sup>11</sup>. However, many cases of excessive force used by police during public gatherings was noted during 2020, especially during the religious processions. The media also reported excessive use of force during various protests and many video recordings were published on online media and portals, which were

<sup>11</sup> As per FoI requests answers, received on 12 and 16 February 2021.

condemned by the public<sup>12</sup>. Based on the official information from the Police Department, 93 persons were detained or arrested during public gatherings in 2020. Five persons filed a complaint on exceeding the use of coercive means, whereas none of them was well founded.

### 1.2.2. Freedom of Expression

Freedom of expression is guaranteed by the Constitution of Montenegro in Article 47, which states that everyone is entitled to freedom of expression by speech, written word, painting or other forms. It can only be limited if it infringes the right on dignity, reputation or honor of another person, or if it endangers the public moral or security of Montenegro. Although freedom of expression can be limited if it is directed towards someone's dignity, reputation or honor, a person cannot be charged with libel, as it is not part of the Criminal Law as of 2011.

In 2020, freedom of expression in Montenegro was on the target. Namely, many persons were detained or arrested for expressing their opinion or for insulting public officials on social media. In addition, many arrests were conducted on grounds of spreading fake news. Among them, there were several CSO members and journalists.

For instance, a CSO member was called in for questioning by the police because she published a "controversial" photo on social media<sup>13</sup> and another civil activist for a post on social media, written ironically at the expense of the then ruling party<sup>14</sup>. In addition, several journalists other were arrested and detained during 2020 for causing panic, by allegedly spreading fake news<sup>15</sup>. The Ombudsman reacted to these actions and prosecution conducted by the Police and stated that nobody should be detained for writing political posts on social media and that there should be an open space for a debate, and that detaining and arresting journalists should be the last measure taken by the police<sup>16</sup>.

Many CSOs reported facing pressures for carrying out certain actions, such as having critical attitude towards the Government, which includes critical speech and advocacy campaigns. For example, several organizations encountered blocking of their website or other online tools; smear media campaigns towards their activists; censorship or self-censorship in the media, etc. Some CSOs even faced persecution or sanctions due to their involvement in an internet or online campaign critical towards the Government or in other activities<sup>17</sup>.

<sup>12</sup> For instance: <https://www.vijesti.me/vijesti/crna-hronika/492481/incident-tokom-auto-litije-u-hn-uhapsen-policajac-koji-je-bio-van-duznosti>, <https://www.vijesti.me/vijesti/crna-hronika/464689/danilovgradjanka-nakon-litije-zadrzana-u-policiji-milonjic-saslusavali-je-deset-minuta-potom-neosnovano-zadrzali>, <https://www.vijesti.me/vijesti/crna-hronika/419872/ko-hoce-litije-u-partijskim-bojama>, <https://www.vijesti.me/vijesti/crna-hronika/419073/bilans-neredana-zlatnici-uhapseno-deset-osoba>

<sup>13</sup> <http://www.rtcg.me/vijesti/hronika/267161/bojana-jokic-saslusana-zbog-fotografije-na-fejsbuku.html>

<sup>14</sup> <https://www.pcnen.com/portal/2020/07/09/omer-sarkic-pozvan-u-policiju/>

<sup>15</sup> For instance: <https://www.vijesti.me/vijesti/crna-hronika/416580/novinarke-fos-media-odredeno-zadrzavanje-osumnjicena-za-izazivanje-panike-i-nereda>, <https://www.cdm.me/hronika/zbog-izazivanja-panike-i-nereda-uhapseni-urednici-borbe-i-in4s-u-toku-saslusanja/>

<sup>16</sup> Ombudsman's reactions: <https://www.slobodnaevropa.org/a/hap%25C5%25A1enja-zbog-objava-na-dru%25C5%25A1venim-mre%25C5%25BEama/30733499.html>, <https://www.vijesti.me/vijesti/crna-hronika/417605/bjekovic-razgovarao-sa-veljovicem-privodenje-novinara-da-bude-krajnja-nuzna-mjera>, <https://www.mminstitute.org/20200806.html>, <https://www.ombudsman.co.me/article.php?id=34473>

<sup>17</sup> Other examples given in the survey: young members who were at the religious processions had problems at school and experienced various types of pressure; a CSO was accused of not working in the interest of the state and could hardly access information online; many members were "warned" informally to suspend their activities on protecting a

### 1.2.3. Access to Information

The Law on Free Access to Information<sup>18</sup> was adopted in 2017, bringing some changes to the previous Law adopted in 2012. The Law regulates the way of requesting information, as well as the manner of acting upon request, prescribing a 15-day deadline for answering the request. However, in 2019, the Draft Law Amending the Law on Free Access to Information was introduced, which included new restrictions that are not in accordance with the Constitution and that would severely limit the possibility to exercise this constitutional right. Particularly problematic was the provision which stated that public officials can determine which information is of public interest and therefore if the public can have access to it. Another problematic provision was that a request for free access to information could be declined if it requires too much information. The new Law on Free Access to Information was planned to be adopted in 2020, but the COVID-19 situation, as well as the Parliamentary elections, postponed it for 2021.

In 2020, a total of 2,207 complaints were submitted to the Agency for the Protection of Personal Data and Free Access to Information<sup>19</sup>. Out of these, 1,374 were adopted, 385 were denied, and 293 procedures were suspended by a conclusion, 144 procedures were ongoing during the year, while eight were suspended due to the untimeliness.

46.2% of CSOs that participated in online survey said they requested free access to information during 2020. Only three CSOs said they received responses to all requests they had sent to the institutions, while that was not the case with the rest of CSOs. Regarding the legally prescribed deadline (15 days) to respond to the request, it remains one of the most noticeable shortcomings. This was especially evident after the Parliamentary elections and restructuring of ministries in the government. Surveyed CSOs noted they received an answer in the legally prescribed time in only one case, while others received either most or some answers within the deadline, or did not receive the answer at all. Another issue that was noted by CSOs was the lack of answers received in precise and clear format, as only three CSOs were delivered the answer in correct format.

When it comes to denying the access to the information, CSOs have more negative experiences. Namely, only two CSOs received precise explanation for denying their requests in most of the cases, eight organizations received an explanation in some cases, three CSOs in small number of cases, while six organizations did not receive it in any case. However, institutions did provide an explanation for denying access to the information in almost all cases.

The Law on Electronic Communication<sup>20</sup> regulates access to public communication services and the internet. There are no limitations for either physical or legal entities to use these services. A provider of public communications services may restrict access to its services, that is, terminate a subscriber's contract, if the latter has failed to meet the obligations due or has breached other conditions specified in the subscription contract. The provider must define in general terms what measures are implemented in the case of certain offenses and the time limit within which the measures are implemented, which must be commensurate with the violation

mountain where the Army was supposed to organize military exercises; a CSO was suggested to stop the media campaign against the excavation of the sand in the Bojana river.

<sup>18</sup> <http://www.katalogpropisa.me/wp-content/uploads/2016/11/Zakon-o-slobodnom-pristupu-informacijama-1.pdf>

<sup>19</sup> As per official response to FoI by the Agency, received on 12 February 12 2021.

<sup>20</sup> [http://www.ekip.me/download/Zakon%20o%20elektronskim%20komunikacijama-40\\_2013.pdf](http://www.ekip.me/download/Zakon%20o%20elektronskim%20komunikacijama-40_2013.pdf)

committed and non-discriminatory.

Article 119 of the Law on Electronic Communication prescribes that it is forbidden to listen, eavesdrop or store the content and data of the communication, without the users consent, except in cases when it is necessary for the purpose of transmitting a message (fax, e-mail, SMS, voicemail etc.), or when there is legal authority to do so. However, operators are required to provide adequate hardware and software at their network, and at their own expense, to enable lawful interception of communications (Article 125).

Few CSOs reported that their channels of communication were blocked (12.8%), while 15.4% stated that they faced restrictions to access information online or offline. It was not specified for how long communication means were blocked, but CSOs stated that their websites were hacked, as well as their emails.

The Police Department stated in their official answer that there were no online groups that were banned, nor any of their members were prosecuted or detained.<sup>21</sup> The Ombudsman also noted no cases of breaching human or other rights of members of online groups or initiatives.

