

# DEAR EU, ARE YOU STILL COMMITTED TO EMPOWERING CIVIL SOCIETY IN ENLARGEMENT COUNTRIES?

## ENABLING ENVIRONMENT FOR CIVIL SOCIETY DEVELOPMENT & ENLARGEMENT PACKAGE 2021

### BACKGROUND ANALYSIS

by the Balkan Civil Society Development Network

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With its annual Enlargement Package, the European Commission (EC) provides a detailed assessment of the state of play and the progress made by the Western Balkans and Turkey (WBT) on their respective paths towards the European Union (EU). The reports focus particularly on implementing fundamental reforms, and aim to give guidance on the reform priorities ahead.

This is BCSDN's 12th 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 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.

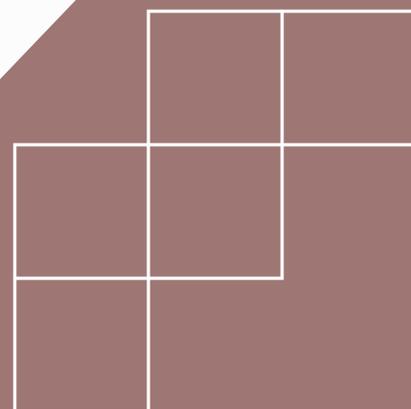
This year, the Enlargement package comes at times of a **critical standstill** of the enlargement process. A new veto for North Macedonia, this time by Bulgaria, has prevented the start of the accession process for both North Macedonia and Albania, despite the favourable decision of the Council from more than a year ago. The visa liberalisation for Kosovo has also not been implemented. With no country advancing in the accession process, the EU's credibility has been put under question. The frustration and concerns that the EU membership is becoming an unreachable goal have been growing among the citizens and the civil society, which was once the strongest driver for EU integration.

Thankfully, the Communication accompanying the Enlargement package has again confirmed the European perspective of the Western Balkans and its **commitment to the region**, promising increased financial support through the Instrument for Pre-accession Assistance (IPA III). The EC has committed to maintaining a credible enlargement process, stressing that it is a "two-way street" and that progress achieved by WBT countries should be followed by the EU delivering on its commitments.

Based on the **detailed assessment** of the state of play in each enlargement country, overall, the EC positively notes the continued reforms in **Albania** and **North Macedonia**. A more critical assessment is made for **Bosnia and Herzegovina** (BiH) and **Kosovo**, noting that the political environment hindered overall progress on the key priorities in BiH and that Kosovo is still to complete effective

implementation of the reform action plan. The accession negotiations with **Turkey** continue to be on hold due to "serious concerns on continued deterioration of the rule of law, fundamental rights and the independence of the judiciary".

Both Montenegro and Serbia is said to have ensured an "overall balance in the progress under the rule of law chapters and progress in the accession negotiations across chapters". The EC notes that **Montenegro** needs to intensify its efforts to address the remaining issues, including in the critical areas of freedom of expression and media freedom. **Serbia** is positively assessed for delivering on several outstanding commitments on EU-related reforms, while many concerns about the rule of law and democracy echoed by CSOs are not mentioned, especially about the treatment of civil society in the country.



Ensuring credible and sustainable reforms in the area of democracy remains a pressing challenge for all the enlargement countries.

As the EC notes, “the absence of genuine political will continued to be the main reason for the lack of substantial progress, or even backsliding.” Civil society continues to be separately assessed within the Political criteria as one of the four pillars of Democracy, yet again, non-systematically, inconsistently, and in varying detail across countries.

In its already recognisable manner, the European Commission starts the assessments of civil society development in the WBT countries with the vital message that “an empowered civil society is a crucial component of any democratic system and should be recognised and treated as such by public institutions”.

While last year, North Macedonia was the only country where the EC noted that civil society is, in fact, recognised as such, this year, the same remark is also given to Kosovo, marking an overall improvement in the civil society issues.

