



Balkan Civic Practices # 12



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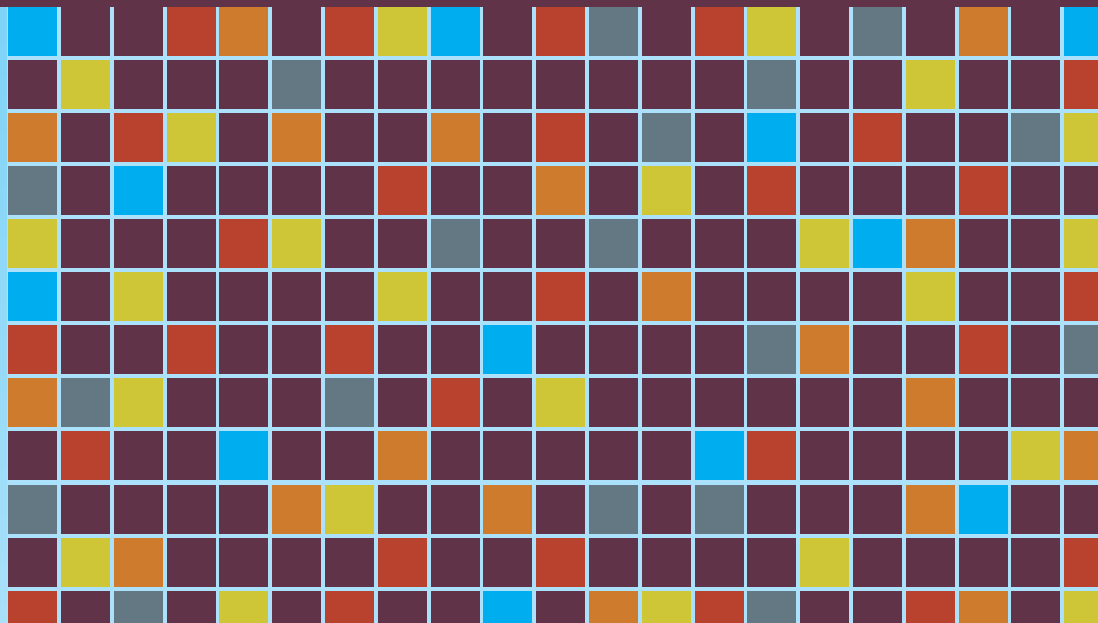


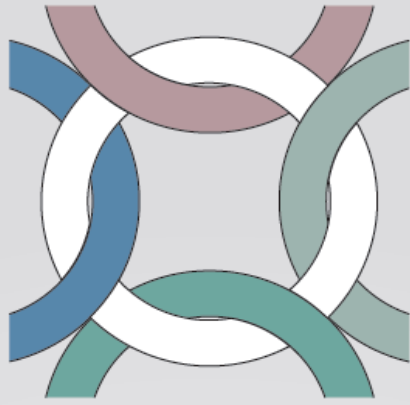
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MONITORING MATRIX ON ENABLING ENVIRONMENT FOR CIVIL SOCIETY DEVELOPMENT

REGIONAL REPORT FOR 2014





BALKAN CIVIL SOCIETY DEVELOPMENT NETWORK



Balkan Civil Society Acquis
Strengthening the Advocacy and
Monitoring Potential and Capacities of CSOs

Monitoring Matrix on Enabling Environment for Civil Society Development

Regional Report for 2014
developed by the European Center for Not-for-Profit Law (ECNL)



Project funded by the EU

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I. EXECUTIVE SUMMARY

The development of civil society in the Western Balkan countries and Turkey (WBT) was predetermined by the region's historical, political, economic and cultural contexts. Vast majority of the Western Balkan countries were under the socialist regime and their transition into full democratic systems is still in progress. The evolution of civil society started in the 1990's and has till now significantly progressed in the development of the enabling legal environment for the operation of the civil society.

In 2014 we have witnessed several worrying developments in the region, affecting the social, political and economic environment of the countries. Political crisis in Macedonia and Bosnia and Herzegovina resulted in a series of anti-government protests. Criticism of the government and opposing views were subject to media censorship, particularly in Serbia and Turkey. Great floods that struck Serbia and Bosnia and Herzegovina had severe economic consequences and in addition shed light on the lack of engagement and adequate responsiveness of state authorities. However, people from the whole region proved their solidarity with those from the areas affected by floods, mobilized themselves and provided substantial help, either by volunteering or providing financial and in-kind donations.

In order to monitor to what extent the environment of civil society is enabling, the Balkan Civil Society Development Network (BCSDN) and the European Center for Not-for-Profit Law (ECNL) developed the Monitoring Matrix on Enabling Environment for Civil Society Development and accompanying Toolkit¹. The authors of this report recognize the value and parallels of the Monitoring Matrix with the recently **adopted EU Guidelines for Support to Civil Society in the Enlargement Countries for the period 2014-2020**² and are pleased to provide an assessments vis-à-vis their objectives throughout the Report.

This report summarizes the key findings from eight country reports in the Western Balkans (Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Serbia) and Turkey prepared by BCSDN member organizations³, and compares its findings with the results of **the Monitoring Matrix Regional Report, 2013**.⁴

This Regional Report identifies key common issues across the region, in order to highlight the priorities for intervention at the regional level, and to support efforts of civil society organizations (CSOs), public authorities and the European Union (EU) in the creation of a more conducive environment for civil society.

1 Monitoring Matrix on Enabling Environment for Civil Society Development: The Tool-kit, available at: http://www.balkancsdn.net/images/BCSDN_Monitoring_Matrix.pdf

2 EU Guidelines for Support to Civil Society in the Enlargement Countries for the period 2014-2020, available at: http://ec.europa.eu/enlargement/pdf/civil_society/doc_guidelines_cs_support.pdf

3 Partners Albania and Institute for Democracy and Mediation (Albania), Center for Promotion of Civil Society (BiH), Cenzura Plus (Croatia), Kosovar Civil Society Foundation (Kosovo), Macedonian Center for International Cooperation (MCIC), Center for Development of NGOs (Montenegro), Civic Initiatives (Serbia) and Third Sector Foundation (Turkey).

4 Monitoring Matrix on Enabling Environment for Civil Society Development: Regional Report 2013, available at: http://monitoringmatrix.net/wp-content/uploads/2014/06/Regional-report-on-EE-as-of-04-06-2014_ABs_06062014_THA_08062014.pdf

1. CIVIL SOCIETY AND CIVIL SOCIETY DEVELOPMENT IN THE REGION

In 2014, the legal environment for CSOs in the Western Balkans and Turkey remained relatively stable. **Freedom of association, assembly, expression and information** continued to be legally guaranteed in all countries of the region, with the exception of Turkey. Ensuring proper implementation and respect of the legal guarantees in practice remains to be challenging in Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, Serbia and Turkey. Reported cases of violations were particularly related to the police crackdowns on peaceful assemblies and state censorship hampering the freedom of expression.

Most positive developments were reported in Albania, where for example amendments to the tax laws regulating CSO tax treatment were passed, and cooperation documents on strengthened relations between CSOs and government were adopted. Most alarming development took place in Kosovo, where the anti-money laundering regulation significantly restricted the right of CSOs to safely receive and impart funding and the state authorities acquired enhanced rights to suspend and see over appeals over registration of CSOs.

Basic laws for CSOs remain unchanged compared to 2013, and were positively improved in Croatia, where the new Association's Act entered into force in October 2014. All countries recognize two general CSO forms, associations and foundations, while Albania, Bosnia and Herzegovina, Croatia and Serbia provide for additional ones, for example centers and funds. In 2014, the number of registered CSOs has increased in all countries of the region, with the exception of Bosnia and Herzegovina where no recent data on number of registered CSOs is available. The highest number of newly registered CSOs was identified in Croatia and Montenegro, with the increase of 10 CSOs per 10 000 inhabitants. While there is an increasing trend in establishing various forms of CSOs, it remains questionable how many CSOs are still active, due to the lack of conclusive, regular statistical data collection.

CSOs continuously struggle to secure their **financial sustainability** in the whole region. In 2014, CSOs still predominantly relied on income from foreign grants and income from state budget, including proceeds from lotteries, while alternative sources of funding were rarely used. **State support**, both **financial** and **non-financial**, was too often distributed through non-transparent mechanisms, and remained insufficient. Hence, there is a continuous need for CSOs to diversify their sources of funding in order to secure their financial independence and sustainability. Relying on one or two financial resources make CSOs over-dependent on their availability, and does not provide sufficient financial security and autonomy of a CSO.

One of the potential alternative sources of funding may be income from donations. The 2014 great floods in Bosnia and Herzegovina and Serbia mobilized people from the whole region and proved their willingness to donate for a publicly beneficial cause even when other country is concerned. This positive trend has been upheld by the World Giving Index 2014, according to which people in the Balkan region are more willing to donate money compared to 2013. The only exception is Turkey, where the number of people donating money in 2014 declined.

Fiscal treatment of donations is, however, still not supportive towards **individual and corporate philanthropy**. According to the findings of country reports, tax incentives for donors are still limited and not encouraging enough. In addition, overall tax treatment of CSOs, particularly with regard to their income from economic activities is still not enabling enough.

Official data and statistics about **people employed and volunteering** in CSOs remain to be limited in the region. Within the labour laws, CSOs continue to be treated in an equal manner to other employers, however, they are not sufficiently included in those state employment policies creating incentives for potential employers. This discriminatory treatment of CSOs is due to the lack of state recognition of civil society as one of the sector that generates employment. According to the estimations from the World Giving Index, volunteerism in 2014 declined in four countries of the region, despite the generally positive trend in adoption of volunteering laws and policies. Volunteering laws stimulating volunteerism currently exist in Bosnia and Herzegovina (on the federal level and in Republika Srpska), Croatia, Macedonia and Montenegro. The current, rather disabling volunteering law in Serbia shall be replaced by the new law, whose preparation commenced in August 2014.

Increasingly, governments continue to adopt **national strategies for cooperation with CSOs** and documents setting standards for the **involvement of CSOs in policy and decision-making processes**. However, due to the lack of political will, as well as insufficient allocation of financial and human resources, the implementation of these documents in practice remains very problematic. In addition, national institutions for cooperation are not provided with sound independence in their operation. It is of great importance that state authorities take clear steps and measures to secure their proper functioning in practice.