When it comes to accessibility to the internet, according to the Agency for Electronic Communications and Postal Activities reports on the number of internet users in Montenegro, there were 184.038 internet connections at the end of 2020<sup>22</sup>, which is an increase of 3.05% in comparison to 2019. Out of that number, 92,66% are physical entities and the rest are legal entities, which is a decrease in comparison to 2019 for less than 2%. However, these statistics only show number of internet connections via cable, but are not able to provide statistics for WiFi connections connected to that cable. Therefore, the number of internet users is much higher, but there are no adequate statistics to prove that. In addition, mobile operators do not publish number of mobile internet users, which makes it more difficult to determine percentage of population that uses internet. However, the Digital Report for Montenegro states that in January 2021 there were 477.300 internet users, which is an increase of 2.7% in comparison to January 2020<sup>23</sup>, i.e. that 76% of the population in Montenegro had access to internet.

Based on the report of Cable.co.uk<sup>24</sup>, the average internet price in Montenegro in 2020 was 3.30 EUR per 1GB, which is 0.17 EUR cheaper than in 2019. Bearing in mind the fact that the average net income in Montenegro is 524 EUR, the internet is affordable, as price per 1GB is 0.62% of average income.

### Box 1: EU Guidelines assessment here

**Result 1.1.** In 2020, freedom of assembly and other related freedoms remain to be legally guaranteed in Montenegro. However, not amending the Law on Free Access to Information as it was planned brings a delay in securing greater freedoms and more transparent work of the Government.

<sup>21</sup> As per FoI request answer by the Police Department on 16 February 2021.

<sup>22</sup> [http://www.ekip2.me/download/izvjestaji/dec2020/Internet\\_-\\_decembar.PDF](http://www.ekip2.me/download/izvjestaji/dec2020/Internet_-_decembar.PDF)

<sup>23</sup> <https://datareportal.com/reports/digital-2021-montenegro>

<sup>24</sup> <https://www.cable.co.uk/mobiles/worldwide-data-pricing/>

## 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

The tax system in Montenegro has several benefits for CSOs. The most important one from Article 13a of the Rulebook on Tax Exemption Procedure regulates tax exemption of projects funded by the European Union. Exemption from VAT is applied on total contract amount, including EU resources, as well as co-funding resources. However, the tax exemption is not applied on salaries and other human resources fees. CSOs are also exempt from tax on real-estate in their ownership, if it is used for achieving the goals of the organization. On the same ground, they are exempt from tax on real-estate turnover.

However, CSO representatives stress that more tax benefits are necessary, bearing in mind the fact that CSOs are non-profit organizations and, thus, paying all taxes as companies or corporations affects the volume of services they can provide. Based on the answers of CSOs that participated in the online questionnaire, 30.8% (12 organizations) used the benefit of tax exemption in 2020, 35.9% (14 CSOs) did not use these benefits, while the rest – 13 organizations – is not aware that these kind of benefits are available in Montenegro. When asked what kind of benefits they used, 91.7% or 11 organizations said they requested VAT exemption for the EU funded projects, while one organization stated they used personal income tax exemption.

50% of CSOs stated that they believe the administrative procedures are not hard to meet when it comes to tax exemption, 16.7% believe they are somewhat hard to meet, while 34.4% believe they are hard or very hard to meet.

The Strategy on improving enabling environment for the work of CSOs in Montenegro 2018-2020 foresaw amending of the Law on Personal Income Tax for Physical Entities, but this measure had not been realized in 2020 as planned. The Report on the implementation of the Strategy states that some preparation activities had been carried out, such as meetings with CSOs in order to present the analysis of tax legislation, and that the Ministry of Finance expects the Law to be amended in 2021.

When it comes to tax exemption for economic activities of CSOs, the tax base is reduced for 4,000 EUR if the income is used in a way that contributes to achieving the goals of the organization. Organizations that are founded only for conducting non-profit activities do not pay income tax and are not obliged to report it, according to the Law on Corporate Income Tax. Taxes, surtaxes and contributions to employee earnings are calculated as is the case with any other employer. None of the CSOs that participated in the online survey reported that they used tax benefits for economic activities.

As of December 31, 2020, there are 219 domestic endowments in Montenegro, registered as foundations. During 2020, 12 new endowments were registered.

### 2.1.2. Incentives for Individual/Corporate Giving

The area of individual and corporate giving remains the same as in 2019. Amendments to the Law on Personal Income Tax in the area of philanthropy were planned to be adopted in 2020, but not carried out. The Ministry of Finance plans to amend this Law in 2021.

The Law on Corporate Income Tax<sup>25</sup> recognizes expenditures in all 21 areas of public interest up to 3.5% of the total income of the taxpayer. Unlike the Law on Corporate Income Tax, the Law on Personal Income Tax<sup>26</sup> recognizes only five areas of public interest (health, education, sporting and cultural purposes and environmental protection) out of the 21, and therefore should be further harmonized. This law does not explicitly regulate the issue of the tax status of institutional grants for CSOs operating in areas of public interest, therefore it is not clear whether institutional grants are subject to tax exemption.

According to Catalyst Balkans' latest report on the state of philanthropy in Montenegro<sup>27</sup>, non-profit organizations were on third place as recipients of donations in 2019, behind individuals and institutions, like it was the case the year before. However, a decrease of 2.1% in donations for CSOs was noted. Organizations received most donations by corporations, as opposed to the year before when individual citizens were recognized as number one givers to CSOs.

Although the legal framework does not provide incentives or tax benefits for companies, Telenor, Telekom, Coca Cola Hellenic, Erste bank, Cerovo, and similar companies finance CSOs' projects by announcing calls in various fields: inclusive education, environment protection, digital transformation, etc. There are also organizations that support grassroots and smaller CSOs through re-granting schemes, such as: CRNVO, CGO, fAKT, CeMI, Green Home, etc.

The development of individual philanthropy is still at a low level in Montenegro and is mostly constrained by the lack of trust in Montenegrin society and the limited awareness of the importance of such activities. However, the coronavirus crisis raised some awareness on the importance of giving and philanthropy, and according to the Report on giving published by fAKT<sup>28</sup>, Montenegrins organized 758 humanitarian actions in the period from March to June 2020, and collected more than 10 million EUR as a response to the COVID-19 crisis.

Around 38% of CSOs that participated in the online questionnaire strongly agree or agree that receiving tax benefits is hard for individual donors, as well as for companies and corporations.

There is no official data on CSOs working in areas of public interest, while some local governments publish such data when allocating funds. 20.5% of CSOs that participated in the online survey stated they have the status of a Public Benefit Organization (PBO).

<sup>25</sup> <http://www.poreskauprava.gov.me/ResourceManager/FileDownload.aspx?rid=52682&rType=2&file=1216286298.pdf>

<sup>26</sup> <https://www.paragraf.me/propisi-crnegore/zakon-o-porezu-na-dohodak-fizickih-lica.html>

<sup>27</sup> <https://www.slideshare.net/CatalystBalkans/giving-montenegro-2019-report-on-the-state-of-philanthropy>

<sup>28</sup> <https://www.faktcg.org/odgovor-dobrocinstva-na-covid-19-u-junu-2020-infografika-catalyst/>

### Box 1: EU Guidelines assessment here

**Result 1.1.** In 2020, no new legislation was introduced in the area of Tax and Fiscal Benefits or Corporate Giving, although it was planned in The Strategy on improving the enabling environment for the work of CSOs in Montenegro 2018-2020. The existing legislation does not provide any incentives for CSOs, which affects the work of CSOs regarding the number of employees and potential activities and projects, but also it does not provide any stimulations for donations by companies or individuals. The coronavirus crisis deepened this issue, since most of the donations of individuals and corporations were aimed to healthcare institutions in order to fight the coronavirus, and not many CSOs had to opportunity to get funds from donations.

## Sub-area 2.2. State support

### 2.2.1. Public Funding Availability

In 2018, a decentralized funding system was introduced, implying that the Government allocates funding for projects and programs of CSOs through its ministries. Each year, the ministries declare areas of public interest within their area of operation in which projects of CSOs will be financed during the next year. Although CSOs are invited to attend consultations on sectoral analysis and provide comments and suggestions, that is not very common in practice. Based on answers received from ministries, only seven CSOs participated in the consultation phase in two ministries<sup>29</sup>. The periodical evaluation of this funding system is planned for 2021.

For each area of public interest, a three-member commission is formed, whereas two members are state officials and one member is a representative of CSO, who is chosen based on a public call. This is regulated by The Decree on the Election of Representatives of Non-Governmental Organizations into the Working Bodies of the State Administration Bodies. Ministries are obliged to publish public calls for financing projects of CSOs by March 1 for projects that will be implemented in that year.

