

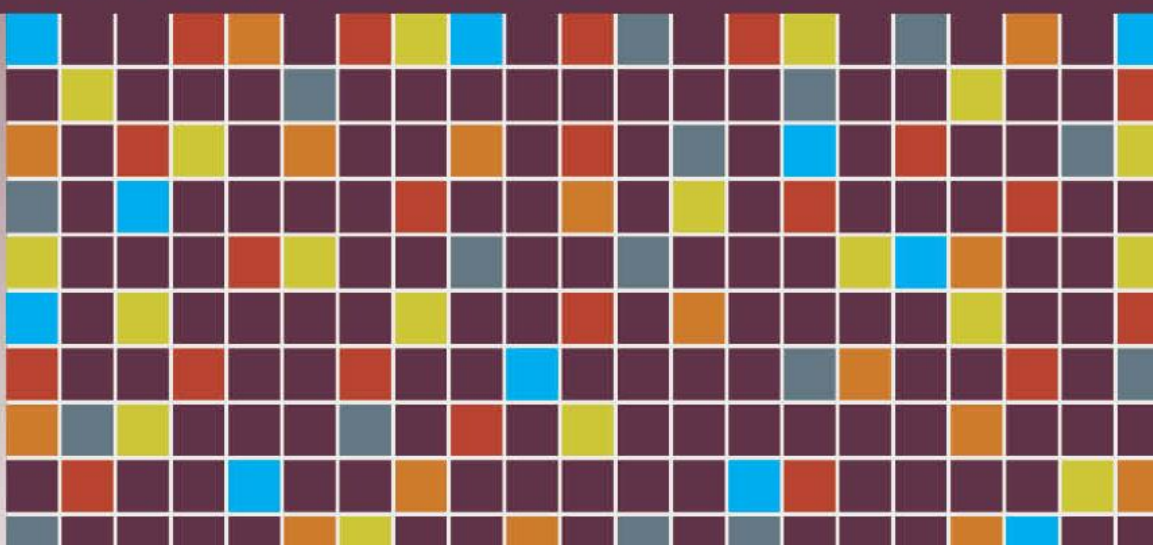


## Balkan Civic Practices # 10

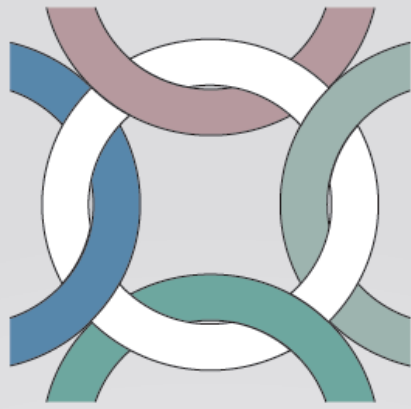


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# MONITORING MATRIX ON ENABLING ENVIRONMENT FOR CIVIL SOCIETY DEVELOPMENT REGIONAL REPORT







# 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

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



Project funded by the European Union

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## I. EXECUTIVE SUMMARY

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

In order to monitor progress with the enabling environment, the Balkan Civil Society Development Network (BCSDN), the European Center for Not-for-Profit Law (ECNL) and group of experts developed a Monitoring Matrix on Enabling Environment for Civil Society Development and accompanying Toolkit<sup>1</sup> that guides the monitoring process.

This report summarizes the key findings from 8 country reports<sup>2</sup> in the Western Balkans (Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Serbia) and Turkey. These reports were prepared by BCSDN member organizations<sup>3</sup> in 2013 and early 2014.

The main aim of the Regional Report is to identify the key common issues across the region, in order to highlight the priorities for intervention on 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. CIVIL SOCIETY AND CIVIL SOCIETY DEVELOPMENT IN THE REGION

The civil society in the Western Balkans enjoys wide range of guarantees related to the freedom of association, and the first laws on association in most of the countries were developed soon after they gained independence in the early goies (except Serbia). In Turkey, however, framework laws are still not aligned with international standards. Moreover, freedom of association and other related freedoms are not fully protected in the law nor respected in practice. The legislative framework establishing the basic legal rights of CSOs has been undergoing changes throughout the region over the past few years, with some laws witnessing second revisions (e.g., Macedonia and Croatia). As a result, the legal framework significantly improved.

All of the countries recognize two general legal forms of CSOs: associations and foundations. In addition other forms of CSOs can be identified depending on the national legal framework (e.g. centers or endowments). Other related freedoms, expression and assembly, are also guaranteed by laws (e.g. access to information laws). However, the practice is also a challenge, with recent protests being particularly violated by the law enforcement officials (e.g. Turkey, Macedonia). In addition, in Turkey civil society ability to freely use various media to receive and share information or to express their critical opinion of public policies and actions has been significantly violated or undermined.

One of the key problems in studying civil society in the region is lack of official data and statistic about the sector, which makes it difficult to determine its real size within the countries. CSOs are very often not recognized as a distinct group and in the official statistic they fall within the same group as other civil society

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<sup>1</sup> [http://www.balkancsd.net/images/BCSDN\\_Monitoring\\_Matrix.pdf](http://www.balkancsd.net/images/BCSDN_Monitoring_Matrix.pdf)

<sup>2</sup> Country reports are available at <http://monitoringmatrix.net>

<sup>3</sup> PartnersAlbania and Institute for Democracy and Mediation (Albania), Center for Promotion of Civil Society (BiH), CenzuraPlus (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).

organizations. Furthermore, information on actually active CSOs is also missing which would help to clarify the real volume of the civil society as a basis for future decisions about how to support the development of the sector.

Typical areas where CSOs in the region are actively engaged include culture, education, social services, youth issues or human rights. As opposed to this, in Turkey most of the CSOs work in "areas such as religious services, sports and social solidarity."

CSOs in the region are usually located in the bigger cities and capitals rather than in rural and remote areas. An exception is identified in Bosnia and Herzegovina, where most of the associations are registered in the smaller towns with population below 100,000 inhabitants.

CSOs as employers are treated in the same way as other employers in the region; state authorities have not created any incentives for increasing CSO power as employment force. On the other hand, civil society is a dominant sector where volunteering activities are taking place. To support this, five of the countries already adopted laws that regulate volunteering in CSOs.

Financial sustainability remains to be the key challenge for the CSOs in the whole region. The laws affecting their financial viability (e.g. tax laws, public funding etc.) have also been recently amended in most of the countries. Changes in implementation are however not always visible, mostly due to the lack of harmonization of the laws within the whole policy and legal framework in the country. Therefore, the benefits that should be emerging from the newly established laws or amendments (mostly regarding the public benefit status) are either not accessible or they have no real effects. Regarding the direct forms of income, CSOs are mostly struggling with insufficient diversification of their funds. This makes them over-dependent on one or two sources and poses a significant threat to their independence and sustainability. Public funding, either in financial or non-financial form, is still an important source of income of CSOs in the region, however due to the problems with accountability and transparency of the distribution mechanisms it is not equally accessible to all CSOs. Despite of this, there are positive trends of using new sources of funding, such as channelling lottery proceeds to CSOs.

Documents for cooperation between public authorities and CSOs and government offices for CSOs are lacking proper implementation that compromises their potential. This is usually due to the weak positions of the office in the overall public administration system or lack of funds allocated from the state budget. Inclusion in decision-making process is also a challenge for CSOs, since they often do not have access to the draft laws and other relevant documents in a timely manner and have almost no time to submit their comments. Problems have been reported also with the public consultations, which are often not properly announced due to lack of human resources for their coordination on the side of the government (even when there is political will). In addition, apart from Croatia there is no good practice on providing feedback regarding the consultation process.

In conclusion, all countries of the Western Balkans are showing general trend of improving the legal environment for civil society however its implementation in practice is still very much problematic. Most of the violations have been recognized in Turkey where legal guarantees on fundamental freedoms, including freedom of association and peaceful assembly are still not fully protected. In all of the countries there are issues, particularly in the area of funding, that require further focus and investment in order to ensure full compliance with the international and European standards and best practices and especially the longer term sustainability of civil society.



## 2. KEY FINDINGS

The following table summarizes the key common findings identified among the countries. The findings are referring to the main trends and problems under each specific sub-area of the Monitoring Matrix.

TOP 6 FINDINGS IDENTIFIED BASED ON THE COUNTRY REPORTS		REFERENCE	
1	Freedom of Association is recognized by all countries of the region and with the exception of Turkey all countries have enabling environment ensuring everyone to exercise this freedom. Some problems have been highlighted in the registration processes and as well as through restrictions on the operation of CSOs which are not in compliance with international standards. Other related freedoms are legally guaranteed, however not always secured through practical implementation.	Area	1
		Sub-area	1.1 1.2
2	Tax treatment of CSOs needs improvement. CSOs lack recognition of their specific nature in the tax laws. Even in countries where there is a distinct public benefit status, there are no real or only small tax benefits associated with it. In addition to this, states are not sufficiently encouraging (individual or corporate) donors through the tax incentives on donations.	Area	2
		Sub-area	2.1
3	Financial viability is identified as one of the biggest challenges for CSOs in the region. Due to the lack of diversification of funding, CSOs are struggling to preserve their financial sustainability. Public funding is an important source of income in some countries, however the distribution mechanisms and consequently the monitoring and evaluation of the funds are lacking rules on transparency and accountability resulting in public funding not being an option for funding for significant number of CSOs.	Area	2
		Sub-area	2.2
4	There are no additional requirements imposed on CSOs as employers. Equal treatment in this regard is however sometimes a disadvantage in terms of employees' benefits that may stimulate CSOs as employment force. Volunteering is on a rise and five countries have adopted laws aiming to support volunteering engagements.	Area	2
		Sub-area	2.3
5	Strategic mechanisms for cooperation between governments and CSOs as well as mechanisms for inclusion of CSOs in policy and decision- making processes are lacking proper implementation. This is usually due to the lack of trained human resources and most of all, lack of funding. Problems with publication of draft laws and policies as well as with invitations to public discussions, which are not provided in a timely manner or not published at all are a common concern.	Area	3
		Sub-area	3.1 3.2
6	CSOs are not sufficiently engaged in service provision. This is usually due to the unequal treatment of CSOs in the selection process and lack of separate mechanisms for contracting providers of social services, which is the area where CSOs are engaged the most.	Area	3
		Sub-area	3.3

### 3. KEY LEARNING POINTS AND RECOMMENDATIONS

Based on the conclusions from the key findings, there are several issues identified which need to be addressed to support civil society development. Even though these issues reflect the commonalities and primary needs for reform in most of the countries of the region, there is a need to review them with consideration of the issues and priorities for each country. This will help with determining the best approach in addressing the problems and adopt the approach which will trigger a change on country level. In addition, we would like to emphasize that, unlike in other countries, the civil society in Turkey is still struggling to secure basic guarantees for the freedom of association and other related freedoms. Therefore the utmost priority for civil society development in Turkey is to ensure primarily that the fundamental freedoms are respected before or parallel with addressing other issues outlined below.

