

# Monitoring Matrix on Enabling Environment for Civil Society Development

Regional Report:  
Western Balkan  
2019





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Author: Kristina Naunova & Ilina Neshikj  
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**Balkan Civil Society Development Network**

Address: Macedonia Street 43-1/9, 1000 Skopje, Republic of North Macedonia

Phone: +389 2 6144 211

Email: [executiveoffice@balkancsd.net](mailto:executiveoffice@balkancsd.net)

Website: [www.balkancsd.net](http://www.balkancsd.net)

[www.monitoringmatrix.net](http://www.monitoringmatrix.net)

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# Abbreviations

<b>BCSDN</b>	Balkan Civil Society Development Network
<b>CSO</b>	Civil Society Organization
<b>MM</b>	Monitoring Matrix
<b>CSDev</b>	Civil Society Development
<b>NGO</b>	Non-Governmental Organization
<b>PBO</b>	Public Benefit Organization
<b>CSR</b>	Corporate Social Responsibility
<b>ICNL</b>	The International Center for Not-for-Profit Law
<b>ECNL</b>	The European Center for Not-for-Profit Law

# Introduction

The Balkan Civil Society Development Network is pleased to present the 2019 edition of the *Monitoring Matrix on Enabling Environment for Civil Society Development*, examining developments in the Western Balkan countries (Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Montenegro and Serbia).

The Regional Report summarizes the findings and recommendations from all the country reports. A web platform offering access to the monitoring data per country is also available at [www.monitoringmatrix.net](http://www.monitoringmatrix.net).

The Monitoring Matrix, developed in 2013 by BCSDN, with the support of its members, partners, ICNL and ECNL, presents the main principles and standards that have been identified as crucial to the existence of a legal environment which is considered both supportive and enabling for the operations of CSOs. The Matrix is organized around three areas, each divided by sub-areas<sup>1</sup>:

1. Basic Legal Guarantees of Freedoms;
2. Framework for CSOs' Financial Viability and Sustainability;
3. Government – CSO Relationship.

The principles, standards and indicators rely on the internationally guaranteed freedoms and rights and best regulatory practices at the European Union level and in European countries. The Matrix aims to define the desired optimum situation for effective operation and development of civil society, as well as set a realistic framework that can be followed and implemented by public authorities. Having in mind that the main challenges lay in implementation, the indicators have been defined to monitor the situation by taking into consideration both the legal framework and its practical use<sup>2</sup>.

In 2015, in addition to the in-depth and qualitative monitoring, an assessment of the enabling environment was carried out, with categorization ranging from fully disabling to fully enabling environment. The system was created in order to address the need for 'compressed' and effective visual communication of findings and a systematic presentation of the changes in the enabling environment for CSDev in terms of standards across countries and years. It does not replace, but rather complements the qualitative assessment, as the narrative country reports are the basis on which categorization is conducted.

The research undertaken with the MM aims to provide for shadow reporting on the enabling environment for CSDev and influence enlargement policy and funding support towards sustainable and strategic development of the sector.

1. As a research tool for assessing the state of the legal, regulatory, and financial environment in which CSOs in WBT operate, the Matrix aims to address the need of CSOs for having evidence-based research products and capacities to advocate for policy changes towards a more enabling civil society environment.

2. For these purposes, the findings part of the report makes further references and notes to the Guidelines for EU Support to Civil Society in Enlargement Countries, 2014-2020.

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# Background - Regional overview

In 2019, the general situation in the Western Balkans faced lingering socio-economic and political challenges, affecting, eventually, the environment and operations of civil society. The EU integration process for Serbia and Montenegro moved slowly forward with the opening of only two negotiation chapters in Serbia (which marks the worst result since 2015), and no negotiation chapters in Montenegro. In Kosovo, the Stabilization and Association Agreement with the European Union is still in force, as well as the European Reform Agenda launched in November 2016. Nevertheless, the implementation of activities that would accelerate the country's EU Integration has been slow. Two major developments in the region echoed in the international area. At the beginning of the year, North Macedonia changed its name by enforcing the Prespa Agreement with Greece, paving the way towards NATO accession and opening the EU negotiations. In May 2019, the European Commission issued a positive unconditional recommendation to start the accession negotiations with North Macedonia and Albania. In October, however, the European Council decided to postpone the decision, giving rise to deep dissatisfaction in both countries. Still, citizen support for EU accession in the two countries has not fallen in the hope that accession talks will finally open in 2020.

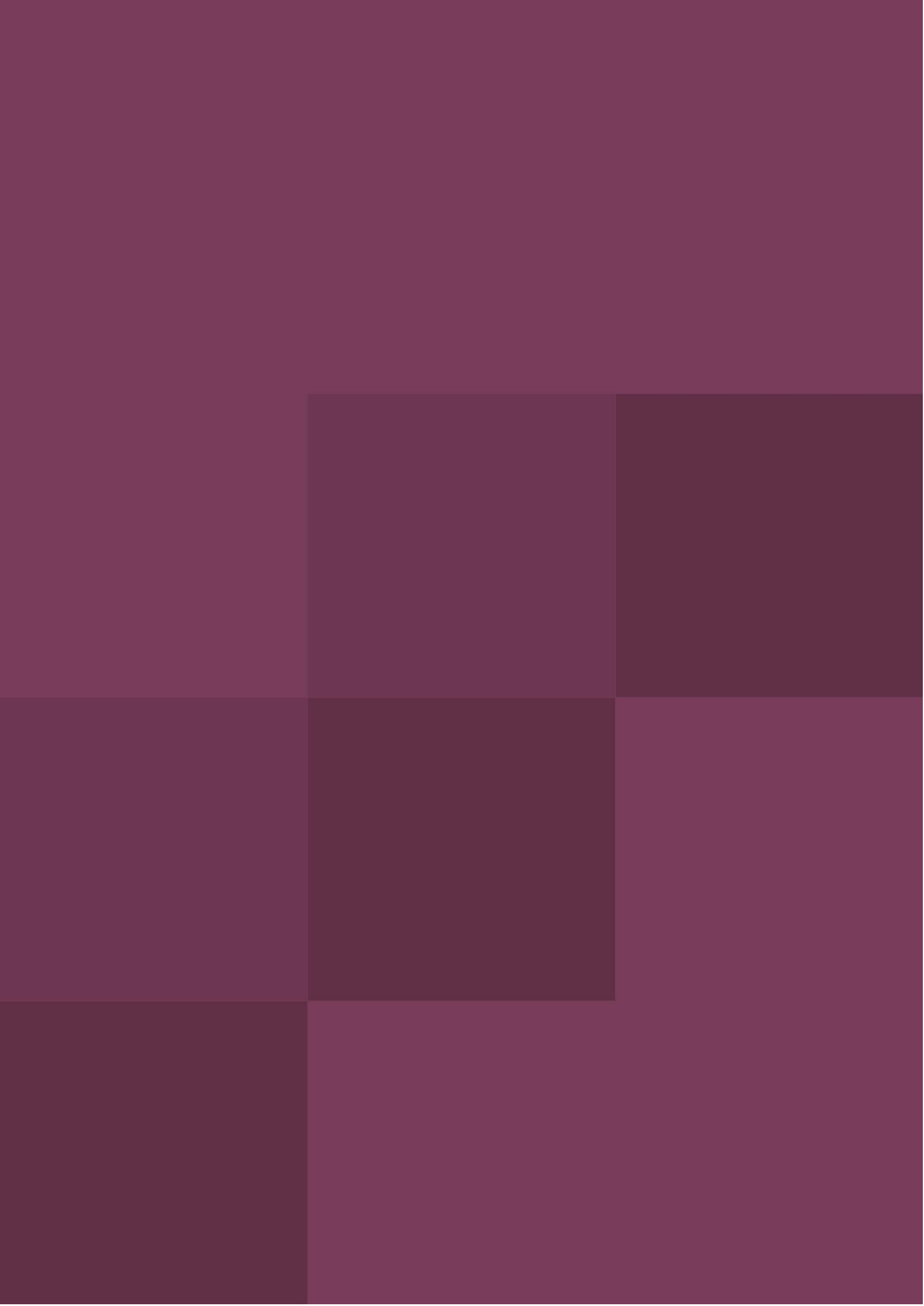
The political environment in most countries remained unfavorable, especially towards civil society development. Albania faced a political crisis which saw clashes between the Parliament and the President and a boycott of the local elections on 30 June 2019, with the major opposition parties refusing participation in the process and voters being left with few meaningful political options. Deep divisions and lack of trust and communication between the most important political actors have also marked the political landscape in Montenegro. Most notably, the Parliamentary Committee that was in charge of creating and proposing a new electoral legislation completed its task with suspended participation of the opposition members, giving rise to strong suspicions among the pro-opposition public about the conditions in which the next parliamentary elections will be held. The state of political instability in Kosovo continued in 2019, while North Macedonia faced a rule of law crisis. More specifically, the Special Public Prosecutor was arrested and a ruling party politician accused of alleged extortion scandal, undermining citizen trust in the rule of law and the independence of the judiciary.

In terms of cooperation between CSOs and the state, however, CSOs in North Macedonia were involved in the law and policy creation processes with a positive outcome, such as the adoption of the Anti-Discrimination Law and the Law on Abortion, aimed at further promoting and protecting human rights. In Kosovo, the new Strategy for CSOs-central Government cooperation 2019-2023 has entered into force in February 2019. Its objectives include: (a) strengthening public servants' capacities and the implementation mechanisms regarding the Regulation on Minimum Standards for Public Consultation and the Regulation on Public Funding for CSOs, (b) improving the system of public service provision by CSOs, and (c) increasing volunteering in public interest programs. Serbia continued to adopt a rather hostile attitude towards CSOs, with CSOs being portrayed as political opponents to the ruling party and enemies of the state in the majority of media favouring the Government or the ruling party. This situation is further exacerbated by the frequent founding of GONGO organizations which do not only receive state financial aid, but also use the space given to them in pro-government media to



discredit CSOs and have been doing so with a long-standing tradition and great expertise. Furthermore, the state's lack of interest in the work of the civil sector is reflected in the failure to adopt the National Strategy for an Enabling Environment for Civil Society Development in the Republic of Serbia. In Montenegro, the state of civil society has remained largely the same as before. Despite the continuous rhetorical readiness for cooperation shown by government officials, a substantial civil society involvement has been lacking. The situation is similar in Bosnia and Herzegovina, where the political stalemate, as well as decentralization of the state structure, has had a negative impact on the ability of registered CSOs to carry out planned and budgeted activities and projects as the ministries are not operating at full capacity. Moreover, as the migrant crisis increases the pressure on society, CSOs have played an important role in providing better treatment for the immigrants seeking refuge in the country. Similarly, when Albania was hit by a severe earthquake in November 2019, CSOs took active part in the relief efforts, ensuring coordinated distribution not only of supplies, but also psychological support and recreational activities for children, women and the elderly.

Overall, not many changes were introduced in 2019 to improve the enabling environment for development of civil society in the Western Balkans region.