Calls are usually open for one month, but due to the situation with the coronavirus, most of the deadlines were prolonged, while some calls were paused. Projects are evaluated by independent assessors, and the Commissions in each ministry make final lists on supported projects.

Government support to civil society is defined in the Law on NGOs and amounts to minimum 0.3% of the annual current budget. Additionally, 0.1% of the annual current budget is allocated for programs and projects of CSOs in the area of protecting people with disabilities, and another 0.1% is given for co-funding of programs and projects funded from the European Union.

For 2020, 6,491,388.96 EUR were planned in the Budget line: *Transfer to NGOs* in the Budget of

<sup>29</sup> According to information obtained through FoI requests, CSOs participated in consultation phase in the Ministry of Human and Minority Rights and Ministry of Education.



Montenegro, which is almost 500,000 EUR more than in 2019. During 2020, 10 ministries announced 28 calls for financing CSO projects. Based on the decisions published, 151 organizations received funds to finance 289 projects. In total, 3,241,812.23 EUR was distributed, while 28 partnerships were formed. Hence, almost 200,000 EUR less were allocated in 2020 than in 2019. This might be due to the fact that some ministries did not publish the planned calls for project proposals, some paused them amid the coronavirus outbreak and never started them again, while some neither published decisions nor allocated funds.

When it comes to co-financing of EU funded projects, 1,000,325.20 EUR were planned in the budget, while 857,468.68 EUR were allocated in 2020. The call for co-financing is open throughout the year. In 2019, 378,791.4 EUR were allocated for co-financing these projects, and in 2018, that number was 852,273.04 EUR.

One third of CSOs that participated in the online survey reported they received funds from the state in 2020. Out of these organizations, 15.4% report that these funds make 51% or more of their total yearly budget. Two thirds of CSOs (66.67%) strongly agree or agree that the available funds are not enough for CSOs' needs.

### 2.2.2. Public Funding Distribution

Although 2019 brought some improvements in the area of public funding distribution, as ministries started respecting the Law on NGOs regarding publishing calls for project proposals of CSOs, 2020 was marked with many delays in this area due to the coronavirus outbreak. The deadline for submitting project proposals was extended by most of the ministries, but it brought additional delays in announcing Decisions on allocation of funds.

All Ministries that announced calls respected the procedure stipulated by the Law on NGOs: the call contained the title, the priority area in which it is published, the specific objectives of the call, the supporting documentation required, the total budget of the call, the minimum and the maximum amounts that can be allocated, the deadline for submitting project proposals, and the address to which proposals should be submitted.

After the deadline for submitting projects has passed, the Administrative checklist is published and CSOs whose documentation is not complete have five working days to submit additional documents. After that, independent evaluators score projects and the Commission determines the list of projects that will be funded based on the number of points they received. After the list of supported projects is determined, it is publicly announced on the ministry's website, along with number of points that each project received.

The Ministry of Human and Minority Rights reported there were two cases initiated before the Administrative Court for the Decision on allocation of funds, while there were no complaints for the existence of conflict of interest. Other ministries that replied to our request for free access to information did not provide information whether there were complaints for conflict of interest or whether any cases were initiated before the court.

Moreover, most of the organizations (71.8%) that participated in the online survey stated they strongly disagree or disagree that that Decisions on allocation of funds are fair. Only 7.7% agree with this statement. 59% of the surveyed organizations stated they disagree or strongly disagree

that state institutions respect the procedure for allocating funds.. Furthermore, 35.9% agree or strongly agree that criteria for allocating funds are clear and precise, while 43.6% disagree or strongly disagree with this statement. Moreover, 59% of organizations state that requests for submitting project proposal are complicated, as many additional documents are asked.

One of the issues stated in the online survey is that public officials and clerks in ministries do not have sufficient knowledge for allocating funds to CSOs. The Ministry of Human and Minority Rights reported that, during 2020, 10 employees completed various trainings and workshops in the field of financing CSOs, while one employee in the Ministry of Internal Affairs attended two workshops.

During 2020, the issue of amending the Law on NGOs was raised, as the decentralized model of funds allocation created many “catch-all” organizations that apply for projects in all areas and receive funds for those projects, while CSOs that operate in one specific area do not receive any funds. The perception that these organizations have the (former) Government’s support is supported by the fact that their representatives are being elected in advisory and other decision-making bodies.

In addition, a question whether a CSO representative is necessary in the Ministry’s Commission has also emerged, as in most cases it was the organizations supporting the candidacy of that CSO representative that received funds from that ministry. A methodology for determining the existence and characteristics of GONGOs and PONGOs should be established and used for determining the existence and number of organizations of this type. As the new government was established, the new minister of Public Administration, Digital Society and Media expressed openness to discuss and initiate the procedure for amending the Law on NGOs in 2021.

### 2.2.3. Accountability, Monitoring and Evaluation of Public Funding

The legal framework in the field of monitoring and evaluation of public-funded projects has not changed in 2020. The Law on NGOs stipulates that the intended use of the funds allocated to CSOs is controlled by external auditors, who are hired by the advisory body, i.e. the Council for Cooperation between the Government and Non-Governmental Organizations. In addition, there are templates for conducting monitoring visits and evaluation of implemented projects.

Contracts between CSOs and ministries regulate the monitoring and evaluation of projects funded by the state. Periodic reports (e.g. quarterly, half-yearly) must be submitted to ministries, depending on the duration of the project, as well as the final narrative and financial report at the end of the project. Ministries occasionally conduct on-field monitoring visits in order to evaluate the implementation of the project they supported.

The Commission appointed by the Ministry can analyze finances and expenses at any time during the implementation of the project and two years after the project is completed. In addition, the Commission has the right to contact every physical or legal entity in order to check the credibility of all documentation. If the Commission determines that the funds are used non-purposefully, or that the project was not implemented on time, the CSO is obliged to repay all funds with interest calculation within 30 days after the Announcement on the Obligation of Returning Funds is received by the organization. If the commission determines that the organization has not fulfilled his contractual obligations, it will be denied the right to apply for

project funding in the next two years. These procedures are usually not burdening or time consuming, especially bearing in mind that reporting forms (narrative and financial) that must be submitted to Ministries are not complex and are clear.

As ministries were late with deciding on the allocation of funds in 2020, but also in 2019, most of the projects that were implemented in 2020 were the ones that were funded in 2019. Most of the projects supported in 2020 started their implementation at the end of the year.

Based on official answers received from ministries, there were several monitoring visits in 2020, in cases when the situation with the coronavirus allowed that. The Ministry of Human and Minority Rights reported that they do not have a uniformed monitoring and evaluation plan, but it is created based on projects' implementation plan and budget. This Ministry carried out three on-field visits, while it also conducted online meetings with CSOs amid the pandemic. The Ministry of Internal Affairs did not conduct monitoring visits due to COVID-19, while it did evaluate the implemented projects. Former Ministry of Transport and Maritime Affairs planned 13 monitoring on-filed visits, but they were not carried out due to the pandemic. Other ministries did not carry out monitoring of supported projects or they denied access to the information<sup>30</sup>.

Five organizations that participated in the online questionnaires reported they had experience with monitoring of projects funded by the state. All five organizations stated that the monitoring visit was conducted in accordance with the rules and that it was announced before.

Since the Law on NGOs was adopted at the end of 2017, periodic evaluation of the effects of state funding, planned to be conducted every 3-5 years, has not been implemented yet.

#### 2.2.4. Non-Financial Support

The Law Governing the Use, Management and Disposal of State Property stipulates that the state may grant the use of state property to CSOs. In addition, each ministry may decide on providing any other type of non-financial support (organizing events, trainings, providing equipment, human resources, etc.).

Local self-governments may allocate property to CSOs based on published criteria. However, these criteria are mostly not clear and the allocation is not conducted transparently. This has been an issue noted also the previous years, and no changes in the legal framework have been made in this regard.

The problem of insufficient number of premises that the state or local governments may provide to CSOs is noticeable, especially since the available premises are usually not good conditions. Many CSOs that provide services to vulnerable and marginalized groups do not have their own premises. Other non-financial support is not defined by any Law, but Ministries decide on it based on individual requests by CSOs.

Based on answers from ministries, Ministry of Internal Affairs provided non-financial support in a way that it donated disinfectants to one CSO, while the Ministry of Finance organized series of free workshops and trainings for CSOs.

<sup>30</sup> All information obtained through responses to FoI.

