

ENABLING ENVIRONMENT FOR CIVIL SOCIETY DEVELOPMENT & COUNTRY REPORTS AND ENLARGEMENT STRATEGY 2018 BACKGROUND ANALYSIS



BALKAN CIVIL SOCIETY
DEVELOPMENT NETWORK

WINDOW OF OPPORTUNITY FOR ENLARGEMENT: HOW MUCH SPACE FOR CIVIL SOCIETY?

This is BCSDN 9th analysis of the annual Commission Enlargement Reports and its assessment of the progress made in the area of civil society development and dialogue with public institutions. The analysis is set against BCSDN's [Monitoring Matrix on Enabling Environment for Civil Society Development](#).

With clear language and a hint of urgency, the new Enlargement Strategy delivers a powerful message reaffirming the enlargement perspective of the region and announcing enhanced EU engagement, while at the same time calling on all Western Balkan countries to redouble their efforts for completing their political, economic and social transformation.

Calling it a “historic window of opportunity”, the European Commission calls on the governments to bring all stakeholders on board from across the political spectrum and from civil society, in order to address vital reforms and complete this transformation. The Strategy stresses, “Joining the EU is far more than a technical process. It is a generational choice, based on fundamental values, which each country must embrace more actively, from their foreign and regional policies right down to what children are taught at school.” For these processes, active involvement of empowered civil society and the existence of enabling environment for civil society is emphasized as crucial.

In support of its pledge for enhanced engagement in the region, the Enlargement Strategy 2018 has

announced six flagship initiatives, outlined in more details in the accompanying Action plan: strengthening the rule of law, security and migration, socio-economic development, transport and energy connectivity, digitalization, and good neighborly relations.

The Strategy announces that the European Commission will encourage appropriate engagement from all levels of government, social partners and civil society in the initiatives aimed to support employment and social policy in the region. That said, it fails to encourage overall civil society’s involvement in all the other initiatives, leaving out even the one aimed towards strengthening the rule of law. After all, civil society’s contribution in addressing key rule of law challenges has been recognized by the EU on multiple occasions, including in all of the 2018 country reports under the Chapter 23 and 24 sections.

As the concrete activities and tools under the Action Plan in support of the transformation of the Western Balkans are to be developed in detail in the following period, the European Commission should have in mind involving the civil society when defining the activities and tools for strengthening support to the rule of law.

Civil society development and civil society dialogue are one of the priorities of the Enlargement process since 2007, and a separate part of Political criteria in the EC Annual Country Reports since 2014. In 2012, The European Commission (EC) laid down the set of preconditions that have to be in place in a country for functioning of the civil society with the publication of the Communication “The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations”. 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, which are reflected in this year’s reports.

OVERVIEW: WHAT IS NEW?

There are several novelties in this year's Enlargement package, starting from being moved from the political (autumn) to calendar (spring) cycle of reporting, to publishing a revamped Enlargement Strategy in advance to the Country reports, and concrete flagship initiatives in support of the transformation of the Western Balkans. The focus on rule of law is further strengthened as Chapters 23 and 24 in this year's reports are moved from "Ability to assume obligations from membership", to the first section of the report together with the Political criteria.

Civil society remains to be firmly set as one of the four pillars of Democracy, as part of the Political Criteria for EU accession, presented in a separate section in each report.

A brief overview and assessment of progress made in the past period is noted, with the same opening line - "empowered civil society is a crucial component of any democratic system and should be recognised and treated as such by state institutions". The Guidelines for EU Support to Civil Society in Enlargement Countries, 2014-2020, seem to be providing the backbone of the more in-depth understanding and monitoring of the conditions in which civil society activists and CSOs need to operate. However, the 2018 reports still do not provide clear progress (or a lack of it) against the Guidelines' targets, and thus do not show concrete results and achievements of the Guidelines. Systematic and unified approach in the monitoring of the civil society environment in all country reports still seems to be missing.