# Executive summary

## Civil Society Overview

	Albania	Bosnia and Herzegovina	Kosovo	Montenegro	North Macedonia	Serbia
Number of registered organizations	11.739	27.195	10.124	5.705	10.710	34.734
Key civil society laws	Law on the Non-Profit Organizations; Law on the Registration of Non-Profit Organizations; National Accounting Standard for Non Profit Organizations	Law on Associations and Foundations	Law on Freedom of Association in CSOs Law on Access to Public Documents; Strategy on Government-CSO Cooperation 2019 – 2023	Law on Non-Governmental Organizations	Law on Associations and Foundations	Law on Associations; Law on Endowments and Foundations; Government Regulation on Establishing the Office for Cooperation with Civil Society;
Relevant changes in legal frameworks	Instruction no. 34, dated 02.12.2019 "On a Modification of the Instruction no. 6, dated 30.01.2015 "On the Value Added Tax in the Republic of Albania", as amended" (VAT Refund) The Roadmap for the Government Policy towards a More Enabling Environment for Civil Society Development 2019-2023	n/a	Draft laws on: (1) Labour (2) Maternity leave  Concept documents on: (1) Public gatherings (2) Volunteering (3) Family and social services	n/a	Adopted changes: (1) Law on Free Access to Public Information (2) Rules of Procedure of the Council and the Decision on Establishment of the Council for Cooperation with and Development of Civil Society (3) Law on Social Protection (4) Law on Free Legal Aid (5) Law on Value Added Tax  Proposals: (1) Draft-law on Lobbying (2) Draft-law on Public Assemblies	The Law on Free Legal Aid -Since its passing, certain CSOs that have performed these activities for years are now prevented from doing so.
State funding (key bodies and amounts)	approx. 793.000 EUR	n/a	21 million EUR*	3.4 million EUR	approx. 11.8 million EUR	66.9 million EUR.
Human resources (employees and volunteers)	9.966	2.064 in B&H 1.050 in Republika Srpska	Employees who have made continuous contribution in the past 12 months: 4, 009 Employees with more than one occupation and working in the sector: 9, 533 Volunteers: 10,000	n/a	1.642	n/a
CSO-Government Cooperation (relevant/new body: consultation mechanism)	National Council for Civil Society	Advisory Board of the Council of Ministers	The Council for Implementation of the Government Strategy for Civil Society Development; (1) The online Platform for Public Consultation (2) Kosovo's Assembly Media and Mass Communication Department	Council for Cooperation between NGOs and state bodies	Council for Cooperation with and Development of the Civil Society	Government Office for Cooperation with Civil Society Contact points for cooperation with civil society in certain ministries
Other key challenges	Lack of data and accurate information on CSOs;  Financial viability and sustainability of CSOs remain weak. The sector is donor dependent, international donor support being the primary source of income.	Data management methods vary and have not been harmonized (e.g. financial support, grants, employment, volunteer engagement etc.).	Lack of official data, particularly data related to the economic value of the sector.	Insufficient official data about CSOs; Poor philanthropic and donation culture; Lack of staff in CSOs; Lack of funding diversity.	/	Insufficient records regarding implementation of tax incentives; Lack of statistical data with regard to distribution of state funding, volunteering, number of employees and persons under contract.

\*The figures provided are official government data for the distribution of funds according to the budget lines for CSOs. However, in most countries, these figures also count funds allocated to other entities such as federations, sports clubs, public service contracts, etc. For more accurate information, please check the detailed country reports.

## Key findings

### Key findings identified based on the country reports

1.	<p><b>Area 1 (1.1):</b> Freedom of association continues to be legally guaranteed in all countries of the region. Organizations are allowed to build networks, coalitions and other types of unions. However, a few challenges remain. Although improvements have been observed in some countries still the majority have identified the need for a more reliable system of statistics on organizations. Shortcomings in protection against unwarranted interference of the state in CSO affairs have not been fully addressed (although there was some progress with new legislation, eg. Kosovo). With regard to financial reporting, the legislative framework in most countries in the region (with the exception of Kosovo) has been modified to comply with the recommendations given in the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and the Financial Action Task Force (FATF). Some of these amendments specify that CSOs should ensure more detailed financial reporting to state agencies. Despite being aimed at increasing transparency, these reporting requirements could place additional burden and pressure on CSOs, shrinking the civic space in the countries.</p>
2.	<p><b>Area 1 (1.2):</b> Even though basic freedoms continue to be legally guaranteed, countries need to strengthen accountability of all relevant institutions in charge of protection and enforcement of these fundamental rights. In practice, the majority of countries have seen a growing number of assemblies, which may be considered a positive indicator of the enabling environment for public assemblies. On the other hand, it is worrisome that in almost all of the countries there have also been cases of restrictive police interventions. The factual situation across the region shows that freedom of expression is facing certain limitations as journalists face a continuous interference in their work.</p>
3.	<p><b>Area 2 (2.1.; 2.2):</b> The legislative and tax framework for CSOs continues to pose challenges for donors, although some improvements have been noted in Albania and North Macedonia. A shared characteristic between the countries in the region is that foreign donors are the dominant source of funding and that the area lacks diversification. Individual and corporate giving in the region is still insufficiently practiced. Moreover, practice shows that state funding is not a viable source for CSOs as it is limited in the ability to support the work of CSOs.</p>
4.	<p><b>Area 2 (2.3):</b> In all of the countries, the legislation and policies pertaining to employment do not take into account the specific nature of CSO operation. Therefore, employment in CSOs is still quite low in practice. On the other hand, volunteering continues to be a viable practice for CSOs in the majority of countries, which is mainly due to stimulating regulation, although in some countries special laws are still to be enacted, such as in Bosnia and Herzegovina and Kosovo.</p>
5.	<p><b>Area 3 (3.1.; 3.2):</b> CSO-state relationships are regulated by legal and/or policy documents in all of the countries. However, their implementation is still slow and rather incomplete due to persistent issues, such as the lack of political commitment, allocated resources and implementation skills. Dialogue with public authorities has been limited, particularly with regard to CSO involvement in the decision-making processes.</p>
6.	<p><b>Area 4 (3.3):</b> Legal frameworks for service provision continue to be unsupportive of CSOs as service providers, resulting in only a few public service contracts.</p>

## Key recommendations

Key recommendations of the report	
1.	Legal guarantees for freedom of association, freedom of assembly and other related freedoms should be enforced and the current framework should be properly implemented in practice.
2.	Fiscal regulations on CSO income and tax incentives for donors need to be revised to provide more supportive tax treatment for CSOs; Public funding mechanisms need to be reformed and their rules properly implemented to ensure relevant, transparent and accountable redistribution procedures.
3.	Stimulating legislation and programmes should be adopted and implemented to promote volunteering and employment.
4.	Mechanisms for cooperation between CSOs and public institutions with clearly outlined responsibilities need to be put in place and made functional through efficient allocation of funds and skilled human resources.
5.	CSOs should be regularly involved in the decision and policy-making processes at all levels, including unrestricted access to information and inclusion in the early stages of consultation.
6.	The state should improve CSOs involvement in the provision of services.

# Findings

## Area 1: Basic Legal Guarantees of Freedoms

### Sub-area 1.1. Freedom of association

#### Establishing and Participating in CSOs

**Freedom of association continues to be legally guaranteed in all countries of the region.** Kosovo was the only country to introduce amendments to the Law on Freedom of Association in Non-Governmental Organizations in 2019. The law was drafted with the inclusion and enormous efforts of CSOs to ensure alignment with the best international standards and practices. Its legal provisions guarantee the right to associate without obtaining prior permission in three legal forms: associations, foundations and institutes. Freedom of association applies both to individuals and legal entities that wish to establish associations, foundations or institutes. Protection against any form of discrimination is guaranteed as specified by the Law on Protection from Discrimination. Registration of organizations is not mandatory. However, the legal framework does not group grassroots under a separate category. The amendments to the law have shortened the registration procedure from 60 to 30 days. Registration is free of charge and registration rules are considered easy to follow. An online platform for CSO registration is also available, simplifying the registration process even further.

The legal framework in North Macedonia permits natural and legal persons to exercise the right to freedom of association offline or online, without discrimination on any account, including being a foreigner. Registration is not mandatory and registration rules are clearly established and allow for easy and timely registration. The Central Registry of the Republic of North Macedonia (CRNM) is the only institution where CSOS could register and registration is available within 5 days of the day of submission of the registration request in hardcopy. Online submission is still not available for CSOs.

Similarly, the Law on Non-Governmental Organizations in Montenegro stipulates that a non-governmental association is formed by no less than three people, of whom at least one is a citizen or resident of Montenegro or by a legal entity. However, explicit prohibition in Montenegro prevents political parties or state bodies from establishing NGOs. CSOs register at the Ministry of Public Administration and the procedure is free of charge. Nevertheless, practice has shown that in some cases the registration process can be quite lengthy, with some organizations reporting it lasted for several months rather than 30 days.

Likewise, no restrictions exist to the freedom of association in Bosnia and Herzegovina, Serbia and Albania. In Albania, registration is not mandatory and the process continues to be centralized at the Tirana District Court. In practice, however, registration at the Tirana District Court has proved lengthy. A single electronic register containing the sector's comprehensive records has not been made available yet, despite being outlined by the Law on the Registration of Non-profit Organizations.

In Bosnia and Herzegovina, the Ministry of Justice has established an Integrated e-Register of all registered associations and foundations. In Serbia, the legislation is fully aligned with international standards and everyone is free to establish associations,

foundations and other types of non-profit, non-governmental entities, without mandatory registration. If founders choose to register the organizations, the rules are clear and allow for easy, timely and inexpensive registration and appeal processes. In practice, however, information provided by the Business Registers Agency based on FoI requests, indicate that in the past 12 months, 283 registration applications have been denied due to procedural reasons.

In all of the countries, organizations are allowed to form networks, coalitions and other types of unions.

### State Interference

**The legal framework of the countries in the region affords protection against unwarranted interference of the state in the internal matters of CSOs, protecting CSOs' autonomy.** However, potential threats to CSOs' integrity still exist.

Even though the legal framework in North Macedonia provides guarantees against state interference in the internal matters of associations, foundations and other types of non-profit entities, and to a certain extent, interference by other third parties, certain issues remain unresolved. Namely, the contested provisions of the Criminal Code have not been modified and representatives of CSOs are still being qualified as "officials" alongside public authorities, and by the same token, facing the same liability requirements. Furthermore, a new 2019 draft of the Law on Lobbying contains provisions with unclear definitions of lobbyists and lobbying activities. Ultimately, this might threaten the principle of public participation which provides CSOs with the opportunity to express opinions freely, start initiatives and participate in policy making.

Albania adopted a new Law on Accounting and Financial Statements that imposes new reporting requirements on CSOs. The law does not take into account the non-profit nature of CSOs and the adoption of the anti-money laundering and counter-terrorism legal package and its bylaws (introducing a high number of risk indicators for measuring CSO activities), which might affect operation and independence of the sector.

In Kosovo, the amendments to the Law on Freedom of Association in Non-Governmental Organizations have also introduced specific provisions on protection of CSOs from interference by third parties, which the preceding legal framework lacked. However, concerns have been raised regarding the provisions on preventing money laundering and combating terrorist financing as they identify CSOs as reporting entities and subject them to burdensome requirements, such as having a certified staff for anti-money laundry legislation and monitoring CSO beneficiaries. Due to this legislation, some CSOs have reported issues with accessing banking services, which is considered a major threat to the operation of CSOs. Serbia has not yet enforced specific provisions aimed at protecting CSOs from interference by third parties. Media's smear campaigns on CSOs and growing pressures on social networks also present an issue. Nevertheless, survey results showed that less than five CSOs experienced interference by the state in their operations in 2019.

In Montenegro, assessment shows that the government oversteps its legal limitations, interfering in the work of CSOs. This is usually done through excessive audits, inspections, evaluations, withholding funding for programs and projects and using media smear campaigns against organizations that speak out in order to create political interference.

The survey conducted in each of the countries showed that several organizations reported interference by the state in their work, either by means of unannounced state visits, or by imposing discriminatory administrative measures. Several CSOs also reported difficulties accessing banking services. A few of the cases were related to reported threats by government representatives; harassment and limitations of the

activities of online groups. A case of a major financial oversight by a state institution was also recorded.

### **Financial reporting and accounting rules for CSOs have slightly improved in some countries, but keep on being burdensome in others.**

In North Macedonia and Serbia, regulations on financial reporting and accounting take into account the specific characteristics of CSOs to a certain extent. In 2019, the Law on Accounting for Non-Profit Organizations in North Macedonia was not modified even though improvements were envisaged in a strategy document. In Serbia, the Law on Accounting recognizes, to some degree, the specific nature of non-profit entities by employing a separate accountancy framework, which is positive. However, the law lays down a few elements that do not apply to non-profit entities and their operations, which places an additional burden to organizations with respect to the recording of financial data.

In Albania, the Directive on the National Accounting Standard for Non Profit Organizations stipulates simplified reporting requirements for organizations with annual revenue below 5 million ALL (approx. 37,000 EUR). Organizations with value of total assets or income higher than 30 million ALL (approx. 235,000 EUR), on the other hand, are obliged to prepare a performance report and publish it on their official websites, along with the annual financial statements, under the new Law on Accounting and Financial Statements from 2018. The template of the report is still being discussed and is expected to be issued by the National Accounting Council in 2020.

In Kosovo and Montenegro, the legislation on financial reporting and accounting does not take into account the specific nature of CSOs. CSOs are subject to audit, inspections, evaluations, and similar types of control and monitoring that apply to other legal entities, such as companies and corporations, and are considered excessive and burdensome. In Montenegro, the need for creating a new financial reporting regulation is recognized in the Strategy for Improving Enabling Environment for CSO Operation in Montenegro 2018-2020. Nevertheless, no progress was observed in 2019.

