



# SHOULD CIVIL SOCIETY BE SATISFIED WITH JUST BEING ACKNOWLEDGED?

## ENABLING ENVIRONMENT FOR CIVIL SOCIETY DEVELOPMENT & ENLARGEMENT PACKAGE 2020

### BACKGROUND ANALYSIS

by the Balkan Civil Society Development Network  
October 2020

*This is BCSDN's 11<sup>th</sup> analysis of the European Commission's annual reports assessing the progress made in the area of civil society development and dialogue with public institutions. Since 2013, this analysis has been set against the **Monitoring Matrix on Enabling Environment for Civil Society Development**, a monitoring framework developed by BCSDN members and partners, which provides a set of principles and standards that need to be in place to have an enabling environment for civil society. The methodology underpins the annual monitoring led by BCSDN and its in-country members in all Enlargement countries and is also reflected in this policy brief by highlighting key issues left out of the EC reports. The Monitoring Matrix has been recognized by the European Commission and has inspired the development of the Guidelines for EU Support to Civil Society in Enlargement Countries, 2014-2020.*

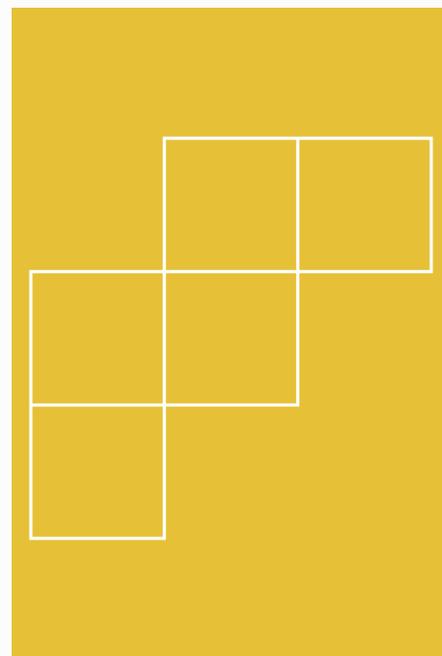
The Enlargement Package 2020 comes after major developments have taken place on the **EU enlargement agenda** – concrete proposals for strengthening the accession process have been set with the Communication “Enhancing the accession process - A credible EU perspective for the Western Balkans”, followed by a decision to open accession negotiations with Albania and North Macedonia and proposals for the negotiation frameworks.

In the annual progress reports, “**rigorous, but fair**” assessments of the implementation of fundamental reforms in the EU aspirants are followed by recommendations and guidance on the next steps, in line with the enhanced enlargement methodology. The strong focus on “fundamentals first” is further enhanced with the just released **Economic and Investment Plan** setting good governance as the foundation for economic growth, thus putting additional pressure on the governments of the Western Balkans.

With 2020 being marked by an unprecedented crisis caused by the **COVID-19 pandemic**, the EC in its communication and reports stresses the EU support to the Western Balkan in addressing the challenges, noting also the important role of civil society organisations in the crisis response, and the (necessary) collaboration with the governments to provide support, in particular to vulnerable groups. The reports also note the extent to which the new coronavirus crisis put reforms “on hold”,

and therefore many issues that appeared in previous reports are repeated in the 2020 ones.

Overall, Albania and North Macedonia have again received a more positive assessment in the EC’s annual progress reports – and thus are expected to start accession talks in 2020 – while the other countries received a **more critical appraisal**. The Commission assesses overall balance in the accession negotiations with both Montenegro and Serbia. Still, Serbia’s report appears to fade the country’s image as one of the “frontrunners” in the EU integration process. Kosovo notes limited progress on EU related reforms, and so does Bosnia and Herzegovina in addressing key priorities from the Commission’s Opinion on its EU membership application. Negotiations with Turkey have effectively come to a standstill as the country continued to move further away from the EU with “serious backsliding in the areas of democracy, rule of law, fundamental rights and the independence of the judiciary.”