1

CIVIL SOCIETY ENABLING ENVIRONMENT

BASIC GUARANTEES TO FREEDOMS OF ASSOCIATION, ASSEMBLY & EXPRESSION

This year's reports have toned down the remarks about significant incidents and cases of violation; except in the case of Turkey, where serious backsliding is noted in each of the 3 basic freedoms: of association, of peaceful assembly and of expression. As stated in the Turkey report, "There has been serious backsliding regarding civil society as it came under increasing pressure, notably in the face of a large number of arrests of activists, including human rights defenders, and the recurrent use of bans of demonstrations and other types of gatherings, leading to a rapid shrinking of space for fundamental rights and freedoms."

No major restrictions on **freedom of association** have been noted in any of the other reports. The Serbia report again mentions the negative statements made by government officials and echoed by the media on civil society. In Macedonia, the developments between December 2016 and in 2017 are observed, including the increased pressure on CSOs, inspections and investigations by law enforcement agencies. There has been no progress noted in regards to the registration process in Albania, which was reported as problematic for CSOS even in the previous reports, due to the high financial cost of registration, lengthy procedures and lack of specialized judges.

Serious concerns have been raised about the restrictions on freedom of expression in Turkey, and harsh criticism on human rights defenders in tabloid newspapers has been noted in Serbia. There were no remarks in this area for any of the other countries. This comes as a surprise for the case of Montenegro, as previous reports did note smear campaigns of critical CSOs and CSO activists by high-level officials and pro-government media;



AREA 1: BASIC LEGAL GUARANTEES OF FREEDOMS

Principle	Standard/Benchmark
SUB-AREA 1.1.: FREEDOM OF ASSOCIATION	
Freedom of association is guaranteed and exercised freely by everybody	<ul style="list-style-type: none"> ⇒ 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	
Freedoms of assembly and expression are guaranteed to everybody	<ul style="list-style-type: none"> ⇒ 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

and CSOs have also been reporting about even more intensified denunciation towards civil society in the past period.³

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 third year in a row that the money laundering and anti-terrorism legislation remains restrictive for the NGO sector.

³ <http://institut-alternativa.org/izvjestaj-ek-za-crnu-goru-u-dijelu-civilnog-drustva-djelimicno-ispunjavanje-forme-bez-sustine/>

2

FRAMEWORK FOR CSO FINANCIAL VIABILITY AND SUSTAINABILITY: TAX TREATMENT, STATE SUPPORT & HUMAN RESOURCES

Similar to previous reports, the EC again noted lack of stimulating fiscal frameworks for giving, transparent access and distribution of public funds, and human resources development. The importance and the need for a more comprehensive approach to civil society development has been highlighted in all of the countries, although again this area has caught EU's attention in some countries more than others.

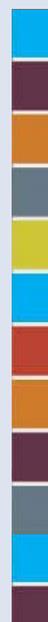
The sub-area concerning **tax/fiscal treatment** of CSOs has been monitored in detail only in Albania, where no significant developments were recorded in the legal and regulatory framework of the tax treatment for CSO, which remains a problem and a significant financial burden for CSOs. Alike last year, Kosovo and Turkey are mentioned for not having appropriate fiscal incentives. For a first time in a while, Montenegro has been called on to improve the financial regulatory environment for CSOs.

Public funding has been mentioned in every country report, with needs for improvements noted in most of them. Amendments to the legislative frameworks with the aim of achieving a more effective system of public funding for CSOs have been noted in Montenegro and Serbia. It is highlighted that secondary legislation in this area still needs to be prepared in Montenegro, while the criteria for public financial support in Serbia need to be better defined to ensure overall transparency. The necessity for greater transparency is emphasized in the reports for Bosnia and Herzegovina and Turkey. For Albania, it is noted that public funding for CSOs remains limited and is not yet legally regulated at central and local level. Some positive developments towards greater transparency of public funding (with further need for

improvement) were reported in Bosnia and Herzegovina, where results of public funding calls were made publicly available. Similarly, in Kosovo new regulation was adopted, laying down criteria and procedures for public funding, and a report on public funding was published by the government, for the first time, in March 2017. For Macedonia, the report points out the need for binding rules for state financing of CSOs, in addition to the more general statement that "The state needs to strengthen the enabling environment for civil society with relevant legal, financial, policy and administrative frameworks."

