

Monitoring Matrix on Enabling Environment for Civil Society Development

Country Report:
Montenegro
2021





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Country Brief for Montenegro 2021

Center for Development of NGOs
March 2021



Executive summary

Civil Society Overview

	2021
Number of registered organizations	6395 (386 newly registered in 2021)
Main civil society laws	The Law on NGOs
Relevant changes in legal framework	No changes in the legal framework for CSOs adopted during 2021
State funding (for the previous year)	Total of 2.213.205,40 Ministry of Capital Investment 250.000,00 Ministry of Justice, Human and minority rights 1.433.205,40 Ministry of Finance and Social Welfare 380.000,00 Ministry of Economic Development 30.000,00 Ministry of Ecology, Spatial Planning and Urbanism 210.000,00 Food, Veterinary and Phytosanitary Administration 160,000.00
Human resources (employees and volunteers)	n/a
CSO-Government Cooperation (body/ consultation mechanism)	Council for Cooperation of NGOs with State Bodies
Other key challenges	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, Lack of funding diversity

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 findings 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 Organizations¹ along with three bylaws² 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 persons or a legal entity of which at least one has to be citizen or resident of Montenegro. 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. In total, 385 CSOs have been registered during 2021, and there are no publicly available data on number of CSOs that were not registered within the legally prescribed time.

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. 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

¹ Official Gazette of Montenegro, no. 39/11 and 37/17.

² 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.

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. 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. Even though the Report on the implementation of this Strategy, which was completed in June 2020, stated 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, there was no progress in this area in 2021.

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.

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 2021, 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.

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 2021 remains the European Union, as it was the case in 2020.

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 Performances³ adopted in 2016.

³ <http://www.katalogpropisa.me/wp-content/uploads/2016/11/Zakon-o-javnim-okupljanjima-i-javnim-priredbama.pdf>

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

There is still no publicly available Report of the Ministry of the Interior on the work and the situation in the administrative areas for 2021, so there are no official data on number reported gatherings, number of secured public gatherings, number of requests for gatherings that were denied and reasons for denying, number of filed appeals or a lawsuits of whose request were denied and the outcomes of these proceedings. There is still no publicly available Report on the implementation of the Law on Public Assemblies and Public Events in 2021 from the Police Department, so there are no official information on number of persons who were detained or arrested during public gatherings in 2021.

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 morals 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 a libel, as it is not part of the Criminal Law as of 2011.

In 2021, freedom of expression in Montenegro saw a number of unfortunate setbacks. According to a report by the Montenegrin Media Union (SMCG), the number of attacks on journalists⁴ in Montenegro is almost 50 percent higher in 2021 than in 2020. With 25 attacks, the highest number since specific data is recorded has been notified. The higher figures of death threats against journalists have been particularly highlighted.

For instance, News journalist Ždero, received death threats⁵ while investigating illegal gravel exploitation activities in the city of Botun. While reporting on the same activities, the journalist Vujisić of the online portal PCNEN received death threats as well. The director of the Center for Investigative Reporting in Montenegro has also been verbally abused and threatened⁶, while the

⁴ <https://www.portalanalitika.me/clanak/udvostrucen-broj-napada-na-novinare>

⁵ <https://safejournalists.net/reports/threats-against-the-lives-and-physical-safety-of-journalists-borko-zdero-podgorica-19-11-2021/>

⁶ <https://safejournalists.net/osuden-zbog-ugrozavanja-bezbjednosti-tadic-mijovic-filipovici-tri-mjeseca-zatvora2/?lang=me>

journalist and editor-in-chief of the magazine Monitor Esad Kočan has been physically attacked⁷.

The Law on Amendments to the Criminal Code of Montenegro entered into force⁸, aiming to safeguard a stronger protection of journalists. With the amendment, new categories of criminal offenses against persons performing public information work are introduced: "Endangering Security", "Aggravated Murder", "Serious Bodily Injury" and "Coercion". Prior to entering into force, a broad coalition of civil society organizations⁹ advocated for the proposed changes. Moreover, the unanimous adoption of the law by the parliament of Montenegro is considered a strong sign, raising hopes of a more enabling environment for journalists which fully respects the freedom of expression.