The rule of law is the key benchmark against which the enlargement countries' progress towards membership is assessed. However, according to the EC, the **lack of credible progress** in the rule of law area remains a significant challenge “which often correlates with a lack of political will, continuing existence of certain elements of state capture, limited progress on judicial independence, institutional resistance and an increasingly difficult environment for civil society”. Civil society continues to be separately assessed within the Political criteria as one of the four pillars of Democracy, however – much like previous reports – with varying depth of the assessment between the countries and absence of a consistent and systematic reference to the Guidelines for EU Support to Civil Society in Enlargement Countries, 2014-2020.

When evaluating the **overall progress in improving the environment** for civil society operation, improvements are noted in Kosovo, Montenegro and North Macedonia. An enabling environment for civil society “still needs to be established on the ground” in Serbia, and no progress was noted in Albania and Bosnia and Herzegovina. At the farthest end is Turkey, where “space for civil society to operate freely has continued to diminish”.

All assessments on the issue of civil society development start with the same sentence: “An empowered civil society is a crucial component of any democratic system and **should be recognised** and treated as such by public institutions”, and just like last year, North Macedonia is the only country for which the EC states that civil society is **recognized** as such. As noted in the report, democracy and the rule of law has been strengthened, including by “activating existing checks and balances and through discussions and debates in key policy and legislative issues”.

## OVERVIEW: CIVIL SOCIETY

The following is the reports' assessment of the enabling environment for civil society development set against the Monitoring Matrix.

# BASIC GUARANTEES TO FREEDOMS OF ASSOCIATION, ASSEMBLY & EXPRESSION

**Freedom of association** has continued to be most under attack in Turkey, where cumbersome administrative procedures for registration and obtaining permits, as well as repetitive frequent inspections and fines for both national and international non-governmental organisations, continued to hamper civil society activities. Human rights organisations face continuous pressure in particular following detentions and arrests of activists and human rights defenders.

Nonetheless, an increasingly **hostile atmosphere** for CSOs this year has also been noted in Serbia and Bosnia and Herzegovina, reporting a climate of intimidation, smear campaigns by some media close to the government and a harsh rhetoric by high government officials. In Bosnia and Herzegovina, activists dealing with sensitive issues, in particular women's rights, have been subject to threats, verbal abuse and physical attacks. In Serbia, organisations working in the area of rule of law are under particular pressure. Surprisingly, in Serbia's report there is no mention of the upsurge of GONGOs, which has been an increasing concern for civil society as GONGOs are discrediting CSOs, taking over the public dialogue, as well as getting a fair share of the state funding for CSOs.<sup>1</sup>

In terms of problematic legislation, the Kosovo report mentions that the legal framework for preventing **money laundering and terrorism** creates several limitations for CSO access to banking services, and therefore the sectorial risk assessment of money laundering and terrorist financing of the sector needs to be comprehensively updated.

When it comes to **freedom of assembly**, apart from Turkey's recurrent use of bans of

Sub-area 1.1.: Freedom of association	
Freedom of association is guaranteed and exercised freely by everybody	All individual and legal entities can freely establish and participate in informal and/or registered organizations offline and online
	CSOs operate freely without unwarranted state interference in their internal govern-
	CSOs can freely seek and secure financial resources from various domestic and foreign sources to support their activities
Sub-area 1.2.: Related freedoms	
Freedoms of assembly and expression are guaranteed to everybody	CSO representatives, individually or through their organization, enjoy freedom of peaceful assembly
	CSO representatives, individually or through their organizations enjoy freedom
	Civil society representatives, individually and through their organizations, have the rights to safely receive and impart information through any media

demonstrations and other types of gatherings which further shrank the space left for organisations, most serious remarks have been noted in the Bosnia and Herzegovina report. Civil society organisations have reported increasing attempts to restrict freedom of assembly notably in the Republika Srpska entity, in particular in relation to the 'Justice for David' movement, whose activists have been subject to intimidation, fines, and judicial prosecution.