There is no mention of the issues of non-financial state support in any of the country reports. Only two of the 2018 reports have taken note of the issues concerning the development of civil society **human resources**: In Albania the implementation of the laws on volunteering and on social enterprises is reportedly hampered by the lack of sub-legal acts, while in Montenegro the legal framework for volunteering remains overly restrictive.

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, M&E 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



Traditionally, the cooperation between public institutions and civil society is the area that receives the biggest focus in the reports and where the Commission, since few years ago, has been making clear assessment of the progress made by each of the countries.

Regarding the **frameworks and practices for cooperation**, some progress has been observed in Albania, Bosnia and Herzegovina, Montenegro and Kosovo. The positive developments are: in Albania - improved functioning of the National Council for Civil Society; in Bosnia and Herzegovina - the establishment of institutional mechanisms for cooperation between governments and CSOs, and the signing of the Charter on Cooperation between the Council of Ministers of Bosnia and Herzegovina and CSOs; in Montenegro - the improvement in frameworks for cooperation between the government and CSOs; and in Kosovo - the entry into force of the regulation setting standards for public consultation. However, the reports also emphasize that key issues remain to be addressed for improving the cooperation between the government and the civil society in each of these countries.

Among the most notable mentions is the need for additional resources, clear rules and genuine involvement on both sides for improving the mechanisms for government to consult the civil society in Montenegro; a long-term strategic framework for cooperation with civil society in Macedonia, Turkey and Bosnia and Herzegovina (at all governance levels); and setting up the council for civil society cooperation in Serbia;

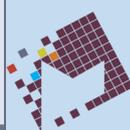
For the first time in a while, good progress has been indicated in civil society's **involvement in policy- and decision-making** processes at least in one country – Macedonia, where the change of government seemingly brought some fresh enthusiasm. The report has recognized the increased involvement of civil society in dialogue, policy development, and legislative drafting, as well as the improved transparency of the process in Macedonia. However, it notes that this “should be translated into more structured, comprehensive and predictable consultative process, involving all stakeholders.” The need for more systematic, transparent and meaningful involvement of civil society is emphasized almost in all countries. In Albania, it is noted that civil society participation has increased, but remains

occasional. In Kosovo, “further efforts are needed to ensure meaningful involvement and cooperation also at local level”. The reports also make note of the quality of involvement of civil society in the negotiation processes. In Serbia, the report highlights that “the inclusiveness and transparency of the reform process, in particular on EU accession-related issues, need to be further strengthened.” In Montenegro, the Commission confirms there is “a general acknowledgement that civil society has an important role in the accession process, but beyond CSOs' formal participation in various working groups, the conditions for a genuine consultation process remain to be strengthened.”

There is no mention about any developments concerning **service provision** by CSOs in any of this year's reports.



AREA 3: GOVERNMENT – CSO RELATIONSHIP	
<i>Principle</i>	<i>Standard/Benchmark</i>
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



MAINSTREAMING CIVIL SOCIETY

In its 2018 country reports, the European Commission has evidently paid more attention on the civil society role in other areas of the EU Acquis, compared to previous years. It is encouraging to see that the civil society's involvement is recognized and noted in the monitoring of the developments concerning the rule of law and fundamental rights in every report. In all country reports,

the civil society role is noted in numerous relevant policy areas: regional policy and institutional framework, judiciary, fight against corruption, freedom of expression, prison system, minorities, marginalized and vulnerable groups, fight against terrorism, migration, asylum, environment and climate change, consumer and health protection, and external relations.

CONCLUSION

With the 2018 reports, the commitment to enlargement seems to be reaffirmed and the role of civil society remains crucial for the functioning of democracy in the countries. Civil society has been addressed in a structural manner and mainstreamed through different chapter areas in the reports, showing an increased interest of the EC to the potential role that CSOs can have in different reform areas. Although the reports follow the same structure when reporting on the environment in which civil society organizations operate, the level of monitoring, the findings, and the focus varies from country to country. What remains to be addressed are the results of the investment in civil society development through the Guidelines for EU Support to Civil Society in Enlargement Countries, 2014-2020 and how to demonstrate progress towards its targets.

This is BCSDN 9th analysis of the annual EC Enlargement Strategy and Country Reports and its assessment of the progress made in the area of civil society development and dialogue 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.



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