

BACKGROUND ANALYSIS

Going Beyond the Form and Structure, Investing in Critical and Strategic Civil Society Initiatives

In 2007, civil society development and civil society dialogue have been laid down as one of the priorities of the Enlargement process. With the publication of Communication “The Roots of Democracy and Sustainable Development: Europe’s Engagement with Civil Society in External Relations” in 2012, the European Commission (EC) laid down the set of pre-conditions that have to be in place in a country for

functioning of the civil society. For the Enlargement countries, these conditions were in 2013 “translated” into more detailed tool for monitoring of the civil society development for Enlargement countries – the Guidelines for EU Support to Civil Society in Enlargement Countries, 2014-2020. Consequently, since 2014 civil society is treated as a separate part of Political criteria in the EC Annual Country Reports.

While taking note of the declining pace of reforms, trend of authoritarianism and unstable economic situation in Enlargement countries, the EC Reports this year deliver the old message of “Fundamentals First” - that is, reforms in areas of Chapter 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security). While civil society has been made prominent in the “Fundamentals First” approach in previous years, this year it is only mentioned generally: “A stronger role for civil society and stakeholders more broadly remains crucial.” While this might be the case with the regional outlook, in separate Country Reports, civil society is given the equal importance of the approach sketched out last year. Each Civil Society section of the Political criteria assessment is opened with a value statement: “An empowered civil society is a crucial component of any democratic system and should be recognized and treated as such by the state institutions.” And in several Reports, e.g.

NOVELTIES IN 2016 APPROACH

The biggest novelty announced by the Commission this year is the pause announced for the next year’s annual report and move from the political (autumn) to calendar (spring) cycle of reporting. Also, the new methodological approach introduced last year, has been further expanded to new areas, such as areas linked to economic development (free movement of goods, competition, transport, energy), as well as certain areas of Chapter 24 (migration, border control, asylum and fight against terrorism), environment and climate change.

Macedonian and Turkish, space is given to reports and claims of harassment and maltreatment of civil society activists or CSOs. Still, it is the analysis of the substance that is the focus of this policy brief – how the Commission assesses the progress or lack thereof in the conditions which civic activists and CSOs operated end of 2015 and 2016. In this, the Commission continues to go beyond the basic understanding “registration + consultations” and to some extent applies the approach laid down in the EU CS Guidelines.

Since 2006, BCSDN has analyzed the annual Commission Enlargement Reports and its assessment of the progress made in the area of civil society development and dialoguing with public institutions. Since 2013, the analysis has been set against the Monitoring Matrix on Enabling Environment for Civil Society Development, a monitoring framework developed in 2012 by BCSDN members and partners, including ECNL, which provides a set of principles and standards accompanied by 151 indicators for legislation and practice that need to be in place in a country to have an optimum enabling environment for civil society development. The methodology underpins the annual monitoring led by BCSDN and its in-country members in all Enlargement countries and is also reflected in this policy brief-by marking key issues left out of the EC Reports. Finally, the Monitoring Matrix methodology has also inspired the Guidelines for EU Support to Civil Society in Enlargement Countries, 2014-2020 (EU CS Guidelines).



CIVIL SOCIETY ENABLING ENVIRONMENT

Area 1: Basic Legal Guarantees of Freedoms¹

Principle	Standard/Benchmark
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Sub-area 1.1.: Freedom of association

Freedom of association is guaranteed and exercised freely by everybody	All individuals and legal entities can freely establish and participate in informal and/or registered organizations offline and online
	CSOs operate freely without unwarranted state interference in their internal governance and activities
	CSOs can freely seek and secure financial resources from various domestic and foreign sources to support their activities

Sub-area 1.2.: Related freedoms

Freedom of assembly and expression are guaranteed to everybody	CSO representatives, individually or through their organization, enjoy freedom of peaceful assembly
	CSO representatives, individually or through their organizations enjoy freedom of expression
	Civil society representatives, individually and through their organizations, have the rights to safely receive and impart information through any media

Basic Guarantees to the Freedoms: Freedom of Association, Assembly & Expression

This year's Reports note rise in incidents and cases of violation of basic freedoms, such as freedom of association, peaceful assembly and expression.