2. KEY FINDINGS

The following is a description of key commonalities identified at the regional level, based on the information included in the Monitoring Matrix country reports⁵. The trends and challenges summarized in the box below are referring to the specific areas as defined in the Monitoring Matrix and the EU Guidelines for Support to Civil Society in the Enlargement Countries for the period 2014-2020.

| No | TOP FINDINGS IDENTIFIED BASED ON COUNTRY REPORTS | REFERENCE MONITORING MATRIX | | REFERENCE EU CS GUIDELINES |
|----|--|-----------------------------|------------|----------------------------|
| 1 | Freedom of association, assembly, expression and information remain to be legally guaranteed in all countries of the region, with the exception of Turkey. In addition to the burdensome rules on financial reporting and accounting reported in Albania, Bosnia and Herzegovina, Kosovo, Macedonia and Turkey, the anti-money laundering provisions in Kosovo are highly restrictive towards CSO operation. At the same time, guarantees for freedom of peaceful assembly and expression in practice need to be improved. | Area | 1 | Area 1 |
| | | Sub-area | 1.1 1.2 | Result 1.1 |

⁵ All country reports are available at www.monitoringmatrix.net.

| | | | | |
|---|---|----------|-----|-----------------|
| 2 | There are still very few or limited tax benefits available for CSOs. Even in Bosnia and Herzegovina, Kosovo, Macedonia, Serbia and Turkey where there is a distinct public benefit/interest status, there are no real tax benefits associated with it. The reason is usually related to the lack of harmonization with the tax laws that do not introduce actual benefits for the eligible CSOs. In addition, tax incentives for donations are oftentimes limited, thus the potential to boost philanthropy is underused. | Area | 2 | Area 1 |
| | | Sub-area | 2.1 | Result 2.2, 2.3 |
| 3 | CSOs continue to struggle to financially sustain their everyday operation. Besides the remaining challenge to diversify the sources of funding, CSOs continue to face problems with the availability and allocation of public funds. The mechanisms for distribution of public funds are lacking rules on transparency and accountability or they are not properly implemented in practice. | Area | 2 | Area 1 |
| | | Sub-area | 2.2 | Result 2.4 |
| 4 | Country laws and policies in Bosnia and Herzegovina (on the federal level and in Republika Srpska), Croatia, Macedonia and Montenegro continue to support volunteering engagement in CSOs. However, throughout the region CSOs are not regarded as potential employers and the incentives in employment strategies are either targeting only for-profit organizations and/or entrepreneurs, or they are not available equally to CSOs compared to other potential employers. | Area | 2 | Area 1 |
| | | Sub-area | 2.3 | Result 1.2 |
| 5 | CSO-Government dialogue remains to be problematic in all countries of the region. The proper implementation of the CSO-Government cooperation strategies remains to be challenging mostly due to the lack of political will and insufficient allocation of funds and human resources. In addition, special bodies/mechanisms for cooperation established in all countries except of Turkey, have limited human and financial resources. | Area | 3 | Area 2 |
| | | Sub-area | 3.1 | Result 3.1 |
| 6 | CSOs continue to be insufficiently included in the decision and policy-making processes. The national-level documents setting standards to involve CSOs in these processes are oftentimes not fully applied and respected by state authorities in practice. The biggest challenges are connected with the inadequate access to information, insufficient time to comment and lack of feedback from the decision-makers. | Area | 3 | Area 2 |
| | | Sub-area | 3.2 | Result 3.1 |
| | | | | |

3. KEY RECOMMENDATIONS

The following tables present the key recommendations based on the country reports which are considered a priority for the region. These top recommendations directed towards national governments

and relevant EU institutions aim at improving the situation regarding enabling environment for civil society development in the WBT region.

| KEY RECOMMENDATIONS FOR NATIONAL INSTITUTIONS | |
|--|---|
| 1 | Legal guarantees of freedom of association should be properly implemented in practice. |
| 2 | Legal guarantees of freedom of assembly and other related freedoms should be respected. |
| 3 | Favorable fiscal treatment of CSOs through amendments of the relevant tax laws needs to be secured. |
| 4 | Mechanisms for allocation and distribution of public funding need to be reformed and respected. |
| 5 | State policies need to stimulate the employment and volunteering in CSOs. |
| 6 | Fully functional strategic and institutional mechanisms for CSO-Government cooperation are needed. |
| 7 | Proper involvement of CSOs in decision and policy-making processes is needed. |

| KEY RECOMMENDATIONS FOR EU INSTITUTIONS | |
|--|--|
| 1 | Enabling framework for civil society needs to be a priority in the negotiation process. |
| 2 | EU should support capacity building of public institutions, but with partnership involvement of CSOs in all stages of the process. |
| 3 | EU funds for civil society need to be distributed transparently and in a depoliticized manner. |

II. INTRODUCTION TO THE MONITORING MATRIX

1. ABOUT THE REGIONAL REPORT MONITORING AND THE MATRIX ON ENABLING ENVIRONMENT FOR CIVIL SOCIETY DEVELOPMENT

This Monitoring Matrix Regional Report is a part of the activities of the “Balkan Civil Society Acquis-Strengthening the Advocacy and Monitoring Potential and Capacities of Civil Society Organizations (CSOs)”, a project funded by the European Union (EU) and the Balkan Trust for Democracy (BTD). The Monitoring Report is the first comprehensive report on the policy and legal framework that governs civil society in the Western Balkans and Turkey (WBT) region. The current Report is the second published on a yearly basis. The report summarizes the key findings and recommendations based on country level monitoring reports for Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Serbia and Turkey, prepared by BCSDN member organizations. The monitoring is conducted based on the Monitoring Matrix on Enabling Environment for Civil Society Development (CSDev) developed by BCSDN and ECNL.

THE MONITORING MATRIX PRESENTS THE MAIN PRINCIPLES AND STANDARDS THAT HAVE BEEN IDENTIFIED BY THE EXPERT GROUP AS CRUCIAL FOR THE LEGAL ENVIRONMENT TO BE CONSIDERED AS SUPPORTIVE AND ENABLING FOR THE OPERATIONS OF CSOs. THE MATRIX IS ORGANIZED AROUND THREE AREAS: (1) BASIC LEGAL GUARANTEES OF FREEDOMS; (2) FRAMEWORK FOR CSOs' FINANCIAL VIABILITY AND SUSTAINABILITY; (3) GOVERNMENT – CSO RELATIONSHIP, EACH DIVIDED BY 8 SUB-AREAS. THE 8 PRINCIPLES, 24 STANDARDS AND 151 (LEGAL AND PRACTICE) INDICATORS HAVE BEEN FORMULATED WITH CONSIDERATION OF THE CURRENT STATE OF DEVELOPMENT OF AND DIVERSITY IN THE COUNTRIES OF THE WESTERN BALKANS AND TURKEY. THEY RELY ON THE INTERNATIONALLY GUARANTEED FREEDOMS AND RIGHTS AND BEST REGULATORY PRACTICES AT THE EUROPEAN UNION LEVEL AND IN EUROPEAN COUNTRIES. THE MONITORING MATRIX DEFINES AN OPTIMUM SITUATION DESIRED FOR CIVIL SOCIETY TO FUNCTION AND DEVELOP EFFECTIVELY AND AT THE SAME TIME IT SETS A FRAMEWORK WHICH CAN BE FOLLOWED AND IMPLEMENTED BY PUBLIC AUTHORITIES. HAVING IN MIND THAT THE MAIN CHALLENGES LIE IN IMPLEMENTATION, THE INDICATORS ARE DEFINED TO MONITOR THE SITUATION ON LEVEL OF LEGAL FRAMEWORK AND PRACTICAL APPLICATION.

For the purpose of the report, the term **civil society organizations (hereinafter ‘CSOs’)** is understood to encompass the narrow definition of civil society also adopted in the Monitoring Matrix which relies on the following criteria: 1) it is a voluntarily organization established by a private instrument (contract, act on establishment), rather than by law; 3) it may be membership or non-membership based; 4) it is not part of the government structure; 5) it is established to pursue public or mutual benefit goals; 6) it is not-for-profit. Therefore, the term includes associations, foundations, private institutions, centers, not-for-profit corporations, and any other organization falling under the above criteria. The experts recognize the existence of other forms of CSOs (e.g., political parties, religious organizations, trade unions) but for the purposes of this Report, the focus is only on organizations under **the narrow definition**.

2. METHODOLOGY

The Regional Report for 2014, particularly sections presenting key findings and recommendations, were developed solely relying on the 8 country reports as its main source of information and data. In addition, where further data was needed, authors also relied on desktop research to collect it. However, due to the lack of national data and statistics in several areas covered in the Monitoring Matrix, it was not possible to draw general conclusions applying to all countries of the region on every issue covered in the Monitoring Matrix or the country Reports.

The presentation of the information in this Report follows the structure and baseline of the Monitoring Matrix. Specifically, the Report reflects the assessment of standards and indicators analyzing the legal framework and practice included in the country reports and compares them to findings from the Regional Report 2013. In addition, the Regional Report for 2014 provides assessment vis-à-vis the objectives set by **the EU Guidelines for Support to Civil Society in the Enlargement Countries for the period 2014-2020**. The Monitoring Matrix includes 2 out of 3 components of the EU CS Guidelines, i.e. conducive environment and changing relations between CSOs and government.⁶ The Report assesses the state of the enabling environment vis-à-vis the EU CS Guidelines utilizing the data gathered during the Monitoring Matrix exercise for 2014. The reference to the objectives of the EU CS Guidelines is included in the summarized Key findings and the specific assessment of their indicators is included in the text boxes under Area 1 and 2 of the Key findings section. In 2014, only **12 core standards** were subject to obligatory monitoring by all countries while the remaining 12 standards were monitored according to the needs of each country. The analysis of the 8 sub-areas is focused predominantly on 12 core standards and includes information from others as necessary and needed for the regional context. The authors used an analytical method of elaboration of the information provided in the country reports, and based on this identified commonalities and differences in the region.