1.2.3. Access to Information

The Law on Free Access to Information¹⁰ that was adopted in 2017 regulates the way of requesting information, as well as the manner of acting upon request, prescribing a 15-day deadline for answering the request.

Draft Law Amending the Law on Free Access to Information that was introduced in 2019, which included restrictions that are not in accordance with the Constitution and that would severely limit the possibility to exercise this constitutional right, was planned to be adopted in 2020, but the COVID-19 situation, as well as the Parliamentary elections, postponed it for 2021. The most 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.

However, given that the strong dissatisfaction was expressed by the civil society but also great concern from European partners that draft was withdrawn. The new Draft Law Amending the Law on Free Access to Information¹¹ was adopted by the Government on December 29th. Adopted Draft Law Amending the Law on Free Access to Information does not contain disputed provisions and it also contains significant improvements. A very important novelty of the Law is the specification of the restrictions related to business secrets, which have so far been the most common excuse for hiding data, especially information that can reveal corruption. Reasons related to the overriding public interest have been expanded in relation to the current Law, which will enable more information to be made available to the public. An important novelty is that the applicant cannot be charged for the information for which the obligation to proactively publish is prescribed by law, which additionally encourages the authorities to proactively publish information in accordance with the law. The biggest objection relates to the norm that the law will be applied only from 2023, but also to the fact that the Law Amending the Law on Free Access

⁷ <https://safejournalists.net/sukovic-sentenced-for-10-months-for-attacking-kocan/>

⁸ <https://sindikatomedija.me/aktivnosti/na-snazi-izmjenjeni-krivicni-zakonik/>

⁹ <https://www.hracion.org/2021/12/29/skupstina-crne-gore-jednoglasno-usvojila-izmjene-kz-a-u-cilju-jace-krivicnopravne-zastite-novinara/>

¹⁰ <http://www.katalogpropisa.me/wp-content/uploads/2016/11/Zakon-o-slobodnom-pristupu-informacijama-1.pdf>

¹¹ <http://www.mans.co.me/wp-content/uploads/2021/03/ZSPI.pdf>

to Information has not yet been adopted by parliament.

The Agency for Protection of Personal Data and Free Access to Information, until the end of April 2022 has not made publicly available Report on the state of personal data protection and the state of access to information for 2021, so there are no data available on number of complaints that were submitted to the Agency and the outcomes of these procedures.

The Law on Electronic Communication¹² 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 committed and non-discriminatory.

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 182.172 internet connections at the end of 2021¹³, which is an increase of 2.25% in comparison to 2020. Out of that number, 91,63% are physical entities and 8,37% are legal entities. 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 Montenegro¹⁴ states that in January 2022 there were 521.200 internet users, which is an increase of 2% in comparison to 2021, i.e. that 83% of the population in Montenegro had access to internet at the beginning of 2022.

¹² http://www.ekip.me/download/Zakon%20o%20elektronskim%20komunikacijama-40_2013.pdf

¹³ <https://www.ekip.me/page/reports/internet-i-broadband-pristup/content>

¹⁴ <https://datareportal.com/reports/digital-2022-montenegro>

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 Union¹⁵. 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.

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.

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 but this measure had not been realized.

2.1.2. Incentives for Individual/Corporate Giving

Laws in the area of individual and corporate giving have been amended in 2021. Amendments to the Law on Personal Income Tax¹⁶ in the area of philanthropy that were planned to be adopted in 2020, and postponed for 2021 have been adopted.

These legal amendments harmonized the areas for which tax exemptions are recognized in the Law on Personal Income Tax. Expenditure on health, social, educational, scientific, religious, cultural, sporting and humanitarian purposes, reduction of poverty, environmental protection, protection of persons with disabilities, social care for children and young people, assistance to the elderly, protection and promotion of human and minority rights, rule of law, development of civil society and volunteerism, Euro-Atlantic and European integration of Montenegro, art, technical culture, promotion agriculture and rural development, sustainable development, consumer protection, gender equality, the fight against corruption and organized crime and the

¹⁵ <https://www.gov.me/dokumenta/ae2a0a42-1879-4557-8684-8b9f31f0622a>

¹⁶ <file:///C:/Users/user/Downloads/zakon-o-porezu-na-dohodak-fizickih-lica.pdf>

fight against addiction - are recognized as expenditures up to 3% of the total income.