<sup>1</sup> Monitoring Matrix on Enabling Environment for civil society development Regional Report, available at: <https://monitoringmatrix.net>

The legislation on freedom of assembly in Bosnia and Herzegovina is not harmonised across the country and aligned with European standards, in particular as regards grounds for restriction and the responsibility of organisers. The same shortcomings in the legislation in Albania concerning freedom of assembly – as well as registration of CSOs – have been repeated this year. In the rest of the countries, freedom of assembly is assessed as generally respected, with number of protests on various social issues and isolated incidents. An exception to this are the protests in Serbia in response to the government’s handling of the pandemic (and the state of democracy in the country) which turned violent in some places, prompting the EC to stress that “while protecting people’s lives and health should be the first priority and public order must be guaranteed, any use of force must be measured and proportionate at all time”.

More countries note no progress in terms of improving the overall environment for freedom of expression, as only Kosovo and North Macedonia noted limited progress during the reporting period. The lack of progress is mostly due to the continued pressure, harassment and attacks against journalists, media workers and other critical voices, and the absence of appropriate judicial follow-up to cases of threats and violence. In Albania, a new legislation package on anti-defamation raised concerns about increased censorship and self-censorship, and possible setbacks on freedom of expression in the country. Particular concerns, including self-censorship, have also been noted in parts of Kosovo. Most serious backsliding is reported in Turkey, where disproportionate implementation of the restrictive national security and anti-terrorism measures continued to silence opposition voices.

## FRAMEWORK FOR CSO FINANCIAL VIABILITY AND SUSTAINABILITY

While the reports vary in depth on the issue of CSO financial viability, almost all stress the challenges for CSOs due to **insufficiently favourable fiscal and legal frameworks**. The need for a more comprehensive approach to civil society development, including transparent access and distribution of state support, a stimulating fiscal frameworks for giving, and human resources development has been – repeatedly – highlighted in all of the countries.

The issue that has gotten most attention throughout the reports is the (lack of) **transparency in the provision of state funding**. On this matter, the EC positively singles out Montenegro, noting that the legal, institutional

and financial environment under which CSOs operate was further improved with the implementation of legislation defining standardised and more transparent state funding mechanisms, as well as the establishment of an online database of CSO projects that have received state funds. Still, the report notes the varying capacity amongst ministries to implement grant schemes and a persisting concern over the evaluation process. Some improvements are also noted in Kosovo, however due to the limited capacity of both local and central authorities to correctly implement the new transparency and accountability standards, public funding of CSOs is assessed at risk of corruption and conflicts of interest.

# FRAMEWORK FOR CSO FINANCIAL VIABILITY AND SUSTAINABILITY

Sub-area 2.1: Tax/fiscal treatment for CSOs and their donors	
CSOs and donors enjoy favorable tax treatment	Tax benefits are available on various income sources of CSOs
	Incentives are provided for individual and corporate giving.
Sub-area 2.2.: State support	
State support to CSOs is provided in a transparent way and spent in an accountable manner	Public funding is available for institutional development of CSOs, project support and co-financing of EU and other grants
	Public funding is distributed in a prescribed and transparent manner
	There is a clear system of accountability, monitoring and evaluation of public funding
	Non-financial support is available from the state
Sub-area 2.3: Human resources	
State policies and the legal environment stimulate and facilitate employment, volunteering and other engagements with CSOs	CSOs are treated in an equal manner to other employers
	There are enabling volunteering policies and laws
	The educational system promotes civic engagement

Putting the focus on the provision of state funding, the EC misses to emphasise the issue of **availability of public funds**, which in all countries is widely perceived as inadequate for supporting CSOs operations. Nonetheless, it notes insufficient public funding to sustain CSO's activities in Albania and to properly implement the 2018-2020 strategy in North Macedonia. The large dependence on foreign donor funding is reported only in Kosovo, despite it being an issue throughout the region. On the other hand, the space for foreign donors in Turkey is assessed as increasingly shrinking, with some donors closing down their offices.