CSOs that participated in the online survey mostly have negative opinion about the non-financial support. Namely, 51.3% of CSOs believe that conditions for gaining non-financial support are hard to meet. Around half of respondents (48.7%) do not think that CSOs have an advantage compared to other legal entities when it comes to receiving non-financial support. CSOs mostly do not have strong opinion about the statement that organizations critical of the government can access non-financial resources. 53.8% of organizations think that decisions on allocation of non-financial support is not fair, while only one organization agrees that it is fair.

There have not been officially reported cases of CSOs being deprived from or not given non-financial support due to their political affiliation/critical stance.

#### **Box 1: EU Guidelines assessment here**

**Result 1.1.** Although ministries and some companies provide funding opportunities for CSOs, the main donors remain the EU and other foreign donors, such as embassies. Therefore, improvement and diversification is needed in the area of public funding as small and in-development organizations often do not have enough capacities in order for their projects to be supported, but funds are allocated to medium and big organizations.

### **Sub-area 2.3. Human resources**

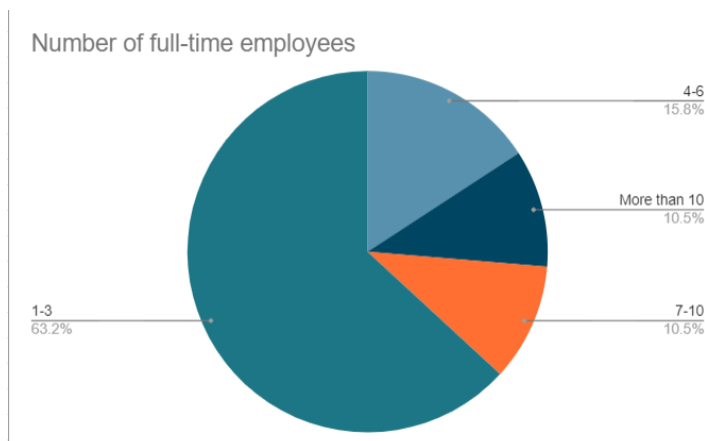
#### **2.3.1. Employment in CSOs**

Employment in CSOs is one of the topics that has been discussed a lot during 2020. The Labor Law equally treats all employees - in the CSO sector, corporations, companies and state bodies. This means that CSOs must pay full taxes and surtaxes for their employees, however they are not obliged to have any employees, according to the Law on NGOs.

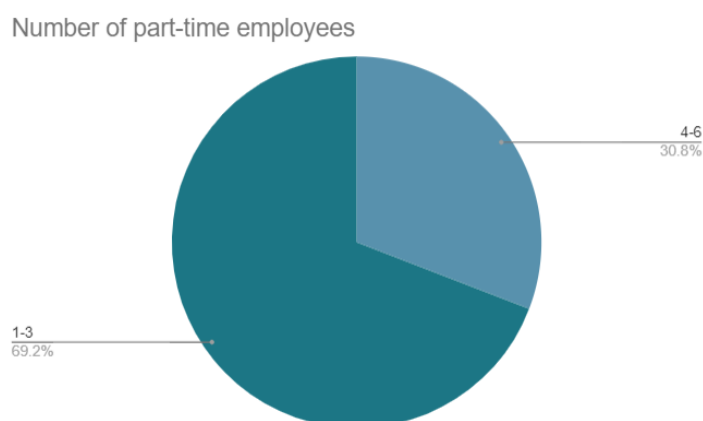
As there are no incentives for employment in the civil society sector, many organizations do not have employees. A new Labor Law was adopted at the very end of 2019 and it introduced provisions that allow employers to hire someone on fixed-term contract for a period of up to 36 months. In addition, work from outside the employer's premises is recognized, which is important for smaller organizations that do not have adequate facilities for their work, but it also allows remote work.

Data for number of employees in CSOs in 2020 was not available by the date of publishing this report. Although the legal entities submit their annual report during the first quarter of the year, the Tax Administration did not provide information on CSO employees by September 2021.

Around half (48.7%) of CSOs that participated in the online survey stated they have full-time employees. Out of them, 63.1% have 1-3 full-time employees, 15.8% have 4-6 full-time employees, 10.5% have 7-10 employees and 10.5% have more than 10 full time employees.



Numbers are somewhat lower when it comes to part-time employees. Namely, one third of CSOs said they had part-time employees in 2020. Out of them, 69.2% have 1-3 part-time employees, while the rest have 4-6 part-time workers. However, the majority of CSOs (74.4%) hired external consultants in 2020.



There are some incentives for every employer, including CSOs, that employ person(s) with disabilities, which imply grants for adjusting the workplace and working conditions for employment of persons with disabilities; credit facilities on favorable terms for the purchase of machinery, equipment and tools necessary for the employment of persons with disabilities; participation in financing the personal expenses of assistants (work assistants) of persons with disabilities; and wage subsidies for persons with disabilities.

In addition, there is a vocational training program for persons with higher education, funded by the State, to hire graduates for period of 9 months. There is a significant number of cases where new employees would sign contracts of employment after the expiration of this period<sup>31</sup>. Most of the smaller organizations, however, do not have funds for salaries in order to keep interns after their program ends, so they ask for new graduates every year. During 2020, more than 100 graduates were employed in the civil sector through state-funded Vocational Training Program. However, due to the COVID-19 situation, most of CSOs worked from home, so graduates were not able to receive full mentoring support, as it was the case in the previous years.

<sup>31</sup> <https://www.vijesti.me/vijesti/drustvo/kurpejovic-vise-od-2-9-hiljada-viskoskolaca-na-strucnom-osposobljavanju>

The Employment Agency of Montenegro stated that in 2020 they organized programs of public work, training for work with the employer, and training for independent work in which CSOs participated (97 CSOs out of 271 participants). These programs implied funds to employ different categories of unemployed people (based on their vocation, for persons with disabilities, prequalification)<sup>32</sup>. The evaluation of these programs is still not available.

During the first lockdown in spring 2020, all employees were given subsidies as an incentive (full taxes and surtaxes, and net salary in the amount of the minimal wage in Montenegro for employees working in the fields whose work was completely forbidden, and partial incentives if their work was partially allowed). However, CSOs were not included in any of these categories, although organizations had advocated for that. Both the (former) Prime Minister and (former) National Coordination Body did not respond to this initiative.

### 2.3.2. Volunteering in CSOs

The Draft Law on Volunteering<sup>33</sup> was created in 2019 and was planned to be adopted in 2020. However, the pandemic and the change of government postponed its adoption. The Report on the Implementation of the Strategy on Improving the Enabling Environment for the Work of CSOs states that the Board of Health, Labor and Social Welfare supported the Draft Law in February 2020, but it is yet to be adopted.

The Draft Law introduces new definition of volunteering, ways of keeping records on volunteers, and it does not obligate organizers of volunteering actions to sign contract with a volunteer if the volunteering is less than 10 hours per week. This is one of the changes that was most advocated by CSOs, as the current Law obliges CSOs to sign contracts with all volunteers, regardless of number of volunteering hours. The Law will establish volunteerism as civic activism instead of a working relationship, as it is the case with the Law on Voluntary Work still in force.

The existing Law defines voluntary work as unpaid and done in freewill. It requires that volunteers and organizers of voluntary work must sign a contract. The law also states that volunteers must have volunteer booklets issued by the local administration, which is not respected in practice.

The current Law prohibits volunteering to children under 15 years of age, even in cases when activities are organized by educational institutions or are in the function of education of those children. This way, the Law is preventing the development of a culture of volunteerism in an age group that would be a natural target group for the development such a culture.

These provisions of the Law are in conflict with the practice of the Bureau for Education Services, which has optional and compulsory curricula materials for elementary and high school education, titled "Volunteer and humanitarian work", that includes practical volunteering. The new Draft Law will change this provision and allow volunteering for younger than 15 if that is in accordance with existing educational programs.

Volunteer work can take up to six hours a day and no more than 25 hours a week. If the contract on volunteer work is concluded in the case of vocational training, the volunteer work can last no

<sup>32</sup> As per official answer to FoI received on 26 January 2021.

<sup>33</sup> <https://www.gov.me/ResourceManager/FileDownload.aspx?rId=388452&rType=2>

longer than 40 hours per week. The agreement on volunteer work is concluded in writing between the volunteer and the volunteer organizer. The organizer of volunteer work is obliged to register the volunteer for insurance in case of injury or occupational disease during the volunteer work. However, even though the law stipulates these provisions, such cases are not very common in practice and they have been criticized by CSOs that organize volunteer actions, because that process is complex and expensive, especially for short-term volunteering.