Likewise, when assessing the environment for civil society operation, the EC recognises that civil society in Kosovo and North Macedonia continue to operate, overall, in an enabling environment. Limited progress is noted in Albania and in Bosnia and Herzegovina, where the EC points that promoting a conducive environment for civil society needs to be a key priority for the BiH authorities. Similar to last year's Report, it stresses that an enabling environment for civil society “still needs to be established on the ground” in Serbia, noting no progress in addressing the issues raised in the previous report. Again, the situation is most alarming in Turkey, where the EC states that “serious backsliding regarding the civil society environment continued”, as CSOs has been facing continuous pressures, and their space to operate freely has further shrunk.

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

## OVERVIEW: CIVIL SOCIETY

# BASIC GUARANTEES TO FREEDOMS OF ASSOCIATION, ASSEMBLY & EXPRESSION

**FREEDOM OF ASSOCIATION** is legally guaranteed in all countries except in Turkey, where it continues to be obstructed due to cumbersome administrative registration procedures, the obligation for associations to register all their members, frequent inspections and fines for national and international organisations. Regarding the few legislative changes in the region, the EC noted the adoption of the Law on Registration of Non-Profit Organisations in Albania as a positive development, highlighting the introduced improvements in the registration process.

However, the EC fails to note the Law was drafted without proper consultations with civil society and adopted amid strong adverse reactions in public. There is also no mention of the concerns raised by civil society concerning the content, as well as several functional and technical aspects of the draft Law.

In practice, the environment has been again assessed as more hostile in Serbia and Bosnia and Herzegovina, continuing last year's downward trends. The EC recognises that some parts of civil society have increasingly faced more **pressures, threats and attacks** than others. In Turkey, this refers to CSOs working in human rights, particularly following detentions and arrests of activists and human rights defenders. In BiH, it is the HRDs dealing with sensitive issues such as women's rights, LGBTIQ, migrants, environment that have been increasingly targeted. In Serbia, CSOs and individuals that criticise the authorities for issues related to the rule of law and environmental protection are under particular

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
	CSOs operate freely without unwarranted state interference in their internal governance and
	CSOs can freely seek and secure financial resources from various domestic and foreign sources to
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 of expression
	Civil society representatives, individually and through their organizations, have the rights to safely receive and impart information through any media

pressure. Verbal attacks and smear campaigns against several CSOs and their financing continued in tabloids, as well as in Parliament.

This year, again, the report on Serbia does not mention the issue of GONGOs, despite the constant alarms of civil society about the GONGOs' harmful activities towards the independent CSOs.

The EC assesses that CSOs are free to exercise their rights without undue pressure from public authorities in Kosovo. The main challenge remains to be the unrevised Anti-money laundering / Countering Financing of Terrorism **(AML/CFT) legislation** that still limits access to banking services and undermines the financial viability of CSOs. In both Kosovo and Albania, the importance of an (updated) risk assessment of the sector is mentioned to prevent this legislation from putting undue limitations on the financial viability of low-risk CSO. The Albania report notes the adoption of the AML package. Still, it fails to note that it was not consulted with civil society and does not reflect the nature and characteristics of NPOs, possibly resulting in registration difficulties.

The EC recognises that the AML/CFT legislation and practices have been especially problematic in Serbia and Turkey. The report for Serbia mentions concerns about the alleged misuse of the law to restrict or coerce civil society actors for their work and criticism of the government. However, it does not mention that the FATF and MONEYVAL investigation found, in fact, an overstepping of competencies on the part of the State Administration for the Prevention of Money Laundering, while the UN Special Rapporteurs determined abuse of authority.

In Turkey, the anti-terror law, adopted in an urgent procedure without any consultation, poses new limitations to freedom of association and harms fundraising. The EC assessed that the measures introduced go beyond what is necessary and proportional, and some of them will have a chilling effect on NGOs.

Positive legislative changes on **FREEDOM OF ASSEMBLY** have been noted in several countries, but further amendments are still needed. In Albania, prior authorisation for the organisation of gatherings is no longer required and, therefore, it no longer constitutes a criminal offence. Still, the Law needs to be amended to recognise the right to spontaneous and counter-assemblies. In BiH, **legislation** needs to be harmonised across the country and aligned with European standards, particularly regarding grounds for restriction and the responsibility of organisers. The EC notes that the newly adopted Law in the Brčko District should be used as a model in all other jurisdictions. On the other hand, the Republika Srpska entity introduced a new crime of offence to the entity and its peoples' reputation, which may further restrict the space for civil society.