Restrictions on **freedom of association** were this year again reported in Montenegro and Turkey, as well as in Macedonia. While in Montenegro it was due to intimidation to civil society activists, freedom of association was overly restricted in

1. The Monitoring Matrix on Enabling Environment for Civil Society Development standards and benchmarks.

2. Key findings of the Monitoring Matrix Country Reports that were not addressed in the EC Country Reports.

Turkey as part of the post-coup measures taken by the Government. Closure of vast numbers of CSOs, restrictions on registrations, challenges to regular operations through penalties and discriminatory practices, and detentions of human rights defenders best exemplify the state at play in Turkey. In Macedonia, targeted investigations and infringement of privacy by law enforcement agencies when CSOs disagreed with the government on sensitive political issues were noted. In addition, the registration process in Albania remained cumbersome due to high registration costs, lengthy procedures and lack of specialized judges on CSOs' legal issues.

In the area of **freedom of peaceful assembly**, Macedonia again

attracted attention in light of the series of anti-government protests led by the civic movement dubbed the 'Colorful Revolution'. The Report notes that individual activists have been fined and taken to court following civil disobedience during the protests. This year, backsliding was also noted in

Turkey, whereby a number of protests were seen as security threats and where a widespread use of excessive force against peaceful protesters was also noted.

The Reports also bring into spotlight increased violations on **freedom of expression** in Macedonia, Montenegro, Serbia and Turkey, whereby CSOs and civil society activists have been targeted on a personal basis by the pro-government media

MISSING ISSUES FROM EC REPORTS²

Region: Lack of official and conclusive data on the civil society sector, which limits the comprehensive analysis of the civil society in the region.

Serbia: As part of a comprehensive Civil Code, the Law on Associations and the Law on Endowments and Foundations are undergoing changes that hinder freedom of association and estrange the actual laws from international standards. Meanwhile, a new Public Assembly Act has been adopted with its provisions out of line with international standards.



through smear campaigns and subjected to harsh and disproportionate criticism by high-level officials.

In assessing whether CSOs can **freely seek and secure financial resources** from various domestic and foreign sources to support their activities, Kosovo has been singled out for the second year in a row as the amendment to the Law on money laundering and anti-terrorism was not adequately consulted, hampering CSOs' effective ability to operate.

Area 2: Framework for CSOs' Financial Viability and Sustainability

Principle

Standard/Benchmark

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

CSOs and donors enjoy favorable tax treatment	Tax benefits are available on various income sources of CSOs
	Incentives are provided for individual and corporate giving.

Sub-area 2.2.: State support

State support to CSOs is provided in a transparent way and spent in an accountable manner	Public funding is available for institutional development of CSOs, project support and co-financing of EU and other grants
	Public funding is distributed in a prescribed and transparent manner
	There is a clear system of accountability, monitoring and evaluation of public funding
	Non-financial support is available from the state

Sub-area 2.3: Human resources

State policies and the legal environment stimulate and facilitate employment, volunteering and other engagements with CSOs	CSOs are treated in an equal manner to other employers
	There are enabling volunteering policies and laws
	The educational system promotes civic engagement

Framework for CSO Financial Viability and Sustainability: Tax Regime, State Support & Human Resources

Similarly to last year, EC again highlighted the lack of stimulating fiscal frameworks for giving, transparent access and distribution of public funds and human resources development, all of which are making civil society dependent on limited number of donors and other sources hindering their ability to plan long-term and work independently. EC's continued and systematic monitoring of issues related to CSO financial viability and sustainability in all Reports for a second year in a row, heads us to conclude that EC is acknowledging the importance and the need for a more comprehensive approach to civil society development by public institutions, CSOs and stakeholders.

In the area of **tax regime**, shortcomings were identified in three countries. Reports highlight that the legal frameworks on tax deductions in Kosovo and Turkey remain discouraging for donations to CSOs. Similarly to last year, Albania was criticized as the current legislation does not provide for any tax incentives for individual or corporate donations to CSOs; for the procedure for VAT reimbursement on IPA projects still not being functional and the lack of tax inspectors' capacities. Positively noted are the corporate donations to CSOs licensed providers of social services in Serbia, which are finally exempt from VAT.