Based on the questionnaire answers, 89.7% of the organizations included volunteers in their work in 2020, but none of them reported any issues for not registering their volunteers. None of the organizations reported sanctions for not registering volunteers or for organizing spontaneous volunteering.

### 2.3.3. Non-Formal Education

The legislation in the area of non-formal education has not been altered in 2020. The Adult Education Strategy for Montenegro 2015-2025 remains the main document that emphasizes the role of CSOs in the non-formal education. It states that it is necessary to use the potential of the sector in adult education for civil democracy, protection of life environment, sustainable development, energy efficiency, gender equality, media literacy, etc. The Ministry of Education annually allocates funds for financing projects and programs of NGOs in these fields and supports numerous organizations.

There is no precise data on the total number of CSOs active in the field of education and learning. However, a large number of NGOs implement educational programs to strengthen the capacities and skills of different target groups in various fields.

Another law that recognizes the role of CSOs is the Law on Education of Adults that states CSOs are key actors in providing informal education programs. However, CSOs must accredit their programs in order to be able to implement them. The procedure for accreditation of non-formal education programs is regulated by this law and CSOs have the same rights and obligations in this regard as other entities envisaged by the law. Nevertheless, most educational programs in practice have not undergone program accreditation procedures and CSOs implement programs of non-formal education without obtaining a license.

The Analysis of the Adult Education Programs for 2020 has not been completed, but based on data from the previous year, there were 18 accredited informal education programs of 10 CSOs. The largest number of accredited CSO programs are vocational qualification education programs and education programs for improvement of key skills and competences. Fewer accredited programs imply acquiring knowledge and skills for civil democracy, environmental protection, sustainable development, family life, successful social integration, raising the quality of life, health education, social skills, third age, etc.

In practice, most of the organized non-formal education programs (e.g. schools, forums, workshops, trainings, etc.) are the ones that are accredited the least. For example, CSOs such as the Center for Civic Education, Prima, Active zone, Association of Youth with Disabilities, Prona, ADP ZID, Juventas, etc., organize many schools and trainings for youth and adults on different topics. CRNVO regularly organizes trainings on writing projects, civil society, strategic planning, public advocacy, etc., which are aimed for smaller and underdeveloped CSOs.

In addition, the Youth Strategy 2017–2021 recognizes the importance of informal and non-formal education programs provided by CSOs as one of key measures are participation of youth in these programs and internships and vocational training programs within CSOs.

Until 2017, Civic Education was a mandatory subject in elementary schools and elective subject in high schools. However, the new Education Reform proposed that Civic Education should be an elective in elementary schools, as well. At universities, these topics are studied at faculties of law, political science, state and European studies, etc. However, there are no such subjects in programs of STEM education faculties.

When it comes to internships and fellowships, some Faculties have them as part of the curriculum (for instance Faculty of Political Science, Faculty of Philology, Faculty of Tourism and Hospitality, Faculty of Maritime Studies, etc.). Yet, high schools do not include volunteering or internships as mandatory part of the curriculum, except for high schools in the field of medicine, tourism, and in vocational high schools.

**Box 1: EU Guidelines assessment here**

**Result 1.1.** In 2020, a new Law on Volunteerism was expected to be adopted. However, this has not been done due to the situation with the coronavirus and the change of the Government. This Law will bring a lot of improvement in this area in comparison to the previous Law on Volunteer Work. On the other hand, the legal environment does not stimulate employment in CSOs, as CSOs are obliged to pay full taxes and surtaxes for every employee, which is often not sustainable for small and medium organizations.



## 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

The Strategy on Improving Enabling Environment for the Work of CSOs in Montenegro 2018-2020<sup>34</sup> has been the main document regulating the state of CSOs in Montenegro in the previous years. However, the Strategy has been completed during 2020 and the Report on the Realization of the Strategy has been published. The Strategy had defined five specific objectives with 34 measures. Out of these measures, 17 have been realized, two partially realized, and two are ongoing, while 12 have not been realized. The recommendations of the Report include the need to create a method in which the CSOs will be included in the process of consultations during the drafting of strategic documents.

In the second half of 2020, a Working Group for Drafting the New Program of Cooperation of State Bodies and CSOs for the period 2021-2023 was established, as a continuation of the Strategy 2018-2020. Based on the official document received from the Ministry of Public Administration, Digital Society and Media, the Working Group has seven members, out of which two are representatives of CSOs.

A public consultation had been organized for CSOs during the initial phase of the preparation of the Program. CSOs were able to submit their suggestions and comments via email or the e-participation portal. During this phase, only one CSO submitted its input. However, another public hearing will be organized after the Working Group drafts the first version of the Program.

Although the Working group was established in July 2020, the Program has not been drafted yet, as the Government change has postponed the internal procedures of the Ministry. The first meeting of the working group is planned for 2021.

Analysis of the Strategy 2018-2020 showed that the state of the sector was analyzed based on data of TACSO reports, official Register of NGOs, tax portal, etc. However, a lot of data was not included in the Strategy, such as number of small, medium and large organizations, number of employees in CSOs, annual revenue of organizations, whether they have their own premises or not, etc. Representatives of CSOs in the Working Group for Drafting the New Program will advocate for obtaining this data and including them in the statistics report on CSOs in Montenegro.

The Register of Non-Governmental Organizations has not been updated since 2018. Based on the data received from the Ministry of Public Administration, Digital Society and Media, the register has been created. However, due to more than 2,300 changes (e.g. registrations, deletions, changes of address or authorized person, etc.) that have arisen in his period, the

<sup>34</sup><http://www.mju.gov.me/ResourceManager/FileDownload.aspx?rid=301459&rType=2&file=Strategija%20unapre%C4%91enja%20podsticajnog%20okru%C5%BEenja%20%202018-20120.pdf>

Register will be updated in 2021 and not in 2020 as it was planned. The Tax Administration has data on number of employees in CSOs, however there are no separate data on number of full time and part time employees, nor number of volunteers.

In addition, a Working Group for the Analysis of the Implementation of the Law on NGOs has been established in 2020, with three CSO representatives. This working group had only one meeting in 2020, for the same reasons as the Working Group for Drafting the Program, but it will continue its work in 2021.

### 3.1.2. Institutions and Mechanisms for Development of and Cooperation with Civil Society

The most important mechanism of cooperation between civil society and public institutions in 2020 remains the Council for Cooperation between State Bodies and NGOs, which was formed in 2018. Its main task is to facilitate cooperation between the government and CSOs, especially in terms of the Strategy on Improving Enabling Environment for the Work of CSOs in Montenegro 2018-2020, i.e. the Program of Cooperation as of 2021, resolve issues and problems that occur in it.

The Council does not have budget, and members do not receive any fees. Number of members is fixed – 12 members, out of which six are representatives of CSOs, and a president who is the Minister of Public Administration, (Digital Society and Media). The mandate of members and the president is three years. Total of three meetings of the Council were held in 2020, which were all organized in an online format<sup>35</sup>.

Councils for cooperation exist on local level, as well. All municipalities have an obligation to organize at least one annual meeting between mayors and presidents of local parliaments with representatives of local CSOs, but in most cases, this does not happen in practice.

Besides the Decree on the Election of Representatives of Non-Governmental Organizations into the Working Bodies of the State Administration Bodies, which regulates participation of CSOs in public consultations and working bodies, there is no official act that states CSOs must participate in drafting annual program or similar documents. However, Ministries publish calls for CSOs to participate in drafting sector analyses and other documents.

Less than half (46.2%) organizations that participated in the online survey reported some kind of cooperation with institutions. Out of these 18 organizations, 16.7% cooperated once, 50% two to five times and 33.3% more than five times. Examples of such cooperation are the following: partnership, capacity building, integration of research findings in the program development, signing of Memorandum of Cooperation, development of a management plan for the protection of the Ulcinj Salt works, joint implementation of project activities, cleaning actions, participation in the work of National Commissions or working groups, development of national guidelines and plans in relevant fields, policy making, etc.

CSOs that did not cooperate with state institutions in 2020 stated the following as some of the reasons: that they did not have the need, they do not have trust in institutions, they were not

<sup>35</sup> Report on the work of the Council for 2020: <https://wapi.gov.me/download/7da278f2-a6b3-4e43-b75e-9e888d2b8f05?version=1.0>

given a chance, they were unable due to the pandemic, etc.

