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FOSTERING AN ENABLING ENVIRONMENT FOR CIVIL SOCIETY CONTRIBUTION TO GLOBAL DEVELOPMENT

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Introduction

quality and relevance of official development programmes. According to UNDP, civil society actors at national and global level have developed different competences and influence in a range of development issues. Partnering of development actors with national CSOs can help contribute to the effectiveness of all development interventions no matter the region, especially with respect to providing voice to the communities, data collection, monitoring and evaluation. CSOs often serve as agents of accountability and service delivery that can also lead to success of the interventions.

In January 2016, the Sustainable Development Goals (SDGs) became the most important global social contract achieved so far, and the main international mechanism for guiding development in all UN member states (including the EU) until 2030. These global goals concern a wide range of targets including peace and prosperity, poverty alleviation, economic growth and environmental objectives to be achieved globally.

Throughout this process, it has been clear that national governments cannot realize these ambitious goals on their own. Collective and individual efforts at national and international level were identified as necessary. Governments will need broad involvement of other stakeholders, such as the private sector, the general public and CSOs.

In order for CSOs to accomplish their critical role in global development and play their role in the localization of the SDGs, it is essential that the legal environment in which they operate is considered supportive and enabling for the operations of CSOs.

This policy brief presents the environment in which CSOs in the Western Balkans function and whether it allows CSOs to contribute to global development processes.

This policy brief is part of the activities of the Western Balkan CSOs for Global Development project, which aims to enhance capacity of CSOs in the Western Balkans, to raise public awareness of global development issues, and to better coordinate CSOs active in development education and global development issues. It also aims for Western Balkan CSOs to engage in political dialogue at national and EU level on development policy, especially in the context of the EU enlargement process.

Civil society organizations (CSOs) play a significant role in international development cooperation. Engagement with civil society is critical to national ownership of development processes, democratic governance, and the

Western Balkan CSOs for Global Development

Project Lead: HORIZONT3000, Austria

Project Partners:

- ▶ Balkan Civil Society Development Network (BCSDN)
- ▶ Macedonian Center for International Cooperation (MCIC)
- ▶ Centre for Development of Non-Governmental organizations (CRNVO) - Montenegro
- ▶ Civic Initiatives - Serbia
- ▶ Association People's Parliament - Serbia
- ▶ Institute for Democracy and Mediation (IDM) - Albania
- ▶ Croatian Platform for Citizen Solidarity (CROSOL)
- ▶ Slovenian NGDO Platform for Development Cooperation and Humanitarian Aid (SLOGA)
- ▶ CONCORD – European NGO Confederation for Relief and Development
- ▶ Pontis Foundation - Slovakia
- ▶ Austrian Foundation for Development Research (OEFSE)

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1. Civil Society Development in the Region

The enabling environment for civil society is broadly defined as the conditions within which civil society works. Specifically, enabling environment is viewed as the varied array of conditions – economic, political, social, cultural, legal, and otherwise – that affect the capacity of citizens, whether individually or collectively, to voluntarily participate in civil society. The enabling environment has increasingly come to be viewed as key to assessing civil society's health.

This policy brief is based on the findings of the country papers developed by BCSDN members through the **Monitoring Matrix on Enabling Environment for Civil Society Development** – a tool developed by CSO experts and practitioners from the BCSDN network and the European Center for Not-for-Profit Law (ECNL). It presents the main principles and standards identified as crucial so the environment in which CSOs operate is considered enabling¹. The Matrix is organized around three areas, each divided by 8 sub-areas: (1) Basic Legal Guarantees of Freedoms; (2) Framework for CSOs' Financial Viability and Sustainability; (3) Government – CSO Relationship. The 8 principles, 24 standards and 151 (legal and practice) indicators have been formulated with consideration of the current state of development of and diversity in the countries of the Western Balkans and Turkey, and they rely on the internationally guaranteed freedoms and rights and best regulatory practices at the European Union level and in European countries.

In all the countries of the Western Balkans, there is a history of varied and vibrant civil activity organized around religious, educational, humanitarian, cultural, and social interests. This policy brief builds on the **2016 Monitoring Matrix country reports** seeking to gauge the state of play with enabling environment for civil society development at regional level, in the Western Balkans Enlargement countries, as precondition for meaningful contribution of the CSOs to global development.

The civil society developments in 2016 in the Western Balkans countries were characterized by a relatively tumultuous setting. Political crises, elections and economic instability, coupled with increased citizen unrest and the refugee crisis. This left little space for civil society development, many CSOs, nevertheless, had a pivotal role in organizing peaceful assemblies against political; social and economic injustices as well as actively supporting refugees and migrants passing through the region.

Within the **EU negotiation process**, the importance of increased CSOs' involvement in the accession process was highlighted in Serbia and Albania; CSOs in Bosnia and Herzegovina (BiH) focused on strengthening their capacities for monitoring the EU integration process and entered into dialogue on the Reform Agenda with the EU and BiH authorities. Due to major political crisis, Macedonia received a conditional recommendation for EU accession.