⁶ Corresponding table between the Monitoring Matrix and EU CS Guidelines is available at: www.monitoringmatrix.net

III. INTERNATIONAL AND EUROPEAN GUARANTEES FOR ASSOCIATION AND ASSEMBLY

1. INTERNATIONAL AND EUROPEAN GUARANTEES FOR ASSOCIATION AND ASSEMBLY

The right to freedom of association and assembly are fundamental rights secured by the major international treaties, most notably the *International Covenant on Civil and Political Rights (ICCPR)*⁷ the *European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)* and the *Charter of Fundamental Rights of the European Union*. These freedoms have been upheld by the international and European case law, e.g. jurisdiction of the European Court of Human Rights and European Court of Justice. In addition, other international documents and guidelines have been adopted to further strengthen the implementation of these freedoms in practice (e.g. *the Council of Europe Recommendations on the Legal Status of Non-Governmental Organizations in Europe* and *OSCE Guidelines on Freedom of Peaceful Assembly*.) All documents emphasize that the two freedoms belong to everyone without discrimination, and prescribe that restrictions that can be imposed on the freedoms are limited to situations “which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals, or the protection of the rights and freedoms of others.”⁸

From the newly adopted documents it is worth to mention the *Joint Guidelines on Freedom of Association*, adopted by OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Council of Europe’s Commission for Democracy through Law (Venice Commission).⁹ The purpose of the Guidelines is to provide practical support to legislators, associations and human rights defenders for drafting laws which regulate or affect the right to freedom of association. In addition, UN Human Rights Council adopted the Resolution for protection of the Civil Society Space.¹⁰

At the EU level, the freedom of association and the overall enabling environment for civil society are receiving an increased attention. Specifically, the 2012 European Commission Communication *The Roots of Democracy and Sustainable Development: Europe’s Engagement with Civil Society in External Relations*¹¹ declares the promotion of an enabling environment for CSOs as one of the three priorities for EU support in partner countries. In addition, at the end of 2013 the Directorate-General Enlargement released *Guidelines for EU Support to Civil Society in Enlargement Countries* which stipulate two main objectives for the upcoming years: to achieve an environment that is conducive to civil society activities and to strengthen the capacity of CSOs to be accountable and effective independent actors.¹² Importantly, the Guidelines also contain a set of objectives, results and indicators

⁷ Article 22(1) of the International Covenant on Civil and Political Rights (ICCPR): „Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.“

⁸ Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

⁹ OSCE/ODIHR and Venice Commission: *Joint Guidelines on Freedom of Association*, 2015, available at:

<http://www.osce.org/odihr/132371>

¹⁰ UN Human Rights Council Resolution A/HRC/27/L.24, available at:

<http://www.ishr.ch/sites/default/files/article/files/a-hrc-l24-as-adopted.pdf>

¹¹ Adopted in September 2012 and endorsed by the Council of the European Union in October 2012;

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0492:FIN:EN:PDF>

Council Conclusions: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/132870.pdf

¹² http://ec.europa.eu/enlargement/pdf/civil_society/doc_guidelines_cs_support.pdf

for EU support to civil society which will allow for the measurement of the progress at country level as well across the region.

Freedom of association is composed of several key principles which have been incorporated in the Monitoring Matrix. Those include: right to form and join an association which applies to everyone without exceptions, the right to operate freely from unwarranted state interference, the right to access funding and resources and to utilize them according to its wishes and the right to take part in the conduct of public affairs.

The right to form and join an association includes guarantee to all individuals and legal entities without discrimination on the grounds of sex, race, nationality, religious views or any other. This means that everyone is allowed to establish and participate in an informal or registered organization. According to the Recommendations on the legal status of non-governmental organizations in Europe developed by Council of Europe (CoE), “NGOs can be either informal bodies, or organizations which have legal personality”¹³. Therefore, registration is voluntary and once an association decides to undergo the process, it shall be easy, timely and inexpensive with granted right to appeal against the refusal of the registration.

Integral part of the freedom of association is **the right to operate freely without any unwarranted interference into internal matters of a CSO**. There are two obligations deriving from this right to the state, first the non-interference of the state in the internal governance of the organization and second, the protection provided by the state to CSOs against the interference from the third parties.

Freedom of assembly is also formed and guided by several key standards guaranteed in the international documents and guidelines described above. These include the presumption in favor of holding an assembly, the state’s obligation to facilitate and protect peaceful assembly, legality and proportionality of the restrictions on the assembly, good administration of the assembly and liability of the regulatory authorities in case of failure to comply with their legal obligations. In addition to this, freedom of assembly should be guaranteed and enjoyed by everyone without any discrimination.¹⁴

When establishing a legal framework for exercising the freedom of assembly, it is essential that the state authorities do not impose too many obligations for the organizers of the assembly. According to the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association there should be **no prior authorization required for holding an assembly**, but at the most there **might be a prior notification prescribed, which is not burdensome** (e.g. submission of notification at short notice). Furthermore, the laws should allow for spontaneous, simultaneous and counter-assemblies.¹⁵

International guarantees also protect **other related freedoms** that have a role in creating the enabling environment for civil society and influence its activities. Those are freedom of expression

¹³ Article 3 of the Recommendations on the legal status of non-governmental organizations in Europe, Council of Europe, 2007, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1194609&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

¹⁴ OSCE/ODIHR and CoE Venice Commission: Guidelines on Freedom of Peaceful Assembly, Second Edition, 2010.

¹⁵ Maina Kiai, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, 2012. Available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf

which shall be enjoyed by CSO representatives either individually or through their organizations as well as right to safely receive and impart information through any type of media.¹⁶

In addition, the international and European documents also aim to strengthen **standards relevant for CSO financial sustainability and importance for their participation in the society.**

For example, according to the Article 50 of CoE Recommendations, CSOs can receive funding – cash or in-kind- from any kinds of donors, including foreign ones. In addition to this, Article 14 provides rules on the engagement of CSOs in the economic activities.¹⁷ CoE Recommendations also include standards on public support of NGOs, including tax benefits and regulations on the accountability of the funds distribution.¹⁸

Finally, in order to ensure a good governance of the country, it is essential to establish legal basis for the **relationship between public institutions and CSOs.** There are several areas where CSOs could be important cooperation partners for public institutions, including policy and decision-making and collaboration in service provision. The importance of their cooperation and right of the citizens to participate in the democratic life has been recognized also in the Article 10 and 11 of the *Treaty on European Union*.¹⁹ Further, according to the CoE Recommendations, CSOs should be encouraged to participate in the dialogue with governments and should be also consulted during the drafting of the legislations that is affecting their sphere of operation.²⁰ Furthermore, CoE has developed the *Code of Good practice for Civil Participation in the Decision-Making Process* which introduces the principles and conditions for the civil participation and also describes different levels of participation.²¹

¹⁶ See *Defending Civil Society Report* by the International Center for Not-for-Profit Law and the World Movement for Democracy, 2012, http://www.icnl.org/research/resources/dcs/DCS_Report_Second_Edition_English.pdf

¹⁷ Article 50 and 14 of the Recommendations on the legal status of non-governmental organizations in Europe, Council of Europe, 2007.

¹⁸ Articles 57-74 of the Recommendations on the legal status of non-governmental organizations in Europe, Council of Europe, 2007.

¹⁹ Article 10 and 11 of the Consolidated Version of the Treaty on European Union.

²⁰ Article 76 and 77 of Recommendations on the legal status of non-governmental organizations in Europe, Council of Europe, 2007.

²¹ *Code of Good practice for Civil Participation in the Decision-Making Process*, Council of Europe, 2009.

IV. KEY FINDINGS

1. CIVIL SOCIETY AND CIVIL SOCIETY DEVELOPMENT IN THE REGION

BASIC LEGAL FRAMEWORKS FOR CIVIL SOCIETY AND AVAILABLE LEGAL FORMS

Legal and institutional frameworks in all countries of the region, with certain limitations identified in Turkey, create preconditions for the creation and operation of various forms of CSOs. Among the available legal forms, **associations** and **foundations** remain to be the most common legal forms present in the region. Associations are traditionally defined by laws as non-for-profit, membership-based legal entities pursuing interest of their members in line with the country legislation. Foundations are most commonly defined as non-for-profit, non-membership legal entities pursuing private or public interest determined by the founders. Other available CSO legal forms include **funds**²² in Croatia, **centres**²³ in Albania, **endowments**²⁴ in Serbia and **humanitarian organizations**²⁵ in Bosnia and Herzegovina. In addition, some countries recognize the existence of other forms of CSOs (e.g. political parties, religious organizations, trade unions), however, for the purposes of this Report these legal forms are excluded from the definition of CSO.

NUMBER OF REGISTERED ORGANIZATIONS

In 2014, positive development has been identified regarding the **increased number of registered CSOs** in all countries, with the exception of Bosnia and Herzegovina. In BiH, the official data on registered CSOs remain to be unavailable. Number of officially registered CSOs per 10 000 inhabitants increased in 2014 in all remaining countries, most significantly in Croatia and Montenegro. The lowest increase of CSOs per inhabitants was reported in Turkey.

Below is a table summarizing data on officially registered CSOs in each and every country, together with the population and comparing the information on number of registered CSOs per 10 000 inhabitants in 2013 and 2014 to show the positive/negative trend.

²² According to the Croatian Law on Foundations and Funds (Official Gazette No. 36/1995, 64/2001), “*fund is the property designated for serving to the achievement of a generally beneficial or charitable purpose over a given period of time, but not longer than five years.*”

²³ According to Albanian legislation, “*a center is a juridical person, without membership, that has the object of its activity the performance of services and the realization of projects for purposes in the good and interest of the public, with funds and income secured according to law.*”

²⁴ ‘Endowment’ is defined as a “*not-for-profit, non-membership and non-governmental legal entity whose founder designated specific property to support its public or private interest objectives*” (Serbian Law on Endowments and Foundations, 2010).

²⁵ The Law on Humanitarian Agencies and Humanitarian Organizations in Federation of Bosnia and Herzegovina defines as ‘humanitarian organizations’ those *that pursue humanitarian actions and engage in activities based on the principles of humanity, impartiality, independence and voluntariness.*

| COUNTRY | NUMBER OF REGISTERED CSOs IN 2014 ²⁶ | POPULATION IN MLN. ²⁷ | CSOs PER 10 000 INHABITANTS IN 2014 | CSOs PER 10 000 INHABITANTS IN 2013 ²⁸ | TREND CSO PER 10 000 INHABITANTS 2013 vs. 2014 |
|------------------------|---|----------------------------------|-------------------------------------|---|--|
| ALBANIA | 8,449 | 2.77 | 31 | 22 | + 9 |
| BOSNIA AND HERZEGOVINA | No data | 3.83 | No data | 31 | No data |
| CROATIA | 50,193 | 4.25 | 118 | 108 | +10 |
| KOSOVO | 8,000 | 1.82 | 44 | 41 | +3 |
| MACEDONIA | 13,656 ²⁹ | 2.11 | 65 | 62 | +3 |
| MONTENEGRO | 3,300 | 0.62 | 53 | 43 | +10 |
| SERBIA | 24,600 | 7.16 | 34 | 30 | +4 |
| TURKEY | 108,738 | 74.93 | 15 | 14 | +1 |

The clearly lowest ratio between the country population and number of registered CSOs per 10 000 inhabitants remain in Turkey. This ratio, 15 CSOs/10 000 inhabitants, is more than a half lower than the second lowest ratio identified in Albania (31 CSOs/10 000 inhabitants). The highest number of registered CSOs per 10 000 inhabitants remain in Croatia (118 CSOs/10 000 inhabitants).