Key regional learning points and findings can be summarized as follows:

- while the standards for establishing CSOs in the region are already set in legislation, there is a need to ensure their proper implementation and harmonization in practice;
- there is a need to ensure that there are systems in place to collect data about the size and qualification of the sector which would inform policies for its development;
- legislation should ensure that tax benefits for CSOs and their donors are in place;
- public funding should be available to CSOs and distributed in a transparent way;
- there should be an increased transparency in allocating non-financial support as important support to small organizations;
- crucially there is a need for diversification of funding for CSOs;
- the sector has potential for employment and its specificities should be taken into consideration with regard to labor regulations;
- strategic mechanisms for government-CSO cooperation are strong documents, but they need to be supported in their implementation;
- there is an need for an increased involvement of CSOs in decision-making and investment in capacity building and mechanisms to ensure better quality of the processes;
- contracting is a opportunity for improving the successful cooperation and mechanism could be adopted for CSOs to be engaged in service provision.

The following table presents the key recommendations identified by the country experts which are considered a priority for the region. Again, we would like to emphasize the importance of considering country specific priorities and needs, when developing strategies for jointly undertake regional actions in order to ensure that the impact of those actions on country level will have the desired effect.

**TOP 6 RECOMMENDATIONS FOR REFORM BASED ON THE COUNTRY REPORTS**

1	There should be a well-organized system to collect statistical information on CSOs and ensure that all the data are publicly available, as well as to use this data in the development of the policies to support the growth of the sector.
2	Public authorities should be encouraged to increase transparency of their work and ensure the participation of CSOs in policy-making by adopting legally binding documents regulating their participation. In addition to this, the key challenge is to ensure the full implementation of all adopted documents through investment in capacity building and ensuring feedback to proposals from CSOs received.
3	In order to preserve the financial sustainability of CSOs the legal framework should support CSOs in diversification of their funding. Furthermore, it is essential to improve the tax framework in order to create better conditions for economic activities of CSOs and social entrepreneurship.
4	EU should politically support the creation of an enabling environment for civil society by addressing it as one of the main issues of the negotiation process.
5	There is a need for EU investment in supporting the capacity of the administration to implement laws as well as the capacity of CSOs to understand better the laws and how these affect their operation. To insure effectiveness, CSOs should be involved in planning and monitoring of assistance to governments in the civil society development (CSDev) area.
6	EU funds for CSOs should be distributed transparently and through independent bodies, not only through governments.

## II. INTRODUCTION

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### 1. ABOUT THE REGIONAL REPORT AND THE MONITORING MATRIX

This Regional Monitoring Report is 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 the civil society in the Western Balkans and Turkey (WBT) region. It is the first of the reports to be published on a yearly basis for at least the 48-month duration of the project. The report summarizes the key findings and recommendations from country-based monitoring reports from 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, EACH DIVIDED BY 8 SUB-AREAS: (1) BASIC LEGAL GUARANTEES OF FREEDOMS; (2) FRAMEWORK FOR CSOs' FINANCIAL VIABILITY AND SUSTAINABILITY; (3) GOVERNMENT – CSO RELATIONSHIP. 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 THE LEVEL OF LEGAL FRAMEWORK AND PRACTICAL APPLICATION.

For the purpose of the report, the term civil society organization (CSO) 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 voluntary organization established by a private instrument (e.g. contract, act on establishment), rather than by law; 3) it may be a 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 (specifically the key findings and recommendations) was developed solely relying on the 8 country reports as its main source of information and data. In addition, when further data was needed, the Report 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 discussed in the Monitoring Matrix or in the Report.

In presenting the information in the Report, the authors followed the structure and baseline of the Monitoring Matrix. Specifically, the standards and indicators regarding the legal framework and practice of the issues identified in the country reports. The authors used an analytical method of elaboration of the information provided in the country reports and based on this identified common issues and differences recognized in the region.

### METHODOLOGY USED FOR COUNTRY MONITORING

The country reports were developed in the period between April and December 2013. The monitoring effort, which has commenced simultaneously in all countries, was the first of its kind. Thus, the country reports present **BASELINES** for each of the countries' enabling environment. The methodology was based on primary data as well as secondary (desk-top) data collection. The countries were given a general methodology that was adapted to local contexts. As a result, at least **630 INDIVIDUALS** (representatives of CSOs, public bodies, business sector etc.) have been involved as respondents to (e-)surveys, (semi-structured) interviews etc.<sup>4</sup> Specifically, for most of the countries a survey method<sup>5</sup> was used alongside in-depth interviews.<sup>6</sup> Expert panel was organized in Albania and a focus groups consisting of all relevant stakeholders for discussing the preliminary findings was conducted in Bosnia and Herzegovina and Macedonia. Inputs provided in working groups and panels for other researches were also used in Montenegro and Serbia. Media review was conducted in Turkey. The Monitoring Matrix was finalized and published in February, 2013 and the findings were presented and submitted for comments in all countries. The national level presentations, which commenced between February and April, 2014 served both for consultation as well as for presentation of the country baseline findings and recommendations.

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<sup>4</sup> Public opinion-pool respondents have not been included in the number.

<sup>5</sup> Albania - questionnaire among 100 CSOs; BiH - semi-structured, sampled questionnaire; Kosovo – a limited population survey with 1,300 respondents and organizational survey with 106 active CSOs were conducted; Macedonia - a questionnaire was answered by 75 respondent from CS; Montenegro - questionnaires to 50 CSOs and to 20 state bodies, Serbia - questionnaires to CSO community.

<sup>6</sup> Albania- selected CSO directors were addressed to get more information on the fiscal issues; BiH - interviews with different stakeholders for obtaining information in all sub-areas; Kosovo - interviews with more than 30 representatives of CSOs and public institutions, plus additional 30 short structured interviews with 30 representatives of all sectors outside civil society; Macedonia - semi-structured questions and four in-depth interviews, plus qualitative semi-structured online asynchronous interviews with three CSOs, one ministry and one state body; Serbia - interview with group of 10 experts who deal with support to CSOs on daily basis; Turkey - in depth interviews with more than 80 representatives who actively work in the area of civil society, plus additional 5 semi-structured expert interviews with CSO representatives.

### III. INTERNATIONAL AND EUROPEAN GUARANTEES FOR ASSOCIATION AND ASSEMBLY

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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)*<sup>7</sup>, 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 which 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.*”<sup>8</sup>

At the EU level, the freedom of association and the overall enabling environment for civil society are receiving increased attention. Specifically, the 2012 European Commission Communication *The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations*<sup>9</sup> 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.<sup>10</sup> Importantly, the Guidelines also contain a set of objectives, results and indicators 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 the Council of Europe (CoE), “*NGOs can be either informal bodies or organizations which have legal personality*”<sup>11</sup>. Therefore,

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<sup>7</sup> 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.*”

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

<sup>9</sup> 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](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/132870.pdf)

<sup>10</sup> [http://ec.europa.eu/enlargement/pdf/civil\\_society/doc\\_guidelines\\_cs\\_support.pdf](http://ec.europa.eu/enlargement/pdf/civil_society/doc_guidelines_cs_support.pdf)

<sup>11</sup> Article 3 of the Recommendations on the legal status of non-governmental organizations in Europe, Council of Europe, 2007,:

<https://wcd.coe.int/ViewDoc.jsp?id=1194609&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

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 for the state deriving from this right: 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 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 favour 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.<sup>12</sup>

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.<sup>13</sup>

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, 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.<sup>14</sup>

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 Article 50 of the 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 economic activities.<sup>15</sup> CoE Recommendations also include standards on public support of CSOs, including tax benefits and regulations on the accountability of the funds distribution.<sup>16</sup>

Finally, in order to ensure 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 to 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 Article 10 and 11 of the *Treaty on European Union*.<sup>17</sup> Further, according to the CoE Recommendations, CSOs should be encouraged to participate in the dialogue with

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<sup>12</sup> OSCE/ODIHR and CoE Venice Commission: Guidelines on Freedom of Peaceful Assembly, Second Edition, 2010.

<sup>13</sup> 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](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf)

<sup>14</sup> 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](http://www.icnl.org/research/resources/dcs/DCS_Report_Second_Edition_English.pdf)

<sup>15</sup> Article 50 and 14 of the Recommendations on the legal status of non-governmental organizations in Europe, Council of Europe, 2007.

<sup>16</sup> Articles 57-74 of the Recommendations on the legal status of non-governmental organizations in Europe, Council of Europe, 2007.

<sup>17</sup> Article 10 and 11 of the Consolidated Version of the Treaty on European Union.

governments and should be also consulted during the drafting of the legislations that are affecting their sphere of operation.<sup>18</sup> Furthermore, CoE has developed the *Code of Good practice for Civil Participation in the Decision-Making Process* which introduces the principles and conditions for civil participation and also describes different levels of participation<sup>19</sup>.

## IV. FINDINGS

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### 1. CIVIL SOCIETY AND CIVIL SOCIETY DEVELOPMENT IN THE REGION

#### FORMS OF CSOS

The most typical legal forms of civil society organisations in the region are associations and foundations. In most laws, **ASSOCIATION** is defined as a non-for-profit, membership-based entity perusing its membership interest, in line with the Constitution and the laws in particular country. A **FOUNDATION**, on the other hand, is usually defined as a non-profit, non-membership and non-governmental legal entity pursuing private or public interest. In addition, the legal frameworks in different countries recognize additional entities such as **ENDOWMENTS** in Serbia, **CENTERS** in Albania and **HUMANITARIAN ORGANISATIONS** in Federation of Bosnia and Herzegovina<sup>20</sup>. When referring to the term CSO, this report only considers these forms and thus the narrow definition of the term.

#### NUMBER OF REGISTERED ORGANISATIONS AND THE LACK OF CLEAR STATISTICS

The majority of the countries, covered by the analysis, have been under socialist rule until the early nineties. That is why CSOs, in the form they appear today, were almost non-existent before that period with rare exceptions of organisations dealing with very specific and highly non-politicized tasks e.g. hobby organisations. The intensive development of civil society has started in the 1990s and that is why we can say that civil society is in its early stages of development in this region. In Turkey, while the situation has been different, there is a growth of CSOs after a more enabling environment was adopted in the early 2000s.