The inflow of **migrants and refugees** has been a crucial challenge to the Western Balkan Enlargement countries, especially for CSOs. Whilst the Balkan Route was practically the only channel enabling influx of migrants and refugees towards Western and Northern Europe, with Macedonia in the first place, the respective Governments dealt with the challenges slowly; in absence of a strategic approach to the situation and good coordination between institutions, CSOs were the main service providers. Throughout the entire period, CSOs played a key role in providing services, primarily with foreign

¹ The term civil society organizations (CSOs) is understood to encompass the definition of civil society also adopted in the Monitoring Matrix, which relies on the following criteria: 1) it is a voluntary organization established by a private instrument (contract, act on establishment), rather than by law; 2) it may be a membership or non-membership organization; 3) it is not part of the government structure; 4) it is established to pursue public or mutual benefit goals; 5) it is not-for-profit. Therefore, the term includes associations, foundations, private institutions, centers, not-for-profit corporations, and any other organization falling under the above criteria. The Monitoring Matrix recognizes the existence of other forms of CSOs (e.g., political parties, religious organizations, trade unions), but these are omitted from this report in order to provide for in-depth monitoring and advocacy focused only on CSOs as defined with the upper criteria.



funding, at the border crossings and in-countries, ensuring provision of food, healthcare, basic supplies, and other goods and services on a daily basis, but also monitoring the situation. That notwithstanding, CSOs efforts were largely overlooked as media barely covered CSOs' relief services to refugees, while the governments' delayed response received significant coverage.

Overall, **CSO sustainability** in the Western Balkan Enlargement countries remained largely stagnant. According to the USAID CSO Sustainability Index 2015, only Albania marks improvements in at least two dimensions of sustainability – legal environment and financial viability. Overall sustainability deteriorated in Macedonia, as well as in Kosovo and Serbia, largely as a result of the difficult political environment that restricts civic space, especially with regards to legal environment, advocacy, and public image. At the same time, CSOs' organizational capacity improved, mainly due to CSOs' continuing efforts and successes in constituency building.

2. Enabling Environment for Civil Society Development - Summary

Basic Legal Guarantees of Freedoms

This area addresses issues which are core to

the existence of civil society – the fundamental freedoms of association, assembly and expression that shall be guaranteed and exercised freely by everybody. Freedom of association denotes the freedom of all individual and legal entities to freely establish and participate in informal and/or registered organizations offline and online, without unwarranted state interference in their internal governance and activities, and to freely seek and secure financial resources from various domestic and foreign sources to support their activities. Similarly, CSO representatives, individually or through their organizations, shall enjoy the freedom of peaceful assembly and expression.

Freedom of association, assembly and expression are legally guaranteed in all countries of the region. Although countries' laws are problematic in certain aspects, as for instance the registration process in Albania, CSOs have relatively enabling framework laws. Still, there are some challenges with inadequate implementation of the laws and lack of implementing bylaws, as well as violations of the guaranteed freedoms. Throughout 2016, there have been copious developments related to all three freedoms, with numerous incidents and cases of violation being reported.

In the area of **freedom of association** there have been positive developments in 2016 in Albania, where National Accounting Standard for Non-Profit Organisations was introduced with clear and easy procedures to the financial reporting and accounting rules to be followed by CSOs, proportionally to the size of a CSO. In Kosovo, the new Law on preventing money laundering and fighting financing of terrorism approved in 2016 removed majority of previously restrictive provisions for CSOs, leaving only a few restrictions not aligned with the international standards. On the other hand, in Serbia a proposed Draft Civil Code set more restrictive framework for associations, foundations and endowments not in line with international standards. In Bosnia and Herzegovina the changes of the Law on Associations and Foundations in 2016 allow the Ministry of Justice to oversee the work of CSOs.

A worrisome trend of rise of “civil” society organizations that propagate undemocratic values has been observed in Macedonia and Serbia, usually acting as proxies to political parties. In Serbia, a study mapped 109 registered and non-registered non-democratic, non-profit legal entities. On a similar note, in Macedonia a Civil Movement for Defense of Macedonia appeared and has been particularly active in organizing counter-assemblies during 2016 and received significant media coverage.

Despite legal protection, numerous cases of state interference in the internal matters of CSOs were



reported in almost all countries, according to the results obtained from a questionnaire administered to CSO representatives. In Albania, 15% of the surveyed CSOs expressed that they have been subject to at least one sanction (due to delays in declarations to the tax authorities and/or to the labor office). In Bosnia and Herzegovina, the Ministry of Justice of BiH announced that all CSOs will be put under surveillance as part of anti-money-laundering procedures so as to prevent illegal activities. In Macedonia, there were increased numbers of cases of state interference with 22% of the respondent CSOs saying they faced excessive administrative demands, 13% faced illegitimate attacks, and 10% unjustified limitations with respect to the organization's work. In addition, the Public Revenue Office conducted targeted inspections on 11 CSOs and notified at least 10 more that jointly carried out an independent pre-electoral awareness-raising campaign.