While there is an increasing trend in establishing various forms of CSOs, there is a remaining challenge to identify how many CSOs are **actually active**. For example, according to the estimations of the NGO Registration Department in Kosovo, only around 10% of registered CSOs are active. In some countries, estimations on the number of active CSOs are made based on how many annual financial reports/tax returns were submitted in the respective financial year. While these data may be good indicators of the CSO activity, their accuracy remain questionable since the obligation to submit a financial report/register with tax authorities is oftentimes not applicable to all CSOs without exceptions.³⁰ **Lack of conclusive data and official statistics** about CSOs is a remaining challenge in studying civil society in the region.

AREAS OF CSO ENGAGEMENT

CSOs remain to work mainly in the areas of education, culture, youth, provision of social services, health and gender equality. According to the country reports, there are diverse tendencies identified in terms of CSO field of engagement. For example in Kosovo, there is an increasing trend to establish so called “watchdog” organizations working on democracy issues. In Montenegro, there is a significant number of associations working in the area of agriculture and rural development. In addition, CSOs in Turkey continue to work predominantly in the areas of sports, religious services and social solidarity. Fields of work that are of the least interest for CSOs in the region are most commonly business and entrepreneurship.

²⁶ Data obtained from Monitoring Matrix country reports 2014.

²⁷ Source: World Bank 2014, available at: <http://databank.worldbank.org/data/download/POP.pdf>

²⁸ Source: Monitoring Matrix Regional Report for 2013.

²⁹ 4,156 from these have re-registered under the new Law on Associations and Foundations of 2010

³⁰ For example project open.data.al introduced in Albania reflects only CSOs registered with the tax authorities, while not all CSOs necessarily register with tax authorities until they get a grant and/or it is required by the donor.

GEOGRAPHIC SPREAD

CSOs continue to register and operate predominantly in the large cities and capitals. The high number of CSOs concentrated in the urban areas was reported for example in Croatia, Macedonia and Serbia. In Serbia, around 24% of associations are registered in the central municipalities of Belgrade. In Macedonia, 39% of total number of registered CSOs are located in the Skopje region. In Croatia, majority of CSOs are located in the four largest cities.

NOTABLE TRENDS IN CIVIL SOCIETY DEVELOPMENT IN 2014

FINANCIAL SUSTAINABILITY

One of the main challenges CSOs in the region have to face is how to financially sustain their everyday operation. Even in 2014, CSOs predominantly rely on income from foreign grants and income from state budget including proceeds from lotteries, while alternative sources of funding are rarely available or used. There is a continuous need for CSOs to diversify their financial resources and not over depend on one source of income in order to preserve their financial viability and autonomy.

Similarly as in 2013, **distribution of public funding is still not transparent**. Even though majority of the countries have law or a policy regulating the distribution of public funds, the measures introduced are either insufficient or not properly implemented in practice. In addition, mechanisms for regular monitoring and reporting on the spending of public funds are missing, too. Distribution of non-financial state support is also lacking clear and transparent measures.

Other remaining problems related to the public funding are lack of funds dedicated to the institutional development of CSOs or co-financing EU or other foreign-funded projects. Also, funds for CSOs are still not clearly planned and allocated within the state budget and oftentimes falling within the same budget line with other non-governmental organizations, including religious organizations and political parties.

| SUMMARY TABLE OF AVAILABLE DATA ON PUBLIC FUNDING PER COUNTRY | |
|---|---|
| ALBANIA | <ul style="list-style-type: none"> • 2014 state budget grants allocated to ASCS: €715.000 (51% awarded to 64 CSOs until September 2014) • Ministry of Culture 2014 call: Approx. €1,3mil (53 CSOs awarded) |
| BOSNIA AND HERZEGOVINA | <ul style="list-style-type: none"> • Declining trend of BiH governments support for civil society: 2007 – €54,8mil, 2008 – €60,4mil, 2010 – €58,3mil, 2012 – €51,1mil |
| CROATIA | <ul style="list-style-type: none"> • €197mil on annual level (on average) allocated to CSOs since 2007 • €470.000 institutional support awarded in 2014 to CSOs in the City of Zagreb (more than 50% of total institutional support) |
| KOSOVO | <ul style="list-style-type: none"> • 2014 budget allocated for implementation of Strategy: €137.960 for 4 years • 24,4% of surveyed CSOs report to have received public funds |
| MACEDONIA | <ul style="list-style-type: none"> • Under Budget Line 463 - Transfers to CSOs (incl. trade unions and religious communities and political parties) in 2014: €4.678.266 • Distributed to CSOs registered according to LAF in 2014: €195.500 to 40 CSOs • Funding from games of chance and entertainment games in 2014: €1.058.975 |
| MONTENEGRO | <ul style="list-style-type: none"> • €1.345.260 allocated to CSOs in 2013 (Decision on the Allocation of the Funds from Games of Chance) • 2013 budget planned for CSOs through the Law on Budget: €1.386.865; • Local governments awarded €346.380 through CfP and €238.310 on other legal basis in 2013 • Fund for Protection of Minorities: €727.500 allocated in 2013, €765.500 in 2014 |
| SERBIA | <ul style="list-style-type: none"> • 2012: €71,7mil granted to CSOs on all levels of government out of €76,7mil available (84,49% allocated under budget line 481-CSOs grants; 11,81% under budget line 472-financing of social protection services) • 2013 co-financing: approx. €150 000 • Non-financial support: approx. €55,6m |
| TURKEY | <ul style="list-style-type: none"> • 2013: €3,5mil budget allocated to 248 CSOs projects and €66mil to 495 CSOs projects through Ministry of Development Social Support Program • 2014: €3.3mil (out of €10.5mil available) allocated from the Ministry of Interior budget to associations by DoA and €2,4mil to be distributed through Associations Aid Program |

One of the potential alternative resources available for the CSOs is **income from private donations or in-kind support from volunteers**. While in 2014, countries including Bosnia and Herzegovina (on the federal level and in Republika Srpska), Croatia, Macedonia and Montenegro continue to stimulate volunteering through supportive legislations and policies, according to the data from World Giving Index 2014 volunteering engagement declined in four countries of the region. Most significant decline was identified in Serbia, where only 4% of people surveyed claimed to have volunteered in 2014 compared to 7% in 2013. On the other hand, Macedonia reported a sound increase of people engaged in volunteering from 7% in 2013 to 14% in 2014.³¹

While according to the World Giving Index 2014 **donation of money** globally declined, people from all countries analyzed in this Report, with the exception of Turkey, are **more willing to donate money**.³²

³¹ Since World Giving Index provides only estimates of the current philanthropic trends and behaviors in the world, no conclusions of the actual number of volunteers may be drawn.

³² Large number of donations were provided as a humanitarian aid to Serbia and Bosnia and Herzegovina, due to the great floods that struck some of their areas.

In 2014, more than 30% of surveyed people claimed to donate money in Kosovo, Bosnia and Herzegovina and Macedonia. However, philanthropic giving is not fully developed in Turkey and Croatia where less than 15% of surveyed people claimed to donate money in 2014.

Another trend identified from the World Giving Index is that five out of eight countries improved their overall scores in 2014, while one remained unchanged. In addition, Kosovo and Macedonia improved and rank better in all categories compared to 2013.

| RESULTS FROM WORLD GIVING INDEX 2014 COMPARED TO WORLD GIVING INDEX 2013 ³³ | | | | | | | | |
|--|---------------|-----------|--------------------|-----------|----------------|-----------|--------------|-----------|
| | OVERALL INDEX | | HELPING A STRANGER | | DONATING MONEY | | VOLUNTEERING | |
| | RANKING | SCORE (%) | RANKING | SCORE (%) | RANKING | SCORE (%) | RANKING | SCORE (%) |
| KOSOVO | 50 ↑ | 36 ↑ | 35 ↑ | 57 ↑ | 34 ↑ | 39 ↑ | 96 ↑ | 13 ↑ |
| BOSNIA AND HERZEGOVINA | 103 ↑ | 23 ↑ | 126 ↓ | 31 ↓ | 41 ↑ | 33 ↑ | 129 ↑ | 6 ↑ |
| MACEDONIA | 72 ↑ | 29 ↑ | 98 ↑ | 40 ↑ | 41 ↑ | 33 ↑ | 90 ↑ | 14 ↑ |
| SERBIA | 124 ↓ | 20 ↑ | 118 ↑ | 35 ↑ | 75 ↑ | 21 ↑ | 134 ↓ | 4 ↓ |
| MONTENEGRO | 130 ↓ | 18 → | 131 ↓ | 29 ↓ | 97 ↑ | 15 ↑ | 114 ↓ | 9 ↑ |
| TURKEY | 128 → | 18 ↑ | 106 ↑ | 38 ↑ | 112 ↓ | 12 ↓ | 132 ↓ | 5 → |
| ALBANIA | 85 ↑ | 27 ↑ | 40 ↑ | 56 ↑ | 87 ↑ | 17 ↑ | 114 ↓ | 9 ↓ |
| CROATIA | 130 ↑ | 18 ↑ | 131 ↓ | 29 ↓ | 101 ↑ | 14 ↑ | 108 ↑ | 10 ↑ |

Philanthropy may be enhanced by well drafted fiscal laws and policies. According to the findings from the country reports, tax incentives for donors are oftentimes limited, and do not boost philanthropy enough, while the process to acquire them is oftentimes lengthy and complicated. While tax incentives for individual and corporate donors are not key to philanthropy, they may eliminate potential “tax barriers” and lead to a continuous cooperation between private donors and CSOs in achieving certain publicly beneficial goals.

States’ fiscal policies have significant influence in overall CSOs’ financial viability and their ability to diversify funding to stay autonomous from external influence. Grants and donations continue to be exempted from income tax, however, economic activities are still subject to income tax in most of the countries. In addition, there are remaining challenges to solve the harmonization of the laws introducing public benefit/interest status with the relevant tax laws to provide actual benefits to the status holders.

EMPLOYMENT AND VOLUNTEERING

The data and statistics about number of people employed and volunteering in CSOs remain to be limited. In some countries the number of persons employed in CSOs may be obtained from the tax authorities/public registers, however, the data do not differ between part-time employees, full-time

³³ Source: World Giving Index 2014, available at:

https://www.cafonline.org/pdf/CAF_WGI2014_Report_1555AWEBFinal.pdf.