Finally, it is worth mentioning that the legislative framework in most of the countries in the region has also been modified to comply with the recommendations given in the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and the Financial Action Task Force (FATF). Some of these amendments prescribe that CSOs ensure more detailed financial reporting to state agencies. In general, although aimed at increasing transparency, these reporting requirements could place additional burden on CSOs. This is an important issue and its development and effect on the work of CSOs should be closely observed in the years to come.

In Kosovo, the legislation on prevention of money laundering and combating terrorist financing is still not in line with the Financial Action Task Force (FATF) Recommendations and EU Directive 2015/849. The law currently regards all CSOs as reporting entities and subjects them to burdensome requirements. Such requirements lay down that each CSO should employ certified staff for anti-money laundering legislation and keep track of all CSO beneficiaries. In line with FATF recommendations, in 2018, a risk assessment of the civil society sector was conducted, which presented a long list of concerns. If adopted, it would result in additional CSO monitoring and inspection by municipalities and other institutions.



**Access to various sources of funding continues to be limited in the region. CSOs are allowed to secure income from grants, donations, membership fees, international funding, as well as income from economic activities.**

All the countries in the region rely on foreign donors as their primary source of funding. However, funding by private domestic donors is scarce in all of the countries and remains a non-viable source of CSO funding.

From a legal perspective, the legal framework in each of the countries generally permits CSO engagement in economic activities. However, specific rules in some of the countries lay out that CSOs cannot exceed the 4.000 EUR threshold on income from economic activities (Montenegro), income from economic activities cannot exceed 20% of the total annual income of CSOs (Serbia, Montenegro, Albania) and economic activities cannot be the primary activity of CSOs (Albania).

## Sub-area 1.2. Related-freedoms

### Freedom of Peaceful Assembly

*Freedom of assembly, expression and information are guaranteed by law in the majority of countries; however, severe and increased number of violations is still being identified in practice.*

**Even though the right to peaceful assembly continues to be legally guaranteed, laws in almost all of the countries contain various restrictions or ambiguities, particularly in relation to spontaneous and counter assemblies, as well as to whether the freedom of assembly extends to foreigners.**

In 2019, no changes have been made to the legal framework governing the exercise of the right of freedom of assembly in any of the countries. Nevertheless, a few proposals for amendments and draft laws relating to public assemblies were put forward in North Macedonia, Bosnia and Herzegovina, and Kosovo. All of these proposals, however, only exacerbated the previous legal situation and provided no solution to some of the lingering issues that were not addressed in previous laws.

In North Macedonia, the Law on Public Assemblies (LPA) contains various shortcomings which were not overcome in 2019: the obligations and responsibilities of the rally organizer are not clearly defined and they are liable to high fines in the event of damage, foreigners need to obtain permission to be able to attend gatherings and face severe penalties for non-compliance with the provisions. Furthermore, in 2019, the identified shortcomings in the Law on Police were also not removed: keeping video recordings for 45 days and recording audio and video without giving prior notice. By the end of 2019, an extensively amended and restrictive version of the LPA was prepared and shared for public consultation. Relevant CSOs were not consulted in the preparation of these measures and after a serious backlash by the public and CSOs on social media, the Government quickly withdrew the law.

In Bosnia and Herzegovina, following the emergence of mass social movements in 2018 and their associated activities, a new highly restrictive Draft Law on Public Gatherings in the Republika Srpska (RS) was introduced, which included provisions with bans on organizing gatherings or participation in gatherings, heavy sentences of up to 2 years of imprisonment for both organizers and participants, and bans on photographing police under any circumstance. This implied a very firm and dangerous intention of the RS Government to restrict freedom of assembly. However, the draft law was withdrawn following pressure by CSOs and the international community in April 2019.

In Kosovo, in 2019, the Ministry of Internal Affairs began the process of drafting a new Law on Public Gatherings. Even though the draft law passed the stage of online public consultation, it did not seem to address the problematic areas identified by CSOs, such as legal restrictions on simultaneous and counter assemblies. Moreover, it remains unclear whether freedom of assembly in Kosovo extends to stateless persons, refugees, foreign nationals and other persons, apart from Kosovo residents.

Similar challenges have been observed in the rest of the countries as well. In Serbia, the Public Assembly Act does not recognize a counter assembly category. In Albania, despite the improvements made in 2018 with the adoption of the procedures pertaining to the Albanian Police State based on the recommendations of the Ombudsman, amendments to the legal framework on peaceful assemblies are still needed. This mostly refers to the need to for clarification of the legal confusion between giving notification and submitting request/obtaining permission for holding an assembly. The right to spontaneous and counter assemblies has not been addressed here as well.

In practice, most of the countries see a growing trend of assemblies, which is considered a positive indicator of the enabling environment for public assemblies. On the other hand,

what is worrisome are the cases of restrictive police interventions in almost all of the countries. In Serbia, numerous cases were reported. In certain instances, for example, even though the police was present, it did not take action to protect protestors when their security was compromised. In other cases, “over policing” was observed, with the police using considerable force and even injuring and detaining protestors. In Montenegro, participants of informal groups reported having witnessed the police using excessive force on the elderly, people with health problems and pregnant women. To illustrate, in December 2019, the adoption of the Law on Freedom of Religion led to spontaneous public gatherings in several cities in Montenegro, resulting in protests and riots during which the police used force and detained 30 people. The media also reported excessive use of force during civic initiatives and protests in the country, many of which were backed by evidence such as video recordings that were shared with the online public.

North Macedonia recorded only one case of use of excessive force by the police and detention of protestors, five cases of administrative burdens, three instances of restriction of physical access, three obstructions of the desired time for protesting. Kosovo witnessed only one case of use of force by the police against protestors, leaving several injured, including children.

On a final note, it is worth pointing out that North Macedonia, Bosnia and Herzegovina and Serbia had their first Pride Parades in 2019, which were held peacefully and without any incidents.

### Freedom of Expression

**Freedom of expression is a constitutional right, legally protected in all aspects across the whole region.** Limitations to the freedom of expression are legally prescribed and valid and particularly focused on the prohibition of hate speech. In view of the global and regional trends of fake news and disinformation campaigns, almost every country has taken action to tackle this problem. Libel is decriminalized in all of the countries, with the exception of Albania and Kosovo. In Albania, defamation is still a criminal offence, although not punishable by imprisonment. In 2019, the Government of Albania also drafted an anti-defamation legal package on regulating electronic media. According to the proposed legal provisions, electronic media are obligated to review every written complaint about the content published on their website, including requests for content removal. The proposed legal package was widely opposed by media and human rights organizations as it was thought to violate the right to freedom of expression. The package was approved by the Parliament in December 2019, but it was not enacted since the President resubmitted it for further improvements. How the issue will be resolved remains to be seen in the period to follow. In Kosovo, despite the amendments made to the Penal Code in 2019, libel still continues to be considered as a misdemeanor.

**Even though freedom of expression is rigorously protected by law, violations have been reported in practice.** Facts across the region show that journalists face continuous interference in their work. A great number of cases in all of the countries show intimidation, threats, arrests, verbal and physical attacks, political, institutional and economic pressure on journalists, journalist associations and media outlets, especially those that speak out against the government. What is more problematic in each of the countries is the lack of efficient investigations and prosecution with regard to cases involving attacks on journalists, which needs addressing in order to promote a more enabling environment for freedom of expression. The use of smear campaigns against CSO representatives is also practiced in the region.

**All of the countries in the region have legal guarantees in place to protect the free access to information and the right to safely receive and impart information through any media. The legal framework also provides certain guarantees against illegal monitoring of communication channels.**

In 2019, the legal framework did not undergo changes in any of the countries, with the exception of Montenegro, which adopted amendments relating to free access to information. Namely, the proposed Draft Law Amending the Law on Free Access to Information in Montenegro includes new restrictions that could severely limit the possibility to exercise the constitutional right of free access to information. Particularly problematic, according to experts, is the provision giving public officials the authority to determine which information is of public interest and therefore may be accessed by the public. This could lead to subjective interpretations and unjustified rejections of requests for accessing information, impeding the exercising of this right. The procedure for the adoption of the law is expected to conclude in 2020.

**Current practice shows very few cases of infringement of the right of access to information and the freedom to receive and impart information.** In Montenegro, an informal group member stated that phone calls, Viber and WhatsApp chats were monitored on several occasions and access to Facebook was suspended. In Serbia, unjustified monitoring of communication channels by the authorities was also reported. To illustrate, a report by the Belgrade Centre for Security Policy „A Case Study - Threats and Pressures Faced by Activists” indicated that almost every interviewee believed that their electronic communications were being monitored, although most of them said that they had no solid evidence to support it. Nevertheless, data shows that in recent years, CSOs have increasingly used social media and online platforms to inform and communicate with the public and advocate for concerning issues, which is a rather positive indicator for the state of the environment in which CSOs operate.

#### **Box 2: EU Guidelines assessment**

**Result 1.1.** The freedom of assembly, freedom of expression and other related freedoms continue to be legally guaranteed in all of the countries. However, several issues in the legal framework raise concerns. In Montenegro, the introduction of the new Draft Law on Free Access to Information has been subject to debate as it decreases the possibility of access to information and is still in the consultation stage. In Bosnia and Herzegovina, the procedure for drafting and adoption of the Law on FOAI has been postponed due to numerous complaints and proposals made by CSOs at the time of finalization of the document at the Ministry of Justice. In Albania, the proposed anti-defamation legal package poses serious threat to the freedom of expression. In Serbia, although guaranteed by the Constitution, freedom of assembly did not undergo proper regulation for quite some time, given the fact that a very restrictive law had been in force for a considerable period of time (since 1992), which was declared unconstitutional in 2015 by a Constitutional Court decision. The Public Assembly Act has been in force since 2016, but it does not adequately safeguard this important human right. A great deal of restrictions on freedom of assembly are set out broadly and leave too much room for arbitrary decisions by the Ministry of Interior. Practice is worrisome especially in Bosnia and Herzegovina and Serbia, where many instances of restricted freedom of assembly and freedom of expression have been observed.

## Area 2: Framework for CSO Financial Viability and Sustainability

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

#### Tax Benefits

#### **The legislative and tax framework for CSOs continues to pose challenges for donors, although improvements have been observed in Albania and North Macedonia.**

Positive changes in legislation have been observed in Albania and North Macedonia. First, the Albanian Ministry of Finance and Economy issued instructions on VAT refund procedures for funds provided by foreign donors to CSOs. With this regulation in place, all bilateral and multilateral agreements ratified by the Albanian Parliament or grant agreements approved by the Council of Ministers qualify for a VAT refund. Moreover, subject to VAT reimbursement are sub-granting schemes implemented through intermediary organizations. This is seen as a huge step towards improvement of the legal regulation on VAT refund in Albania and reflects the results of the advocacy efforts of the sector to this regard.

In North Macedonia, the Law on Value Added Tax (VAT) was amended and made more amenable for CSOs. In particular, the amendments increased the threshold on VAT registration. CSOs continue to not be governed by the Law on Profit Tax, and the new Law on Personal Income Tax exempts them from paying compensation to volunteers, accommodation, food and transportation costs for attendees of events organized by CSOs, as well as travel expenses. Furthermore, grants and donations from foreign donors are VAT exempt, with a prior project registration procedure as a precondition.

In Montenegro, VAT exemption is calculated on the total contract amount, including European Union and co-funding resources. Non-governmental organizations are also exempt from tax on real estate if the real estate is owned by the organization and used for achieving the goals of the organization. The same exemption grounds apply with regard to tax on real estate turnover. However, CSO representatives stress that CSOs need additional tax benefits since non-profit organizations pay the same taxes as companies or corporations, which affects the volume of services they can provide.

Serbia introduced no changes to its legislative framework. According to the Corporate Profit Tax Law, CSOs are exempt from taxation of grants, donations, membership fees and non-economic sources of income. In Bosnia and Herzegovina, CSOs do not have to pay income tax on donations made from the state budget or other public funds, sponsorships or donations given in cash and tangible assets. No recent changes to the legal framework regarding tax benefits for CSOs have been made in Kosovo either. A number of CSOs funding sources do not undergo taxation, such as grants, donations and subventions.