One of the key problems in studying civil society in this region is the **LACK OF CONCLUSIVE AND SPECIFIC OFFICIAL DATA ABOUT CSOS**, the people employed or engaged with these organisations, etc. Out of all

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<sup>18</sup> Article 76 and 77 of Recommendations on the legal status of non-governmental organizations in Europe, Council of Europe, 2007.

<sup>19</sup> Code of Good practice for Civil Participation in the Decision-Making Process, Council of Europe, 2009.

<sup>20</sup> *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, 201). A minimum capital of 30,000 EURO is required to establish it, unless an exemption has been granted by the competent state authority; 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."; The Law on Humanitarian Agencies and Humanitarian Organizations in Federation of Bosnia and Herzegovina defines *humanitarian organizations* as those that pursue humanitarian actions and engage in activities based on the principles of humanity, impartiality, independence and voluntariness.



countries studied, Bosnia and Herzegovina reported that there are no official statistics on the number of registered CSOs, while in Albania the access to information is difficult. Furthermore, in Macedonia specific information is kept in the Central Register, but one must pay in order to obtain detailed information.

Very often the official statistics do not recognize CSOs as a distinct group. In most countries, sport clubs, fire-protection societies and similar types of organization are included in the overall number of registered CSOs. This impedes the possibility to understand the true nature of civil society and its specifics, both by the state and the general public. Furthermore, information on **ACTUALLY ACTIVE CSOs** (e.g. through information based on annual reports) would further help clarify the picture on the landscape of the civil society in each country and allow for realistic assessments about the sector and its needs as a base for developing policies towards its development and engagement. It would furthermore help inform the general public who CSOs are and what their work consists of.

Below is a table on the number of officially registered organisations in each of the eight countries, showing also the population in each country and the ratio of registered CSOs per 10,000 inhabitants<sup>21</sup>.

COUNTRY	NUMBER OF REGISTERED CSOs	POPULATION IN MLN. <sup>22</sup>	CSOs PER 10.000 INHABITANTS
ALBANIA	6.855 <sup>23</sup>	3,16	22
BOSNIA AND HERZEGOVINA	12.189	3,83	31
CROATIA	46.193	4,26	108
KOSOVO	7.452	1,80	41
MACEDONIA	13.021 <sup>24</sup>	2,10	62
MONTENEGRO	2.716	0,62	43
SERBIA <sup>25</sup>	21.958	7,22	30
TURKEY	104.152	73,99	14

Based on both official and proxy assessment on the number of registered organisations in WBT and the ratio of registered CSOs per 10,000 inhabitants, it can be concluded that with the exception of Croatia (108 CSOs/10.000 inhabitants) other countries have similar ratio of registered organization (22-62 CSOs/10.000 inhabitants), while in Turkey there is an obvious imbalance between how many organisations are registered and how many people live in the territory.

While the country reports do not discuss this issue *per se*, the reason for the low activism of the people establishing CSOs might be related to traditions (e.g. that people rely predominantly on the family and not on the wider society for solving some problems), history (e.g. reliance on voluntary and informal forms of organization of public life in Kosovo under the Milosevic regime), but it may also be that there are problems in the existing legal framework.

<sup>21</sup> Data obtained through country reports unless otherwise specified.

<sup>22</sup> Source: <http://data.worldbank.org/indicator/SP.POP.TOTL>

<sup>23</sup> Information obtained by PartnersAlbania in April, 2014 from the First Instance Court in Tirana.

<sup>24</sup> Based on the 2010 Law on Associations and Foundations, 4.752 re-registered to comply with the law, and most likely this is the actual number of active organizations. However, since re-registration was not mandatory the official remains is 13.021.

<sup>25</sup> This number does not include sports organizations which are also registered as CSO. If added, the number of organizations per 10.000 inhabitants in Serbia will increase.

## AREAS IN WHICH CSOs WORK

The typical areas in which CSOs work in the region are culture, education, social services, and youth issues. There are also a number of organisations dealing with gender issues, minorities and human rights. Turkey is somewhat departing from that typical sectoral division as there, according the country report, most CSOs engage in “areas such as religious services, sports and social solidarity”.

## GEOGRAPHIC SPREAD

CSOs in the region are mostly based in **BIGGER CITIES AND CAPITALS**. For example, in Turkey “the distribution of number of CSOs throughout country is uneven, with 75% located in major cities of Turkey such as Istanbul, Ankara and Izmir<sup>26</sup>”. In Albania there is a similar tendency as “*the sector in rural and remote areas is still in its embryonic stage, the number of CSOs is low, their mission and objectives are not clearly focused, and their activity is modest and often sporadic*”.

One minor exception to this general trend is noticeable in Bosnia where “most active associations are registered in smaller towns with populations up to 100,000 (51,1%), whereas least associations are registered in rural areas with less than 1,000 population (7,7%)”.

The country reports do not go into exploring reasons for the concentration of CSOs in bigger cities, but the reasons could be diverse: different types of education and needs that exist among the urban population, institutions which citizens want to influence are based in the bigger cities, usually many organisations are funded through foreign funds which rarely reach the smaller towns and address the very specific needs of smaller communities.

THE CIVICUS CIVIL SOCIETY INDEX GLOBAL REPORT FROM 2011 ANALYSES REASONS ON GLOBAL, BUT ALSO REGIONAL LEVEL:

“THE DOMINANT CSOs ALSO EMERGE AS EXCESSIVELY URBAN-FOCUSSED INSTITUTIONS. MANY OF THE CSI REPORTS SHOW CENTRALISATION IN CAPITAL CITIES AND WEAK CONNECTION BETWEEN URBAN AND RURAL CSOs.

FOR EXAMPLE, THE ALBANIA REPORT RECORDS THAT, “SIGNIFICANT DISCREPANCIES ARE OBSERVED BETWEEN CIVIL SOCIETY ORGANISATIONS IN TIRANA, CSOs IN OTHER MAJOR CITIES AND CIVIL SOCIETY STRUCTURES IN SMALL URBAN CENTRES, IN TERMS OF INFRASTRUCTURE, RESOURCES, CAPACITIES AND, FOR REMOTE AND RURAL AREAS, EVEN (IN) EXISTENCE OF FORMAL CIVIC STRUCTURES.”

THERE ARE GOOD REASONS FOR CSOs TO LOCATE THEIR HEADQUARTERS IN CAPITAL CITIES, NOT LEAST TO EXERT INFLUENCE AND IMPROVE CIVIL SOCIETY–STATE RELATIONS. IT CAN ALSO BE ARGUED THAT IN MANY COUNTRIES CSOs NECESSARILY REFLECT A PATTERN OF A STRONGLY CAPITAL-CENTRED STATE BUREAUCRACY.

<sup>26</sup> Data is compiled from website of the General Directorate of Foundations (DGoF).  
<http://www.dernekler.gov.tr/tr/AnasayfaLinkler/dernekler-grafik-tablo.aspx> Access date: February 13, 2014.

NEVERTHELESS, CONCERNS ALSO EMERGE ABOUT WHAT THIS MEANS AND SAYS ABOUT CSO VALUES, AREAS OF FOCUS AND LEADERSHIP. FOR EXAMPLE, TURKEY REPORT STATES THAT "CSOs WERE CRITICISED FOR APPEALING TO AN 'URBAN' AND 'ELITE' SEGMENT OF THE SOCIETY AND REMAINING RATHER DETACHED FROM THE REST OF THE POPULATION."

WHEN RURAL POPULATIONS ARE OFTEN THOSE MOST SUFFERING, PARTICULARLY FROM ACUTE PROBLEMS OF DEPRIVATION, ISOLATION AND LIMITED OPPORTUNITY, THERE WOULD SEEM TO BE A NEED TO INVESTIGATE NEW WAYS OF BROKERING URBAN-RURAL CONNECTIONS THAT SHIFTS THE BALANCE OF CIVIL SOCIETY POWER AWAY FROM THE CITY.

BRIDGING THE GAPS: CITIZENS, ORGANISATIONS AND DISSOCIATION/CSI SUMMARY REPORT: 2008-2011<sup>27</sup>

## NOTABLE TRENDS IN CIVIL SOCIETY DEVELOPMENT

### FINANCIAL SUSTAINABILITY

Financial sustainability is one of the biggest challenges for CSOs in the region. Many CSOs turn to the state to secure their financial sustainability due to a lack of other private funds and diminishing foreign funding. However, this further results in **LACK OF DIVERSIFICATION OF RESOURCES, AND OVERDEPENDENCE OF ONE SOURCE**, which does not ensure sustainability. In order to preserve the financial viability of CSOs, there is a need to identify new possibilities and further diversify funding streams. Even in Croatia, where state funding is generally accessible, a problem arising from the lack of diversification has been reported as a possible risk in CSO development and related freedoms.

In other countries of the region, significant problems have been reported with regard to **THE TRANSPARENT DISTRIBUTION OF PUBLIC FUNDING**. CSOs are having difficulties with the access to the actual state support, mostly due to noncompliance with the regulations on transparent distribution of funds by the state authorities (e.g. in Serbia CSOs claimed that state authorities are allocating funds according to the political views of the CSOs, in Macedonia the regulation on distribution of funds is a non-binding document and final decision-making is left to political bodies, etc.).

An interesting possibility in the region is the trend to **CHANNEL LOTTERY PROCEEDS TO CSOs** (e.g. Croatia, Montenegro). This possibility, while being the major source of income for some CSOs is not a real solution for others, since only a limited number of organizations can or want to have access to it. Moreover, indirect state support in the form of tax benefits is also reported to be insufficient and often not accessible due to the lack of harmonization of the laws and bylaws.

Below is a table with available data on public funding for civil society from state budgets and lotteries.

### PUBLIC FUNDING PER COUNTRY

<b>ALBANIA</b>	· 2010 call: 52 CSOs or €0,45m	<b>TURKEY</b>	There is no general information on
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<sup>27</sup><http://www.civicus.org/downloads/Bridging%20the%20Gaps%20-%20Citizens%20%20Organisations%20and%20Dissociation.pdf>.

The Albanian CSI report was developed by IDM, who participated to implementation of the Monitoring Matrix activities in Albania together with PartnersAlbania, and the Turkish report was developed by TUSEV, who implemented the monitoring in Turkey.