Data from World Giving Index 2014 are compared with the World Giving Index 2013, available at:

<https://www.cafonline.org/publications/2013-publications/world-giving-index-2013.aspx>

employees and external experts. In countries where such data is available, the number of employees increased in Macedonia and Croatia, while a decreasing trend has been identified in Serbia.

| HUMAN RESOURCES 2013 | | | | | | | | |
|-----------------------|---------|-----------------------------|--|--|-----------|-------------|-----------------------|--|
| | ALBANIA | CROATIA | BOSNIA AND HERZEGOVINA ³⁴ | KOSOVO | MACEDONIA | MONTE NEGRO | SERBIA | TURKEY |
| NO OF PEOPLE EMPLOYED | N/A | Approximately 18,000-19,000 | 380 persons employed within 214 membership-based organizations | 793 CSOs have declared 6,589 employees ³⁵ | 1.897 | N/A | 6,021 ³⁶ | 109,391 employees of associations out of which 75,608 volunteers and 33,783 paid-staff |
| NO OF VOLUNTEERS | N/A | N/A ³⁷ | N/A | N/A | N/A | N/A | 150,000 ³⁸ | 1,107,827 in foundations and 75,608 in associations |

Even more challenging is to obtain information on actual number of volunteers, as volunteering engagement still largely appears outside of contractual relations. According to the above mentioned data obtained from World Giving Index 2014, volunteering engagement generally declined in 2014. However, these are rather estimates that cannot serve as a basis for in-depth analysis of the sector.

CSO-GOVERNMENT COOPERATION

CSO-Government cooperation remains to be partly or fully **inefficient** in all countries of the region with the exception of Croatia. While strategies for CSO-Government cooperation and standards on CSOs' involvement in decision and policy-making were adopted in almost all countries of the region and new ones developed in 2014 in Albania, Montenegro and Serbia, they are missing proper implementation. According to the country reports, the most common reasons for the insufficient implementation include: a) a lack of political will for proper implementation, b) an insufficient allocation of funding and c) limited human resources with adequate capacities.

Similarly, national institutions/mechanisms to facilitate CSO-Government dialogue exist in almost all countries of the region with commencement of development of new ones in Albania and Macedonia. The challenge remains, however, to secure their appropriate functioning in practice. The reasons of problematic functioning are identified in insufficient allocation of funds from the state budget; lack of human resources working full-time on the implementation of the institutions' tasks; and the dependent position of the institution.

³⁴ Data related to employment and volunteerism is not collected by state institutions.

³⁵ Statistical Agency, 2013.

³⁶ SBRA, 2013.

³⁷ The only available data for 2013 is: 1,652,965 volunteer hours worked; 50% increase in volunteers.

³⁸ SBRA, estimations for 2014.

2. KEY FINDINGS

AREA 1: BASIC LEGAL GUARANTEES OF FREEDOMS

1.1 SUB AREA 1.1: FREEDOM OF ASSOCIATION CONTINUES TO BE LEGALLY GUARANTEED IN ALL COUNTRIES OF THE REGION EXCEPT OF TURKEY, WHERE SIGNIFICANT RESTRICTIONS REMAIN IN PLACE.

Freedom of association **remains legally guaranteed** in all countries of the region with the exception of Turkey, where legal reforms are planned as envisaged in the Turkey's National Action Plan for the EU Accession (Phase I: November 2014 – June 2015). In all of the countries, the constitutions and framework laws regulating freedom of association remained unchanged in 2014, except of the positive improvement in Croatia. The recently adopted Associations' Act addressed the main challenges of the former law such as limitations for youth under age of 18 and persons with limited legal capacity to be active members of an association taking part in decision-making processes. In all other countries, the framework legislation remains stable without any significant improvement or deterioration.

Country legislations provide the possibility **for all individuals and legal entities to establish a CSO**. The restrictions are still in place in Turkey, where the Constitution limits available CSO legal forms to associations and foundations and requires minimum seven persons for founding an association or a foundation which is significantly high number compared to other countries in the region. Providing there have been no changes made in the legislation of other countries, there is still a restrictive residency requirement for at least one founder to have a permanent residence in Montenegro and Serbia.

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RESULT 1.1: In 2014, no significant improvements or deteriorations occurred in the basic legal frameworks guaranteeing the freedom of association. The country legislations remain generally favorable in all countries of the region, with the exception of Turkey. CSOs reported to generally perceive the registration procedures as simple and timely, despite the impediments to the registration procedures identified in 2013.

RESULT 2.1: Financial rules, including reporting and accounting obligations, prove to be burdensome in five countries of the region, namely in Albania, Bosnia and Herzegovina, Kosovo, Macedonia and Turkey. CSOs reported to perceive them as unclear and ineffective, disproportionate to the size and type of organization.

No changes were identified also with regard to the registration of CSOs. In all countries of the region, CSOs may operate without prior registration, allowing the existence of informal organizations. However, in Turkey, unregistered CSOs are excluded from the public life in general and individuals are not allowed to act collectively through unregistered groups or organizations. The country registration procedures are in general easy, timely and inexpensive, although the impediments identified in 2013 remain unchanged. The responsible body for registration in Albania is still centralized, located in the capital city, thus being difficult to reach from other parts of the country. Besides the excessively high registration fees reported last year in Bosnia and Herzegovina, there is also a challenge to determine the overall number of registered CSOs due to the lack of a unified registry.

| COUNTRY | TIMELINE FOR REGISTRATION ³⁹ |
|------------------------|---|
| ALBANIA | 15 days |
| BOSNIA AND HERZEGOVINA | 30 days |
| CROATIA | 30 days |
| KOSOVO | 60 days |
| MACEDONIA | 5 days |
| MONTENEGRO | 10 days |
| SERBIA | 30 days |
| TURKEY | 60 days |

In Kosovo, the appeal against denial of registration is decided within the same institution as the registration itself, which may raise concerns about the independency of such decision. Furthermore, the most extensive problems with the registration procedure remained in Turkey, including burdensome permission requirements for registration of a foreign CSO branch and extensive eligibility requirements for founders.

Non-interference of the state in internal matters of a CSO as one of the core principles pertinent to the freedom of association is **explicitly guaranteed by legislation in five countries**, namely Albania, Bosnia

and Herzegovina, Croatia, Macedonia and Serbia. Countries reporting challenges with securing the autonomy of CSOs internal organization are Kosovo, Montenegro and Turkey. In Kosovo, the prohibition of the state interference in activities of CSOs guaranteed by framework laws was broken by the new Administrative Instruction on Registration and Functioning of NGOs adopted in September 2014. This bylaw allows the NGO Department to suspend the operation of a CSO upon a written request of an authorized security institution. Inspection Law regulating state oversight of CSOs activities in Bosnia and Herzegovina is still imposing excessive fines in case of failure to report changes in data to state authorities. In Turkey, CSO framework laws provide a possibility of state audit to determine whether activities of CSOs are in line with their bylaws and also impose excessive fines for failure to report changes in the data included in the registry. In the rest of the countries, CSOs did not face any direct interference of the state in their operation, however, cases of indirect pressure were reported.

Financial reporting and accounting rules prove to be burdensome in most countries of the region. Country reports for Albania, Bosnia and Herzegovina, Kosovo, Macedonia and Turkey highlighted that the same financial reporting and accounting standards apply to CSOs as to any other legal entity, including private companies, and no proportionate measures are taken in terms of the size/type of the organization. In addition, regulations on countering money laundering are causing problems in every day operation of CSOs in Albania and Kosovo. In Kosovo, CSOs have to obtain prior authorization to receive funds above 1,000 EUR from a single sender or to pay more than 5,000 EUR to a single recipient within the same day. The whole decision-making about the authorizations relies on the Financial Intelligence Unit of Kosovo (FIU-K) and lacks clear criteria, thus creating base for different interpretation or arbitrary decisions. Moreover, breach of the set limitations is considered to be a criminal act sanctioned with imprisonment and high monetary fines and gives the CSO Registration and Liaison Office the authority to dissolve a CSO. On the other hand, CSOs in Macedonia since 2014 are exempted from the obligation to undertake anti-money laundering measures imposed on other legal entities.

Access to various sources of funding is essential for CSOs in order to secure their financial viability and autonomy of operation. Funding sources including grants, donations, membership fees, funding from abroad as well as income from economic activities are **generally not limited in the region**, with the exception of Montenegro and Turkey. In Montenegro, CSO's income from economic activities cannot

³⁹ Data from country reports for 2013.

exceed 4,000 EUR or 20% of the annual income; further direct engagement in economic activities in the current year is prohibited and fined. In Turkey, associations and foundations are not allowed to directly carry out economic activities and in case they wish to do so, they have to establish a separate commercial enterprise.

In 2014, no significant improvements or deteriorations occurred in the basic legal frameworks guaranteeing the freedom of association in the Western Balkans and Turkey. Similarly as in 2013, the countries proved to face common challenges, however, the distinctions may be identified throughout the country legislations. Most significant differences in comparison with other countries of the region are recognized in Turkey, where the legal environment for the operation of CSOs is proving to cause severe challenges.

1.2 SUB AREA 1.2: OTHER RELATED FREEDOMS ARE GUARANTEED BY LAWS, HOWEVER THERE ARE STILL SEVERAL RESTRICTIONS AND CHALLENGES IN EXERCISING THE RIGHTS IN PRACTICE

No significant changes have been reported with regards to laws regulating the right of peaceful assembly compared to 2013. **The right to peaceful assembly is legally guaranteed, however several restrictions remain in place with regard to the citizenship of organizers, location of the assemblies or obligation to obtain prior authorization.** For example, in Macedonia and Turkey, foreigners still have to receive a permission from the Ministry of Interior to organize an assembly compared to the less burdensome notification requirement for the citizens. The legal framework in Kosovo guarantees the right to organize and participate in a peaceful assembly only for its citizens, without providing the same right to foreigners. In Bosnia and Herzegovina, the federal and cantonal laws guarantee the right to a peaceful assembly, however, the organizers are obliged to obtain prior authorization. In addition, there are several restrictions regarding the location of the assembly, including the prohibition to hold an assembly in the vicinity of specially secured facilities, to a distance of at least 50 meters, which leaves the space for possible misuse by state authorities. Alarming, several cases of the excessive use of force by the police, including beating of the participants of the peaceful protests have been reported in Turkey and Bosnia and Herzegovina.

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RESULT 1.1: Freedom of assembly, expression and information remain to be legally guaranteed, no changes occurred in 2014. In practice, several cases of violations were reported, particularly related to the freedom of assembly. CSOs in Bosnia and Herzegovina, Montenegro and Serbia claimed to face direct and indirect threats for expressing criticism, particularly with regard to the state authorities. Criticism of government is also subject to censorship in the media.