When it comes to the Council for Cooperation between State Bodies and NGOs, only 23.1% of CSOs state they are familiar with the work of this body, 46.2% are not familiar with its work, while 30.8% of CSOs are not informed that this body exists. Organizations that are familiar with its work (9 of them) all scored the work of this body with the score 3 on the scale 1-5, when asked whether the decisions of the Council are based on the needs and recommendations of CSOs.

#### **Box 1: EU Guidelines assessment here**

**Result 1.1.** In 2020, CSOs and Government cooperation remains to be legally regulated through the Law on NGOs. The most important mechanism of collaboration between civil society and public institutions remains the Council for cooperation between state bodies and NGOs.

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

#### **3.2.1. Standards for CSO Involvement**

The Decree on the Election of Representatives of Non-Governmental Organizations into the Working Bodies of the State Administration Bodies states that public hearing in the preparation of laws and strategies is conducted by consulting bodies, organizations, associations and individuals in the initial phase of drafting a law or strategy; and by organizing a public debate on the text of the draft law or strategy.

This Decree also states introduces new rules to improve the inclusion of CSOs in the decision-making processes. Namely, it recognizes two types of cooperation. The first one refers to the obligation of state administration organs to include representatives of CSOs into working groups that they form, based on a public call on their web site and the e-administration portal. The second form of cooperation is through public debates in the preparations of laws and strategies. The interested public can participate in these debates during consultations in the process of drafting laws and in debates on the text of a draft law.

During 2020, 46 laws, 7 decisions, 20 decisions on election, appointment and dismissal, five financial plans of independent regulatory bodies and one conclusion were adopted. That is almost two times less than in 2019, which might be due to the coronavirus, but also due to the Parliamentary elections that took place in August 2021. All adopted laws are available either on the ministries' websites, or in the Catalogue of Regulations<sup>36</sup>.

Around 41% of CSOs that participated in the online questionnaire stated that they participated in consultation on drafting laws, bylaws and policies. Out of these organizations, 18.8%

<sup>36</sup> [www.katalogpropisa.me](http://www.katalogpropisa.me)

responded that most of their suggestions were included; 50% that some of their suggestions were included and 6.3% reported their suggestions were not considered at all. None of these organizations stated that all of their suggestions were considered, 12.5% did not receive any feedback about their suggestions, while 6.3% did not have any comments and suggestions.

When asked whether they agree if CSOs are included in early phases of preparing draft laws, 43.6% disagree or strongly disagree with that, while 18% agree or strongly agree. Moreover, 20.5% strongly disagree or disagree that announcements about public consultations are published at least seven days before they are organized, and on the contrary 28.2% agree or strongly agree that announcements are published timely. In addition, most organizations (38.5%) think that not enough time is provided to submit comments and suggestions to the Government, while 23% believe there is enough time. 41% of CSOs think that materials, such as draft laws and bylaws, comments, strategies, etc., are not available prior to the consultations. 23% of CSOs agree that materials are available.

48.7% of online questionnaire participants disagree or strongly disagree that appointed public servants facilitated effective engagement of CSOs in the consultation process. Only 5.2% agree or strongly agree with this statement. In addition, 38.5% reported they disagree or strongly disagree with the statement that civil servants have enough capacities to include CSOs in drafting new documents and acts. 10.3% responded they agree or strongly agree on this issue.

### 3.2.2. Public Access to Draft Policies and Laws

A public debate on the text of a draft law or strategy should be organized by the authorized ministry, as stipulated by the Decree on the Election of Representatives of Non-Governmental Organizations into the Working Bodies of the State Administration Bodies. Each ministry is obliged to publish a list of laws and strategies for which it will organize a public debate, a brief explanation of the need to adopt a law or strategy and other information of importance for the preparation of the law or strategy. The call should be published within 15 days from the day of adoption of a ministry's annual work program on its website and on the e-government portal.

However, the Law on State Administration stipulates that public consultations are not mandatory when regulating defense and security issues, the annual budget, in emergency, urgent, or unforeseeable circumstances, or in situations where the law does not regulate an issue in a substantially different manner. During the pandemic, a National Coordination Body was established, but it did not include CSO representatives in its work, although that had been advocated for by many organizations. During the period of facing the first wave of Covid-19, CSOs reacted to the violation of human rights in certain situations. The selection of CSO representatives in National Coordination Body had to be implemented in accordance with the existing Regulation on the Procedure of the Selection of NGO Representatives in the Bodies Established by the Government and Public Authorities.

The existing Law on Free Access to Information regulates that every domestic and foreign physical and legal entity has the right to access information, without an obligation to state the reasons and explain the interest of seeking information. Every ministry, local government, as well as local and national body and institution, and public enterprise, is obliged to have the Guidelines for Access to Information published on their website.

The institution must provide an answer to the requested information, 15 days from the day the request is received. If the answer is not provided, the entity that requested information may appeal to the Agency for Protection of Personal Data and Free Access to Information. In 2020, 2207 complaints in total were submitted to the Agency<sup>37</sup>. Out of these, 1374 were adopted, 385 were denied, 293 procedures were suspended by conclusion, 144 procedures are ongoing, while eight were suspended due to the untimeliness.

The Law prescribes monetary sanctions if the information is not provided, if it is provided after the deadline, or if it was not created in accordance with the law. It is not known how many institutions faced sanctions for these reasons in 2020. In addition, the Agency will be sanctioned if it does not act on the complaint.

The portal of e-Government<sup>38</sup> is an online tool that contains four parts: public debates, consultations, working groups and announcements. Every state body publishes call for one of these sectors along with the draft law/document. Based on information available on e-participation websites, there were 42 calls for public debates in 2020, whereas the draft document was published in 34 cases. Only 20 reports on the public debate were published. Any physical or legal entity is able to publish comments or suggestions through this portal. There were 28 calls for consultations, whereas 13 draft documents and 12 reports on the consultations were published.

### 3.2.3. CSOs' Representation in Cross-Sector Bodies

According to the Decree on the Election of CSO Representatives to the Working Bodies of the State Administration, the state administration body elects representatives of CSOs to the working group and other working body that it forms, based on a public invitation published on its website and internet portal of e-government. A representative of a CSO in the working body may be a person who: resides in Montenegro; has experience in the area of concern that is considered or normatively regulated by a working body; is not a member of political party organs, public official, civil servant, or state employee. When the Call is open, organizations may suggest a CSO representative for that body. After the deadline for submitting suggestions for the representative of CSO, the Ministry announces list of suggested representatives as well as the decision on the selected representative signed by the Minister. In addition, list of incomplete applications and list of organizations that supported the application of certain CSO representative whose documentation is incomplete is published.

49 representatives of CSOs participated in the work of Working Bodies of the Parliament<sup>39</sup>, while in 2019 that number was 72. When it comes to Ministries, 11 CSO representatives participated in working bodies of the Ministry of Public Administration, [Digital Society and Media], whereas all meetings were organized online due to COVID-19. In addition, 25 CSO representatives participated in the work of Ministry of [Justice], Human and Minority Rights, and five in the working bodies in the Ministry of Internal Affairs. Information of CSO representatives' participation in working bodies of other ministries is still unavailable. The Ministry of Internal Affairs formed 13 advisory and working bodies during 2020, the Ministry of [Justice], Human and

<sup>37</sup> As per official response to FoI by the Agency, received on 12 February 2021.

<sup>38</sup> <https://www.euprava.me/eparticipacije>

<sup>39</sup> As per FoI request answer obtained from the Parliament of Montenegro on 22 January 2021.

Minority Rights four, and Ministry of Public Administration, [Digital Society and Media] two<sup>40</sup>.

38.5% of the organizations participated in the work of advisory/consultative/working group bodies and committees in the past year. Every working group, advisory body, consultative body, etc. that is formed must have at least one CSO representative included in their work. There are no recorded cases of non-transparent selection of CSO representatives. Also, there is no official list of bodies that do not publish names of their members, information on meetings and decisions.

Although advocacy is quite present in the civil sector, most organizations focus their advocacy on actions like announcements, statements and media campaign. However, CSOs do advocate for some important issues using various means. For example, in 2020, a Law on Civil Partnership was adopted enabling members of the LGBTIQ+ population to file a request for civil partnership and have the same rights as heterosexual married people. This was done after CSOs dealing with LGBT rights advocated for this law to be drafted and adopted. Advocacy has started to imply more modern means, such as public performances, art exhibitions, public gatherings, etc., and not only statements and media campaigns.