	<ul style="list-style-type: none"> <li>• 2011 call: 69 CSOs or €0,94m</li> <li>• 2011 call: 31 CSOs or €0,11m</li> <li>• 2012 call: 61 CSOs or €0,4m</li> </ul>		<p>the percentage of the total budget allocated to CSOs in the general budget;</p> <p>Ministry of Interior allocates only €3,3m to associations for 98.945 associations</p>
<b>CROATIA</b>	<p>€200m from all levels of the governments</p> <p>The budget allocations for CSOs are not separate from allocations to other non-profit entities</p>	<b>KOSOVO</b>	<p>No national level mechanism for distribution of public funds to CSOs</p> <p>Total CS resources from public funding increased from 8 % in 2010 to 20% in 2013</p>
<b>MACEDONIA</b>	<p>Under Budget Line (BL) 463-Transfers to CSOs (incl. trade unions and religious communities and political parties):</p> <ul style="list-style-type: none"> <li>• 2013 – 4.701.903 EUR</li> <li>• 2012 – 4.073.687 EUR</li> <li>• 2011 – 3.749.631 EUR</li> </ul> <p>Distributed to CSOs registered according to LAF:</p> <ul style="list-style-type: none"> <li>• 2013 – 195.095 EUR awarded to 40 CSOs</li> <li>• 2012 – 195.106 EUR awarded to 40 CSOs</li> <li>• 2011 – 243.883 EUR awarded to 47 CSOs</li> </ul> <p>Funding from games of chance and entertainment games:</p> <ul style="list-style-type: none"> <li>• 2013 – 975.475 EUR</li> <li>• 2012 – 975.530 EUR</li> <li>• 2011 – 1.219.340 EUR</li> </ul>	<b>MONTENEGRO</b>	<p>€175.000 in 2012 &amp; €52.349.000 in the first half of 2013 (money from budget lines of administration organs, based on the CSOs applications and request for assistance)</p> <p>Total allocations for NGOs (% of the total budget of MN):</p> <ul style="list-style-type: none"> <li>• 2010: €4.721.991 (0,73%)</li> <li>• 2011: €3.078.028 (0,49%)</li> <li>• 2012: €2.338.164 (0,39%)</li> <li>• 2013: €1.546.886 (0,26%)</li> </ul> <p>Financing of NGOs from games of chance:</p> <ul style="list-style-type: none"> <li>• 2011: €1.747.012</li> <li>• 2012: €1.768.259</li> </ul>
<b>SERBIA</b>	<p>No national level mechanism for distribution of public funds</p> <p>€27 mil in 2011 &amp; €70 mil in 2012 from budget line 481 (CSO Grants)</p> <p>€970.000 in 2011 &amp; €8,8 mil in 2012 from budget line 472 (financing of social protection services)</p> <p>Introduction of matching funds for CSOs for EU projects since 2012 - €11mil from 71 local governments &amp; €13,5 mil from Belgrade, Novi Sad, Nis</p>	<b>BOSNIA AND HERZEGOVINA</b>	<p>€50m in 2012:</p> <ul style="list-style-type: none"> <li>• €345.000 by BiH at state level</li> <li>• €29,5m by FBIH</li> <li>• €15,5m by RS</li> <li>• €5,7m BAM on BD level</li> </ul> <p>Organizations that receive government funding:</p> <ul style="list-style-type: none"> <li>• sports clubs/orgs (38,9%);</li> <li>• associations for the protection of veterans and the disabled (15,2%);</li> <li>• CSOs for social services/social care (12,2%);</li> <li>• other types of CSOs (34,4%)</li> </ul>

While traditional sources of income are important for the financial sustainability of CSOs, there is a need to create a better legal environment for other important sources of income, e.g. through supporting the development of **SOCIAL ENTREPRENEURSHIP**. There are attempts in the region to support this type of activity, including the creation of network to support social entrepreneurship in Serbia.<sup>28</sup> Organizations need to further invest their efforts in this direction and specifically tax laws need to be improved to allow for better use of this model. Furthermore, it would be vital for both the CSOs and the governments to cooperate in **SERVICE**

<sup>28</sup> Belgrade Declaration on strengthening social entrepreneurship in the region on the Western Balkans and Turkey, 14 March, 2014 <http://belgradedeclaration.net>

**PROVISION**, where CSOs as experienced and skilled providers could be strong partners in complementing or implementing outsourced government tasks.

Comparatively, another possibility is to turn to people for support, either as volunteers or as donors. There is a CSO initiative in the Balkans to develop Minimum standards for Fundraising for CSOs<sup>29</sup> as a way to attract individual and corporate support. However, the reality is that donations as source of funding needs more time and efforts to develop and to some extent require encouragement from the state by creating the incentives for donors. This is also shown by the results from the World Giving Index 2013<sup>30</sup>:

	OVERALL INDEX		HELPING A STRANGER		DONATING MONEY		VOLUNTEERING	
	Ranking	Score (%)	Ranking	Score (%)	Ranking	Score (%)	Ranking	Score (%)
AVERAGE FOR ALL COUNTRIES STUDIED	n/a	32,2	66	47	55	28,5	58	19,7
AVERAGE EUROPE	n/a	32	90	42,7	45	33,7	60	18,9
KOSOVO	78	28	76	45	52	30	113	8
BOSNIA AND HERZEGOVINA	109	21	120	33	60	27	131	4
MACEDONIA	118	19	129	29	75	22	121	7
SERBIA	123	19	124	31	86	18	121	7
MONTENEGRO	126	18	116	34	102	13	113	8
TURKEY	128	17	116	34	102	13	130	5
ALBANIA	132	16	132	25	102	13	107	10
CROATIA	133	16	124	31	115	10	127	6

It can be easily seen that in no country included in this report the people involved in volunteering exceed 10% of the population. Similarly, the people that have donated are less than 30%. In Croatia, the country that is often presented as a model for its enabling environment for CSOs, but has limited legal incentives for donors, the result is even lower – only 10 % of people have donated.

Comparatively looking, the United States is ranked first in the 2013 World Giving Index, reclaiming a position it previously held in 2011. Its score of 61% is the highest on record. Three EU countries are amongst the first ranked countries: Ireland (5th, 57%), the United Kingdom (6th, 57%), the Netherlands (8th, 54%). Out of the surveyed EU countries, the lowest score has been noted in Bulgaria (118<sup>th</sup>, 19%), Lithuania (120<sup>th</sup>, 19%) and Greece (135<sup>th</sup>, 13%) but when compared with WBT countries we can notice that the overall ranking is around or below most of the EU countries, except for Kosovo ranked as 78<sup>th</sup>.

#### **EMPLOYMENT AND VOLUNTEERING**

While there are no additional requirements imposed on CSOs as employers, there is a **LACK OF ACTUAL DATA** on the number of employed persons and volunteers in CSOs. From the scarce data available it could be noted that CSOs as employers **DO NOT HAVE A LEADING ROLE**. As an example, in Serbia where the number of

<sup>29</sup> The standards are in draft form and are being developed by a group of local grant-making and philanthropy organisations from Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia around SIGN network.

<sup>30</sup> Source: <https://www.cafonline.org/publications/2013-publications/world-giving-index-2013.aspx>

registered organisations is among the highest, there were only 7.304 fully employed persons in associations in 2012. At the same time in Macedonia in 2013, the total number of employees in CSOs was 1.839. On the other hand, there has been a **POSITIVE TREND IN VOLUNTEERING** identified in the region. Five countries already adopted laws on volunteering activity, the most progressive laws being in Macedonia and Republika Srpska. Nevertheless, most of the volunteering still appears outside of contractual relation. CSOs seem to have a larger workforce when looking at the personal income tax paid, but this issue needs further investigation to establish to what extent these are either permanent workforce of part-time employees or just external associates hired for the expert tasks of CSOs. Investigation on this largely depends on institutions such as tax authorities and registers collecting and making such information available.

### **GOVERNMENT- CSO COOPERATION**

The important role of CSOs consists in helping to determine future direction of the country and its policies. In the whole region, with the exception of Turkey, there has been a significant progress identified in the adoption of the so-called strategies or documents for cooperation; however the reality shows that they are lacking proper implementation. There have been also established separate institutions in order to facilitate the cooperation; however they are usually highly depending on state bodies or lacking human resources and funding for realization of the tasks. The same problem remains in the inclusion of CSOs in the decision-making process. Most of the countries reported having a legal framework that is regulating this area; problems are however again with the full implementation. State authorities that are obliged to provide access to the draft laws and other important documents are lacking trained human resources. Therefore, the consultation processes either do not follow the prescribed rules or lack the quality necessary to ensure the input and feedback that would enrich the policies.

## **2. KEY FINDINGS**

### **AREA 1: BASIC LEGAL GUARANTEES OF FREEDOMS**

All the countries in the region, except Turkey, report to have legal frameworks that provide guarantees for basic freedoms. Nevertheless, country examples show that not all of them are in line with the internationally accepted standards. In order to comply with them, it is essential that the countries consider revising their regulations and secure the protection of basic freedoms for everyone.

#### **1.1. FREEDOM OF ASSOCIATION IS GENERALLY RESPECTED, SIGNIFICANT PROBLEMS ARE REPORTED ONLY IN TURKEY**

Freedom of association is guaranteed and exercised freely by everybody in most of the countries of the region. Seven out of eight countries reported that there is a legal framework enabling everybody to exercise this basic freedom. The exception is Turkey where the legal framework is reported to be complicated and restrictive, mostly focusing on limitations rather than freedoms.

Even though freedom of association is generally guaranteed, there could be some restrictions found also in other countries when it comes to the establishment of the organization itself. Not every country in the region allows all persons to be founders of a CSO. In six of the countries all individuals and legal persons are without discrimination allowed to establish a CSO. The restrictive requirements in the two remaining countries are related to the legal capacity of the founder (Turkey) or to the residence in the country for at least one of the founders (Montenegro).

All the countries of the region also reported that **REGISTRATION IS NOT A REQUIREMENT** in order to operate a CSO, allowing the existence of informal organizations. When an organization decides to register, the process

is easy, timely and inexpensive. This is, however, not the case in some of the countries in the region. Besides the extensive problems with the registration reported in Turkey (e.g. permission requirement for foreign organizations having a branch in Turkey, complicated procedures, etc.), there are also other problems reported in the region such as high fees for registration (Bosnia and Herzegovina) or centralised body responsible for registration (Albania) causing difficulties for organizations not residing in the capital city. Furthermore, in Kosovo the registration process and appeal against denial of registration is decided within the same institution, which is contrary to the international standards. In most cases, a registration process varies from minimum 5 days in Macedonia to maximum 60 days in Kosovo as summarized in the table below:

COUNTRY	TIMELINE FOR REGISTRATION
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

One of the principles related to the freedom of association is non-interference of the state in the internal governance of the organization. Five of the countries explicitly guarantee in their laws **THE PRINCIPLE OF CSO INDEPENDENCE IN THEIR WORK AND IN THE INTERNAL MATTERS OF THE ORGANIZATION**. Other countries do not regulate the direct interference of the state, nevertheless there is certain presence of state control included in the laws. For example, in Montenegro *"a fine ranging from 500 up to 800 EUR shall be imposed on a CSO for failure to report about changes in the compulsory data for the registration"*<sup>31</sup>, which is high considering the financial conditions in the country. Turkey introduced an audit for associations and foundations to determine whether their activities are in line with the purposes set out in their bylaws.

