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Enabling Environment for Civil Society Development & EC Enlargement Strategy Paper and Progress Reports 2013 Background analysis

BACKGROUND¹

Since 2007, the European Commission (EC) has identified civil society development (CSDev) and civil society dialogue as a core priority of the Enlargement process, and has since translated it into specific benchmarks under the Political criteria for most of the Enlargement countries. The importance of the role of civil society was further highlighted in the 2012 EC's Communication

*"The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations."*² It is with this Communication that the Commission introduced **enabling environment** as a set of preconditions that have to be in place in a country. The yearly publications of the Enlargement Strategy Paper and the Progress Reports enable the Commission to follow the progress in this area. This has served as a basis for BCSDN's background analysis since 2009 assessing the Commission's approach and the situations in CSDev in the respective countries. The Analysis is set in the framework of the BCSDN Monitoring Matrix on enabling environment for civil society development (CSDev)³ developed in 2012. The Monitoring Matrix provides a set of principles and standards accompanied with 152 indicators for legislation and practice that needs to be in place in a country to have an optimum enabling environment for CSDev, i.e. Civil Society *Acquis*.

"To operate, CSOs need a functioning democratic legal and judicial system – giving them the de jure and de facto right to associate and secure funding, coupled with freedom of expression, access to information and participation in public life. The primary responsibility to ensure these basic conditions lies with the state."



ASSESSMENT

The 2013-2014 Enlargement Strategy treats CSDev as part of **"The functioning of institutions guaranteeing democracy"** section. In the section, the Commission announces intention to "increase focus on civil society" as a way to meet the key challenges in bringing about functioning democratic institutions. In doing so, "capacity-building and encouraging the creation of an **enabling environment for its development** and greater involvement of stakeholders in reforms..." take the center stage of the approach. Finally, the experience of board-based inclusion of CSOs into the screening process in Montenegro is to be promoted and "building on the positive example of Montenegro, and encourage maximum transparency in handling of relevant documents." The analysis of the Reports shows that similar to last year, the Commission has maintained its focus on the issues pertinent to **Government-CSO relationship** such as involvement of civil society in policy and decision-making, administrative capacity of state institutions to draft and adopt quality legislation through an inclusive process, and on the mechanisms that stimulate funding of CSOs. However, while last year BCSDN's [paper](#) has criticized the insufficient focus on crucial areas for consolidating the enabling environment in which civil society functions and operates, this year's Reports bring about **increased attention** on issues over **financial viability and sustainability of the sector** such as tax regime and state funding and support (e.g. Albania, BiH, Kosovo, Macedonia, Turkey). The issues of provision of service by CSOs and the human resources in the sector, nevertheless, are only

¹ Cloud of the most frequent words used in the 2013 Progress Reports for all countries in relation to civil society.

² EC Communication: *The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations*, 2012L <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0492:FIN:EN:PDF>

³ The Monitoring Matrix was developed by 12 CSO practitioners from 10 European countries and was supported by ECNL. The full Monitoring Matrix is available at: http://www.balkancsdn.net/images/BCSDN_Monitoring_Matrix.pdf

sporadically mentioned. **A shift in the methodology** in the assessing Political criteria for accession, including development and involvement of the civil society can also be observed. For example, there is no follow up on some issues mentioned in last year's Reports, opening a question whether this is because of advancements in those areas, or if they are no longer an issue of interest by the Commission due to changed methodology. This leaves quite some room for interpretation and speculations. A further shift in methodology in the CSDev can be expected next year as well since the Commission is preparing a monitoring matrix of its own. The matrix, called "**Guidelines for EU Support to Civil Society in Enlargement Countries, 2014-2020**"⁴ is intended to enable the tracking of predetermined indicators so as to give a specific set of recommendations for improvement to governments.

Issues concerning **Roma, LGBTI community, freedom of expression and media**, which have been prominent already in previous years, have this year culminated in full-fledged separate issues treated in the Strategy and individual country Report's.