The issue of the **tax framework** for CSOs has been tackled only in the reports for Albania and Turkey. In Albania, a new instruction was adopted to improve the VAT reimbursement situation for CSO beneficiaries of the Instrument for Pre-Accession and other donor grants, but overall there is a lack of favourable tax arrangements, which represents a significant financial burden for CSOs. Moreover, tax incentives for corporate donations in Albania do not promote donations to CSOs and there are no tax incentives for individual donations – which, again, is an issue in all candidate countries, however, omitted in the EC reports. In Turkey, the existing tax system “impedes the functioning and development of foundations and associations” and the status of ‘public benefit’ for associations and ‘tax exemption’ for foundations is vaguely defined and granted by the President.

The importance of **human resources** for CSO sustainability has been touched upon only in Montenegro, noting that a law on volunteering has yet to be adopted, and in Kosovo, where the work on a comprehensive legal framework on volunteering has started. The Kosovo report is also the only one that mentions the issue of **non-financial state support**, pointing out the need for “standard criteria and procedures for allocating public property and confiscated assets for use by CSOs, which should be implemented at central and local level”.

## PUBLIC INSTITUTIONS - CSOs RELATIONS

Civil society **participation in policy-making** has been recognized by the EC for its significant contribution to strengthening democracy. Therefore, as usual, this area is closely monitored and reported on in most details, with the Commission making clear assessment of the progress made in each of the countries.

Alike last year's reports, the EC has noted positive developments regarding the **framework and practices for cooperation** in Montenegro and North Macedonia. In Montenegro, the dialogue on cooperation between public institutions and civil society has further improved, as the Council for Development of NGOs intensified its work, and the NGO strategy continued its implementation, with a new strategy for 2021-2023 being drafted together with civil society representatives. In North Macedonia, the implementation of the 2018-2020 Strategy and Action Plan for Cooperation between Government and Civil Society has led to a more enabling environment for civil society, and good progress has been noted on the work of the Council for Cooperation.

In addition, in Kosovo, the strategic framework for cooperation between government and civil society for 2019-2023 was approved following extensive consultations with civil society, and a new Government Council for Cooperation with Civil Society was set up and started working. While in Albania the National Council for Civil Society has to improve its functioning and representation, Serbia and Turkey have yet to set up councils for cooperation with CSOs. In addition, Serbia has not yet adopted a national strategy and action plan, nor has Bosnia and Herzegovina.

Sub-area 3.1.: Framework and practices for cooperation	
There is a strategic approach to furthering state-CSO cooperation and CSO development	The State recognizes, through policies and strategies, the importance of the development of and cooperation with the sector
	The State recognizes, through the operation of its institutions, the importance of the development of and cooperation with the sector
Sub-area 3.2.: Involvement in policy- and decision-making processes	
CSOs are effectively included in the policy and decision-making process	There are standards enabling CSO involvement in decision-making, which allow for CSO input in a timely manner.
	All draft policies and laws are easily accessible to the public in a timely manner
	CSO representatives are equal partners in discussions in cross-sector bodies and are selected through clearly defined criteria and processes
Sub-area 3.3.: Collaboration in service provision	
There is a supportive environment for CSO involvement in service provision	CSOs are engaged in different services and compete for state contracts on an equal basis to others.
	The state has committed to funding services and the funding is predictable and available over a longer-term period.
	The state has clearly defined procedures for contracting services which allow for transparent selection of service providers. There is a clear system of accountability, monitoring and evaluation of service provision

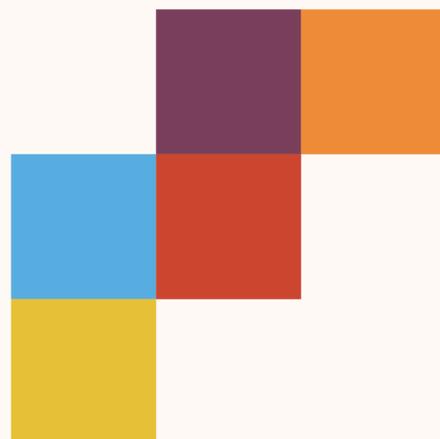
The EC assessed no progress in the implementation of the roadmap on an **enabling environment** in Albania, and noted that the implementation of the revised roadmap depends largely on donor funding.