Even though there is an existing legal framework for freedom of assembly and association in all of the countries of the region, **THE COHERENCE WITH OTHER LAWS AND BYLAWS IS OFTEN MISSING AND LEADS TO CONSIDERABLE CHALLENGES IN THE IMPLEMENTATION OF THE LAWS**. For example, in Macedonia a problem with recognition of public benefit status introduced by the Law on Associations and Foundations in 2011 is reported, as only 1 organization has been granted this status so far. Since there have been no measures taken in the tax laws, this status is practically dysfunctional. Similar problem exists in Kosovo, where the Law on Freedom of Association describes the basic elements of such status, however since there is a lack of harmonization with tax and other laws, there are only very limited benefits resulting from this status. For example, access to the tax deductions after donations is provided only for donors supporting expressly listed publicly beneficial activities, selected incoherently with the regulations on public benefit status. Similar problems have been explicitly reported also in Turkey.

**ACCESS TO FUNDING AS PART OF THE FREEDOM OF ASSOCIATION IS GENERALLY NOT PROHIBITED** (with the exception of Turkey where certain types of organizations are unable to apply for grants); CSOs are allowed to

<sup>31</sup> Article 42 of the Law on Non-Governmental Organizations (2011) ("NGO Law")

receive grants, donations, membership fees, funding from abroad and they are allowed to engage in economic activities. However, there is a **LIMITATION ON ECONOMIC ACTIVITIES** identified in Montenegro, where CSOs cannot exceed the threshold of 4.000 EUR on income from such activities, otherwise they might be fined from 500 up to 4.000 EUR. Similar restriction is attempted to be introduced in Croatia.

**REGULATIONS ON FINANCIAL REPORTING OF ORGANIZATIONS SHOULD BE PROPORTIONATE**, recognizing the specific nature of CSOs. This is however not the case for example in Albania, where the civil society sector is treated the same way as the business sector, imposing equal accounting and reporting obligations on the CSOs. The same problem has been identified also in other countries, such as Kosovo, Turkey or Serbia.

**Despite some differences recognized within the region, we can generally conclude that there is a basic legal framework for exercising the freedom of association in place. Some of the identified commonalities, such as non-discriminatory establishment and operation of the CSO, prove that the countries are following the path of democracy. However, there are some distinctions recognized throughout the region, showing the differences between the legal systems of the Balkan countries and Turkey and areas mentioned above which could be subject to discussion and improvement.**

#### **1.2. OTHER RELATED FREEDOMS ARE GUARANTEED BY LAW, HOWEVER NOT ALWAYS SECURED IN THE PRACTICE**

Apart from the freedom of association there are also other related freedoms that should be granted to everybody without discrimination, based on international and European standards and best practices. These freedoms are freedom of assembly, expression and right to receive and impart information through any media. Despite the fact that all countries of the region, except Turkey, have these fundamental freedoms legally guaranteed, there have been reported cases of breaching these rights by the state.

In all the countries, the **FREEDOM OF PEACEFUL ASSEMBLY** for everybody is regulated by laws which do not require any prior authorization for holding an assembly. Despite that, two countries are reporting problems with the actual restrictions posed by the state authorities when notifying for organizing an assembly. In Croatia, there is a lack of respect of the notification period by the responsible authorities. Serbia has reported arbitrary reasoning for the banning of assemblies. In addition to **THE NOTIFICATION PROBLEMS**, there are also **OTHER OBSTRUCTIONS** imposed on the freedom of assembly. For example, in Bosnia and Herzegovina the law regulates limitations on the place of protest, stipulating that assemblies cannot be held "in the vicinity of specially secured facilities (e.g. government buildings) to a distance of at least 50 meters". In Macedonia, the law imposes burdensome obligations on organizers, discriminates foreigners and various groups, and provides for disproportionate liability and penalties for organizers. Furthermore, as seen from recent protests in Turkey, freedom of assembly can be seriously restricted and cracked-down. The Turkish Law on Demonstrations and Meetings imposes restrictions with regard to the time, place or route of the protests and state authorities are allowed to postpone or cancel the assembly when they consider it necessary.

**FREEDOM OF EXPRESSION** is often violated, even though the legal frameworks in all the countries of the region regulate its protection. Limitations on this freedom imposed by laws are usually linked to the rights of other persons to dignity, restricting the expression of hatred or discrimination. Vague definitions of the limitations in Turkey have led to the numerous arbitrary decisions against CSOs' freedom of expression. Especially alarming is that, on the one hand, libel is still categorized as a criminal offense in three countries of the region. On the other hand, in Bosnia and Herzegovina, due to the lack of recognition of hate speech as a criminal offense, denial of genocide and other serious crimes are in reality not punishable.



**RIGHT TO SAFELY RECEIVE AND IMPART INFORMATION** through any media is generally guaranteed in the laws of all the countries of the region, except Turkey. The recently amended law titled "*Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publication*" is allowing for arbitrary decisions of government authorities to ban web contents without in-depth investigation (e.g. recent cases of blocking Twitter and YouTube). Furthermore, the Turkish government routinely blocks advanced web content and prohibits access to the websites with opposing views. However, there could still be found **CASES OF VIOLATION** also in other countries of the region. For example, Serbia reported a violation by the Security Information Agency, which refused to provide information on phone surveillance of citizens submitted by a local CSO. The requested information has been additionally provided upon a decision of the ECHR. What has been recognized as a common key challenge calling for improvement in most of the countries is the **LOW USE OF THE INTERNET AND MOBILE SERVICES, TOGETHER WITH THE NEW TECHNOLOGIES**. In Macedonia, CSOs are reported to have insufficient interest to use the internet and social media. In Albania, a so called "digital gap" has been recognized between urban and rural areas where there is low awareness of the benefits of the use of information and communication technologies.

**To sum up, there is a clearly recognized legal framework guaranteeing the basic freedoms in all countries of the region with the exception of Turkey. Problems in other countries are arising mostly from its insufficient implementation and lack of respect by the state authorities. However, it has to be pointed out that CSOs prove to be active in defending their rights, which might have a positive influence in building respect for these freedoms by the national governments.**

## **AREA 2: FRAMEWORK FOR CSOs' FINANCIAL VIABILITY AND SUSTAINABILITY**

All the countries are reporting insufficient financial state support, either through direct funding or provision of indirect benefits. Even though there are some positive trends identified throughout the region (e.g. non-financial state support) there is a need to reform the laws regulating the distribution of public funds and secure its transparency, as well as to reform the tax laws.

### **2.1. TAX TREATMENT OF CSOs IS NOT SUPPORTIVE**

The specific nature of CSOs should be recognized by the state through a favorable tax treatment. The reality in Balkan countries is somehow different. All countries in the region reported **INSUFFICIENT INDIRECT STATE SUPPORT IN TERMS OF THE TAX BENEFITS AND INCENTIVES FOR DONORS**. Reasons are varying from country to country, mostly emerging from the lack of a supportive legal framework.

Even though **GRANTS AND DONATIONS** are traditionally exempted from the corporate income tax, some countries are not providing them special VAT treatment. For example in Serbia, the non-taxable amount of funds received is 100.000 Dinars (approx. 877 Euros) and the funds received above this threshold are subject to gift tax. Distinction between what is a gift and what is a donation is unclear and subject to the interpretation of the Tax Administration. In addition to this, in Albania, there is tax exemption from the corporate income tax granted only for donations and membership fees. Grants are not expressly included in the exemption, which causes serious misunderstandings in the interpretation of this omission.

Furthermore, **INCOME FROM ECONOMIC ACTIVITIES** of CSOs is very often taxed at the same rate as the income of companies. Albania, Bosnia, Croatia, Kosovo and Montenegro introduced certain tax benefits for CSOs on their economic activities, which are however also considered to be awkward or limited. For example in Kosovo, the law provides tax benefits for related economic activities up to the "reasonable level of income".

This formulation is however not very clear and could be used against CSOs. In Croatia, the Tax Administration Office can make a decision that a CSO has to pay tax on the income from economic activities if the non-taxation leads to unfair advantages in the market. This could also lead to arbitrary decisions of the responsible authority.

Sometimes, the tax benefits are provided only to organisations that are conducting public benefit activities or those who have acquired the **PUBLIC BENEFIT/INTEREST STATUS**. Countries where the distinct status has been introduced are reporting problems with proper harmonization of laws regulating this status with tax laws or undue processes for its acquiring. For example in Albania, public benefit status is given only to organizations active in the field of education, health and economic development and is exempting them only from paying VAT on their supplies. In Turkey, there are no clearly defined conditions in the law, making the process highly political and bureaucratic. In Kosovo, there are very limited benefits linked to this status, having almost no real effects in practice. Problems with coherence of laws have been already pointed out in the first part of the Key Findings section (III.), but due to its great importance it is essential to underline the issue again.

States could play a crucial role in stimulating possible donors to dedicate certain amount of money to CSOs by introducing the incentives. Even though all the countries of the region provide certain **TAX INCENTIVES FOR DONORS**, they are **OFTEN INSUFFICIENT AND LIMITED**. Countries are reporting insufficient encouragement of donors from the state. Some of them are also having problems with harmonization of the laws, as mentioned above. For example in Kosovo and Serbia, tax deductions are not available for all publicly beneficial activities as stated in the general laws, but only for a few of them listed in the tax laws.

**It is of high importance that the CSOs enjoy certain tax benefits, mostly because of their non-profit character. Even though there are some trends identified throughout the region in this direction, still missing are clear rules on recognizing the distinction between businesses and CSOs and specific tax treatment, harmonized with the other laws of the country.**

## **2.2. PUBLIC FUNDING IS INSUFFICIENT AND LACKING ACCOUNTABLE AND TRANSPARENT MECHANISMS**

State support for CSOs should be provided in a clear and transparent manner. In order to achieve this, there is a need of a separate law or policy document that regulates the selection criteria for distribution of public funds and its proper monitoring and reporting. All countries in the region claim that the existing rules regulating this area are inadequate. Furthermore, the amount dedicated to CSOs from the state budget is in most cases very small or not targeted specifically to CSOs but to all nongovernmental organizations, including sports' clubs or religious organizations and political parties (e.g. Macedonia, Serbia).