#### **Box 1: EU Guidelines assessment here**

**Result 1.1.** Involvement of CSO representatives in decision-making process remains regulated by the Law on NGOs and the Decree on the Election of CSO Representatives to the Working Bodies of the State Administration. Advocacy remains limited to announcements, petitions, media campaigns, although there is some improvement in advocating for some important questions.

### **Sub-area 3.3. Collaboration in social provision**

#### **3.3.1. CSO Engagement in Service Provision and Competition for State Contracts**

There have not been any changes in the legal framework for service provision of CSOs during 2020. The Law on Providing Services remains the main law that regulates this area although there is no specific part that regulates the area of CSOs providing services. This is, however, regulated in a way that ministries under whose jurisdiction is certain area of work, may issue a license to CSOs to provide services to citizens.

In addition, the Law on Child and Social Security prescribes that [former] Ministry of Labor and Social Welfare may issue a license to CSO in this area. The license is issued by the Institute for Social and Child Protection for a period of six years and is renewed in accordance with this Law. The procedure for license suspension may be initiated if the competent state administration authority determines that the service provider does not meet the prescribed conditions.

<sup>40</sup> As per FoI requests answers obtained from these ministries.

The procedure of obtaining licenses is complicated, expensive and long, which is the reason why not many organizations have a license. In addition, donors in most cases do not cover the expenses of obtaining the license, but require it in order for CSO to get funds, which makes the process even more complicated and overwhelming. CSOs have advocated for this procedure to be less expensive for organizations, but this has not been adjusted yet.

Furthermore, the Law on Consumer Protection defines that organizations that work in the area of consumers' protection have the right to serve as service providers for citizens in this field.

There is no regulation that prevents organizations to provide services that are not defined by the law. CSOs in Montenegro provide number of services in various areas, but the most recognized ones are the following: free legal aid, protection of consumers, protection of whistleblowers, social and children security, protection and providing help to persons with disabilities, education, healthcare, etc. CSO services are offered free of charge, with the financial support of domestic or foreign donors. CSOs' reliance on project-based funding to provide services threatens the stability of service delivery.

There are no official data on number of CSOs across different areas that received contracts for service provision, per different policy fields and per different legal forms. Only two organizations that participated in the online questionnaire applied to calls for contracts on providing services. Both organizations said that obtaining license is complicated, burdensome and long.

### 3.3.2. State Funding for CSO-Provided Services

State funding for CSO-provided services is one of the main shortcomings in 2020. Although the state funds projects and programs of CSOs under which services can be provided, there are no specific funds intended for these services. This represents a great challenge, especially for CSOs that provide services to vulnerable or marginalized groups.

This issue arose in 2020 when, due to the coronavirus pandemic, many organizations were forced to stop their services due to the measures introduced. This caused many beneficiaries to experience great losses in terms of the help they were given by CSOs.

Only two organizations that participated in online questionnaire provided services in 2020.

Both CSOs state that funds available for their service provision are not sufficient; that funds they receive are not enough for covering administrative costs and that criteria set by the state for public service provision is not clear.

### 3.3.3. Procedures for Contracting Services

The Law on Public Procurement<sup>41</sup> allows CSOs to participate in public tenders, although it does not specify it, but it says each legal entity is allowed to participate. This law regulates that a competition must be transparent, open and non-discriminatory. Moreover, the contracting authority is obliged to ensure that all legal entities in the public procurement procedure are treated equally. A contracting authority may not, in a procurement procedure, provide information in a discriminatory manner that would favor a particular participant in the

<sup>41</sup> <https://ujn.gov.me/wp-content/uploads/2015/04/Public-Procurement-Law.pdf>

procedure over other participants.

This law is the only law that regulates service provision. It stipulates that the contracting authority is obliged, in the public procurement procedure, to select the most economically beneficial tender bid, applying a cost-effective approach, on the basis of the following criteria: price, price / quality ratio or life cycle cost.

An appeal may be submitted against the following: tender documents; amendments to the tender documentation; decisions on exclusion from the public procurement procedure; decisions on the selection of the best offer, or decisions to cancel the procurement procedure. Depending on the type of the appeal, it may be submitted to the court at the latest ten days from the day: the tender was announced; the legal entity was excluded from the procedure; or the decision on the tender was announced.

However, if CSOs provide services through projects funded by the state, then the regulations that apply to it are stipulated by the Law on NGOs.

### 3.3.4. Accountability, Monitoring and Evaluation of Service Provision

Although there is no official law that regulates this issue, other laws that regulate licensing for providing services of social and child security do stipulate that if the competent state administration authority, during the period for which the activity license was issued, determines that the service provider does not meet the prescribed conditions, it will initiate the procedure for suspension of the license. This indicates that the state authority may monitor and inspect service provider.

Other types of monitoring are available through regular monitoring visits of a monitoring commission if the CSO received funds for project implementation, as well as through audits that are regulated through the Law on Audit. All projects amounting more than 60,000 EUR may be subject to external audit. Service provision monitoring standards and criteria are not regulated by any law or bylaw.

There is no data on number of CSOs that are involved in developing and evaluation of services provided by CSOs.

#### **Box 1: EU Guidelines assessment here**

**Result 1.1.** The area of service provision is one of the most underdeveloped areas when it comes to CSOs. A legal framework should be adopted which will regulate who and in which way can provide services and what are the procedures for obtaining licenses. It is also necessary to regulate the area of monitoring of CSOs that provide services, especially if their beneficiaries are vulnerable and marginalized groups.



# Conclusions and recommendations

## **Comprehensive Register of CSOs should be created including services provided by CSOs**

The lack of a comprehensive register of CSOs remains an issue. Although the Strategy for Improving the Enabling Environment for CSOs 2018-2020 had foreseen the update of the existing register, it did not happen. In addition, the existing Register contains only basic information: address, municipality, register number, main areas of work, and founders of the CSO. More information should be included, such as annual organizational budget, number of employees (full time, part time) and volunteers, list of projects, etc. In this way, a transparency of CSOs would be guaranteed and would also lower the chances of emerging “catch-all CSOs”, as well as GONGOs and PONGOs. Ensured transparency would also ensure accountability, which would mean that people operating in GONGOs and PONGOs would be obliged to base their work on facts, and not have a hidden agenda behind their activities. Following the adoption of the Law on CSOs providing services, a Register of CSOs should also contain data on organizations that provide services and whose programs are licensed and accredited. The Register should contain list of all licensed organizations, field of their work, as well as services they provide. This would also make the visibility of these organizations’ work better and could contribute to having more users that use these services.

## **The state should introduce institutionalized grants and ensure funding diversity**

Although the state provides funds on national level, it does not provide institutionalized grants in order to support capacity building of organizations, especially small organizations that operate on local level. These grants are necessary in order to ensure long-term sustainability of CSOs in Montenegro. In addition, the existing funding opportunities are not diverse enough and they are not sufficient for all CSOs. It should be ensured that funds are given in each of 21 recognized priority areas, as the lack of funds leads to creation of “catch-all” CSOs that operate in all areas for which funds are allocated. This further creates an additional problem, which is the lack of specialized CSOs, as many organizations implement projects for which they do not have enough capacities or experience.

## **Procedures for VAT exemption and submission of annual balance sheet and income balance should be simplified**

Procedures for VAT exemption for the EU projects and annual submission of balance sheet and income balance remain very complicated, especially for small and medium organizations. This being said, it is important to simplify these procedures and ensure that all CSOs, especially those

that lack financial management capacities and sufficient resources, have the same opportunity to submit them in accordance with the Law.

### **Philanthropy should be encouraged through tax incentives for individuals and companies**

The Strategy for the Improvement of the Enabling Environment for CSOs 2018-2020 foresaw the introduction of incentives for philanthropy through amending the Law on Personal Income. However, this has not been realized, which indicates that improvement in this area is still needed. Therefore, the Tax Law should be amended to make all donations and sponsorships exempt from VAT. That would provide more funds for CSOs, but also encourage donors and companies to donate funds and promote corporate giving. In addition, CSOs pay full taxes and surtaxes for salaries, consulting fees and honoraria, which affects the number of employees in CSOs, but also leaves less means for project activities. Bearing that in mind, CSOs should have some incentives for these taxes and surtaxes.

### **Actual cooperation of CSOs and the State must be ensured**

Although there is a legal framework that ensures that CSOs must be included in working bodies, consultation and decision-making processes, it is necessary to abolish the practice of *pro forma* CSO participation in these processes, as there are still numerous examples of the exclusion or disregard of civil society representatives' opinions and positions. Instead, real cooperation mechanisms need to be established, where CSOs would be seen solely as a partner and not an enemy of the government.