The legislation or measures in place have been unevenly applied **in practice** in Montenegro and BiH, including arrests and fines, depending on the political nature of the public gathering. Temporary rules and protocols aimed at preventing the spread of the infection brought limitations to the freedom of assembly in all countries. However, protests were still organised to draw attention to social, economic and human rights matters. The most serious remarks are raised in Turkey where recurrent bans, disproportionate interventions and excessive use of force in peaceful demonstrations, investigations, administrative fines and prosecutions against demonstrators led to further severe backsliding in this area.

Limited progress in improving the overall environment for **FREEDOM OF EXPRESSION** is noted in a few of the countries, while no progress is noted in Albania and Bosnia and Herzegovina primarily due to a persistent atmosphere of political pressures, **intimidation and violence** against journalists, especially without appropriate institutional follow-up. Nonetheless, serious concerns remain in all of the countries regarding public smear campaigns, threats and physical attacks on journalists, especially coming from high-level politicians. The Serbian government established a new working group on the safety of journalists, but most media associations withdrew from the group, citing hate speech and **smear campaigns against journalists and civil society** representatives, including by the head of the ruling party caucus in Parliament. While instances of physical and verbal violence have also increased in North Macedonia, the overall political context in the country is generally favourable to the promotion of freedom of

expression and pluralistic viewpoints. Serious backsliding has continued in Turkey due to the increasing pressures and disproportionate restrictive measures, detentions and arrests, criminal cases and convictions, targeting critical voices.

An increasing number of **SLAPP** (Strategic Litigation Against Public Participation) cases have been noted in BiH, Kosovo and Montenegro, used to threaten and sue journalists and civil society activists to silence them. In Montenegro and North Macedonia, the rise **of hate speech and disinformation**, including online, is an increasing concern. The EC recommends that governments ensure the efforts to limit its effects do not disproportionately restrict the freedom of expression. In terms of legislation changes, the report for Albania positively notes that the widely criticised package on anti-defamation in Albania was rejected and is now under revision based on the Venice Commission recommendations and consultations with the media.

# FRAMEWORK FOR CSO FINANCIAL VIABILITY AND SUSTAINABILITY

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

CSOs and donors enjoy favorable tax treatment	Tax benefits are available on various
	Incentives are provided for individual

## 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
	Public funding is distributed in a
	There is a clear system of accountability, monitoring and
	Non-financial support is available

## Sub-area 2.3: Human resources

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

The EC reports vary in the extent they deal with the issue of CSO financial viability. Although this area is, overall, addressed in fewer details, the reports recognise several critical challenges for CSOs concerning the fiscal and legal frameworks.

One of the main issues across the reports is the **lack of transparency** in the provision of **STATE FUNDING**. The EC notes that efforts to ensure frameworks for transparent funding of civil society are necessary for most countries. Some improvements have been recorded in Kosovo. However, it is recognised that public funding is still at risk of corruption and conflict of interest. In addition, Kosovo is the only country for which the EC notes that public funding for civil society continues to be reported annually and made publicly accessible. The issue with limited data is, however, present in all countries, confirming need to monitor, collect and publish **data on public funding** more systematically, while data about funded projects and sectors should complement information about funding authorities, recipient bodies and amounts disbursed.

The need to involve CSOs and other stakeholders in every stage of the distribution process, including in consultations on annual funding priorities, is mentioned only in Montenegro and Turkey. The EC stresses that stronger capacities of public institutions in **strategic planning, monitoring and evaluation** of the support provided to CSOs would enhance the quality of the cooperation with civil society, but does not highlight this in the other reports. In addition, EC mentions that public funding in Albania is insufficient to sustain CSOs' activity, as its budget was reduced by 40% in 2020, but fails to mention that public funds for civil society notably decreased in almost all countries in the region as a consequence of COVID-19.