With regards to **public funding**, positive steps have been noted in Bosnia and Herzegovina on local

MISSING OUT FROM EC REPORTS

Region: CSOs still do not sufficiently diversify their funding remaining overly-dependent on the limited public funding and foreign funds

Serbia: The Ministry of Finance has still not taken into consideration the submitted draft amendments to the Personal Tax Law and the Profit Tax Law nor made appropriate changes in the laws.

level and Kosovo, as model ensuring transparent mechanisms for distribution of public funding for CSOs were identified. Nonetheless, sufficiency, transparency and efficiency of public funding remain to be issues of concern for a second year in a row. Challenges with transparency of allocation of public funds to CSOs were reported in Bosnia and Herzegovina, Kosovo and Turkey. In Albania, Macedonia and Montenegro, an appropriate framework and efficient system of public funding are still not in place and public funds remains insufficient. The latter is also of particular concern in Turkey, whereby CSOs are financially vulnerable and dependent on public project grants, but also in Montenegro where the Law on gaming, which serves as the largest source of public financing for CSOs, is for years not being implemented properly.

Similarly to last year, the issue of **state non-financial support** was mentioned only in the Report for Montenegro noting that “the priorities identified in the Strategy for development of non-governmental organisations (NGOs) 2014-2016 on transparent procedures for free concessions of public spaces to NGOs have not been addressed”.

Three Country Reports this year take into consideration **human resource development** aspect for civil society development, more precisely, the enabling volunteering policies and laws. Progress has been recorded in Albania as the Law on volunteerism was enacted by parliament. In Montenegro by contrast, the report highlights that conditions conducive to voluntary work, civic activism and social entrepreneurship need to be created. Similarly, the Report on Serbia pinpoints that “the legal framework for volunteering needs to further encourage voluntary work, including as part of co-financing projects”.

Public institutions - CSOs Relations

In line with previous Reports, cooperation between civil society and state bodies has again attracted the most attention. Positive steps in the **framework and practices for cooperation** have been noticed in three countries, yet with hindrances. In Albania, the Law on the

establishment and functioning of the Nacional Council for Civil Society (NCCS) has been adopted nonetheless the selection of CSO representatives was not clearly set out in the Law and was

Area 3: Government – CSO Relationship

Principle	Standard/Benchmark
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Sub-area 3.1.: Framework and practices for cooperation

There is a strategic approach to furthering state-CSO cooperation and CSO development	The State recognizes, through policies and strategies, the importance of the development of and cooperation with the sector
	The State recognizes, through the operation of its institutions, the importance of the development of and cooperation with the sector

Sub-area 3.2: Involvement in policy- and decision-making processes

CSOs are effectively included in the policy and decision-making process	There are standards enabling CSO involvement in decision-making, which allow for CSO input in a timely manner.
	All draft policies and laws are easily accessible to the public in a timely manner
	CSO representatives are equal partners in discussions in cross-sector bodies and are selected through clearly defined criteria and processes

Sub-area 3.3: Collaboration in service provision

There is a supportive environment for CSO involvement in service provision	CSOs are engaged in different services and compete for state contracts on an equal basis to other providers
	The state has committed to funding services and the funding is predictable and available over a longer-term period
	The state has clearly defined procedures for contracting services which allow for transparent selection of service providers, including CSOs
	There is a clear system of accountability, monitoring and evaluation of service provision

MISSING OUT FROM EC REPORTS

Region: *Involvement of CSOs in service provision on behalf of the state is under-regulated and rarely practiced.*

Bosnia and Herzegovina: *Consultations in legislative drafting of the Council of Ministers that bind each ministry to hold consultations are still not being implemented in practice.*

concluded only with international assistance. In Bosnia and Herzegovina, 23 institutions at all levels of government designated specific bodies or contact points in charge of dialogue with CSOs, but a strategic framework for cooperation with CSOs is still lacking. In Serbia, a new Director of the Government Office for Cooperation with Civil Society was finally appointed one year after the resignation of his predecessor, nevertheless, the National strategy for an enabling environment for development of CSOs 2015-2019 has still not been adopted and the Council for Civil Society Cooperation is yet to be established.