### **Comprehensive law on CSOs providing services should be drafted and adopted**

Currently, there is no comprehensive legislation that specifically regulates the area of CSO service provision. There is no unified law, clear procedure and criteria on issuing CSO licenses. The process is long, complicated and burdensome. Some organizations were not able to receive funds for approved projects in the field of protection of persons with disabilities until they obtain a license. There are many organizations that provide services in the field of education, healthcare, legal aid, etc. and do not have licensed programs and services, while there are some organizations that do have licenses but mostly operate in the field of social and child protection and providing help to persons with disabilities. Therefore, a new Law regulating this area should be created and adopted, in order to allow more organizations to register their services and programs as well as to clearly define the process of obtaining license.

# Annexes

## 1. Monitoring matrix methodology

The Monitoring Matrix on Enabling Environment for Civil Society Development is a detailed theoretical framework based on international human rights and freedoms and regulatory practices of European countries and the EU. The framework is built around three core areas: Basic Legal Guarantees of Freedoms; Framework for CSOs' Financial Viability and Sustainability; Government – CSO Relationship, each divided in sub-areas. The areas are elaborated by standards, which are further specified through legal and practice indicators.

The **legal indicators** are measured by coding the presence or absence of rules, costs, procedures, and obligations enshrined in legal regulation (primary and secondary) and policy frameworks enacted in the respective countries. To assure standardization and comparability of the data gathering process regarding the **practice indicators**, country researchers follow a methodology plan in which each of the 80 indicators are further operationalized in concrete mandatory and additional data types (i.e. operationalized dimensions of a practice indicator) to be reported across the countries. The **mandatory data** types tap into the core building blocks of a practice indicator as described in the Monitoring Matrix Toolkit. They mandate the reporting of optimal information without which one could not be able to evaluate the respective indicator. The additional data (operationalized dimensions) specified for each practice indicator are reported if country researchers want to deepen and further illustrate specific practice indicator (e.g. via case study; see next section on country-specific notes on methodology).

The data gathering strategy for the practice indicators is tailored to match the mandatory data types specified in the methodology plan. For each indicator there is a clear guidance on the data gathering strategy (instruments and sources) which should be utilized by country researchers. The specified data gathering instruments and sources follow an implicit hierarchy, in which publicly available factual data (e.g. official statistics) are the most important source of data for assessing practice indicators, followed by survey data from civil society organizations, which in turn is followed by relevant secondary sources (e.g. from CSOs reports, Ombudsman and media). Finally, at the end of the hierarchy are interview data, being subjective type of data, which covers smaller groups of respondents.

The primary factual data and secondary data are gathered through **desktop research**. Following the data gathering strategy, country researchers utilize three core data gathering instruments: Freedom of Information requests (FoI), survey questionnaire and interview topic guides. The questions in the data gathering instruments are tailored to match the mandatory data types (operationalised dimensions) of each practice indicator. The **Freedom of Information requests** (FoI requests) are used by researchers when public information and statistics on the state of civil society and their environment (primary factual data) are not readily and publicly available. The researchers can draw from a detailed bank of FoI questions tailored to match the

operationalized practice indicators.

The **survey questionnaire** collects information on civil society organisations' experiences and perceptions on the key aspects of the enabling environment for civil society for the period 2020. The organisational survey includes 50 questions matching the mandatory data types (operationalized dimensions) on basic rights and freedoms, organisational and financial sustainability and civil society's cooperation with the state. The questionnaire dominantly consists of closed questions, and fewer follow-up open questions which require the respondents to elaborate on their experience. The same questionnaire is implemented across all countries, and only the formulation of few items is slightly adapted to the concrete country context to assure questions are understood by respondents. The survey is sent to lists of formal CSOs compiled and updated by country researchers on the basis of available registers or other alternative lists of active CSOs in the country (for more information see section on country-specific notes on methodology). The data collected from the survey is confidential and used strictly on anonymous basis. Individual responses are not connected to the organisations which answered the survey and reported only in an aggregate form.

The **interview topic guides** include questions which – similar to the survey questionnaire – match specified mandatory data types and are used in all countries. In addition to these core questions, researchers formulate additional questions that capture contextual developments in the country. The four topic guides are used in semi-structured interviews with the following groups of respondents: representatives of associations of journalists and media professionals; representatives of organisations of volunteers; representatives of the institution or mechanism for CSO cooperation and representatives of informal civil society groups (e.g. citizen initiatives, social movements and online initiatives).

To **analyse and interpret the data**, country researchers use a unified data collection template which provides the indicators description (including the mandatory and additional data types for the practice indicators) and five category descriptions ranging from fully enabling to fully disabling environment provided under each indicator. The five category descriptions are specified for each legal and practice indicator in the Monitoring Matrix Toolkit, to enable researchers – based on the reported data – to choose one code (score) which most accurately summarizes the state of enabling environment concerning the respective indicator. In a first step, the researcher reports the required data types collected through different sources in the template box. For example, they report factual data from primary sources complemented with descriptive statistics or cross tabulations based on survey data. In a second step, they choose one of five category descriptions specified for the respective indicator which best illustrates the reported data. The categories enable unified comparison of findings on the level of indicators across all country reports.

## 2. Notes on methodology and country challenges

**Desk research** on legislation and legal framework was conducted, whereas 25 laws, bylaws, reports, strategies were analyzed.

**Online questionnaire** was conducted within the civil sector. Total of 52 organizations participated, out of which 50 were associations and two were foundations. Eight organizations have PBO status. Surveyed organizations work on local level (32.6% of them); 16.3% work on regional level within the state; 34.9% on national level; 9.3% on regional level (Balkan peninsula) and 7% on international level.

These organizations work in various areas, as follows: agriculture and rural development – 11.6%; assistance to marginalized people and people with special needs – 25.6%; civil society development and volunteering – 18.6%; culture and art – 25.6%; democracy, good governance and rule of law – 30.2%; economic development and employment – 9.3%; environmental protection and sustainability – 30.2%; Euro-Atlantic and EU integration – 14%, fight against corruption and organized crime – 9.3%, health protection and health policies – 7%; human rights and anti-discrimination – 30.2%; humanitarian aid – 11.6%, inter-ethnic relations, minority rights and social inclusion – 9.3%; media and information society – 14%; science, education and life-long learning – 18.8%; social protection – 14%, youth and children rights – 37.2%; women empowerment, gender equality and LGBTQ rights – 11.6%; sport and recreation – 7%.

Annual budget of these organizations for 2020 was: zero EUR – 18.6%; less than 5000 EUR – 14%; 5,001 – 10,000 EUR – 14%; 10,001-50,000 EUR – 37.2%; 50,001 – 100,000 EUR – 2.3%; 100,001 – 500,000 EUR – 11.6%; 500,001 – 1,000,000 – 2.3%.

When it comes to free access to information, **FoI requests** were sent to 24 institutions, whereas total of 162 requests were sent.

### 3. Used resources/Bibliography

- Analysis of the Strategy on Improving Enabling Environment for the Work of CSOs in Montenegro 2018-2020
- Adult Education Strategy for Montenegro 2015-2025
- Analysis of Adult Education Programs implemented during 2020
- Constitution of Montenegro
- Decree on the election of NGO representatives to the working bodies and the conducting of a public discussions (MNE Gazette number 41/2018)
- Law on Amendments to the Law on Non-Governmental Organizations (Official Gazette number 39/2011 and 37/2017)
- Law on Civil Partnership
- Law on Consumers' Protection
- Law on Data Protection
- Law on Education of Adults
- Law on Free Access to Information
- Law on Freedom of Religion
- Law on Personal Income
- Law on Public Assemblies and Public Performances
- Law on Public Procurement
- Law on Social and Child Security
- Law on Voluntary work
- Regulation on Funding Projects and Programmes of Non-Governmental Organizations in Areas of Public Interest
- Report on the Work of the Council for Cooperation of NGOs and State Bodies for 2020
- Regulation on procedure of co-funding projects funded by European Union
- Report on the Implementation of the Regulation on the Election of NGO representatives to the Working Bodies and Conduct of the Public Discussions 2020
- Reports and minutes from the meetings of the Council for development of CSOs (Ministry of Public Administration)
- Rulebook on tax exemption procedure
- Strategy on improving enabling environment for the work of CSOs in Montenegro 2018-2020
- Youth Strategy 2017-2021