Assessment on the **TAX TREATMENT** of CSOs has again been tackled only in the reports for Albania and Turkey, and this time briefly in Kosovo, where it notes that "the legislation on tax exemption and related administrative procedures should be harmonised". In Albania, despite last year's adoption of the new instruction to improve the VAT reimbursement for CSO beneficiaries of EU funding, there is no evidence of successful VAT refunds yet. Moreover, only the Report on Albania notes that tax incentives for corporate donations are not enough to promote donations to CSOs, despite this being an issue in all other countries. The same is the case with the absence of incentives or tax deductions for individual donations, also valid – but not mentioned – in Serbia and Turkey too.

For Turkey, EC again notes that the existing tax system "impedes the functioning and development of foundations and associations" and mentions the issues around the status of 'public benefit' for associations and 'tax exemption' for foundations. Finally, the EC assesses that the space for foreign donors under current Turkish legislation is increasingly shrinking.

Same as last year, the importance of **HUMAN RESOURCES** for CSO sustainability has been mentioned in only two countries. In Kosovo, the need for a more enabling environment for **volunteering** is identified, while in Montenegro, the EC emphasizes the need to adopt the Law on volunteering aimed to promote and regulate volunteer work in CSOs. In addition to aligning the Kosovar legislative framework with international standards, the EC notes that financial resources for youth volunteering programmes should be allocated.

None of the reports discusses the issues related to **employment** in the CSO sector – especially the lack of systematic data collection and publishing as a way to support the development of policies appropriate to the sector's needs, as well as to recognise its economic value – nor the provision of non-financial state support to CSOs.

## PUBLIC INSTITUTIONS - CSOs RELATIONS

Throughout the reports, the EC recognises that close cooperation with civil society, enabling its meaningful and systematic contribution to public policy development, is essential for strengthening democracy, as civil society is a key guarantor of effective checks and balances. Therefore, as usual, this area is most thoroughly assessed in each of the countries.

The reports show minimal improvement in the **FRAMEWORKS AND PRACTICES FOR COOPERATION** across the region. In Albania and Kosovo, limited progress was noted in the implementation of the **strategic documents**, also due to limited resources available and dependence on donor funding. There is no assessment on the implementation of the expired Strategy in Montenegro. To maintain the positive trend in North Macedonia, the EC calls the government to ensure transparent and timely implementation of all objectives of the ongoing strategy through a realistic action plan. The EC rightfully notes that the **Councils for cooperation** in most countries are underperforming and need to be more representative of wider civil society. Surprisingly, there is no mention of a very positive development - the establishment of the Advisory Body of the Council of Ministers of BiH for Cooperation with NGOs, responsible for creating a stimulating environment for civil society.

In Serbia and Turkey, the reports note there is still no government strategy or mechanism for cooperation with civil society or for improving the CSO operating environment. In Serbia, the EC mentions the creation of a Ministry for human and minority rights and social dialogue that took over, among others, the competencies of the Office for Cooperation with Civil Society.

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 CSOs
	The State recognizes, through the operation of its institutions, the importance of the development of and cooperation with CSOs
Sub-area 3.2: Involvement in policy- and decision-making	
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
	CSO representatives are equal partners in discussions in cross-sector bodies and are selected through clearly defined criteria and
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 & evaluation of service provision

However, it fails to note the civil society did not receive this change positively. Several relevant CSOs in Serbia have been vocal about a lack of transparency and consultations in the process, and raised their concerns that placing the relations with civil society under the auspices of one ministry significantly narrows the space for constructive cooperation between all public authorities and CSOs.

Limited progress has been noted across the region in the CSOs' **INVOLVEMENT IN POLICY AND DECISION-MAKING PROCESSES**. The EC recommends further improvements towards ensuring meaningful and systematic consultations as part of inclusive policy dialogue in all Enlargement countries. In Kosovo, public consultations continue to be organised regularly but not systematically, despite the minimum standards in place. In Albania and Montenegro, the EC notes that consultations often remain artificial exercises, **lacking genuine and systematic inclusion** of all relevant stakeholders. Still, there is no recognition of civil society concerns across the region about consultations only being a formality, without genuine openness towards the views of civil society representatives.