When distributing public funds, it is important to preserve **ACCOUNTABILITY AND TRANSPARENCY OF THE FUNDING MECHANISM** to insure lack of interference, abuse and misuse of public funds. Seven out of eight countries reported that there is a prescribed procedure for distribution of public funding. This regulation is missing in Kosovo, where there are only general provisions in the laws regulating public spending. Despite existing regulations in other countries, most of them reported lack of transparency and accountability in distribution of public funds and its further monitoring and evaluation. For example in Serbia, CSOs are reporting that the public funding is often allocated on the basis of supporting or belonging to a particular political opinion. In Montenegro, there has been a new Law adopted, which defines new rules for allocation of funds to CSOs, however the bylaws specifying the process are still not enacted and funds are allocated according to the existing non-transparent models, rendering any effect of the new Law. Furthermore, in some

countries (e.g. Macedonia) the rules are introduced through non-binding documents and are not fully respected by the state authorities.

Another problem identified in almost all the reports is that the actual funding allocated to CSO activities and projects is **INSUFFICIENT OR DISTRIBUTED IN SMALL SUMS** which causes problems for the financial sustainability of CSOs. In Croatia, even though the public funding allocated to CSOs is quite significant, the problem arises from the lack of separation of the budget allocations for CSOs from other non-profit entities (e.g. sports' clubs). Similar problem has been identified in Serbia, where due to the **LACK OF DISTINCTION OF FUNDING WITHIN THE STATE BUDGET**, CSOs fall within the same budget line together with the sports' clubs, churches and even political parties. In addition to this, in Bosnia and Herzegovina, due to the lack of a clear focus of the activities described in the calls for funding proposals, the funding is divided to small sums and distributed to a large number of CSOs, which is supportive of their financial viability.

PUBLIC FUNDING IN 2012 IN EUROS		
<b>ALBANIA</b> <sup>32</sup>		0,95mil
<b>CROATIA</b> <sup>33</sup>		200 mil
<b>BOSNIA AND HERZEGOVINA</b> <sup>34</sup>	Distributed on State level	0,34mil
	Distributed by Federation BiH	29,5 mil
	Distributed by Republika Srpska	15,5 mil
	Distributed by Brcko District	5,7 mil
<b>KOSOVO</b>	N/A	
<b>MACEDONIA</b>	Funding from games of chance and entertainment games	0,,97 mil
	Funds distributed only to CSOs registered according to LAF	0,20 mil
	Total Under BL 436- Transfers to CSOs in total <sup>35</sup> .	4,,07mil
<b>MONTENEGRO</b>	From financing of NGOs from games of chance	1,77 mi
	By institutions based on the application of CSOs as well as assistance to organizations	0,175 mill
<b>SERBIA</b>	Under BL 481 (CSO Grants) <sup>36</sup>	70 mil
	Under BL 472 (financing of social protection services)	8,8 mil
	Matching funds for CSOs for EU projects from local governments + from Belgrade, Novi Sad, Nis	11 mil + 13,5 mil
<b>TURKEY</b>	Ministry of Interior <sup>37</sup>	3,3 mil

Another big trend in the region is the possibility to use **LOTTERY MONEY FOR SUPPORTING CSO PROJECTS**. In all of the countries in the Western Balkans, a certain portion of the income from games of chance/lottery goes for civil society. This funding is distributed in various ways e.g. in Croatia this is the main source of income for the National Foundation for Civil Society Development, while in Montenegro there is a specialized commission which distributes the funds.

<sup>32</sup>Distributed in 2012 (from 2011 budget allocations).

<sup>33</sup>Of which: 25% goes to sport purposes; 22% to associations and programmes for people with disabilities; 20% for culture and protection of the cultural, historic and the natural heritage; 9% into participation of the national minorities in the public life; 12,5 % into democratization related activities of the CSOs.

<sup>34</sup> Out of which: 38,9% to sports clubs; 15,2% associations for the protection of veterans and disabled; 12,2% CSOs for social services/social care; 34,4% to other types of CSOs.

<sup>35</sup> Including funding to trade unions and religious communities and political parties.

<sup>36</sup> Out of which: 40% was allocated for churches, religious communities and political parties, 60% was targeting CSOs (around 39 million EUR).

<sup>37</sup> There is no general information on the percentage of the total budget allocated to CSOs in the general budget.

There is also a positive trend identified throughout the region concerning the **NON-FINANCIAL STATE SUPPORT**. Seven countries, with the exception of Turkey, reported that there is an enabling environment allowing state authorities to allocate non-financial support to CSOs. There has been recognized an increasing use of this possibility throughout the countries. For example, in Croatia, many CSOs are using government premises for their offices. On the other hand, many countries reported problems with unclear rules on the procedure for distribution of non-financial state support, due to the lack of transparent mechanisms.

### 2.3. THE EQUAL TREATMENT OF CSOs TO OTHER EMPLOYERS WITH REGARD TO LABOUR REGULATIONS MIGHT BE PERCEIVED AS A DISADVANTAGE

There is no different regulation on CSOs as employers, meaning that there are no additional requirements imposed on them. While this might seem as good practice, there are situations in which this treatment causes difficulties for CSOs. In most of the cases the problem has been identified in the financial obligations imposed on the employers, such as paying of bonuses, severance payments and other employee benefits. For example in Kosovo, employers have to provide half of the salary for women during their maternity leave, which is posing a financial burden on CSOs. This could have serious impact on their financial situation and lead to either breaching the laws or paying and facing possible bankruptcy.

HUMAN RESOURCES 2012								
	ALBANIA	CROATIA	BIH	KOSOVO	MACEDONIA	MONTENEGRO	SERBIA	TURKEY
<b>NO OF PEOPLE EMPLOYED</b>	N/A	19.610	N/A	N/A	1.839	N/A	7.304	57% of CSOs do not have paid staff
<b>NO OF VOLUNTEERS</b>	N/A	N/A	N/A	3,1% declared to volunteer in 2013, 4,5% in 2011	N/A	N/A	150.000	41% employ 6-20 volunteers

The state, as well as the unemployed persons or students, do not view CSOs as potential employers. Therefore, civil society is not treated as a sector that contributes to the employment and no measures are taken by the state in order to create incentives for boosting up employment within CSOs. While businesses and in particular SMEs (which are in size similar to CSOs and thus facing similar financial difficulties) are receiving **SUBSIDIES FOR EMPLOYING LONG-TERM UNEMPLOYED PERSONS OR FIRST-TIME EMPLOYEES**, CSOs often do not have any access to such subsidies. Exception to this and an example of a good practice can be found in Serbia, where CSOs use several state incentive programs such as start-up programs, professional development programs, etc.

In order to ensure better position of CSOs as employers, it would be essential to strengthen the position of CSOs within the whole region. One of the issues identified in the country reports that might be a key solution for this challenge is to enhance the promotion of the **CIVIC ENGAGEMENT** through reforms in educational systems. Significant amount of the CSOs' employees are volunteers and therefore it is essential to facilitate their working conditions by creating an enabling legal framework.

Five of the countries in the region have a Law on Volunteerism – Croatia, Bosnia and Herzegovina (both entities), Macedonia, Montenegro and Serbia. Having legislation is important for recognizing **VOLUNTEERS**

and ensuring there would be no problem with the agencies monitoring employment, as it has been reported in Turkey or Albania. On the other hand, laws are not always followed, as for example in Montenegro, where despite the existing legal framework, most of the volunteering happens in a spontaneous manner outside of contractual relation, or is hampering as in the case of Serbia.

### **AREA 3: GOVERNMENT-CSO RELATIONSHIP**

Even though there is a positive trend in creation of Government-CSOs partnerships identified in the region, it is still in its beginnings. Apart from Croatia, documents regulating this relationship are lacking full implementation, partly because of lack of funding and human resources, partly because they are still not completely respected by the state authorities. In addition to this, in Turkey there are still no national policies or laws regulating the CSO-government partnership and inclusion of CSOs in decision-making. Therefore, it is essential to show governments throughout the countries that CSOs are strong partners with significant potential for cooperation in the governance of the state and in overcoming different social challenges in society.

#### **3.1. STRATEGIC MECHANISMS FOR CSO-GOVERNMENT COOPERATION ARE LACKING PROPER IMPLEMENTATION**

One of the most significant problems identified throughout all the country reports is that the cooperation of CSOs with governments, either through established mechanisms or without, is **NOT FUNCTIONAL**. Seven out of eight countries included in their key findings that CSOs are facing serious difficulties in their relationships with the governments.

Strategic documents for cooperation have been adopted in five countries of the region, and the processes of their development have been largely participatory. The first countries to start this trend were Croatia and Macedonia in 2006, followed by Montenegro and most recently Kosovo. Croatia, Macedonia and Montenegro have adopted the second set of strategies, which follow up on the first versions and aim to incorporate some of the lessons learnt. Currently, Serbia is in preparation of a strategy and initial interest has been expressed by the government in Albania. In Bosnia and Herzegovina, a Cooperation Agreement between the BiH Council of Ministers and the CSO Sector in BiH was signed in 2007. However, until now most of its measures are not implemented, including the agreement to prepare a Strategy for Creation of Enabling Environment for Development of Sustainable Civil Society.

While adopting documents for cooperation is considered to be **AN EFFECTIVE TOOL FOR COORDINATION** of the relationship between the government and CSOs and for facilitating their partnership, there is unfortunately **LACK OF PROPER IMPLEMENTATION** identified throughout the countries. For example, in Kosovo there is a specific action plan drafted, describing the responsibilities and estimated costs of its implementation, however there has been no money allocated from the state budget for its implementation so far. In Macedonia, some of the activities included in the action plan for cooperation were implemented mainly with foreign financial assistance and predominantly by initiative of CSOs, however several tasks were not fulfilled. In Croatia, there is a recognized need to improve the legal framework supporting the cooperation in order to secure full implementation and evaluation of the strategic documents. Partial implementation, lacking the realization of all envisaged measures is reported also in the rest of the countries that have developed strategic documents.

To facilitate the cooperation, seven countries, with the exception of Turkey, established a **SPECIAL BODY OR INSTITUTION FOR COOPERATION WITH CIVIL SOCIETY SECTOR** (see table below). These government bodies are

unfortunately in most of the cases **LACKING INDEPENDENCE FROM THE STATE BODY UNDER WHICH THEY WERE ESTABLISHED OR ARE LACKING HUMAN AND FINANCIAL RESOURCES**. For example in Bosnia and Herzegovina, the envisaged Civil Society Council aimed to be composed of representatives from both government and CSOs, resulted in the creation of Civil Society Sector under the Ministry of Justice. This sector has been transformed recently into Legal Aid Sector and civil society is only one of its competencies. In Macedonia, the Unit for Cooperation with NGOs is also considered to be insufficiently independent in their work, allowing little flexibility in their initiatives. In Kosovo, the institutional framework for cooperation is reported to be very complicated, comprising several different units and lacking human and financial resources for the proper implementation of the strategy for cooperation.