Amendments to the Law on Corporate Income Tax¹⁷ were also adopted in 2021, but there were no major changes have been made in related area. Expenditures in all areas of public interest, which are now defined in the same way as in the Law on Personal Income Tax, upto 3.5% of the total income of the taxpayer are recognized. 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.

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.

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.

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.

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 2021, 3.713.205,40 EUR were planned in the Budget line: *Transfer to NGOs* in the Budget of Montenegro, which is 2.778.183,56 EUR less than in 2020. During 2021, 8 ministries announced 27 calls for financing CSO projects. Based on the decisions published, 121 organizations received funds to finance their projects. In total, 2.213.205,40 EUR was distributed. Hence, 1.250.000,00 EUR

¹⁷ <https://me.propisi.net/zakon-o-porezu-na-dobit-pravnih-lica/>

of total available fund planned in the budget were not allocated in 2021. This might be due to the fact that some ministries did not publish the planned calls for project proposals, while some neither published decisions nor allocated funds.

When it comes to co-financing of EU funded projects, 928,301.25 EUR were planned in the budget, while 928,310.25 EUR were allocated in 2021. The call for co-financing is open throughout the year. In 2020, 857,468.68 were allocated for co-financing these projects, and in 2019, that amount was 378,791.4 EUR.

2.2.2. Public Funding Distribution

As 2020, 2021 was marked with many delays in this area due to the coronavirus outbreak, the formation of the new government, as well as the fact that the budget was not adopted until July 2021. Most of the calls were announced in November and December. All Ministries that announced calls (6 out of 12) 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.

During 2021, 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 specific areas do not receive any funds.

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 2021. 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 2021, most of the projects that were implemented in 2021 were the ones that were funded in 2020. Most of the projects supported in 2021 started their implementation at the end of the year (November and December).

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. Some of the local self-governments have a special space - an office, within their institutions, which are equipped with basic equipment (computer, internet) that they provide for the use of non-governmental organizations.

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.

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 2021. 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 Labor Law that was adopted at the very end of 2019 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 2021 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 March 2022.

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.

2.3.2. Volunteering in CSOs

The existing Law on Volunteering¹⁸ 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.

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 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

¹⁸ <https://www.zzzcg.me/wp-content/uploads/2015/05/Zakon-o-volonterskom-radu.pdf>

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. The Draft Law on Volunteering¹⁹ that was created in 2019 and was planned to be adopted in 2020, has not yet been adopted.

2.3.3. Non-Formal Education

The legislation in the area of non-formal education has not been altered in 2021. 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.

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.

¹⁹ <https://www.gov.me/dokumenta/7331bc28-9fa1-485c-a60b-32e8a8065031>

Area 3: Government-CSO Relationship

Sub-area 3.1. Framework and practices for cooperation

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

The Strategy on Improving Enabling Environment for the Work of CSOs in Montenegro 2018-2020 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 Strategy²⁰ 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 eight members, out of which two are representatives of CSOs. Although the Working group was established in July 2020, the Program has not been drafted during 2020. Given that the work of the working group has not started until June 2021, the timeframe of the Strategy has been changed to the period 2022-2026.

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. Also, after the working group started work in 2021 a new cycle of consultations with civil society was conducted through the EU technical support project "Improving cooperation between the Government and NGOs in Montenegro". Seven focus groups were organized in this process, with the participation of 60 NGO representatives.

The starting point for the preparation of the new Strategy was the mapping of challenges in the current cooperation between the state and the non-governmental sector. This document, which was drafted by a senior expert, detected the following shortcomings: systematic monitoring of the development of the NGO sector, administratively uneven and non-digitalization of the process of founding NGOs, weaknesses of the existing state funding model, inadequate planning framework for long-term and medium-term planning, too demanding licensing in the field of social protection, lack of systematic measurement of the effects of public funding of NGOs, inconsistent compliance with applicable standards and rules for involving the public and NGOs in drafting regulations and policies, unused e-Petition and e-Participation portals, declining interest integration, lack of coordination of international donor assistance, non-transparent practice of allocating state property for use to NGOs, as well as regionally unbalanced development of NGOs sector, weak professionalization of the NGO sector, insufficient support for capacity building programs of the NGO sector, weak intra-sectoral connectivity and coordination of NGOs in the

²⁰ <https://www.gov.me/dokumenta/ad0a0e26-3735-4a29-83f5-75d5142fd9db>

field of public advocacy, inadequate normative framework for volunteering and lack of incentives for volunteering development.