#### **Legislation in all of the countries offers all CSOs benefits relating to their economic activities.**

In Montenegro, the tax base related to taxes for economic activities of CSOs is reduced to 4,000 EUR if the income is used in a way that contributes to achieving the goals of the organization. In Bosnia and Herzegovina, CSOs can generate income by performing economic activities. If they earn up to 50,000 BAM (approx. 25,000 EUR) from service provision, they are exempt from paying VAT. In North Macedonia, pursuant to the Law on

Profit Tax, CSOs do not pay profit tax related to economic activities. The income becomes taxable once the total threshold of one million MKD (approx. 16,000 EUR) is exceeded by 1%, which is calculated only against the exceeding amount. In Albania, the revenue derived from economic activities should not exceed 20% of the total annual income of the CSO and is subject to VAT if the amount exceeds the VAT registration limit specified by the Law on Tax Procedures. In Serbia, the law stipulates that the income earned by CSO which is lower than 3.400 EUR is exempt from profit taxation. In the event of taxation, the profit tax rate is 15%, the same as with other legal entities. The legal framework on economic activity remains ambiguous in Kosovo, particularly with regard to economic activities of CSOs without a Public Benefit status. According to the Kosovo Tax Administration, the economic/commercial activities of PBOs are exempt from corporate income tax if the income is used solely for the public benefit and is up to a “reasonable level”. While this provision relates only to PBOs, another provision on commercial activities applying to all registered CSOs reads “commercial or other activity shall be exclusively related to its public purpose up to a reasonable level of income”. This implies that the economic activity of any registered CSO shall be directly linked to its mission and the income should be up to a reasonable level, whereas all other economic activities are subject to income tax. This incoherence causes difficulties in interpretation and implementation.

### Incentives for Individual/Corporate Giving

**Individual and corporate giving is poorly practiced in the region, especially in the civil sector.** The table below provides information on the legislative framework for donation tax incentives.

Country	Legislation regarding individual/corporate tax incentives
Albania	The legal framework on individual and corporate giving did not undergo changes during 2019. The only law governing donations is the amended Law no. 7892 on Sponsorship, dated 21.12.1994. The law defines sponsors as “only those entities having the quality of merchants, physical or juridical persons, domestic of foreign, or joint ventures” and the sponsorship amount is considered a deductible expense up to the amount of 3% and 5% for press publishers and literature, scientific and encyclopedic publications, as well as cultural, art and sport-related activities. Individual giving is not accounted for in the Law on Sponsorship or any other law, and therefore subject to any fiscal policy.
Bosnia and Herzegovina	Donations by taxpayers to legal entities in Republika Srpska are deductible up to 3% of the total annual income that comes from donations to organizations providing humanitarian, cultural, sport-related and social services, and 2% for sponsorship expenses. In the Federation of BiH, sponsorship expenses are tax-deductible up to 3%, as are costs related to donations made for humanitarian, cultural, educational, scientific and sport-related purposes to legal entities or individuals that have no other income.
Kosovo	The Law on Personal Income Tax and the Law on Corporate Income Tax allow 10% deduction of the taxable income of physical persons, corporations and other sources if such donations

	are made for humanitarian, health, educational, religious, scientific, cultural, ecological and sport-related purposes. Eligible recipients of these donations are CSOs and any other non-commercial organizations operating directly in the above mentioned areas. The provisions of the Law on Corporate Income Tax regarding CSOs remain ambiguous and it is unclear if the exemptions on standard corporate tax apply to all CSOs or only to those with a Public Benefit status.
<b>Montenegro</b>	The Law on Corporate Income Tax recognizes expenditures in the area of public interest up to 3.5% of the total income of the taxpayer. Amendments to the 2016 Law addressed some of the key problems in the Act: the concept of public interest was aligned with the provisions of the Law on NGOs (recognizing all 21 areas of public interest, instead of just 5 as stipulated by the previous legislation), specifying that tax benefits shall apply only if expenses were incurred by legal entities registered for performing activities in the areas of public interest defined by law, in line with special regulations, and that not only cash, but also things, rights and services shall be considered expenses.
<b>North Macedonia</b>	The Law on Donations and Sponsorships in the Public Activities (LDSPA) provides tax incentives for individual and corporate donations to CSOs. According to LDSPA, an individual making a contribution can deduct the calculated, but not paid personal income tax, or claim a return of the paid income tax determined based on their annual tax return in the amount of the donation, but no more than 20% of the donor's annual tax debt, or no more than 390 EUR. Enterprises can use tax benefits amounting to 5% for donations and 3% for sponsorships.
<b>Serbia</b>	The Corporate Profit Tax Law stipulates that expenditures on health care, cultural, educational, scientific, humanitarian, religious, environmental protection and sport-related purposes shall be recognized as expenditure amounting to not more than 5% of the total revenue. This means that public institutions and CSOs could both receive funds with tax deductible expenses. The law does not stipulate the clear criteria for final determination of the tax-deductible amount for each individual case. The Individual Income Tax Law, on the other hand, does not grant any incentives for individual donations.

Regarding **philanthropic activity**, a noteworthy development, in Albania, in 2019, was the initiative for creating a philanthropic fund from contributions made by the private sector (Solidarity Albania) aimed at addressing the problems of people in need, which was announced by the Prime Minister. In 2019, Albania marked a 94% increase in the total value of private donations compared to the previous year, which was mostly prompted by the earthquake that hit Albania in the autumn of 2019. According to the



Catalyst Foundation, Serbia saw an increase of almost 61.2% compared to 2018. This growth comes as a result of the increased humanitarian aid donations made by citizens, primarily in the field of health. In contrast, Catalyst Balkans research results for North Macedonia indicate a 13.4% decrease in donations made for charitable purposes, with citizens accounting for the largest part of the donations (46.1%). Most of the donations towards non-profit organizations in Montenegro were also made by individual citizens, making up for 36.5% of the donations.

**Despite being legally recognized, corporate social responsibility (CSR) is practiced very poorly in the region.**

Serbia and North Macedonia are among the positive examples of how the state could promote CSR. In Serbia, apart from the legal background supporting CSR activities, there is also a Responsible Business Forum dedicated to promoting and advancing the concept of CSR. CSR in North Macedonia is viewed as potentially encouraging of corporate giving, and therefore of interest to the Government. The Ministry of Economy adopted a Mid-term CSR strategy, (2019-2023) aimed at defining and implementing a comprehensive approach to the promotion and advancement of CSR with a focus on businesses. CSOs are listed as implementers of some of the measures/activities in the action plan of the Strategy. Conversely, CSR in Kosovo is neither commonly practiced among private companies, nor it is promoted by the state. Similarly, Bosnia and Herzegovina has an underdeveloped concept of CSR and inadequate legislation to regulate enforcement.

**Practice shows that a rather small number of CSOs have a public benefit/interest status (PBO) in Bosnia and Herzegovina, Kosovo, North Macedonia and Montenegro, regardless of the fact that it is permitted by law.** To illustrate, only 2.08% of the organizations that participated in an online questionnaire in Montenegro reported having a PBO status, and as few as 4 in North Macedonia. In Kosovo, a PBO status plays no part in receiving tax benefits, which means that the fiscal legislation is inconsistent with the NGO Law with regard to the PBO status.

**Box 3: EU Guidelines assessment here**

**Result 2.2. & 2.3.** Even though some tax incentives are provided to donors in all countries of the region, they are scarce and do not encourage sufficient private giving. CSOs are exempt from income tax on grants and donations. A degree of ambiguity exists with regard to economic activities and legislation needs to be improved. Currently, in the majority of countries, tax benefits related to economic activities are only provided if they contribute to the mission of the organization.



## Sub-area 2.2. State support

### Public Funding Availability

**State funding remains a limited source of income as support to CSOs in the region. The legal framework concerning state support for CSOs has not undergone significant changes and certain issues persist.**

Distribution of public funds for CSOs is mostly decentralized and performed by the ministries and other public institutions.

In Kosovo, under the Regulation on Criteria, Standards, and Procedures on Public Financing for CSOs, specific budget lines were to be introduced in the annual state budget to allow for public funds for CSOs. Although mandatory, public institutions have not yet included specific budget lines for CSO support in the annual budget. According to the Annual Report on Public Funds distributed to NGOs in 2018, 24 million EUR were allocated to CSOs from the total annual budget of EUR 1.8 billion. A review of the beneficiary lists (which was conducted by KCSF) showed that only 9 million EUR from the 24 million EUR reported as public financial support were actually allocated to civil society organizations. The rest went out to federations, sports clubs, economic operators, and services provided by CSOs on behalf of state institutions. An average of EUR 9,731.71 was allocated per CSO. The lists of public fund beneficiaries reveal that public institutions categorize the funds allocated for sports clubs, federations, religious institutions, private schools, art ensembles, and city theatres, as support for civil society organizations, which is problematic.

In 2019, in Montenegro, 6,001,249.05 EUR were planned under the current special budget item "Transfers to NGOs". In North Macedonia, the main budget line for CSOs continues to be 463 - Transfers to Non-Governmental Organizations (NGOs), envisaging (according to the data provided by state institutions) a total of approx. 8.3 million EUR as financial support for NGOs. Nevertheless, the 463 budget item causes confusion since most budget funds under this item are allocated to political parties and sports clubs. Similarly, payments to other legal entities are also made from the 481 – Donations to NGOs budget item. In 2019, 64.431.679,49 EUR were planned under this budget item, but no specific percentage was set out for allocation of these funds.

Channeling a certain percentage of the proceeds from lotteries and other games of chance to CSOs is still possible in the region, with the exception of Serbia. However, this source of income is rather unpredictable due to its limited availability and lack of transparency in the selection procedures.

In general, practice indicates that state funding is not a viable source for CSOs as it is limited in its ability to support the work of CSOs. As an illustration, 67% of the survey respondents in Albania and 70% of the survey respondents in Kosovo say that public funding cannot meet their needs. However, a new and noteworthy positive development in the region is the passing of the Law 39/ 2019 "On Administration of Sequestered and Confiscated Assets" in Albania. Based on this law, the Agency for Administration of Sequestered and Confiscated Assets may, with the approval of the Ministry of Finance and Economy, set up a special fund which would be allocated and distributed to CSOs and other entities. In 2019, the Agency for Administration of Sequestered and Confiscated Assets planned a total fund of 95 million ALL (approx. 754,000 EUR) in support of civil society organizations.

### Public Funding Distribution

**The legal framework in all of the countries contains provisions that stipulate general and uniform criteria for the process of distribution of public funds.**

In 2019, North Macedonia set a positive example with its increased efforts for strengthening transparency and accountability of the process of distribution of public funds. More specifically, it was for the first time that state institutions submitted data on

the allocation of funds to CSOs at national and local level. This data was later published and used at a session of the Council for Cooperation and Development of the Civil Society. Moreover, the names of all the recipients of public funds (including NGOs) were published on the Open Finance website by the Ministry of Finance. Finally, information on the complete assessment process and selection of the beneficiaries carried out by the General Secretariat of the Government for CSOs in 2019 was published on the Unit for Cooperation with NGOs website.

In Montenegro, on the other hand, with the introduction of the new decentralized funding system in 2018, many ministries came under heavy criticism for not following legally prescribed procedures, although things improved slightly in 2019. As a result, 52.08% of surveyed organizations stated they disagreed or strongly disagreed that state institutions observed the procedure for allocating funds and 64.58% of surveyed organizations stated that they disagreed or strongly disagreed that decisions on allocation of funds were fair.

In Serbia, due to the general provisions on the programme's criteria for selection, which could leave greater room for arbitrary decision-making, numerous cases of non-transparent financing of CSOs have been observed. This number has risen lately as funds are being allocated to newly registered CSOs (often affiliated with political structures – GONGOs/PONGOs).

**Regarding accountability, monitoring and evaluation of public funding, all countries have enforced legal acts prescribing clear measures for accountability, monitoring and evaluation.**

Ordinarily, monitoring of financial support is performed through routine and financial visits to ensure compliance with legal requirements. Organizations also submit reports, mostly during the project implementation period, as well as one final report as soon as the project is completed. Nevertheless, some accountability provisions do not take into account the specific nature of CSOs.