COUNTRY	TYPES OF BODIES FOR COOPERATION WITH CSOs
ALBANIA	Civil Society Support Agency (main functions related to grant-making) Civil Society Sector, Ministry of European Integration established in October, 2013
BOSNIA AND HERZEGOVINA	Legal Aid Sector established within the BiH Ministry of Justice
CROATIA	Office for Cooperation with CSOs of the Government and the Council for Development of Civil Society
KOSOVO	Office for Good Governance within the Office of Prime Minister and the Joint Advisory Council (to be established based on the Strategy)
MACEDONIA	Unit for Cooperation with CSOs established within the Sector for Policy Analysis and Coordination in the General Secretariat of the Government
MONTENEGRO	Office for Cooperation with NGOs (part of the General Secretariat of the Government) and Council for Cooperation between the Government of Montenegro and NGOs
SERBIA	Office for Cooperation with Civil Society
TURKEY	Draft legislation is awaited to come to the Parliament, which aims to establish several new bodies such as a Civil Society Council and a Civil Society Board as consultative bodies regarding civil society related matters

### **3.2. INSUFFICIENT INCLUSION OF CSOs IN DECISION-MAKING PROCESS**

Despite the fact that all countries, with the exception of Turkey, report to have certain regulations on the CSOs involvement in policy and decision-making processes, they are **NOT CONSIDERED TO BE EFFECTIVE**. Problems in practice are similar as with the documents for cooperation between governments and CSOs – not all of them are binding (e.g. Macedonia) and they are lacking the proper implementation and respect by government officials. Another challenge is fragmentation of the rules regulating CSOs inclusion in the decision-making process, which makes the existing mechanisms and procedures unclear. To support better implementation of the regulation on participation, both Croatia and Serbia developed guidelines that would facilitate public consultation and participation. In Albania, however, there is no harmonized document regulating public discussions, which makes the participation in decision-making processes very difficult.

In practice, the most general problem with the inclusion of CSOs in the policy and decision-making processes is their **INSUFFICIENT ACCESS TO THE DRAFT LAWS** and policy documents, and consequently to the **PUBLIC CONSULTATIONS**. Even in countries with existing legislation that obliges public institutions to make all drafted laws and policies available to public, they are often not followed or relevant documents are published in a late

stage when there is almost no possibility of change. This is the case for example in Kosovo, where access to public information is a constitutional right, however most of the draft laws and policies are not accessible to the public in a timely manner, since there is no obligation for public institutions to be proactive in this matter. In addition to this, in Montenegro, despite the adopted *Decree of the Procedure Method of a Public Discussion in Preparing Laws*, state bodies are still not familiar with its provisions and do not publish the relevant documents. According to the information from the country report, only 3 out of 16 ministries published an on-line list of laws for public discussion.

Policy documents and regulations on CSO participation in decision-making process provide different instruments for facilitation of public discussions. These are consultations with the interested public (e.g. Croatia, Kosovo), inclusion of selected representatives of CSOs in the working groups (e.g. Montenegro, Serbia) or electronic consultations and feedback reports from the ministries (e.g. Macedonia, Croatia). However, as noted above implementation is a challenge. For example in Montenegro the public announcement of the election of CSOs representatives in the working groups introduced by the Decree has been respected only by 6 out of 30 state bodies. In addition to this in Kosovo, The Rules and Procedures of the Government requires consultations for all draft laws/policies followed by the feedback on the result, nevertheless only 29,29% of the CSOs declared to be regularly invited for these consultations. One of the reasons for the frequent disrespect of the provisions on the public consultations is that there **ARE NO CLEAR SANCTIONS OR NO OPTION FOR REDRESS PRESCRIBED FOR THE CASES OF VIOLATION.**

In addition, the countries report situations where laws are adopted without consultation. There are several reasons for this, one of them being the **LACK OF TRAINED HUMAN RESOURCES FOR THEIR COORDINATION AND MONITORING.** In Croatia, there is an emphasis put on the improvement of the education of civil servants in order to properly implement consultations. In Montenegro, there is also a need to improve capacities of civil servants in order to implement the above mentioned Decree. State bodies are not fully aware of the document, which leads to numerous violations. For example, only six ministries published invitations for public discussion on preparation of the laws and only eight for discussion of draft laws. Furthermore, there have been reported problems **WITH NON-TRANSPARENT SELECTION OF THE PARTICIPANTS OF PUBLIC DISCUSSIONS**, e.g. in Bosnia and Herzegovina or Macedonia.

**Most of the countries reports conclude that there is a need of broader and more systematic application of the existing rules. Most of all, there is a need to introduce realistic time limits for publication of draft laws and policies, as well as invitations for public consultations and to respect those accordingly. It is of high importance to work on capacity building of civil servants, as well as of CSOs, to enhance the cooperation of state bodies and CSOs in the governance of the countries and to ensure feedback is provided on given comments. In addition to this, it would be essential to provide options for redress if the provisions on CSOs' involvement in policy and decision-making processes are not respected.**

### **3.3. LACK OF SUPPORTIVE ENVIRONMENT FOR CSO INVOLVEMENT IN SERVICE PROVISION**

Receiving payment from local or national government for providing services is not a significant source of income for CSOs in the region. This is a clear sign that CSOs are not sufficiently engaged in service provision. While according to legislation CSOs are treated equally as other service providers, there are some challenges for CSO to be involved. In cases when services are purchased (as opposed to the provision of grants), the typical mechanism of the public procurement law is used. Even though there is no country where CSOs are excluded from the public procurement mechanism, sometimes there are **HIDDEN BARRIERS.** For example in Kosovo, all the bidders are required to have a valid certificate of registration as a business organization, which

automatically excludes CSOs from competition. In Serbia, there are certain criteria imposed on bidders that are considered as burdensome for CSOs, such as bank guarantees. In Croatia the country report informs that there is limited access to provision of services in areas such as healthcare and education.

The most typical area where CSOs have the needed capacity and the governments seek their support is naturally the social area. Even so, no country has a separate mechanism 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. The only exception to this rule is Macedonia where the *Law on Social Protection* creates a special mechanism through which funding for provision of social services is given, but the mechanism used is the grant mechanism. While having a specific mechanism is not the most important prerequisite for successful contracting of services to CSO providers, it may be an important element of the social provision system. On the other hand, it is important for governments to understand the potential of CSOs for provision of services which can happen by promoting existing good practices and targeted training for both officials and CSOs.

With regard to funding, problems were reported with the length of the contracts (e.g. Macedonia) and insufficient funding not reflecting other costs of the institution aside from the service provision itself (e.g. Kosovo). The main problem here is that in reality CSOs do not have access to funding for service provision, as most of the contracts with businesses are.

**As a conclusion, provision of social services is by its nature the area where CSOs can be the best partners to the government authorities in service delivery. Therefore, it is essential to make governments recognize the benefits of their cooperation with CSOs in service delivery. From the governments' perspective, efforts need to be invested in ensuring that the law allows for CSOs to be contracted for service provision, and that the procedures used to contract CSOs take into account their specific character as well as the specificities of the social services.**



## V. KEY LEARNING POINTS AND POLICY RECOMMENDATIONS

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### 1. LEARNING POINTS

From the general key findings of the report, the following learning points can be drawn:

#### **1. THE STANDARDS FOR ESTABLISHING CSOs ARE ALREADY SET IN LEGISLATION IN ALMOST ALL COUNTRIES EXCEPT OF TURKEY, BUT THERE IS A NEED TO ENSURE THEIR PROPER IMPLEMENTATION AND HARMONIZATION IN PRACTICE**

As mentioned, one exception to this is Turkey where the basic legislation for CSOs is still hindering the registration and operation of CSOs. Nevertheless, it is important to pay attention to how those standards are implemented in all of the countries in the region. In addition, there may still be some issues that would need strict monitoring, such as the blocking of websites or social networks in Turkey or ensuring that freedom of assembly is respected regardless of whether the assembly is pro or against the government's policies.

#### **2. NEED TO ENSURE THAT THERE ARE SYSTEMS IN PLACE TO COLLECT INFORMATION ABOUT CSOs**

In many countries in the region, it is a problem to ensure that specific information about CSOs is collected and is made publicly available. Information related to the number of registered and active organizations, the areas in which they work, CSOs public funding allocations, the number of employees and volunteers engaged with them, etc. is crucial with regard to future decisions about how to support CSOs and transparency about CSOs and their work. One important direction of the CSO-related reforms should be to ensure that such information is properly collected, publicly accessible in standardized format.

#### **3. LEGISLATION SHOULD ENSURE THAT TAX BENEFITS FOR CSOs AND THEIR DONORS ARE IN PLACE**

While in general the income from non-profit activities is tax-exempt, there are a number of issues that remain open. These include benefits related to gift tax, VAT, taxation of income from economic activities, etc. CSOs serve an important purpose in society and should be supported through such incentives. A key component is also the tax benefits for their donors. Very often the benefits for donors are insufficient or are not harmonized with the CSO legislation.

#### **4. PUBLIC FUNDING SHOULD BE AVAILABLE TO CSOs AND DISTRIBUTED IN A TRANSPARENT WAY**

Public funding is an important source of funding for CSOs. Governments should provide funds to support CSOs and should differentiate between funds for sports organizations or political parties and for CSOs. Such funding should not be centralized (as in Montenegro) because this detaches the money from the sectoral policies and from the people that know best the areas in which funding should be provided. A key element of any public funding scheme should be its transparent decision-making process that is not politically influenced. Establishing clear procedures and setting up rules on conflict of interest is an important way to ensure transparency as this clearly impedes the distribution in the countries.

Currently many countries in the region are channelling a portion of the income from state-run lotteries to CSOs. There is, however, a need to ensure that the institution and the people who distribute such funds are independent and have good knowledge of civil society and the areas in which funding is provided. The example of Croatia where a professional foundation is established could be used as a model.

## **5. INCREASE TRANSPARENCY IN ALLOCATING NON-FINANCIAL SUPPORT AS IMPORTANT SUPPORT TO SMALL ORGANIZATIONS**

Non-financial support is another important source of support for CSOs. In many countries, especially for smaller organizations such support is highly needed. The distribution of state or municipal property for CSO use should also follow a transparent mechanism for its distribution.