Freedom of expression is generally guaranteed and protected in all its forms in the region. Limitations introduced by the laws are related to the other person's dignity, expression of hatred or violence against a person or groups of persons due to their personal attributions. In 2014, four out of eight countries have been monitoring how the freedom is secured in practice. Three of them, Montenegro, Bosnia and Herzegovina and Serbia, reported cases of violations, including acts of intimidation and death threats. In Montenegro, several organizations claimed to face consequences

including direct and indirect threats for expressing criticism, particularly with regards to state authorities. It is alarming that the Croatian Criminal Code still categorizes libel as a criminal offense and punishes regardless of the actual truthfulness or falseness of the statement.

Right to safely receive and impart information through any media remains legally respected in all the countries of the region with the exception of Turkey. This constitutionally guaranteed freedom in Turkey may still be restricted by public institutions on the basis of legislation introduced in recent years. Internet censorship implemented by the government is on increase and several high state officials expressed their criticism towards social media, claiming they impose threat to the society.

Other related freedoms, including freedom of assembly, expression and right to receive and impart information continued to be generally guaranteed by country laws throughout 2014, however, several restrictions remain in place. Implementation of laws in practice proves to be challenging as state authorities in Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, Serbia and Turkey still do not fully respect the freedoms and overlook their legal guarantees. In Croatia, conditions for exercising the freedom of expression is deteriorating because of the legal regulation of the libel, categorized under the criminal offenses.

AREA 2: FRAMEWORK FOR CSO FINANCIAL VIABILITY AND SUSTAINABILITY

2.1 SUB AREA 2.1: COUNTRY TAX REGULATIONS ARE STILL CAUSING CHALLENGES TO CSOs, HOWEVER, POSITIVE TRENDS HAVE BEEN IDENTIFIED COMPARED TO 2013

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RESULT 2.2: Tax incentives for donors remain to be inefficient and not encouraging enough. In some countries, tax incentives are limited only to the corporate donors. Changes of tax laws/policies affecting philanthropy in 2014 were identified in Macedonia. However, the amendments did not address the main challenges of the law, such as complicated procedure for acquiring the “public interest”.

RESULT 2.3: CSOs remain to be exempted from income tax on grants and donations. 2014 tax amendments in Albania introduced VAT exemption for grants and waived the income tax from the economic activities. CSOs in Macedonia, Turkey, and Serbia still have to pay income tax on all income from economic activities.

Favorable tax treatment of CSOs, recognizing their specific nature compared to the other legal entities is core to the CSOs’ financial sustainability. In 2013, all countries **reported challenges** in this regard, either due to the lack of tax exemptions in place or lack of incentives for donors that would motivate them to engage in philanthropic giving. In 2014, most of the countries reported that the situation remained unchanged, however, positive trends were identified as well.

Grants and donations remain to be exempted from income tax. The amendments to the Law on Nonprofit Organizations in Albania eliminated the challenges in interpretation of the exemption of grants. It provides CSOs with the express exemption from the income tax. Non-monetary contributions are, with the exception of Bosnia and Herzegovina, exempted from Value-Added Tax (VAT). In Bosnia and Herzegovina, donors registered in the VAT system have to pay VAT on non-monetary gifts and donations to CSOs. The

situation improved in Albania, where the new Law on VAT adopted in 2014 clarifies the exemption of grants from VAT scheme.

Unfavorable tax treatment of **the income from economic activities** is still burdening CSOs in most of the countries of the region. In Turkey and Serbia, CSOs still have to pay income tax from this source of funding the same way as from other legal entities. In Kosovo, the exemption is still provided only to the economic activities related to the organization's public benefit purpose and up to a "reasonable level of income" vaguely interpreted as the level ensuring sustainability and development of an organization. Also, due to the incoherence between Law on the Corporate Income Tax and Administrative Instruction explaining its interpretation, it is not clear whether the exemption applies to all CSOs or only those with public benefit status. However, an improvement has been identified in Albania, where the 10% income tax has been waived if the income from economic activities is used for the CSOs' statutory activities. Furthermore, CSOs' activities considered as of public interest are exempted from VAT in Albania.

Public benefit/interest (PBO) status is still causing challenges in all countries where the distinct status exists, namely Bosnia and Herzegovina, Kosovo, Macedonia, Serbia and Turkey. The problems identified are twofold: (1) insufficient harmonization of laws regulating public benefit/interest status with other laws in the legal framework resulting in no actual benefits in practice and/or (2) criteria for obtaining such status are extremely demanding and almost no CSOs can actually meet them. For example, in Turkey, the distinct "public benefit" status available for associations and "tax exempt" status available for foundations are vaguely defined, and can be acquired in a non-transparent and long procedure and providing very limited benefits in practice. In Kosovo and Macedonia, distinct status of public benefit has been introduced by CSO framework laws, however, due to the insufficient harmonization with tax laws, no actual benefits are provided to the status holders in practice. Challenges with the harmonization of the legislation have been identified also in Serbia where a unified definition of "public interest" is missing in the CSO framework laws, and this results in unsystematic granting of tax relief for both donors and recipients of funds.

Tax regulations that would encourage individuals and corporations to engage in philanthropic giving are still not sufficiently supportive. **Tax incentives for donors are oftentimes limited, and do not boost philanthropy enough**, while the process to access them is oftentimes lengthy and complicated. In Serbia, tax deductions are available only for corporate donors and acquired through a complicated procedure where contributions are subject to state inspections. Also in Turkey, the tax incentives are available only for corporate donors. Amendments to the "Macedonian Law on Donations and Sponsorships in Public Activities" adopted in 2014 still do not address the main challenges of the Law. These include lengthy and complicated administrative procedure for deciding if a donation/sponsorship is of public interest as a prerequisite for obtaining tax benefits. In Albania, the tax benefits are reported not to be encouraging enough. In order to boost up philanthropy a "National Action Plan on Corporate Social Responsibility" was drafted establishing the "Multi-Stakeholders Forum on CSR" and adapting the ISO 260000 standards.

States fiscal policies have significant influence in CSOs' financial viability and their ability to sustain continuous operation. It is of utmost importance that the country laws recognize CSOs' specific nonprofit nature and provide them with concrete tax benefits compared to the other legal entities. Tax treatment of CSOs with regards to their economic activities is still not enabling enough, while incentives for donors and sponsors remain insufficient in the region.

There are still challenges to solve the harmonization of CSO basic legal frameworks with the relevant tax laws.

2.2 SUB AREA 2.2: PUBLIC FUNDING IS STILL NOT DISTRIBUTED THROUGH TRANSPARENT MECHANISMS

Distribution of direct financial state support remains to cause challenges in 2014. There is a strong need for **clear set of measures regulating allocation, distribution and monitoring of public funding that are sufficiently implemented in practice.** In six out of eight countries there is a national law or policy document regulating state support for CSOs in place. The two remaining countries without any binding document are Macedonia and Kosovo. In Macedonia, consultations for adoption of a binding document started in November 2014.

While there is a positive trend of adopting regulations on state support for CSOs, there are remaining **challenges with the allocation of sufficient amount of funds to CSOs in practice.** Five out of eight countries of the region reported that the amount of public funding available for the sector was insufficient in 2014. In the remaining three countries of the region the allocation of the funds to CSOs is not clearly planned within the state budget. In addition, in countries such as for example Croatia, Serbia and Macedonia, CSOs do not have their special budget line and fall within the category of all nongovernmental organizations, including religious organizations and political parties. Furthermore, many countries, including for example Kosovo and Macedonia, reported that the funding available is only project-based and there are no funds available for institutional support and/or co-financing of EU and other grants.

The proper implementation of transparency measures remains to be the greatest challenge in all countries of the region. Despite the above mentioned national regulations in place, the transparent distribution of funds is still causing problems in the majority of the countries. The most common issues are a) lack of clear selection criteria and b) implementation of the prescribed transparent procedures in practice, particularly at the sub-national level. For example, in Croatia tender procedures on the national level are reported to be rather transparent, however, counties and cities are reported to conduct entirely non-transparent tenders for CSO funding. Other problems are arising from the **lack of available information** related to the procedures for funding and amounts actually awarded to the CSOs as state bodies often do not publicize this information as they are obliged to. This is the case for example in Macedonia, Kosovo and Turkey, where information on procedures and funded projects are reported to be rarely publicly available. In addition, there is a

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RESULT 2.4: In six countries there is a national law/policy document regulating state support for CSOs in place. The two remaining countries without any binding document are Macedonia and Kosovo, however, there is a non-binding Code of Good Practices for Funding of Associations and Foundations from the national budget existing in Macedonia. Mechanisms for distribution of public funds are, however, lacking clear transparency and accountability measures, or rules in place are not properly implemented in practice.

CSOs in majority of the countries perceive public funding as insufficient and distributed in a non-transparent manner according to the personal relations, acquaintances and political views.

disturbing trend related to the allocation of the public funds based on personal relations, acquaintances and political views reported also in 2014. Majority of the countries reported to experience **problems with civil servants** who are not well trained and lack the knowledge of the procedures and information on public funding calls.

Majority of the countries continue to channel **the income from lotteries and other games of chance** to CSOs. For example in Bosnia and Herzegovina, 50% of revenues generated from the lottery fees are set aside for funding/co-funding CSOs projects and programs. In Kosovo, the Law on Games of Chance provides the possibility to direct certain amounts of funds for various purposes, such as human rights protection, culture and sports. This source of income is, however, oftentimes unpredictable without clear data on how much money has been collected and disbursed to eligible CSOs. For example in Montenegro, there is a remaining problem with the harmonization of the Law on State Budget with the Law on Games of Chances which results into unpredictable and oftentimes lower-than-expected allocation of funds to CSOs.

Non-financial state support continues to be spread in the region. All countries of the region allow for some form of in-kind support from state or municipalities, mostly by providing the possibility to rent publicly owned premises for CSO offices.⁴⁰ Legislation in most of the countries, including for example Albania, Croatia, Kosovo and Macedonia, enables CSOs to rent a state owned space without any or with reduced financial contribution. However, in most of the cases there are no clear rules on how the non-financial state support is distributed among CSOs, which provides broad discretion to the authorities making the actual decisions. Also, similarly to the state financial support, there are no transparent procedures for the distribution of non-financial support.⁴¹

Mechanisms for distribution of state support remain to be legally regulated, however, the distribution is often not in accordance with prescribed measures. CSOs are still facing challenges to secure public funding mostly due to the lack of will of authorities failing to: 1) respect the prescribed transparent procedures; 2) make all the relevant information available; and 3) apply non-discriminatory treatment to all CSOs.