### Non-Financial Support

**Non-financial state support is generally available to CSOs in the region. The most common means of non-financial state support is the use of public premises, free of charge or for a reduced fee, or the use of movable items.**

With the exception of Albania, which has not yet enforced a legal framework or regulations with specific provisions that authorize state authorities to provide non-financial support to CSOs, all other countries have already addressed this issue. In 2019, Kosovo amended the Law on Allocation for Use and Exchange of Municipal Immovable Property; however, the new law does not take into account the nature of civil society organizations and contains no specific provisions on one-time usage of municipal or other public property by civil society.

The prevailing opinion is that CSOs are mostly unaware of the opportunities for non-financial support extended by the state.

**Box 4: EU Guidelines assessment here**

**Result 2.4.** CSO view of public funding did not change in 2019. CSOs consider public funding as mostly insufficient (although some improvements have been observed) and the transparency of the distribution process as rather low. Most of the countries use a decentralized system for distribution of the public funds. In some countries, most notably Serbia, improvements to the database are necessary as currently there is no comprehensive and up-to-date database on the funds allocated to CSOs from the state budget in 2019.

### Employment in CSOs

**In all of the countries, legislation generally permits the hiring of staff in CSOs. Nevertheless, the laws and policies pertaining to employment do not take into account the specific nature of CSO operation.**

In North Macedonia, for example, CSOs suffer unequal treatment when it comes to receiving benefits available for businesses. Namely, the government policies on increasing employment are merely focused on businesses, which is showcased in the 2016-2020 National Employment Strategy where CSOs are listed as implementers of measures, rather than users. Furthermore, the civil sector is not represented in employers' organizations and it is unclear under which collective agreement it is covered. The situation is similar in Montenegro and in Serbia where Labor Laws do not differentiate between employees of corporations, the state or CSOs. This means that CSOs are obligated to pay full taxes and surtaxes for every employee, which some see as burdensome. Incentives for employment in the civil society sector are also at a very low level.

Despite discussing the amending of the Labor Law in Kosovo since 2014 and identifying the provisions that allow CSOs the same treatment as other entities as burdensome and challenging for CSOs, the draft of the law that passed its first reading in June 2019 lacks, yet again, the inclusion of specific provisions on employment in CSOs. Albania also saw a legislation change in 2019, when the Law 15/2019 "On Employment Promotion" was adopted. Implementation of this law is expected to improve the employment level by offering services and public programmes for employment, self-employment and the obtaining of professional qualifications.

In practice, employment in CSOs is still quite low. As an illustration, latest available data indicate that only 854 people were hired by CSOs in Montenegro, 1,645 in North Macedonia and 8,517 in Serbia, which makes up for less than 1% of all the employed persons in these countries.

### Volunteering in CSOs

**Volunteering continues to be a viable practice for CSOs in most of the countries due to generally stimulating regulation. In some countries, changes to this particular legislative framework have been observed.**

In North Macedonia, a new National Strategy for Promotion and Development of Volunteering 2020 – 2025 was discussed in 2019 and a new Law on Internship was adopted in 2019, drawing a distinction between the concepts of internship and volunteerism. A new Draft Law on Volunteering was also in parliamentary procedure in Montenegro. The Law redefines volunteering and aims to establish volunteerism as civic activism instead of a work relationship. The adoption of this law is in accordance with the Strategy for Improving Enabling Environment for CSOs in Montenegro for the period 2018-2020. A "Code of Ethics for Volunteers" in compliance with the Law on Volunteerism was enacted in July 2019 in Albania, while in Kosovo, the process of drafting the Law on Volunteering is still in its beginning phase (currently, volunteering is regulated by the Law 03/L-145 on Youth Empowerment and Participation).

In Bosnia and Herzegovina, on the other hand, volunteering is not regulated by means of any legal framework. Although the passing of a Law on Volunteering was suggested several times, it has not yet been passed due to the lack of political will.

Survey results show that in practice, engagement of volunteers in the work of CSOs is rather satisfactory. For instance, 81% of surveyed CSOs in North Macedonia stated that they hired volunteers during 2019.

## Non-Formal Education

### **CSOs engagement in non-formal education looks promising with room for improvement in most of the countries.**

The legislation in Montenegro is the most notable example. Specifically, the importance of the role of the CSO sector is recognized in the Adult Education Strategy for Montenegro 2015-2025, which recommends using the NGO sector potential for adult education to increase social inclusion of adult citizens through lifelong learning and education. For this purpose, the Ministry of Education makes annual allocation of funds for financing NGO projects and programmes in accordance with the Law on Non-Governmental Organizations.

Legislation in the rest of the countries generally allows the organization of educational activities by CSOs, including non-formal ones, in line with their statutes and fields of activities, which in some cases may require the acquiring of licenses or certifications.

With regard to formal education, civil society related subjects are moderately included in the official curriculum of the educational system at all levels in almost all countries.

#### **Box 5: EU Guidelines assessment**

**Result 1.2.** In all of the countries, attempts have made attempts to improve the provisions in order to facilitate and stimulate volunteering and employment in CSOs. Nevertheless, the fact that there is no official comprehensive statistics on the number of employees in CSOs continues to pose a challenge in Serbia, Kosovo and Bosna and Herzegovina. Additional stimulating policies are also needed with regard to volunteering. In 2019, the Government of Montenegro proposed a new Law on Volunteerism, which should be adopted by the Parliament in 2020 and bring about some improvements in this area. On the other hand, in Bosnia and Herzegovina, the Law on Volunteering is still pending due to lack of political will.

## Area 3: Government-CSO Relationship

### Sub-area 3.1. Framework and practices for cooperation

#### State Policies and Strategies for Development of and Cooperation with Civil Society

**All countries in the region are implementing or have started the process of adopting policy documents for cooperation.**

In Kosovo, the Government approved a new Strategy that came into force in February 2019. The strategy is aimed at building mechanisms for addressing more effectively the challenges encountered in the implementation of the previous Strategy which had extremely poor results in terms of achieving the defined objectives. The new Strategy intends to increase the capacities of public servants to allow for implementation of the mechanisms of the Regulation on Minimum Standards for Public Consultation and the Regulation on Public Funding for NGOs. This, in turn, will help build a system that allows CSOs to provide public services and increase volunteering in programmes of public interest.

North Macedonia has also observed progress in terms of implementation of the Strategy for Cooperation with and Development of the Civil Society and the Action Plan for 2018-2020. Information concerning implementation of the measures and activities is collected regularly and published by the Unit for Cooperation with NGOs, while the Council performs quarterly oversight. Progress regarding the key measures for development of civil society is still slow (reform in public funding, individual and corporate donations, social services and volunteerism are some of the measures that have been planned for 2020).

Positive developments have also been observed in July 2019, in Albania, when the Albanian Government approved the Road Map for the Government Policy towards a More Enabling Environment for Civil Society Development 2019-2023. The document reflects a revised version of The Road Map 2015-2018, which lacked proper implementation. The revised Road Map presents a series of actions and measures in: a) the legal framework with emphasis on improving the registration issue; b) a strengthened institutional framework for the work of CSOs; c) clearer and more transparent public funding mechanisms for CSO programmes; d) inclusive involvement of CSOs in social service delivery at national and local level; e) regulated consultations with CSOs in drafting new laws; f) a favorable tax policy for CSOs; g) a more conducive legal, fiscal, and institutional framework for the promotion of volunteering, and h) an enabling environment for the promotion of philanthropy.

Similarly, in Montenegro, a Report on the Implementation of the Strategy for Improving the Enabling Environment for CSOs for 2018 was published in August 2019. From the total of 30 indicators that were planned to be met in 2018, 46% were met fully, 10% were met partially, and 44% of the indicators were not met. Most of the unmet indicators were part of the Chapter 4: Role of CSOs in Socio-Economic Development (80% were not met), Chapter 5: Role of CSOs in the EU Accession Process (33.4% were not met) and Chapter 6: Monitoring, Reporting and Evaluation of the Realization of the Strategy and the Action Plan (50% were not met).

In contrast to the aforementioned development, Serbia is at a status quo with no strategic document for addressing the state-CSO relationship and civil society development. However, elements of a strategic approach for cooperation with civil society can be found in the Government Regulation on establishing the Office for Cooperation with Civil

Society, as well as in the Guidelines for the involvement of civil society organizations in decision making processes. The strategic document that was drafted and debated publicly in 2015 has not been adopted yet.

The situation is similar in Bosnia and Herzegovina where the adoption of a strategy for cooperation is still pending. The Agreement for cooperation between the Council of Ministers and CSO in Bosnia and Herzegovina was signed in 2017. Several clear commitments for the Council of Ministers stemmed from the Agreement: a) establishing an advisory body for cooperation with CSOs, b) strengthening the role of the Sector for Legal Aid and Development of Civil Society as a contact point of the Council of Ministers for cooperation with CSOs, c) adopting a civil society development strategy, d) ensuring transparency of funding for associations and foundations, and e) strengthening the role of civil society in the European integration process. However, the adoption of the relevant amendments or bylaws is still in the preparation phase.

**Regarding the practice of CSO participation in the drafting of strategic documents for cooperation and their implementation, CSOs report different approaches, all of which have had a limited impact.**

### Institutions and Mechanisms for Development of and Cooperation with Civil Society

**National level institutions/mechanisms for development and cooperation with civil society, including cooperation offices, councils or units, exist in all countries of the Western Balkans.**

North Macedonia, Kosovo, Montenegro and Albania have active councils for cooperation with CSOs. In North Macedonia, the council serving as a cross-sectoral advisory body was active and functional in 2019. The rules of procedure of the council were amended twice in order to regulate the procedure for nominating representatives from the sector in consultative bodies and working groups and thus increase participation of the Council in the decision-making processes.

In Kosovo, the Council for Implementation of the Government Strategy for Civil Society Cooperation is the body authorized to monitor and report on the implementation of the Strategy. The Council's members are part of work teams focused on accomplishing each of the 4 strategic objectives. The rules of procedure of the Council also ensure that all suggestions made by CSOs are taken into consideration, which applies to the work teams of the Council as well.

In 2018, Montenegro established the Council for Cooperation between State bodies and NGOs, which was tasked with ensuring and encouraging cooperation between the government and CSOs and implementing the Strategy for Improving the Enabling Environment for CSOs in Montenegro 2018-2020. Councils for cooperation exist at a local level as well and municipalities have amended their acts to include the obligation of holding at least one annual meeting between mayors and presidents of local assemblies, which should also be attended by representatives of local CSOs. Nevertheless, these meetings are seldom held in practice.

In Albania, the National Council for Civil Society (NCCS) serves as a consultative body that aims to guarantee institutional collaboration between the State and CSOs. The NCCS should also stand in support of good governance, transparency and meaningful involvement of CSOs in decision making and participatory processes. Nevertheless, during 2019, the NCCS was not successful in voicing CSOs' priorities in policy-making processes and has conducted only one meeting, the results of which have not been made available to the public so far.

In contrast to the aforementioned, Serbia has not established a council for cooperation with CSOs. Similarly, Bosnia and Herzegovina has foreseen the implementation of a mechanism which is new and unique to the region and includes the forming of an advisory body for cooperation with CSOs. It would be composed of 7 representatives from the civil society sector, engaged on a voluntary basis and with the authority to discuss and advise the Council of Ministers on all civil society related issues. The



Decision allowing the formal establishment and start of operation of this body has not been passed.

Although the state acknowledges the need for development of and cooperation with civil society through the establishment of special institutions, the main challenge faced by all of the countries is **how to secure the proper implementation and functionality of said institutions and mechanisms in practice**. In all of the countries, not enough resources are being allocated from the state budget for cooperating bodies and there are insufficient adequately skilled human resources that could rise to the task.

### Sub-area 3.2. Involvement in policy and decision-making processes

#### Standards for CSO Involvement

**CSO involvement in policy and decision-making processes on national level is subject to clearly defined standards, which are aligned with the best practices in meeting minimum requirements by policy-making processes.**

In Albania, the legal framework related to CSOs involvement in policy and decision-making is governed by the Law on Notification and Public Consultation, which sets out requirements for consultation on draft laws and policies. The law specifies a reasonable timeframe for familiarizing with the documents and forming an opinion and obliges public authorities to give a written feedback. An electronic register of lobbyists is maintained by the Albanian parliament.

The legal framework in North Macedonia imposes clear standards for CSO involvement in all policy-making processes. A Rulebook by the Government lays down the online publishing of draft laws and a minimum timeframe of 20 days to allow for open consultations of legal drafts. Some state institutions have resumed their practice of involving the public and CSOs by inviting them to comment on laws and policy initiatives in the very early stages of drafting while there is sufficient time to form and offer an opinion. The meeting of deadlines for electronic consultations has improved and an overall continuous involvement of CSOs in all key legislation-making processes by means of various consultation methods has been observed.