Although some progress has been noted across the region in the civil society's involvement in policy and decision-making processes, the EC recommends further improvements towards ensuring meaningful and systematic consultations in all Enlargement countries. Positively, civil society in North Macedonia is considered an **active and key player** in policy and decision-making processes, and so are CSOs in Kosovo.

In Montenegro, the role of civil society in policy development is recognised and promoted, but genuine inclusion of CSOs is not sufficiently ensured in practice. Moreover, NGO representatives' membership of state regulatory bodies has not been restored despite the court decisions on the dismissals of prominent NGO representatives in the concerned bodies as unlawful. In Serbia some constructive steps were initiated in terms of issuing guidelines and planning of consultations, while in Albania and Bosnia and Herzegovina more substantial efforts are needed to ensure meaningful and inclusive **policy dialogue**. Finally, in Turkey there is no legal framework for public consultations and CSOs remained excluded from legislative consultation processes.

**Access to public information** has also been raised as a somewhat problematic issue in Albania, and Bosnia and Herzegovina, and a more serious concern in Montenegro, where an "increasingly restrictive approach to public access to information" was noted with the new legislation adopted. Finally, assessment of service provision by CSOs is again left out of all this year's reports.

Assessing the **involvement of civil society organizations in the negotiation process** in Montenegro and in Serbia, the EC has shared the same concerns as last year: the lack of inclusiveness, openness and effective participation. In Montenegro, the role of CSOs in the accession process is recognized and promoted at political level, but in most cases participation remains a formality. Regarding the inclusiveness and transparency of the reform process in Serbia, the EC has used harsher wording, as last year's "need to be further strengthened" this year became "need to be improved as a matter of priority".



## CONCLUSION

The first round of reports of the new European Commission addressed some of the earlier criticism that the annual reports lack detail and overlook important developments. This year, each country got a detailed assessment on more than a hundred pages, but the details seem to have not added to the clarity of the overall picture. The reports criticize a number of individual cases of violations, but many of those do not get the attention needed as they are left out of the highlighted sections.

Positively, the EC paid evidently more attention on civil society's role in the EU Acquis areas, compared to previous years. It is encouraging to see that the involvement of civil society is recognized and noted in the developments concerning the rule of law chapters in every report, and – in some more than others, also in regional policy and institutional framework, environment and climate change, consumer and health protection, external relations, and other areas. Again, this confirms that the EU recognizes civil society as a legitimate actor and partner in the democratic processes in Enlargement countries.

Nonetheless, the lack of consistency in the reports, in terms of issues covered and depth of assessment, all the while making comparisons difficult, confirms the EU is missing a clear and comprehensive framework

for civil society development in the Western Balkans and Turkey. While the Guidelines for EU Support to Civil Society in Enlargement Countries, 2014-2020 have been considered the key document for ensuring an enabling environment for civil society actions and development, and a detailed monitoring tool of the EC, they have not been consistently reflected in EU's assessment of the enlargement countries' progress.<sup>2</sup> Without a strategic coherence, clear monitoring framework, and political commitment to further support the civil society in enlargement countries, the EU fails to deliver the much-needed political support to CSOs, or clear guidance towards national governments.

Finally, we expect the next reports to follow a clear structure for monitoring the enlargement governments' treatment of civil society that would be a basis for taking political actions upon them, where backsliding would have ramifications and progress would bring concrete benefits. Ultimately, this will reinforce the credibility and the transformative power of the Enlargement policy towards the Western Balkans and Turkey.

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<sup>2</sup> BCSDN Advocacy Platform towards the EU, available at: <http://www.balkancsd.net/novo/wp-content/uploads/2020/05/58-7-BCSDN-Advocacy-Platform.pdf>