The Register of Non-Governmental Organizations has been updated in 2021. The register contains a list of "active organizations" with basic information about the organization: name, registration number, name of the authorized person, type of association, records of deleted organizations, as well as lists of organizations by municipalities.

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, and two meetings in 2021 for the same reasons as the Working Group for Drafting the Program of Cooperation of State Bodies and CSOs.

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

The most important mechanism of cooperation between civil society and public institutions in 2021 remains the Council for Cooperation between State Bodies and NGOs, which was formed in 2018 for the period of three years, with the main task to facilitate cooperation between the government and CSOs, especially in terms of the implementation of 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. The mandate of members and the president expired in July 2021 and there has been no activity since then to elect new members of this advisory body. Since this body has not been functional after July 2021, there is no publicly available report on the work of the Council for 2021.

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.

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 to the working bodies of state administration bodies and the conduct of public hearings in the preparation of

laws and strategies²¹ introduces 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.

There is no publicly available Report on the work of the Parliament of Montenegro for 2021. The only publicly available data are contained in the Information on legislative and supervisory activities of the Parliament of Montenegro, January 1 - July 31²², and in that period, 22 laws, 3 decisions, 21 decisions on election, appointment and dismissal, 1 resolution and 13 conclusions were adopted. Also, five financial plans of independent regulatory bodies were considered. The legislative activity of the Assembly, as well as the overall functioning of the state, was very challenging in 2021, bearing in mind that the work of the Assembly has been blocked for almost half a year since June 2021. All adopted laws are available either on the ministries' websites, or in the Catalogue of Regulations²³.

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 to the working bodies of state administration bodies and the conduct of public hearings in the preparation of laws and strategies. 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. 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

²¹ <https://www.gov.me/dokumenta/1f353a31-1729-4db3-a378-e8c4610a5b04>

²² <https://api.skupstina.me/media/files/1640872453-informacija-o-zakonodavnim-i-nadzornim-aktivnostima-skupstine-crne-gore-1-januar-31-jul-2021.pdf>

²³ <https://www.katalogpropisa.me/>

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. There are no publicly available data on number of complains submitted (adopted, denied, suspended by conclusion, ongoing) to the Agency in 2021.

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 2021. In addition, the Agency will be sanctioned if it does not act on the complaint.

The portal of e-Government 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 60 calls for public debates in 2021, whereas the draft document was published in 30 cases. Only 30 reports on the public debate were published. Any physical or legal entity is able to publish comments or suggestions through this portal. There were 35 calls for consultations, whereas 7 draft documents and 23 reports on the consultations were published.

3.2.3. CSOs' Representation in Cross-Sector Bodies

According to the Decree on the election of representatives of non-governmental organizations to the working bodies of state administration bodies and the conduct of public hearings in the preparation of laws and strategies, 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.

According to the data available on E-participation portal²⁴, 113 public calls were announced for participation of representatives of NGOs in working groups and working bodies in 2021. There are only 4 decisions publicly available on the election of NGO representatives in the working bodies with data on 7 elected NGO representatives.

According to the data available on the website of the Ministry of Ecology of Spatial Planning and Urbanism²⁵, 16 public calls were announced for participation of representatives of NGOs in working groups and working bodies. Two List of NGO candidates for a member of the working

²⁴ <https://eusluge.euprava.me/eParticipacija/RadneGrupe/>

²⁵ https://www.gov.me/vijesti?sort=published_at&ou=20&tags=549&tags=301&tags=285&tags=228

body have been published, but there are no publicly available Decisions on the election of NGO representatives.

According to the data available on the website of the Ministry of Economic Development and Tourism²⁶, 21 public calls were announced for participation of representatives of NGOs in working groups and working bodies. There are no publicly available Decisions on the election of NGO representatives.