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

Area 1: Basic Legal Guarantees of Freedoms ⁵	
Principle	Standard/Benchmark
Sub-area 1.1.: Freedom of association	
Freedom of association is guaranteed and exercised freely by everybody	All individuals and legal entities can freely establish and participate in informal and/or registered organizations offline and online. CSOs operate freely without unwarranted state interference in their internal governance and activities. CSOs can freely seek and secure financial resources from various domestic and foreign sources to support their activities.
Sub-area 1.2.: Related freedoms	
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.

As in the previous years, there is no coherent and detailed approach in the country reports regarding this issue. The freedom of association and assembly in all countries (except Turkey) noted to be "generally respected", "overall satisfactory" or "continuous to be exercised/ enforced".

Repeatedly, concerns were raised in Bosnia and Herzegovina regarding "cases of intimidation and violence against human rights advocates" and lack of "effective investigation and prosecution of such cases". In Serbia, "lack of transparency and consistency in the registration process" is noted to pose continues obstacles for smaller religious groups from exercising their rights. Serious concerns raise the repeated remarks on Turkey that "there were examples of a restrictive interpretation of legislation vis-à-vis associations and civil society organisations", as "many associations had to seek court protection to defend their right". A case is noted, where

association was refused the right to establishment in Turkey. While some amendments were made in respect to the freedom of expression through the democratization package announced in September by the government, there are numerous causes for concern outlined.

The reports on all of the countries regarding **freedom of expression** are mostly focused on the independence of media and in that respect include numerous concerns. Progress was explicitly reported only in Albania, but it was emphasized that "further steps are needed to fully decriminalise defamation." Concrete critiques were given for Kosovo's legislation covering freedom of expression for being fragmented and ineffective and for the overlap between responsible institutions. For Macedonia, "polarization of the media and poor professional standards hamper the public's right of access to diverse viewpoints and accurate information" has been noted.

⁴ <http://www.balkanicsdn.net/index.php/bcsdn-news/1585-guidelines-for-support-to-civil-society-in-the-enlargement-countries-outcomes-of-online-and-national-consultations-may-june-2013>

⁵ Excerpts from the BCSDN Monitoring Matrix.

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

This year's Reports have significantly increased its attention on the issue, pointing in more detail which aspects of the **fiscal environment** continue to hamper the development of an enabling environment for civil society. It is highlighted that in Albania, the tax framework for CSOs, particularly on VAT reimbursement still includes provisions that undermine their financial viability. Lack of progress in harmonising tax legislation in Macedonia is noted (particularly, limiting access to tax benefits and to certain types of economic activities), as well as in the expected amendments to the Law on Donations and Sponsorships in Public Activities. For Turkey, insufficient tax and other incentives for private donations and sponsorship and the fact that "legislative and bureaucratic obstacles impeding the financial sustainability of civil society organizations persisted" is noted.

Almost all Reports point to the fact that civil society sector remains dependent on **funding** by foreign donors (e.g. Albania, Macedonia, Turkey) and there is limited public funding available (e.g. Kosovo, Albania, Turkey). Additionally, as in the previous report lack of transparency in the allocation of public funds for CSOs was noted in Bosnia and Herzegovina and Kosovo.

Area 2: Framework for CSOs' Financial Viability and Sustainability	
Principle	Standard/Benchmark
Sub-area 2.1: Tax/fiscal treatment for CSOs and their donors	
CSOs and donors enjoy favorable tax treatment	Tax benefits are available on various income sources of CSOs. Incentives are provided for individual and corporate giving.
Sub-area 2.2.: State support	
State support to CSOs is provided in a transparent way and spent in an accountable manner	Public funding is available for institutional development of CSOs, project support and co-financing of EU and other grants. Public funding is distributed in a prescribed and transparent manner. There is a clear system of accountability, monitoring and evaluation of public funding. Non-financial support is available from the state.
Sub-area 2.3: Human resources	
State policies and the legal environment stimulate and facilitate employment, volunteering and other engagements with CSOs	CSOs are treated in an equal manner to other employers. There are enabling volunteering policies and laws. The educational system promotes civic engagement.