In Bosnia and Herzegovina, the legal framework provides CSOs with the possibility for participation in the preparation of legal documents from the earliest stages of drafting. Consultations are obligatory for all ministries. All persons or institutions interested or affected by certain legislation must be involved in the minimum consultation processes on all draft legislation. The particular documents that govern the legislative processes related to consultation are the Rules for Consultation in Legislative Drafting of Legal Acts at the level of the Council of Ministers, the Regulation on Rules for Participation of Interested Public in the Process of Preparation of Federal Legislation and Other Acts in the Federation of BiH, and the Guidelines for Republic Administration Bodies on Public Participation and Consultations in the Drafting of Laws in the Republic of Srpska.

With the enforcement of the Regulation on Minimum Standards for Public Consultation in January 2017, Kosovo marked an important step towards the legislation on participation of CSOs and the general public in the policy and decision-making processes. The regulation is only mandatory for central public institutions, with the exception of the Assembly. This means that the Government is obligated to begin public consultation from the early stages of drafting of the agenda for the following year. It also sets out specific requirements and deadlines for public consultations conducted by government units. The online platform for public consultations was launched in February 2017 and provides an alternative means for consultation with CSOs and the public. The Rules of Procedure of the Assembly are still undergoing amendments. In this regard, CSOs are advocating the addressing of the non-mandatory provisions on involving CSOs and organizing public hearings.

In Montenegro, the Decree on the Election of Representatives of Non-Governmental



Organizations into the Working Bodies of the State Administration Bodies specifies that CSO involvement in the preparation of laws and strategies is to be achieved by including bodies, organizations, associations and individuals in the initial phase of drafting of the laws or strategies and by holding public debates. The Regulation sets out two modes of cooperation. The first mode of cooperation involves the obligation of the state administration bodies to include representatives of NGOs in the consultation processes by publishing public calls on their websites and e-administration web portals. The second mode of cooperation involves inclusion in the drafting of laws and strategies through participation in public debates. The Decree also regulates CSOs' participation in the state funding process.

In Serbia, provisions and standards contained in several laws and bylaws allow the participation of CSOs in decision-making processes. The Law on Public Administration prescribes the duty and obligation of public administration bodies to provide conditions for public participation during the preparation of draft laws, other regulations and acts. The holding of public debates in the preparation of policies is regulated in more detail by the Rules of Procedure of the Government. The Rules of Procedure indicate all instances in which a public debate should be conducted and include a provision imposing obligatory public debates when preparing a development strategy. Moreover, the document prescribes mandatory public hearings in the preparation of laws, which brings about significant changes to certain issues that are of special interest to public. The adoption of the Regulation on the Methodology of Public Policy Management and Regulatory Impact Assessment, as well as the Content of Individual Public Policy Documents in the beginning of 2019 is also worth mentioning. The processes relating to public policy acts and documents at all levels have been harmonized within this document and provide mechanisms for systematical prevention of the adoption of ineffective regulations and documents.

The state policies in all of the countries fail to meet established standards when it comes to providing educational programs/training for civil servants on CSO involvement in state policies.

**In practice, CSOs continue to report setbacks to their involvement in decision and policy-making processes at both national and local level.**

In North Macedonia, cooperation between the Government and civil society has improved. A survey indicates that 61.3% of CSOs have cooperated with a state institution in the past year, 28.2% of CSOs have had no need to cooperate with state institutions, and 10.4% of CSOs have attempted but failed to cooperate. Throughout the year, CSOs participated in the preparation of numerous laws and other policy and strategic documents. However, 2019 saw a rise in the exclusion of CSOs from certain politically sensitive issues such as: the Draft Law on Public Prosecution, the Draft Law on Public Gatherings and the Law on the Use of Languages.

The situation in Montenegro can also be seen as progressive. CSOs that took part in the online questionnaire stated that they participated in consultations on the drafting of laws, bylaws and policies to a large extent during 2019, i.e. 47.9% of the respondents. From these organizations, 52.2% reported that some of their suggestions were taken into account; 13% stated that all of their suggestions were taken into account, and 13% said their suggestions were dismissed altogether. During 2019, 66 calls for participation in public hearings and a total of 51 minutes and reports were published. However, the lack of available electronic documents on e-government portals continues to be the trend. Moreover, 39.58% of organizations believe that draft versions of laws, bylaws, decisions and reports are not available prior to consultations.

In Bosnia and Herzegovina, the process of CSO involvement is faring well only at the highest level of the Council of Ministers. The e-consultation platform is in use and specifies that no document can be tabled at the sessions of the Council of Ministers without being approved by the General Secretariat and followed by a statement that

consultations have been carried out and that all participants in the consultations received feedback and satisfactory explanations. However, these processes have not been implemented at any of the lower government levels, which therefore offer no formal consultation processes.

In contrast to Bosnia and Herzegovina where CSO involvement at the local level is met with challenges, consultations carried out at the local level in Albania seem satisfactory. More specifically, responses from surveyed CSOs indicate that the majority have participated in local-level consultations conducted by local self-government units, including participation of CSOs in local-level consultations processes on fiscal packages and local annual budgeting, social services, youth strategies, etc. More than half of surveyed CSOs (59%) participated in consultations for the preparation of draft laws and policies, while 37% of surveyed CSOs stated that they did not participate in any kind of processes. Regarding the outcome of the consultation processes, almost half of the surveyed CSOs (45%) expressed that some of their suggestions and recommendations were considered by the public authorities conducting the consultation processes.

The situation is far from optimal in Kosovo where 74% of CSOs reported that they were not involved in the drafting of any type of policy/legislation during 2019, either at the invitation of public institutions or on their own initiative. Only 12% of the interviewed were regularly invited by public institutions to participate in public consultations. From the CSOs that participated in public consultations, 12.5% had their comments fully accepted, 70.8% had their comments partially taken into consideration and 2 organizations did not have their comments taken into consideration at all. Written feedback on the reasons for rejection was received in only 17% of the cases.

Similarly, practice in Serbia shows a disabling environment when it comes to routinely inviting CSOs to discuss policy and legal initiatives in the early stages of drafting. In 2019, 47 calls for public debates on laws (38) and strategies (9) were announced through the E-Government Portal. 30 CSOs (almost 58%) reported they were involved in consultations about policy/legislation, only 6 CSOs (11%) stated they were involved in the early stages of legislation drafting, and 71% CSOs reported they participated in the work of advisory, consultative or work group of bodies and committees. A positive outcome of CSOs' engagement following strong pressure from the Coalition for Social Entrepreneurship is the halting of the adoption of the Draft Law on Social Entrepreneurship (which excluded associations as founders of social entrepreneurships) in March 2019.

### Public Access to Draft Policies and Laws

**All of the countries have valid policies and laws on public access to information, which are generally aligned with international practice.**

In 2019, developments with regard to the right of access to information were observed in Kosovo, North Macedonia and Montenegro.

Changes in the legislature of Montenegro raise concerns. The existing Law on Free Access to Information prescribes that every domestic and foreign physical or legal entity has the right to access information without being obligated to explain the reasons and the interest for seeking it. However, the new Draft Law on Free Access to Information and the Law on Data Secrecy introduce provisions that could potentially limit this right. One of these provisions gives public officials the authority to decide which information is one of private interest and which one is of public interest. Another provision specifies that requests for free access to information can be declined if they ask for the disclosure of too much information. These provisions undermine legal security and leave room for subjective interpretations that could seriously limit access to information. Many domestic CSOs and media, as well as the international community, have warned against the adoption of the law on the grounds that the new law would be unconstitutional.

In contrast, more positive changes have been observed in North Macedonia since the adoption of the new Law on Free Access to Information of Public Character in May 2019, which was prepared in a participatory manner by including CSO representatives.

Systematic changes include the establishing of a new agency, aimed at securing quicker and improved quality access to information, as well as increased transparency and accountability of the providers of information. Political parties have been added as holders of public information. The new law sets out a clear procedure for accessing public information, as well as sanctions for civil servants/units for breaching the legal requirements on access to public information.

Improvements have been observed in Kosovo as well, where the right of access to public information is a guaranteed constitutional right. The amending process of the Law on Access to Public Documents was concluded in 2019. The new law prescribes advanced forms and procedures for accessing public documents and imposes new requirements on archives of public institutions to update and publish their lists of available documents. The procedures and mechanisms for accessing published documents/information have been clearly prescribed. Public institutions are obliged to respond to a request for access to public information/documents, which if denied must be accompanied by a detailed explanation of the reasons for the rejection. Failure to respond to a request will be met with fines.

**Practice indicates that the procedures for accessing public information have not been optimally implemented across the region.**

In 2019, in Montenegro, 1715 complaints were submitted to the Agency for Protection of personal Data and Free Access to Information. 412 of the filed complaints mentioned administrative silence on behalf of the institution acting as the holder of the information, while 424 filed complaints were dismissed due to the institution providing the requested information. Moreover, only a small number of CSOs used the procedure for accessing free information. From the CSOs that did use it, the majority were not informed of the possibility to appeal denied access to information.

In North Macedonia, most of the CSOs that used the opportunity to access information received a response, usually within the set out timeframe and in a clearly written form. However, in terms of stating the grounds for refusal of the requests, explanation was not provided for the majority of the requests, nor was the complaint procedure observed. The survey indicates that just over a third of CSOs have sent requests for accessing information of public character in the past 12 months. A total of 26 CSOs stated that they received a response, 22 CSOs said they occasionally received a response, and 5 CSOs did not receive any response.

In Kosovo, the Government's Annual Report indicates that 46% of the requests for access to public information coming from civil society have been made at the level of local government. Three CSOs have filed lawsuits for not being granted access to public information/documents and won, but the court decisions have not yet been enforced.

In Serbia, preliminary data gathered from the Commissioner for Free Access to Information of Public Importance showed that from the 25,416 requests recorded in 2019, 20,572 were adopted, 563 were not taken into consideration, and 1746 were rejected.

In Albania, 46% of the surveyed CSOs said that they had submitted requests for accessing information to public institutions, 86% of which assessed the responsiveness of public institutions as positive. The answers were written clearly (70% of CSOs) and received within 10 days as stipulated by law (69% of CSOs). There is still room for improvement when it comes to providing explanations for denied information requests as 72% of CSOs reported that their requests were denied without any explanation. In 2019, the Commissioner's Office received 786 complaints, a large number of which were submitted by CSOs, serving as a clear indicator of their attempt to raise awareness on exercising the right to information.

**CSO representation in cross-sector bodies in all of the countries in the region has not been properly regulated and is practiced on an ad-hoc basis.**

Montenegro is the only country to adopt a Decree on the Election of CSO Representatives into the Working Bodies of the State Administration that regulates the obligation of state bodies to include representatives of NGOs into their working and advisory bodies. This is done by publishing a public call on their websites and the e-administration portal. As soon as the call is opened, organizations are free to suggest a CSO representative for the respective body. Each consultative body must include at least one CSO representative.

The existing legislation in Serbia imposes the obligation on public institutions to invite CSO representatives to different decision-making and/or advisory bodies created by public institutions. The draft of the Guidelines for CSOs' involvement in working groups for drafting public policy documents and regulations was available for consultations during 2019. The Guidelines are a non-binding act that proposes principles and a procedure for appointing CSO representatives to working groups established by state administration bodies. The Guidelines allow for CSO participation in the process of preparing, adopting and monitoring the implementation of regulations at several levels. No clear guidelines exist on how to ensure appropriate representation from civil society based on transparent and predetermined criteria, which is not in line with standards.

North Macedonia does not have a standardized mechanism for selection of representatives in cross-sector bodies. Various legal acts ensure the establishment of certain councils, committees, etc. and impose the obligation of including CSOs in the mechanism. The Decision on Establishment of the Council specifies that CSO representatives within the sector are selected by means of a transparent and open procedure and appointed as representatives of particular areas pertinent to their work.

In Bosnia and Herzegovina, the current legislation provides a possibility for cooperation between public institutions and representatives of civil society organizations at all levels. However, there is no selection system and CSOs are mobilized by means of direct invitation on specific issues.