2.3 SUB AREA 2.3: COUNTRY LAWS AND POLICIES GENERALLY STIMULATE VOLUNTEERING IN CSOs, HOWEVER STATE EMPLOYMENT POLICIES DO NOT TARGET CSOs AS POTENTIAL EMPLOYERS

The labor laws continue to provide the same treatment to CSOs compared to the other employers. Equal treatment of CSOs under the labor regulations may be, however, oftentimes perceived as a disadvantage. The main drawback remains to be the obligatory payment of fringe benefits and social security and health insurance contributions for all types of employees, including short-term ones. For example in Kosovo, there is a remaining challenge with the payment of maternity benefits for employees on a maternity leave, as CSOs have to contribute with the amount equal to half of the woman's salary. Considering the oftentimes limited funds of CSOs, this provision may have very negative impact on their financial viability. In addition, the Law on Social Insurances in Albania contains

⁴⁰ Montenegro has no law or bylaw regulating non-financial state support, however, Strategy for the Development of NGOs envisages the creation of in-kind support model.

⁴¹ For more information about the non-financial state support in the region please refer to the recent BCSDN publication written by Milka Ivanovska: *Ways of Non-financial Gains for CSOs in the Balkans and Turkey*, 2015.

an obligation to pay the social insurance for at least one employee even when the organization is not performing any activities and has no funds available, which results in breaching of this provision in practice.

The common challenge identified in the region is that CSOs are **not regarded as potential employers in the country employment programs and policies and therefore not treated equally towards other employers**. The incentives in place are either targeting only for-profit organizations and/or entrepreneurs, or they are not available equally to CSOs compared to other potential employers. For example in Croatia, there was a large number of active labor market measures implemented in 2014, however only two, *Public works* and *Occupational Training*, were made available for CSOs. In Kosovo, CSOs are not recognized in the current government employment strategies as potential employers. In Macedonia, strategies and action plans stimulating employment do not recognize CSOs as employers. In addition, CSOs are deprived of the possibility to use one of the measures for obtaining compensation for employing persons under 29 years as interns. Furthermore, according to the surveys conducted among CSOs in Albania 45% do not consider them stimulating, while in Macedonia 64% do not consider employment policies stimulating at all.

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RESULT 1.2: There is a lack of conclusive data on number of people volunteering and employed in CSOs. In some countries, the number of persons employed in CSOs may be obtained from tax authorities/public registers, however, the data do not differ between part-time employees, full-time employees and external experts. In countries, where such data is available the number of employees increased in Macedonia and Croatia, while a decreasing trend has been identified in Serbia.

Volunteering laws and policies for the development of volunteering exist in Bosnia and Herzegovina (on the federal level and in Republika Srpska), Croatia, Macedonia, Montenegro and Serbia. The laws are generally considered as enabling, however, some of them introduced complicated administrative procedures for establishing CSO-volunteer relationship.

Well drafted laws and policies on development of volunteerism may positively stimulate volunteering engagement and help CSOs to find human resources helping to pursue their objectives. Volunteering laws exist in five countries of the region, namely Bosnia and Herzegovina (on the federal level and in Republika Srpska), Croatia, Macedonia, Montenegro and Serbia. In Albania and Turkey, there is a remaining problem with the lack of distinct status of volunteers that results in the equal treatment with employees. Due to this, provisions of the labor codes apply to volunteers, including the obligation to pay health insurance and social security contributions. Positive improvement was identified in Republika Srpska, where new Law on Volunteering came into effect at the end of 2013, followed by the Government Strategy for development and improvement of volunteering. However, a distinct law and strategy stimulating volunteer engagement is still missing in the Brcko District (BiH).

Volunteering legislations and policies are not key to the enhancement of volunteering if they are introducing **complicated administrative procedures for establishing a CSO-volunteer relationship, thus hampering their creation in practice**. For example in Serbia, the law requires a written agreement between volunteer and host organization regardless of the duration of the

engagement. In Montenegro, the volunteering legislation is treating volunteers as a special type of labor rather than citizens' free time engagement and complicates the process of "hiring" volunteers.

Civic engagement may be efficiently promoted and encouraged through informal educational system. This indicator was monitored only in Albania and Serbia in 2014, however, from the previous reports it can be concluded that the civic education is not part of the official portfolio and it highly depends on the educational institutions and organizations whether the promotion of civic engagement is sufficient.

AREA 3: GOVERNMENT-CSO RELATIONSHIP

3.1 SUB AREA 3.1: REMAINING CHALLENGES WITH THE PROPER FUNCTIONING OF CSO-GOVERNMENT PARTNERSHIP

Ensuring a functioning CSO-Government partnership remains problematic. National strategies and policies for the development of civil society and cooperation with the sector are useful means for setting the standards and mechanisms for their accomplishment. Also, an independent national level institution/mechanism for cooperation with a strong mandate can play an important role to facilitate CSO-Government dialogue. However, clear steps and measures have to be taken to secure their proper functioning in order to deliver the positive effects in practice.

In terms of the strategies and policies for CSO-Government partnerships, the situation in the region has improved. **The majority of the countries have concluded or started the process of adoption of strategic documents that regulate the standards and mechanisms for CSOs-Government cooperation.** In 2014, a new Resolution "For Recognition and Strengthening the Role of Civil Society in the Process of Democratic Development of the Country", was adopted by the Albanian Parliament based on the Charter for Civil Society from 2009. Furthermore, in order to strengthen the dialogue between Government and CSOs, the Road Map for Government Policy on Civil Society Development has been prepared.⁴² In Serbia, the National Strategy for Enabling Environment for Civil Society Development has started to be developed in the beginning of 2014, with the involvement of a substantial number of civil society representatives. An overarching national strategic document creating mechanisms for CSO-Government cooperation is still missing in Turkey.

Despite the positive trend in adopting strategic documents for cooperation, there is a remaining challenge to ensure their full practical implementation, as reported also in the Monitoring Matrix Regional Report for 2013. The three elements that commonly hampered the implementation processes throughout the countries were: a) lack of political will for proper implementation, b) insufficient allocation of funding and c) limited human resources with adequate capacities. As a result, only few activities designed within the action plans accompanying strategic documents were implemented on time. For example in Kosovo, despite the sufficient allocation of funds within the state budget, the implementation of most of the activities has been postponed for 2015 and beyond. This was caused by a delayed establishment of bodies for implementation of the Strategy. Monitoring systems regularly assessing the implementation of the strategic documents and identifying obstructive elements are also

⁴² The document is in compliance with the Guidelines for EU support to Civil Society and Enlargement Countries, 2014 – 2020, which aims to ensure a solid framework for measuring the progress in developing an enabling and stimulating participatory democracy in the countries moving towards EU accession.

missing in the region. The need for such mechanisms was expressly reported for example in Bosnia and Herzegovina and Montenegro.

Institutions and/or mechanisms for cooperation with civil society remain in place, with the exception of Turkey. Cooperation bodies and their mandates vary country by country. In some countries, units for cooperation were created within ministries or government agencies, while elsewhere one or more separate institutions facilitate the overall cooperation between the state governing structures and CSOs. In 2014, positive developments were identified in Albania and Macedonia through first steps towards establishment of national level Councils for cooperation with CSOs.

Even though there are national institutions/mechanisms to facilitate CSO-Government dialogue in almost all countries of the region, the challenge remains to secure their appropriate functioning in practice. The reasons of problematic functioning are similar as in 2013: (1) insufficient funds allocated from the state budget for the implementation; (2) the lack of human resources working full-time on the implementation of the institutions' tasks; (3) the institutions are not given enough independence in their operation. For example in Montenegro, the Office for Cooperation with NGOs, organizationally dependent on the Government General Secretariat, has insufficient personnel capacities and no separate budget to manage its own finances. Limited human resources were again reported in Kosovo, however, the Office for Good Governance has recruited two new officers in 2014. The situation in Bosnia and Herzegovina has not improved since 2013, and the Cooperation Agreement from 2007, envisaging the establishment of several specialized institutions for CSO-Government cooperation, is still at a standstill.

| CSO-GOVERNMENT COOPERATION 2014 ⁴³ | | |
|---|---|--|
| COUNTRY | STRATEGIC DOCUMENT | BODY/MECHANISM FOR COOPERATION |
| ALBANIA | Road Map for Government Policy on Civil Society Development, 2014 | Civil Society and Strategy Unit in the Ministry of European Integration Civil Society Advisory Board on Human Rights of the Ombudsman ⁴⁴ Draft legislation on the establishment of National Council for Civil Society, December 2014 |
| BOSNIA AND HERZEGOVINA | Agreement on Cooperation between the BiH Council of Ministers and the Non-Governmental sector adopted in 2007 | Legal Aid Sector established within the BiH Ministry of Justice |
| CROATIA | National Strategy for Creation of an Enabling Environment for Civil Society Development for 2012-2016 | Office for Cooperation with NGOs of the Government of the Republic of Croatia Council for Civil Society Development |
| KOSOVO | Government Strategy for cooperation with civil society (implementation started in 2014) | Office for Good Governance within the Office of Prime Minister Council for implementation of the Government Strategy for cooperation with civil society, 2014 |
| MACEDONIA | Strategy of the Government for Cooperation with the Civil Society (2012-2017) | Unit for Cooperation with CSOs established within the Sector for Policy Analysis and Coordination in the General Secretariat of the Government Draft legislation on the establishment of Council for promotion of cooperation, dialogue and stimulating the civil society development, November 2014 |
| MONTENEGRO | Strategy for Development of NGOs 2014-2016 | Office for Cooperation with NGOs (part of the General Secretariat of the Government) Council for Development of Non-Governmental Organizations, July 2014⁴⁵ |
| SERBIA | National Strategy for Enabling Environment for Civil Society Development (in the process of adoption) | The Government Office for Cooperation with Civil Society Sectorial Civil Society Organizations (SEKO) |
| TURKEY | _____ | _____ |

⁴³ All the changes compared to 2013 are highlighted in bold.

⁴⁴ The country report identifies two other mechanisms/structures at the central administration level dealing with the civil society: Office for Coordination with Groups of Interest in the Parliament, Department of Programming and Development of Foreign Aid at Prime Minister's Office, however these are not regarded as primarily established for the cooperation with civil society.

⁴⁵ The term of the Council for Cooperation between the Government of Montenegro and NGOs has ended in 2013, replaced by the newly appointed Council for Development of Non-Governmental Organizations.

3.2 SUB AREA 3.2: CSO-GOVERNMENT COOPERATION IN DESIGNING LAWS AND POLICIES REMAINS TO BE INSUFFICIENT AND UNDERDEVELOPED IN THE REGION

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RESULT 3.1: CSOs continue to be insufficiently included in the decision and policy-making processes at both national and local level. National standards for CSO involvement exist in all countries except of Turkey, however, they are oftentimes non-binding and not respected in practice.

CSOs report that the draft laws/policies are not consulted in a timely manner and oftentimes changes to the draft are made in the final phase of its adoption. In addition, CSOs claimed that the proposals on substance are often ignored and only technical changes are accepted.