A more positive assessment is made for North Macedonia, where CSOs continued to play the watchdog role and participated in the decision-making process on crucial laws. Furthermore, the EC notes that CSOs regularly engaged with public institutions and bodies such as the Council for Cooperation or the OGP Council. Still, it also recognises that "continued efforts are needed to further strengthen the existing structured dialogue" and that "a systematic follow-up of exchanges with civil society is needed". In the same line, but with a more diplomatic tone, the report for Serbia takes note of the perceptions of CSOs that the time for public consultations is still too short, or that their comments on draft laws were not given sufficient consideration and follow-up. While in BiH, the legislation on public consultations is considered uneven across the country, in Turkey it is noted that there is still no legal framework or transparent and consistent

practice for public consultations. Independent CSOs are largely excluded from the consultations that are part of policy-making processes and monitoring. **E-consultations** are increasingly used in Albania, Kosovo, North Macedonia and Serbia, but not to their full potential.

**ACCESS TO PUBLIC INFORMATION** is assessed as problematic in several countries. In Serbia, the EC notes that administrative silence remains a major issue. In Montenegro, information classified by public institutions and withheld from the public is considered an issue to be addressed as a matter of priority. In Montenegro and Turkey, the **absence of revised legislation** limits the CSOs' and citizens' access to key policy decisions, while in Bosnia and Herzegovina, legal provisions are still interpreted to protect private rather than public interests. In Kosovo, too, implementation of existing legislation continues to be insufficient.

Finally, assessment of **SERVICE PROVISION** by CSOs is again not directly addressed in reports, except in Montenegro, where the EC notes that services provided by CSOs (e.g. shelters) continue to face **administrative constraints**, including the lack of proper licences. On the other hand, the EC recognises that CSOs have provided support and services to the most vulnerable people affected by the COVID-19 pandemic, complementing or sometimes replacing state interventions. In this context, as countries are recovering from the COVID-19 crisis, the EC recommends that governmental and non-governmental actors **build long-term partnerships and strengthen existing cooperation**.

## CONCLUSIONS AND RECOMMENDATIONS

The legal, financial and institutional framework for civil society, except in Turkey, is mostly in line with European and international standards. However, the European Commission rightfully notes that “**challenges remain in ensuring effective implementation**”. Many concerns raised in the previous reports have been addressed to a limited degree or are still pending. And while the EC has recognized the involvement and the important role of civil society in different EU Acquis areas, a common thread is that further efforts are still needed to **ensure systematic cooperation** between the government and civil society in the democratic processes.

The detailed reports aim to provide “a factual and fair assessment as well as a clear roadmap to accelerate and deepen reforms”. However, at times, the EC has presented a bleak assessment or omitted developments that are vital for civil society and its development. Even in cases where local CSOs have been vigorous in their advocacy efforts and public reactions on both national and international levels, their **concerns seem to have not been heard** by the EU Commission in some countries. Whether this is a result of an intentional trade-off between diplomacy and a critique when it comes to supporting the civil society, or a lack of interest and de-prioritizing the importance of civil society on account of other issues, both scenarios are equally **concerning**.

The lack of a consistent, systematic way of reporting on civil society, we have noted many times, is evident in this Enlargement package, too. Despite having available a clear and

comprehensive framework for civil society development – the Guidelines for EU Support to Civil Society in Enlargement Countries, and the availability this year of a detailed monitoring report based on the Guidelines, this has **not been consistently reflected** throughout the reports.

The **new Guidelines** should be fully incorporated in the existing EU policy framework and the EU integration process (such as the annual reports, the negotiating frameworks, IPA programming, action documents, and especially the annual reports). This would allow the Guidelines to be used as a **basis and leverage** for the Commission to take appropriate action towards enlargement countries, especially in cases of increasingly hostile environments for civil society and growing obstacles to CSO operations. It will also provide the civil society with the needed evidence and political backing for their advocacy efforts to keep governments in check and advocate for an environment that is enabling their operation.

Keeping in mind the **merit-based approach** of the new enlargement methodology, backsliding in the area of civil society should have ramifications, and progress should bring concrete benefits, especially if tied to the provision of financial assistance. Ultimately, this will **reinforce the credibility** and transformative power of the Enlargement policy towards the Western Balkans and Turkey, reviving the EU’s most successful foreign policy and strongest incentive for WBT governments to ensure functioning democracies.