No changes have been observed regarding this issue in Kosovo. Government level legislation allows but does not oblige the government to invite CSO representatives into these bodies. As an exception, sectorial consultative committees on municipal level should be established and comprised from citizens and civil society; however, only a few municipalities have fulfilled this obligation. A number of independent or advisory bodies have adopted their own specific rules of procedure, envisaging the participation of civil society representatives, and even specifying selection procedures.

Similarly, in Albania, no specific legal framework regulates CSOs involvement in cross-sector structures. An important step has been made with the adoption of the National Plan for European Integration (NPEI) 2018-2020 by the Government of Albania in May 2018. Supporting the decision of the Council of Ministers on the approval of the NPEI, the Prime Minister issued an order on the forms of participation, operation and institutional structure of the European integration partnership platform. The order sets out that CSOs are an integral part of the two levels of representation: the Governing Board comprised of 15 members, two of whom must be CSO representatives, and 33 Discussions and Consultations Tables analogous to the "acquis" chapters of the European Union. Membership is opened to all and applications are assessed by the members of the Working Groups.

**The prevailing opinion in practice is that selection of CSOs in cross-sector bodies is still not being carried out in a fully transparent way; for the most part, CSOs are unable to express their opinions freely and must use alternative ways of advocacy to defend their positions.**

In some cases in Montenegro, working groups or councils which included CSO members organized meetings without notifying CSO representatives or convened them at times when CSO members were unavailable to participate. This has been the experience at the both national and local level. In 2019, 39.6% of CSOs participated in the work of advisory or working group bodies and committees.

In Serbia, a high 71% of surveyed CSOs reported they were involved in the work of bodies and committees in 2019.

This percentage, 34%, is even lower in Albania and almost the same in North Macedonia, where 35.6% of CSOs report taking part in the work of cross-sector bodies.

The country causing the most concerns is Bosnia and Herzegovina, where involvement of CSO representatives is still rare and sporadic.

Similarly, survey results in Kosovo show that the vast majority of CSOs are not part of consultative bodies. At the central level of governance, around 70% of respondents reported participation in consultative bodies, whereas at a municipal level, no participation was reported by around 20% of CSOs.

#### **Box 6: EU Guidelines assessment here**

**Result 3.1.** CSOs continue to report problems with their involvement in decision and policy-making processes at the both national and local level. National standards for CSO involvement exist in all of the countries, except Turkey. CSOs report that the draft laws/policies are not always published well in advance as it is required by the legal regulation. State authorities also oftentimes neglect the provisions on the publication of calls for consultations. Representatives of civil society in the decision-making/advisory bodies are selected outside of clear and transparent mechanisms. Selection procedures continue to be regarded as biased and based on personal acquaintances.



### CSO Engagement in Service Provision and Competition for State Contracts

**In all of the countries, CSOs are allowed to provide services, but are rarely engaged in the provision of anything other than social services.**

In North Macedonia, three key laws in the area of service provisions were amended and improved in favor of associations and foundations. Firstly, the new Law on Public Procurement addressed two key issues: new award criteria were added to the lowest-price criterion and the e-auction option was introduced. Secondly, amendments made in a participatory manner to the Law on Social Protection set out that an association (but not a foundation) may perform certain social protection activities defined by this law if the association is registered for working in social care. Thirdly, the Law on Free Legal Aid stipulates a possibility for CSO involvement in providing pre-trial legal aid. In 2019, the passing of a new law stipulated better legal protection for citizens and amended and improved the funding process for associations and foundations that provide legal aid by allowing the awarding of grants from the Ministry of Justice.

The existing legislation in Serbia allows the extension of services by CSOs in various areas, including education, healthcare and social services. However, the Law on Free Legal Aid limits significantly the capacity of associations for providing legal assistance and support to vulnerable categories, except in cases provided for by asylum laws or related to domestic violence and non-discrimination. Also, the lack of a clear framework for co-operation prevents CSOs from assuming a more dominant role in health care. On the other hand, the legal framework for the most part does not contain provisions that prevent civil society organizations from providing services. The provision of health services is not subject to any licensing/certification procedure, but individuals who are directly involved in the provision of health services must be certified by the Ministry of Health.

In Albania, CSOs remain the main stakeholders in delivering social services for a wide range of beneficiaries. However, the current legal framework presents many challenges that need to be addressed in order to create a supportive environment for CSOs involvement in the provision of publicly funded social services.

In Kosovo, the legal framework on public service provision is in the amending process. The concept document of the Law on Family and Social Services has been approved in the first quarter of 2019. Its objectives include improving the quality and increasing the transparency of social services, as well as building a sustainable system for financing. Moreover, the provisions of this law take into account the specific nature of the civil society sector. In everyday practice, CSOs in Kosovo usually provide services in the area of social care, education and health care.

**In practice, CSOs are largely disregarded in the complete cycle of development and provision of services and are rarely seen on the implementing side of state contracts.**

For example, in North Macedonia, 11 CSOs were awarded contracts for the provision of public services. In Kosovo, only 3 out of 16 applicants were selected for extending public services. In contrast, in 2019, in Serbia, a total of 558 organizations were licensed for providing social services. As part of the group of non-public service providers, CSOs make up for 66% of all service providers in Albania.

**The social entrepreneurship framework is still reported as unfavorable in Albania and North Macedonia.** North Macedonia restarted the drafting of the Law on Social Entrepreneurship, along with the Strategy for Social Entrepreneurship, the former being expected to be finalized by June 2019, and the latter by November 2019. With regards to social enterprises, Albania did not launch any legal initiatives. Moreover, the present legislation is considered very problematic as it prescribes that social enterprises receive the same treatment as state enterprises, limiting them to non-government funding, thus minimizing their productivity.

## State Funding for CSO-Provided Services

**CSOs in all of the countries are entitled to receiving partial funding for the provision of services.**

In North Macedonia and Serbia, the legal framework provides partial funding to CSOs for the provision of basic social services, while in Albania, the Ministry of Health and Social Protection grants funding through the Social Fund, a new financial mechanism established to help municipalities with social care service planning and delivery.

In Kosovo, however, an ongoing issue worthy of mention is the absence of specific budget lines for funding service provision by CSOs. Funding is only granted based on public calls for services and is never provided by state authorities. CSOs receive the same treatment as economic operators and the requirement for recording CSO in a commercial register has been removed. Furthermore, funding may be granted on annual basis only and there is no option to conclude longer-term agreements.

**In practice, service-providing CSOs find the obtained funding insufficient.**

In Serbia and North Macedonia, CSOs report insufficient funding to cover the basic costs of the services they are contracted to provide.

70% of service-providing CSOs in Kosovo and 75% of service-providing CSOs have stated that the received funding cannot meet basic costs.

It is worth mentioning that although CSOs in Bosnia and Herzegovina have been the main providers of direct humanitarian assistance to migrants and refugees, they face significant challenges in terms of lack of funding to respond to the migrant crisis.

## Procedures for Contracting Services

**The procedures for contracting services in all of the countries are governed by the Law on Public Procurement.**

In Kosovo, the Law on Public Procurement and the Law on Social and Family Services remain ambiguous, particularly with regard to the selection procedures for service providers.

North Macedonia has enforced transparency provisions regarding distribution of funds to service providers which contain minor issues that need addressing. There are also guidelines in place on ensuring transparency in the process of evaluation and selection of service providers, as well as managing conflicts of interests.

Similarly, the law in Serbia contains provisions on the prevention of conflicts of interest, as well as certain mechanisms aimed at ensuring transparency and legality of this procedure.

In Albania, the procedures for contracting services are carried out through the competitive grant scheme instead of a public procurement procedure.

**In practice, the procedures for contracting services are considered somewhat unfair and lacking in transparency.**

To illustrate, 26 CSOs were contracted for the provision of social services in Kosovo in 2019. Around 48% of CSOs considered the allocation of state contracts neither transparent nor fair. The situation is similar in Montenegro, where 75% of the organizations that participated in an online questionnaire stated that allocation of state contracts was neither fair nor transparent.

CSOs in North Macedonia shared a slightly more positive viewpoint, with 62.6% of the respondents reporting that they did not know if the procedure for awarding state contracts for service delivery was fair and transparent.

**The legislation contains some standards and monitoring procedures regarding service provision in all countries.**

In Montenegro, service provision monitoring standards and criteria are not regulated by any laws or bylaws. Instead, other laws that regulate the licensing of services related to social and child security stipulate that if the competent state administration authority determines during the period over which the activity license was issued that the service provider does not meet the prescribed conditions, it will initiate procedure for suspension of the license. This indicates that the state authority may monitor and inspect the service provider.

In Albania, the public authorities that contract out services through CSOs can exercise control and monitor both the quality of the services and the funding. They have the right to inspect the premises where services are provided by providing prior notification.

In Bosnia and Herzegovina, the legal provisions on accountability, monitoring and evaluation of service provision are mainly part of internal policy documents of the relevant institution/authority level.

In North Macedonia, the Law on Public Procurement lays down that the use and spending of public procurement funds is under the control of the State Audit Office. When it comes to monitoring quality standards, the Law on Social Protection stipulates that the monitoring procedure for services provided by contractors is undertaken by the Institute for Social Affairs, where staff of various profiles and expertise performs assessment of quality standards (depending on the issue of social protection that is being monitored).

With regard to the possibility for monitoring both the spending and the quality of service providers, legislation in Serbia meets the standards only to a certain extent. The control procedure is prescribed by the Law on Public Procurement and the Rulebook on Regulation of the Public Procurement Procedure.

In Kosovo, except for social services, other services provided by CSOs do not fall under a specific legal basis for monitoring (both on the spending and the quality of the service provision). Service provision by CSOs is subjected to the general legal requirements on public spending. The secondary legislation adopted in 2015 includes some general provisions on monitoring of services funded by the Ministry of Labor and Social Welfare. Most of the monitoring is focused on spending verification and technical aspects of service provision, with little qualitative monitoring and assessment. There are no identified cases of regular evaluation of quality and effects/impact of services provided. In general, the system of accountability, monitoring and evaluation of services provided by CSOs lags behind.

**CSOs in all of the countries report rather inadequate monitoring and that state institutions are not imposing tight controls.**

The deficiencies in the monitoring and evaluation procedures vary from country to country. Namely, Montenegro and North Macedonia both report mixed experiences as some CSOs say that they have been subject to excessive control, while others say state the opposite or say that they are not familiar with the issue. In Albania, reports on conducted inspections are made available, while in Bosnia and Herzegovina, a periodic reporting to competent institutions is still the main method for assessing the provided services. Finally, in Serbia, the interviewed representatives of CSOs indicated that they were not subject to monitoring in 2019 as there was no established monitoring mechanism in use at the time of service provision.



# Conclusions and recommendations

*The following are key common recommendations based on the indicators of the Monitoring Matrix. While these recommendations aim to define actions for regional interventions, the specific country context has to be always taken into consideration when analyzing the environment for CSOs. Therefore, as we have noted in past reports, the issues below cannot be addressed in isolation and other measures have to be taken into account in order to develop an enabling environment for civil society development*

## **Recommendation 1: Legal guarantees for freedom of association, freedom of assembly and other related freedoms should be enforced and the current framework should be properly implemented in practice**

Even though basic freedoms are legally guaranteed across the region, deterioration and shrinking of civic space have been reported in each of the countries. Proper implementation of the existing legal standards and guarantees of freedom of association, assembly and other related freedoms needs to be secured in practice. Collection of basic data on CSO registration needs to improve to guarantee appropriate policies related to civil society development. Finally, with regard to financial reporting, adaption and implementation of the recommendations from the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and the Financial Action Task Force (FATF) should be monitored closely as they open the door to possible misuse and state harassment of CSOs.

## **Recommendation 2: Fiscal regulations on CSO income and tax incentives for donors need to be revised to provide more supportive tax treatment for CSOs; Public funding mechanisms need to be reformed and their rules properly implemented to ensure relevant, transparent and accountable redistribution procedures**

Fiscal legislation should be improved by increasing (or introducing) tax incentives for corporate and individual giving and introducing new financial benefits for CSOs. In countries where distinct public benefit status exists, tax laws should be harmonized with the CSO framework laws to ensure applicable benefits for organizations with a public benefit status and provide incentives for organizations. The system of government support for CSOs should be reformed so that support is provided in a transparent, accountable, fair and non-discriminatory manner.