Government-CSO Relationship

With regards to **the Government-CSO Relationship**, there are differences among Commission's observations for the individual countries. In most of the countries it is noted that the dialogue and cooperation between government and civil society remains weak or/and further improvements are needed. Positive connotation for continuous involvement of civil society can be found in Reports for Montenegro and Serbia, for the involvement in the legislative process in Albania and improved cooperation at local level in BiH.

The primary focus of the Commission remains on the role and the participation of civil society in policy- and decision-making. The Commission calls on improvement and more systematic and structured consultation with CSOs in Albania, Bosnia, Kosovo and Turkey, and improvement in practice and greater openness of the government to involving civil society in Macedonia.

The Commission calls for further improvement in the framework and practices for cooperation with CSOs in almost all countries, esp. the institutional mechanisms and governments' procedure. Such mechanisms are noted to be lacking in Turkey, are not operational in BiH, and only a modest and

uneven progress across institutions in the implementation is observed in Macedonia. The Commission calls for increase transparency of such procedures in Montenegro. Progress is noted in Kosovo for the preparation and adoption of the Government's strategy and action plan on cooperation

Area 3: Government – CSO Relationship	
Principle	Standard/Benchmark
Sub-area 3.1.: Framework and practices for cooperation	
There is a strategic approach to furthering state-CSO cooperation and CSO development	The State recognizes, through policies and strategies, the importance of the development of and cooperation with the sector. The State recognizes, through the operation of its institutions, the importance of the development of and cooperation with the sector.
Sub-area 3.2: Involvement in policy- and decision-making processes	
CSOs are effectively included in the policy and decision-making process	There are standards enabling CSO involvement in decision-making, which allow for CSO input in a timely manner. All draft policies and laws are easily accessible to the public in a timely manner. CSO representatives are equal partners in discussions in cross-sector bodies and are selected through clearly defined criteria and processes.
Sub-area 3.3: Collaboration in service provision	
There is a supportive environment for CSO involvement in service provision	CSOs are engaged in different services and compete for state contracts on an equal basis to other providers. The state has committed to funding services and the funding is predictable and available over a longer-term period. The state has clearly defined procedures for contracting services which allow for transparent selection of service providers, including CSOs. There is a clear system of accountability, monitoring and evaluation of service provision.

with civil society for 2013-2017 and highlighted are the work of the Serbian office for cooperation with civil society. There is no mention on the state of play with the National Civil Society Development Strategy in BiH, which was last year mentioned to be in preparation.

Under the biggest focus of the Commission, **the involvement of CSOs in the decision-making process**, issues are noted with more detail. Generally, the Commission calls for more consistent, transparent and inclusive processes in all countries, as well as appropriate institutional mechanisms and satisfactory follow ups. In almost all of the countries the need for better involvement of civil society in the legislative process in specific areas such as in anti-corruption policy, human rights, and environment and climate change, as well as in regional policy and coordination of structural instruments (in Macedonia) is highlighted. Progress on this issue is noted in Albania, though it is emphasized that there are still “no clear rules on public consultation”. Significant involvement of CSOs is noted in the Report for Montenegro.

One of the crucial messages for the national authorities sent by the Commission is that “A more transparent and inclusive consultation

process, further involving civil society and social partners, would increase public trust in legislative drafting.” Concerns over this issue are again raised for Turkey, as “**There was no progress in the long-standing discussion on the need for systematic consultation with civil society and other stakeholders in law-making.**”

The issues of CSOs' involvement in **service provision** are addressed only in few of the country reports. It is outlined that there is limited public funding in BiH for social services delivered by civil society on behalf of the authorities. In Albania, it is highlighted that further substantial efforts are required to develop community-based services, and that “human and financial resources for civil society organisations certified to supervise work with juveniles need to increase; so does the budget to guarantee the effectiveness of the probation service”.