## **6. NEED FOR DIVERSIFICATION OF FUNDING FOR CSOs**

CSOs need to consider alternative possibilities for raising funds and diversifying their income portfolio as a key way to achieve financial sustainability and independence in their activities. Such alternative methods include fundraising from corporations and individuals or social entrepreneurship (engaging in mission-related economic activities). Accessing such alternative sources will turn CSOs into more independent and viable organizations, closely linked to their beneficiaries and target groups. Such support should include elimination of existing legal barriers to collecting donations or engaging in related business activities. It should also include research on motivations, support to trainings, sharing successful practices and foreign experience, etc.

An important element in creating an environment for philanthropy is tax benefits for donors. Even though it may not be the key incentive for donating, a legal framework that does not support philanthropy might be a key reason for not donating. Possibilities to account donations exceeding the threshold in the three consecutive years or allowing employed people to benefit from exemptions for donations made are good examples of how a better legal framework can support philanthropy.

## **7. THE SECTOR HAS POTENTIAL FOR EMPLOYMENT AND ITS SPECIFICITIES SHOULD BE TAKEN INTO CONSIDERATION WITH REGARDS TO LABOUR REGULATIONS**

Country reports have shown that equal treatment with businesses in terms of employment regulations can have a negative effect on CSOs. On the other hand, state incentive programs for supporting employment should also include CSOs (as is the case in Serbia). In developed countries, civil society is one of the key employers and with the growth of CSOs in this region, this is a real possibility for the Balkans as well.

## **8. NEED TO ENSURE THE STRATEGIC MECHANISMS FOR GOVERNMENT-CSO COOPERATION ARE SUPPORTED IN THEIR IMPLEMENTATION**

Strategies for CSDev are an important tool for improving partnership. The example of many countries in the region that have developed cooperation between CSOs and governments shows that this approach is successful. Even when such strategies are not fully implemented, they serve as a guide for both authorities and CSOs as to what are the goals and how some of the problems could be solved.

However, in order for these documents to affect the situation in practice, the government should actively support their implementation. For example, as part of supporting cooperation, governments create institutionalized forms of cooperation between CSOs and governments (Offices/Councils/Bodies). Very often such bodies lack sufficient powers and independence or funding to carry out their tasks as envisaged in strategic or policy documents. That is why governments need to ensure that the created mechanisms are able to operate properly to ensure better cooperation.

## **9. FURTHER INVOLVEMENT OF CSOs IN DECISION-MAKING IS NEEDED**

While there are some positive examples, CSOs are still not real partners to government when it comes to preparation of draft laws or strategic documents. In most of the countries there are no strong legal guarantees incorporated in one document, and where they exist they are fragmented or non-binding. In addition, this is an area where the practice mostly shows problems, due to lack of implementation of existing norms or lack of interest or capacity. Draft documents are not published for comments, the deadline for consultation is quite short and there is no feedback on submitted comments.

## **10. CONTRACTING IS AN OPPORTUNITY FOR IMPROVING THE SUCCESSFUL COOPERATION**

Even though the social area is considered in all country reports as the key area in which CSOs could provide services and be paid by the government, the practice or legislation with regard to social contracting is not developed at all. Most countries use the public procurement mechanism to contract services to CSOs but very often this mechanism does not take into consideration the specificities of CSOs (e.g. Serbia, Kosovo). Even countries that have a separate mechanism used for funding the delivery of social services by CSOs (in Macedonia there is a special grants scheme), do not take into consideration the specific characteristics of social services delivery.

## **2. RECOMMENDATIONS**

The following recommendations have been formulated by the experts who developed the country reports, based on the findings in the 8 countries. They outline the priority issues to guide further joint actions on regional level in the short term (next 1-2 years). While they aim to define actions for regional interventions, they should be considered together with the specifics in each country. This would allow for the adoption of the best methods and approaches that would result in changes on country level. In addition, they should also consider the fact that while the basic freedom of association standards are already in place in most of the countries, except in Turkey, there are still challenges with the other related freedoms, as well as problems with practical implementation of those. Hence, the issues below cannot be addressed in isolation without consideration of the steps that need to take place to consolidate fully the legal and practical implementation of the fundamental rights.

### **1. PUBLIC AUTHORITIES TO INTRODUCE WELL-ORGANIZED SYSTEM TO COLLECT STATISTICAL INFORMATION ON CSOs**

It would be utmost important for state institutions to collect and make publicly available specific statistics exclusively for the CSOs, and to clarify the categories of associations, foundations, endowments, and centers, vis-à-vis other legal entities. This would provide a clear and factual state of registered CSOs that can be a base for strategic, fair and effective approach to supporting CSOs by the state through its policies, measures and funding. In addition, such a system should allow for easy, free and public access to the information for shaping future CSO policies and advocacy initiatives. Furthermore, such free and public access can insure transparency about who CSOs are and what they do and present their work accurately to the general public.

### **2. PUBLIC AUTHORITIES TO INCREASE TRANSPARENCY AND PARTICIPATION OF CSOs IN POLICY-MAKING**

While this is a clear principle in the Monitoring Matrix, it should have an even bigger importance with regard to policies that are supported by the EU. Governments should be encouraged to develop legally binding documents on participation, and to introduce better practices in the implementation of the standards. Many of the countries have already some mechanisms that support participation, so there is a need for national and

regional dialogues that will help in self-assessment and regional experience sharing to stimulate further reforms. In addition, there are many good examples of consultation practices and including CSOs in working groups that can be promoted and followed in the other countries as well. Monitoring and feedback on consultation inputs should be key element in ensuring a move from pro-forma consultation to substantive, content-like partnership.

### **3. THE LEGAL FRAMEWORK TO SUPPORT THE FINANCIAL SUSTAINABILITY AND DIVERSIFICATION OF FUNDING OF CSOs**

Country reports show that there is high dependence of CSOs in the region on foreign or state funding. In the long term, this is not sustainable as most of the foreign donors will withdraw, which will threaten the independence and even existence of CSOs. That is why there is a need to support CSOs to engage in alternative forms of fundraising. Specifically, it is important to work on improving the tax framework for civil society, including the ability to raise resources from economic activities to further social entrepreneurship, and also to increase opportunities for tax exemptions. The European Union can play a vital role in the process.

### **4. THE ENABLING FRAMEWORK FOR CIVIL SOCIETY TO BECOME A PRIORITY ISSUE IN THE NEGOTIATION PROCESS**

In many countries this area is not a priority and for various reasons governments are unwilling or not sufficiently active to undertake the necessary reforms to ensure the civil society framework in their country is enabling. Receiving clear political support from the EU for such a process (as an element of the negotiation process) would help also the government buy-in.

The EU (through its delegations or other projects and programs) should support any advocacy activities at the country level for the implementation of the Guidelines for EU support to civil society in Enlargement countries, 2014-2020. Such support should not only be financial but also political.

### **5. THE EU TO SUPPORT CAPACITY BUILDING**

There is a need for EU investment in supporting the capacity of the administration to implement laws but also the capacity of CSOs to understand better the laws, how these affect their operation and monitor their implementation. Specific support should be tailored to increase the understanding among government officials on the standards in the area of enabling framework for CSOs, and specifically those targeting the issue of public participation. In addition, the EU may support possibilities for governments to meet counterparts in the countries in Europe on this topic and receive technical assistance from regional and European expertise when reforming laws, especially new areas of regulation.

### **6. EU FUNDS FOR CSOs TO BE DISTRIBUTED TRANSPARENTLY AND IN A 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 channelled predominantly through governments. As based on the example of Croatia and Macedonia, this may create conflicting situations especially in the case of human rights and watchdog organizations whose role may be to monitor government, and receiving funding through it may compromise their work, if not make it impossible. Existing state foundations/funds for civil society support (as is the case of Croatia or Estonia) may be a more acceptable mechanism for distribution of EU funds as they are more independent from the government. Hence, the EU could look towards helping governments to build such structures to support more independent funding system. Furthermore, where EU funds are used for capacity building of state administration, effectiveness, transparency and accountability can best be achieved if CSOs are involved in programming and monitoring of such assistance.

## V. USEFUL RESOURCES

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### INTERNATIONAL AND EUROPEAN DOCUMENTS AND TREATIES

Charter of Fundamental Rights of the European Union, (2000/C 364/01), 2000

Consolidated Version of the Treaty on European Union, article 10 and 11

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:EN:PDF>

Council of Europe (CoE) Recommendation CM/Rec (2007)14 of the Committee of Ministers of the Council of Europe to member states on the legal status of non-governmental organisations in Europe

<https://wcd.coe.int/ViewDoc.jsp?id=1194609&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFB55&BackColorLogged=FFAC75>

Council of Europe (CoE), Code of Good Practice for Civil Participation in the Decision-Making Process, adopted by the Conference of INGOs, 2009

<https://wcd.coe.int/ViewDoc.jsp?id=1514961>

European Convention for the Protection of Human Rights and Fundamental Freedoms –ECHR

<http://conventions.coe.int/Treaty/en/Summaries/Html/005.htm>

European Court of Human Rights Case Law

<http://www.echr.coe.int/ECHR/EN/Header/Case-Law/Decisions+and+judgments/HUDOC+database/>

International Covenant for Civil and Political Rights- ICCPR

<http://www.ohchr.org/english/law/ccpr.htm>

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

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

<http://www.osce.org/odihr/73405>

### COUNTRY REPORTS

Country report of Albania, Partners Albania

Country report of Bosnia and Herzegovina, Civil Society Promotion Center (CSPC)

Country report of Croatia, Cenzura Plus

Country report of Kosovo, Kosovar Civil Society Foundation

Country report of Macedonia, Macedonian Center for International Cooperation (MCIC)

Country report of Montenegro, Center for Development of Non-governmental Organizations

Country report of Serbia, Civic Initiatives (CI)

Country report of Turkey, Third Sector Foundation of Turkey (TUSEV)

## USEFUL REFERENCES

World Bank

<http://data.worldbank.org/indicator/SP.POP.TOTL>

General Directorate of Foundations (DGoF)

<http://www.dernekler.gov.tr/tr/AnasayfaLinkler/dernekler-grafik-tablo.aspx>

World Giving Index 2013

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

Guidelines for EU support to civil society in Enlargement countries, 2014-2020

[http://ec.europa.eu/enlargement/pdf/civil\\_society/doc\\_guidelines\\_cs\\_support.pdf](http://ec.europa.eu/enlargement/pdf/civil_society/doc_guidelines_cs_support.pdf)

Belgrade declaration on strengthening social entrepreneurship in the region on the Western Balkans and Turkey, 14 March, 2014

<http://belgradedeclaration.net>