**Recommendation 3: Stimulating legislation and programmes to promote volunteering and employment should be adopted and implemented**

Volunteering is considered a viable practice for CSOs with generally supportive regulation in most of the countries, although some countries, such as Bosnia and Herzegovina, should enact specific laws. The practice of volunteering and employment in CSOs needs more supportive measures by governments and stronger promotion in the region.

**Recommendation 4: Mechanisms for CSO-public institution cooperation with clearly outlined responsibilities should be put in place and made functional through efficient allocation of funds and skilled human resources**

Implementation of legal and/or policy documents should be more efficient and clearly reflect the political commitment to CSO-government relations, as well as include the allocation of sufficient resources and use of good implementation skills.

**Recommendation 5: CSOs need to be regularly involved in the decision and policy-making processes at all levels, including unrestricted access to information and inclusion in the early stages of consultation**

Governments should implement the legislation and policies in practice, particularly those relating to CSO involvement in the decision-making processes. Investing in the capacity building of public officials assigned to these areas is of great significance;

**Recommendation 6: The state should improve CSO involvement in the provision of services**

The legal frameworks for service provision should be revised to become more supportive of CSOs as service providers. CSOs are mainly regarded as social service providers despite having the capacity for service provision in other areas.

# BCSDN opinion and recommendations for the EU

*BCSDN has been following the EU's approach to supporting civil society in the enlargement countries, advocating for recognizing and supporting of civil society as a competent and democratic partner in the EU accession process. Based on the findings and conclusions from the 2019 monitoring and on our extensive experience as a network, as well as on the individual experience and knowledge of our member organizations which are the leading CSOs supporting civil society development in their respective countries, we have outlined priority recommendations for EU intervention to guide further joint actions at the regional level:*

**Recommendation 1: The EU needs to reinforce and demonstrate a common understanding of the enabling environment for CSOs through the adoption of an official EC document which will have the political weight and leverage to ensure that governments in the enlargement countries take appropriate action**

The monitoring results from 2014 onwards indicate the need for stronger political support, especially with regard to the defence of basic human rights and fundamental freedoms, but also in other areas such as reforms in the public funding systems and involvement of civil society in decision-making processes.

Even after six years of implementation, the current EU Guidelines seem to lack a strategic coherence, a clear monitoring framework, ownership, as well as a political commitment on behalf of EU Delegations and the EU itself. They have neither been consistently reflected in EU's monitoring of the reform progress of enlargement countries, nor have they been adequately used in the programming of EU's financial assistance to civil society. It is therefore necessary to introduce and strengthen a new mechanism for monitoring and pressuring governments to implement the recommendations made based on the monitoring results;

Such a document should be incorporated in the existing EU policy frameworks and tied to the provision of financial assistance, outlining clear priorities of what the EU assistance aims to achieve, a clear result-oriented framework focused on the quality of practice, followed by well-thought-out and consistent monitoring processes, as well as a well-defined structure for monitoring and a requirement for regular reports on implementation. The focus of this approach should be on establishing long-term partnerships and support, as well as recognizing civil society as a legitimate actor and partner in the democratic processes in the enlargement countries.

**Recommendation 2: The EU needs to demonstrate clear political commitment to effective involvement of civil society in the European Integration process, translated into adequate mechanisms and dialogue processes.**

Civil society participation in policy-making and its contribution to strengthening democracy have been widely recognized by the EU. The monitoring carried out in 2019 revealed weaknesses in the practice of CSO involvement in the decision-making processes in all of the enlargement countries. For this purpose, it is crucial to identify and implement effective communication and engagement mechanisms that would help CSOs become the relevant stakeholders in the EU integration process, which is the essential policy design process in all of the countries.

Civil society and other non-state actors should be systematically involved in all of the planning, programming, implementation and monitoring processes related to the accession reforms, and the EU should lead by example and stimulate inclusive civil society dialogue. To maximize the potential for contribution of civil society to the policy-making processes, participation mechanisms should be accessible and based on trust, transparency, and accountability, with clearly outlined procedures, predictability, long-term support, and dedicated resources.

# Bibliography

The regional report is fully based on the results and information provided in the six country reports that are listed below. The sources utilized for the compiling of the country reports are not provided in the regional report and can be acquired in the bibliography section of each individual country report.

## **Country Reports:**

Country report of Albania, Partners Albania for Change and Development

Country report of Bosnia and Herzegovina, Centre for Civil Society Promotion (CPCD)

Country report of Kosovo, Kosovar Civil Society Foundation (KCSF)

Country report of Montenegro, Center for Development of Non-Governmental Organizations (CRNVO)

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

Country report of Serbia, Civic Initiatives (CI)

# Annexes

## 1. Monitoring matrix methodology

### Regional report

The 2019 Regional Report was primarily compiled using the six Monitoring Matrix Country Reports as its main source of information, data and analytical overview. Furthermore, the authors used their expertise and previous research to deepen the analysis, draw parallels and give overall regionally relevant conclusions/recommendations where applicable. The 2019 Regional Report relates to and builds on previous editions of the Regional Report, especially the most recent one, the 2016 Regional Report.

The information in this report follows the structure and baseline of the Monitoring Matrix. Particularly, the framework is built around three core areas: Basic Legal Guarantees of Freedoms; Framework for CSOs' Financial Viability and Sustainability; and Government-CSO Relationship, each of them divided in sub-areas. All areas are analyzed against standards defined by legal and practice indicators. The Regional Report gives an overview of the legal framework and practice presented in the Country Reports using standards and indicators.

As with previous editions of the report, the 2019 Regional Report provides a brief assessment vis-a-vis the objectives set by the EU Guidelines for Support to Civil Society in the Enlargement Countries (EU CS Guidelines), 2014-2020.

Compared to previous years, the methodological approach has been updated and includes a Data Collection Template aimed to facilitate the work of country researchers and collect data for drawing comparisons between the countries. The 5-grade scale "traffic light" codes ranging from (1)-fully disabling environment to (5)-fully enabling environment have also been improved for the purposes of this methodological exercise. Particularly, a scoring category has been defined for each respective indicator in order to diminish the possibility for ambiguities or inconsistencies in the scoring. This scoring system has been used in the drafting of the Regional Report as it provides for a more accurate systematization of the findings on the changes in the enabling environment for CSDev which were presented in the report. Moreover, the scoring system enables standardization of the quality of the Country and Regional Reports, provides for a more effective evaluation of indicators by means of the Monitoring Matrix Tool-kit and opens up possibilities for future comparative analysis. In this context, the Monitoring Matrix online platform has also been updated and redesigned to be more user-friendly and assist in the achieving of the goals of the Monitoring Matrix, i.e. enable a more practical and efficient method for tracking the enabling environment for CSDev, as well as help in the drawing of comparisons between the countries in the region.

### Operationalization and data collection for the national reports

The **legal indicators** are measured by coding the presence or absence of rules, costs, procedures and obligations enshrined in legal regulation (primary and secondary) and policy frameworks enacted in the respective countries. To assure standardization and comparability of the data gathering process in terms of the **practice indicators**, country researchers follow a methodology plan in which each of the 80 indicators is further operationalized as specific mandatory and additional data types (i.e. operationalized dimensions of a practice indicator) to be reported across the countries. The **mandatory**

**data** types tap into the core building blocks of a practice indicator as described in the Monitoring Matrix Toolkit. They mandate the reporting of optimal information, without which one would not be able to evaluate the respective indicator. The additional data (operationalized dimensions) specified for each practice indicator are reported if country researchers want to deepen and further illustrate specific practice indicators (e.g. via case study; see next section on country-specific notes on methodology).

The data gathering strategy for the practice indicators is tailored to match the mandatory data types specified in the methodology plan. Clear guidance on the data gathering strategy exists for each indicator (instruments and sources) which is observed by country researchers. The specified data gathering instruments and sources follow an implicit hierarchy, in which publicly available factual data (e.g. official statistics) are the most important source of data for assessing practice indicators, followed by survey data from civil society organizations, which in turn are followed by relevant secondary sources (e.g. CSOs reports, the Ombudsman and media). Finally, interview data come at the end of the hierarchy, being a subjective type of data obtained from smaller groups of respondents.

The primary factual and secondary data are gathered through **desk research**. Following the data gathering strategy, country researchers utilize three core data gathering instruments: Freedom of Information requests (Fol), a survey questionnaire and interview topic guides. The questions from the data gathering instruments are tailored to match the mandatory data types (operationalized dimensions) of each practice indicator. The **Freedom of Information requests** (Fol requests) is used by researchers when public information and statistics on the state of civil society and their environment (primary factual data) are not readily and publicly available. The researchers can draw from a detailed bank of Fol questions tailored to match the operationalized practice indicators.

The **survey questionnaire** collects information on civil society organizations' experiences and perceptions of key aspects of the enabling environment for civil society for the year 2019. The organizational survey includes 50 questions matching the mandatory data types (operationalized dimensions) relating to basic rights and freedoms, organizational and financial sustainability and civil society's cooperation with the state. The questionnaire dominantly consists of closed questions and fewer follow-up open questions which require the respondents to elaborate on their experience. The same questionnaire is implemented across all countries, although the phrasing of a few items is slightly adapted to the specific country context to ensure that questions are readily understood by the respondents. The survey is sent to a list of formal CSOs compiled and updated by country researchers based on available registers or other alternative lists of active CSOs in the country (for more information see the section on country-specific notes on methodology). The data collected from the survey are confidential and used completely anonymously. Individual responses cannot be traced back to the organizations that answered the survey and are reported in aggregate form only.

The **interview topic guides**, similar to the survey questionnaire, include questions that match specified mandatory data types and are used in all of the countries. In addition to these core questions, researchers form additional questions that capture contextual developments in the country. The four topic guides are used in semi-structured interviews with the following groups of respondents: representatives of associations of journalists and media professionals; representatives of organizations of volunteers; representatives of the institution or mechanism for CSO cooperation and representatives of informal civil society groups (e.g. citizen initiatives, social movements and online initiatives).

### Data analysis and interpretation used in the national reports

To analyze and interpret the data, country researchers use a unified data collection template containing descriptions of the indicators (including the mandatory and additional data types for the practice indicators), as well as descriptions of five categories ranging from fully enabling to disabling environment for each indicator. The descriptions of the five categories for each legal and practice indicator are provided in the Monitoring Matrix Toolkit to enable researchers to choose, based on the reported data, one code (score) that most accurately summarizes the state of the enabling environment with regard to the respective indicator. In the first step, the researcher reports the required data types collected from different sources in the template box. For example, they report factual data from primary sources complemented with descriptive statistics or cross-tabulations based on survey data. In the second step, they choose one of the five category descriptions

provided for the respective indicator which best illustrates the reported data. The categories enable a unified comparison of findings at the level of indicators across all country reports.

## 2. Notes on methodology and challenges

Overall, all of the countries experience similar challenges regarding the application of the Monitoring Matrix methodology. Namely, the prevailing trend in each of the countries indicates that the use of FoI requests does not provide optimal results. This is due to the fact that institutions take considerable time to respond to the request, fail to respond, or are unable to provide the requested information. The number of received responses to FoI requests is rather low compared to the number of requests sent. For example, in Montenegro, responses were received to only 28 of the total of 162 FoI requests that were sent. Moreover, the gathering of data via the FoI requests proved time-consuming for some of the researchers, as it required the preliminary gathering of information about which institutions were the best equipped to answer to particular requests and provide the required information. In some cases, the fact that the staff was inadequately trained to work with CSOs or the lack of a systematization and reliable statistics, made the process of gathering data via FoI requests even more difficult. The COVID-19 outbreak has also been one of the causes for the low responsiveness of institutions in some of the countries, such as Kosovo.

The implementation of the online survey as another primary data gathering source has also faced a common challenge in all of the countries. Namely, the participation rate of CSOs in the survey has been quite low. For example, in North Macedonia, only 163 associations returned the questionnaire that was sent to over 2,800 associations, while, in Serbia, it was filled out by only 52 organizations, which makes for a rather low response rate given the fact that the survey was sent to over 4,000 organizations and there are over 30,000 registered organizations in the country.

In addition to the online survey, interviews were conducted in almost all of the countries. Additional data about CSOs' experience regarding a specific topic or issue were also gathered through focus groups.

The national reports were to a great extent also based on secondary data sources, such as existing legislation, domestic and international publications, reports and surveys, strategies, blogs and other relevant literature that was gathered through desk research.