According to the data available on the website of the Ministry of Finance and Social Welfare²⁷, 2 public calls were announced for participation of representatives of NGOs in working groups and working bodies. There are no publicly available Decisions on the election of NGO representatives.

According to the data available on the website of the Ministry of Public Administration, Digital Society and Media²⁸, 13 public calls were announced for participation of representatives of NGOs in working groups and working bodies. Eight List of NGO candidates for a member of the working body have been published, but there are no publicly available Decisions on the election of NGO representatives.

According to the data available on the website of the Ministry of Capital Investments²⁹, 10 public calls were announced for participation of representatives of NGOs in working groups and working bodies. One List of NGO candidates for a member of the working body have been published, but there are no publicly available Decisions on the election of NGO representatives.

According to the data available on the website of the Ministry of Agriculture, Forestry and Water Management³⁰, 3 public calls were announced for participation of representatives of NGOs in working groups and working bodies, but there are no publicly available Decisions on the election of NGO representatives.

According to the data available on the website of the Ministry of Justice, Human and Minority Rights³¹, 14 public calls were announced for participation of representatives of NGOs in working groups and working bodies. 4 List of NGO candidates for a member of the working body have been published, but there are no publicly available Decisions on the election of NGO representatives.

On the website of the Ministry of Education, Science, Culture and Sports³², 8 public calls were announced for participation of representatives of NGOs in working groups and working bodies, but there are no publicly available Decisions on the election of NGO representatives.

On the website of the Ministry of the Interior³³, 7 public calls were announced for participation of representatives of NGOs in working groups and working bodies, but there are no publicly available Decisions on the election of NGO representatives.

On the website of the Ministry of Health³⁴, 6 public calls were announced for participation of

²⁶ https://www.gov.me/vijesti?sort=published_at&ou=18&at=6&at=3&page=1

²⁷ https://www.gov.me/vijesti?sort=published_at&ou=13&tags=474&page=9

²⁸ https://www.gov.me/vijesti?sort=published_at&ou=15&at=6&page=1

²⁹ https://www.gov.me/vijesti?sort=published_at&ou=21&tags=1811&tags=1325&tags=228&tags=163

³⁰ https://www.gov.me/vijesti?sort=published_at&ou=19&page=1

³¹ https://www.gov.me/vijesti?sort=published_at&ou=10&page=1&at=5

³² https://www.gov.me/vijesti?sort=published_at&ou=16&page=1

³³ https://www.gov.me/vijesti?sort=published_at&ou=11&page=1&at=5

³⁴ https://www.gov.me/vijesti?sort=published_at&ou=17&page=1

representatives of NGOs in working groups and working bodies, but there are no publicly available Decisions on the election of NGO representatives, and there are no available data on the website of the Ministry of Defense.

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.

Sub-area 3.3. Collaboration in service 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 2021. 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 Security³⁵ prescribes that Ministry of Finance 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.

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 whistle-blowers, 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

³⁵ <https://www.gov.me/dokumenta/14d18f91-2891-4ec8-a67c-6f978907a53e>

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 remain one of the main shortcomings in 2021. 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 Corona-virus pandemic, many organizations were forced to stop their services due to the measures introduced. The problem continued in 2021, given that the largest number of calls for financial support to NGO projects were announced only in November and December. State that funds available for service provision are not sufficient; funds that are available are not sufficient 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 Procurement³⁶ 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 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 regulation that apply to it are stipulated by the Law on NGOs.

³⁶ <https://ujn.gov.me/wp-content/uploads/2015/04/Public-Procurement-Law.pdf>

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.

Annex 1

Background & methodology

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, Serbia and Turkey. A Regional Report is also available summarizing findings and recommendations for all countries and a web platform offering access to monitoring data per country.

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 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 principles, standards, and indicators rely on internationally guaranteed freedoms and rights and best regulatory practices at the EU 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 aims to provide evidence on the enabling environment for civil society development and to influence the support of governments, the European Union and other donors towards more sustainable and strategic development of the sector.

To analyse and interpret the data, country researchers use a unified data collection template which provides the indicators description 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. 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.

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