Lack of engagement and capacities by many ministries in Kosovo and the Council for the Development of NGOs in Montenegro undercut efforts of CSOs to implement the strategy on cooperation with civil society and effectively influence government decisions respectively. Serious concerns have been raised in Macedonia as the Government adopted a Decision on the establishment of a Council for Cooperation with the civil sector, only 2 working days after informing the CSOs and proceeded with improper selection process of CSO representatives. Moreover, inadequate administrative capacity and the lack of funds in the Unit for NGO Cooperation prevent the implementation of the 2012-2017 Strategy for Cooperation with Civil Society, while the drafting of the 2015-2017 Action Plan is still pending. Again, Turkey remains to be noted as the only Enlargement country where an overall government strategy for cooperation with civil society is not in place.

With regards to **involvement in policy - and decision - making processes**, amid progress being observed in several countries, more effective and

systematic involvement of CSOs and political commitment remain to be a challenge. Positive steps have been noticed most significantly in Kosovo where Minimum Standards for Public Consultations designed jointly with CSOs, were adopted, whereas in Bosnia and Herzegovina, e-consultations web platform was launched involving 9 ministries and 14 agencies at the state level. In Albania, Bosnia and Herzegovina, Montenegro, Serbia and Turkey, CSOs actively participated in working groups, nevertheless, their role remained passive overall and participation in policy-making ad hoc to a large extent. Moreover, in Albania and Montenegro access to information has been contested.

Macedonia emerged as the only Enlargement country where the situation has been assessed as deteriorated, amid the efforts being made by the Secretariat for European Affairs, and therefore the Report urged public institutions to consult and engage with civil society in finding a way out of the crisis by better involving them in policy-making, legislative process and in discussions resulting in concrete actions. Interestingly, political polarization and divisions were observed between CSOs who support the governing party and those who oppose it.

Finally, the area of **service provision** by CSOs this year remained only mentioned in the Serbian Report in the context of progress being made in VAT exemption to licensed providers of social services.

MAINSTREAMING CIVIL SOCIETY ISSUES IN EC REPORTS

As in the past two years, issues related to civil society development and participation are noted for other EU Acquis reform areas: human rights and the protection of minorities, public administration reform, rule of law, regional policy and coordination of structural instruments, judiciary and fundamental rights, legal and irregular migration, fight against terrorism and fight against organized crime, environment and climate change, consumer and health protection.



CONCLUSION

6 For third consecutive year, civil society has been one of the four pillars of Democracy in the assessment of Enlargement countries in their fulfillment of the Political Criteria for EU accession. The EU CS Guidelines with its benchmarks and country targets are for the second year in a row providing the backbone of the more in-depth understanding and monitoring of the conditions in which civil society activists and CSOs need to operate. The data gathering process and analysis, which is both conducted by BCSDN and TACSO project and channeled into the Commission assessment process, has this year been more inclusive than ever before both of CSOs and Governments. On an annual review conference organized in Skopje 25-26th April, 2016, the Commission has requested for CSOs and Governments representatives to sit side by side and deliver their joint proposal for the Report analysis - a process that has intended to help them understand the Commission's reporting system as well as to get them involved in it so that recommendations made in the Reports in November are eventually taken up and addressed. Although only taking place at bureaucratic level,

this novelty is both timely and relevant. Still, considering the lack of considerable progress in the structural reform process in all countries and the political instability providing background for increased attacks and pressure on civil society activists and CSOs, the Commission will need to both push further and higher. In the 2018 spring Report, the Commission should aim to provide clear progress (or its lack) against EU CS Guidelines targets to show concrete results and achievements with the Guidelines and needed adjustments on the road ahead to 2020. It should also aim to get political level, both in the EU and Enlargement countries involved endorse the EU CS Guidelines. But maybe most importantly, the Commission should continue its support to critical and strategic national and regional civil society initiatives that it has helped to develop and shape with its so far assistance under the IPA Civil Society Facility. This is critical time for initiatives in key areas of structural reforms such as media freedom, rule of law, anti-corruption, access to justice, rule of law, environment and others to keep on providing the continues monitoring and pressure to deliver reform for the citizens and the EU accession process and some of which cannot sustain its work without its support.



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