CSO representatives in the decision-making/advisory bodies are selected outside of clear and transparent mechanisms. Oftentimes, CSO participants in such bodies are considered to be selected according to their private contacts that invites criticism from civil society.

As in 2013, state regulations and policies defining standards for the involvement of CSOs in policy and decision-making processes exist in all countries of the region with the exception of Turkey. CSOs' involvement in decision-making processes in Turkey is not obligatory and may be realized only through invitation with limited possibility to comment the draft legislation. In countries where standards exist, it remains a challenge to secure their proper application in practice, due to their oftentimes non-binding character and the lack of implementation mechanisms. Rules/standards for CSOs' involvement are non-binding for example in Serbia and Kosovo. The adoption of the Law on Public Notification and Consultations in Albania is a positive improvement in 2014, however, its implementation mechanism has not yet been prepared.

Shortage of trained human resources remains to be one of the key problems with regard to mechanisms for CSO involvement in policy and decision-making. In particular, very few civil servants are assigned to coordinate, monitor and report on CSO involvement, and they are not provided with appropriate training to perform their tasks well. The problem with the lack of human resources with clear description of their tasks was reported in Bosnia and Herzegovina, Montenegro and Kosovo. In addition, there is no staff or other resource allocated to conduct regular monitoring of the CSO involvement and publish reports.

Another key problem reported in 2014, is **the lack of political will and/or respect by the relevant state authorities** to observe the provisions on involvement of CSOs in policy- and decision-making processes. Results of the surveys conducted among CSOs show that in majority of the countries, including for example Bosnia and Herzegovina, Macedonia and Serbia the draft laws are not consulted in a timely manner, while CSOs' proposals on the substance or the general goals of the laws are ignored, and only technical proposals are considered. Even in Croatia, where the consultation procedures are generally respected, there were several cases of violation reported in 2014, mostly related to the additional changes in the law made in the last phases of its adoption. Similarly, the new Administrative Instruction on Registration and Functioning of NGOs adopted in September 2014 in Kosovo was drafted with the significant contributions from CSOs, however, an article on discretionary suspension of CSOs was introduced after the drafting process was officially closed.

The legal requirement for public institutions to invite CSOs to participate in decision-making and/or advisory bodies exist only in Croatia and Bosnia and Herzegovina. In some countries, there is no legal obligation but a possibility to invite CSO representatives to participate in decision-making and/or advisory bodies. However, such rules on participation of CSOs are oftentimes fragmented in various legal documents or policies and do not ensure CSO representation in all advisory/consultative bodies created by the institutions. Furthermore, due to **the lack of clear and transparent selection mechanisms** the CSO participants in such bodies are considered to be selected according to their private contacts, which is subject to criticism from civil society itself. Biased selection of CSO representatives was particularly emphasized in the local-level advisory bodies. The problems with the selection mechanisms were emphasized in numerous countries, for example in Macedonia, Montenegro and Kosovo.

CSOs play a crucial role in the processes of designing effective public policies and regulations. Combined with the extensive influence of political parties in policy- and decision-making, inclusion of CSOs provide an alternative way to channel different views and secure a variety of interests of the society in drafting of policies and regulations. It is of great importance that countries introduce clear standards on CSOs participation and ensure their adequate implementation in practice, particularly by sufficient allocation of human and financial resources.

3.3 SUB AREA 3.3: CSOs REMAIN TO BE INSUFFICIENTLY INVOLVED IN SERVICE PROVISION

While all country legislations allow CSOs to compete for public contracts to provide services on behalf of a state, **CSOs remain to be rarely engaged in service provision, except of services in the social area.** One of the reasons identified also in 2013 is the equal treatment of CSOs compared to other potential providers resulting in various hidden barriers. For example, strict application of the public procurement rules where price is the leading criteria for all kinds of services disregards the quality of the provided service. The quality factor is particularly important for the services traditionally provided by CSOs, particularly social services. Public procurement for contracting out all types of services without any distinction is still used in majority of the countries. In Kosovo, there is a remaining 'hidden barrier' in obligation for bidders to have a valid certificate of registration as a business organization, which automatically excludes CSOs from competition. This obligation applies to all types of services with the exception of social services.

In case CSOs decide to carry out service provision, they traditionally engage in the provision of **social services**. In majority of the countries, such as for example Albania, Macedonia, Kosovo and Montenegro, there are special laws regulating the provision of social services on behalf of the state. The laws traditionally prescribe special procedures on licensing of service providers where CSOs are subject to the same conditions as any other providers, e.g. entrepreneurs. Similarly, CSOs in Croatia are equal providers of social welfare services according to the '2011-2016 Social Welfare Development Strategy' developed by the government. However, there are still no mechanisms to contract social services to CSOs (the so called social contracting) that takes into consideration the specificities of social services as well as specificities of CSOs as contracting partners.

Collaboration in provision of other than social services on behalf of the state remains to be underdeveloped, oftentimes inexistent. Majority of the country reports stressed that there is a need to create a possibility for CSOs to take over provision of services from various fields, including for example education and health care. In addition, according to the reports, CSOs are still insufficiently included in all stages of the service provision, including needs assessment, monitoring and evaluation.

V. KEY RECOMMENDATIONS

The following are general recommendations for the Western Balkans and Turkey offered for consideration, based on the comparative analysis of the country reports:

1. LEGAL GUARANTEES OF FREEDOM OF ASSOCIATION SHOULD BE PROPERLY IMPLEMENTED IN PRACTICE

While all countries of the region have legal guarantees for basic freedoms, there is a need for extra efforts to secure proper implementation of the legal standards by state authorities and public institutions. In addition, in order to create a fully enabling legal environment for CSO operation, it is recommended that basic legal guarantees should be harmonized and translated to the other laws and bylaws affecting CSOs.

2. LEGAL GUARANTEES OF FREEDOM OF ASSEMBLY AND OTHER RELATED FREEDOMS SHOULD BE RESPECTED

Despite the fact that basic freedoms are mostly guaranteed by country laws, there is a remaining challenge due to the lack of respect from the public authorities to secure the proper implementation of the laws in practice. In order to prevent cases of violations, implementation of the existing laws need to be improved and independent mechanisms should be put in place to oversee/supervise fulfillment of these guarantees.

3. FAVORABLE FISCAL TREATMENT OF CSOs THROUGH AMENDMENTS OF THE RELEVANT TAX LAWS NEEDS TO BE SECURED

Fiscal laws should recognize the specific nature of CSOs' operations and provide them with sufficient tax benefits. In addition, the state may support the enhancement of philanthropy by introducing various tax benefits for donors, including tax deductions/tax credits and/or VAT free treatment of donations. In order to enable cross-border philanthropy tax laws should provide tax incentives for foreign donations under the same conditions as for domestic ones.

4. MECHANISMS FOR ALLOCATION AND DISTRIBUTION OF PUBLIC FUNDING NEED TO BE REFORMED AND RESPECTED

In order to secure transparent and unbiased distribution of public funding, there is a need for functioning mechanisms setting clear rules on how funds are awarded and how the spending is monitored on both national and local level. In particular, state authorities should ensure that: (1) the transparent procedures for distribution of public funding are respected; (2) all the relevant information on the public spending is available; and (3) distribution of the funds is not discriminatory, influenced by the personal relations, acquaintances and political views. In addition, the funds should be supporting the institutional funding and co-funding of EU projects.

5. STATE POLICIES NEED TO STIMULATE THE EMPLOYMENT AND VOLUNTEERING IN CSOs

State employment programs and policies have not recognized CSOs as potential employers. The incentives in place are either targeting only for-profit organizations and/or entrepreneurs or they are not available equally to CSOs compared to other potential employers. State authorities should recognize the potential of CSOs to create jobs in diverse areas, and they should provide incentives equally to other employers.

6. FULLY FUNCTIONAL STRATEGIC AND INSTITUTIONAL MECHANISMS FOR CSO-GOVERNMENT COOPERATION ARE NEEDED

While there are both strategies and institutions for cooperation in majority of the countries, it is still problematic to ensure their proper implementation/functioning in practice, due to the lack of financial and human resources. In order to make strategic/institutional mechanisms fully functional, it is indispensable to allocate sufficient funding from the state budget, to assign satisfactory number of civil servants with adequate capacities and to provide institutional mechanisms with sound independence.

7. PROPER INVOLVEMENT OF CSOs IN POLICY- AND DECISION-MAKING PROCESSES IS NEEDED

As in 2013, state regulations and policies defining standards for the involvement of CSOs in policy and decision-making processes exist in all countries of the region with the exception of Turkey. However, the provisions are oftentimes violated and CSOs are not involved in providing their input in a timely manner. It is of utmost importance to secure CSOs' involvement in all levels and phases of policy- and decision-making processes. In addition, there is a need to provide legal requirements for public institutions to invite CSOs to participate in decision-making and/or advisory bodies via transparent selection mechanisms.

In addition, following priority recommendations for the EU intervention have been outlined to guide further joint actions on regional level in the short term (next 1-2 years):

1. ENABLING FRAMEWORK FOR CIVIL SOCIETY NEEDS TO BECOME A PRIORITY IN THE NEGOTIATION PROCESS

The EU should enhance involvement of CSO representatives in the EU negotiations processes. In addition to financial support, the EU should also give political support to the implementation of the *Guidelines for EU support to civil society in Enlargement countries, 2014-2020* and demand strict adherence and implementation by state authorities as part of the regular monitoring of the countries' progress towards EU membership. CSOs should be treated as essential partners to formulate and evaluate the requirements for an enabling environment.

2. EU SHOULD SUPPORT CAPACITY BUILDING OF PUBLIC INSTITUTIONS, BUT WITH PARTNERSHIP INVOLVEMENT OF CSOs IN ALL STAGES OF THE PROCESS

It is recommended that the EU invests in building the capacity of the government officials to implement laws, to cooperate with and understand the relevance of civil society. Specific support should be tailored to increase the understanding among government officials on the standards in the area of enabling framework for CSOs. At the same time, it is necessary to strengthen the capacity of CSOs to understand the EU and national laws better, and how these affect their operations and monitor their implementation. CSOs should be involved in the development, implementation and evaluation stages of capacity-building support to public institutions.

3. EU FUNDS FOR CIVIL SOCIETY NEED TO BE DISTRIBUTED IN A TRANSPARENT AND DEPOLITICIZED MANNER

While the EU is looking for an increased role of the governments in distributing EU funds, funding for civil society should not be channeled predominantly through governments as it may create conflicting situations. The EU should support creation of more independent funding systems. Models of state foundations/funds for civil society support may be a more adequate mechanism for distribution of EU funds as they are more independent from the government.

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BALKAN
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