In the area of **freedom of peaceful assembly**, the right to peaceful assembly is legally guaranteed, although almost all country laws impose various restrictions. After Serbia's Constitutional Court declared the Public Assembly Act unconstitutional in 2015, a new Law on Public Assemblies was adopted in 2016, which recognizes spontaneous assemblies and removed restrictions off simultaneous and counter-assemblies; yet it banned gatherings in certain places and allowed local self-governments to define the scope of locations for public assemblies. In Macedonia, the Law on Public Assemblies provides citizens the right to assembly without the obligation for prior notification; however, it contains some burdensome provisions and does not provide the right to appeal restrictions. Furthermore, the Law on police lacks consolidation with the related legislation and further explanation on the specified means for dispersing crowds and video recording, leaving room for this to be used as pressure over the citizens that want to practice their right to assembly.

In practice, during 2016, anti-government protests intensified through various actions and initiatives in almost all countries, with the ones in Kosovo, Macedonia and Serbia attracting greatest attention. Protest organizers in Macedonia and Serbia had been facing pressures by civilian police, whereas few isolated protests in Kosovo and Macedonia have been accompanied by violence and excessive use of force, with journalists being attacked, and 13 people arrested in Macedonia. In Macedonia most of the gatherings were peaceful and properly handled. In an isolated case disproportionate and indiscriminate force was used on the crowd, and on several other gatherings there were restrictions, mostly by limiting the desired place for assembly and excessive police presence.

Freedom of expression continues to be legally guaranteed and protected in all its forms throughout the whole region. Nonetheless, increased numbers of violations have been reported in Bosnia and Herzegovina, Macedonia and Serbia, with CSOs' representatives and civic activists facing verbal and physical attacks, censorship, smear campaigns, criticisms by high-level officials, and court judgments (Macedonia and Serbia).

Framework for CSO Financial Viability and Sustainability

This area addresses issues that are core to the sustainability of civil society – tax treatment for CSOs and their donors, state support to CSOs and CSOs' human resources. Fiscal treatment for CSOs and their donors inspects the availability of tax benefits on various income sources of CSOs and incentives for individual and corporate giving. State support tackles availability of state funds for different modalities, their distribution and system of accountability, monitoring and evaluation, as well as non-financial support. CSOs' human resources inspect treatment of CSOs as employers compared to other employers, volunteering policies, and promotion of civic engagement within educational systems.

Financial sustainability and continuous access to funding is currently the main challenges of CSOs in the region. In most of the countries, tax incentives available to CSOs, including Public Benefits Organizations (PBOs) are limited, and do not boost philanthropy. State funding remains to be insufficient and its distribution is still not in line with transparency and accountability standards that allow for easy, equal, fair and effective access for CSOs. The issues regarding lack of respect of prescribed rules for awarding financial state support in practice remain. Non-financial support is also distributed through nontransparent mechanisms. During 2016 several developments, both positive and negative, have been noted across the region that affect civil society financial viability and sustainability.



Tax incentives, for instance, on private or corporate donations, grants and membership fees, interest from bank deposits etc., are in place, but tax treatment is still unfavorable and does not stimulate philanthropy. With the legal changes in BiH in 2016, CSOs are exempt from paying tax for performing economic activities, and from 2017 CSOs are obliged to pay 10% tax on profits made. In Macedonia, under the Law on Personal Income Tax and the Law on Profit Tax, CSOs are treated equally as for-profit entities and some regulations even put them in a less favourable position (tax exemptions exist only for trade companies with total income under 3 million MKD). Furthermore, in Montenegro, according to the new Law on Value Added Tax adopted in July 2016, expenditures in dozen of CSOs areas, as for instance civil society and volunteerism, sustainable development, gender equality, etc., are recognized as expenses if exceeding 3.5% of total income.

Public funding in all countries is limited, distributed through nontransparent procedures and spent in an unaccountable manner. Positive steps have been noted in Kosovo, where the Government in May 2016 adopted a model on public funding for CSOs, designed jointly with civil society, which foresees decentralized distribution and central monitoring and evaluation. However, despite the establishment of a working group in September 2016 for developing draft Regulation on public funding for CSOs, no special laws or policies regulate financial state support to Kosovar CSOs. In Serbia, without any prior notice, in March 2016 the Ministry of Finance changed the Rules on the method of determining and recording public funds beneficiaries and on the conditions and manner of opening and closing sub-accounts with the Treasury Administration, reestablishing the 2014-abolished obligation for opening such an account for CSOs.

With regards to **human resources**, positive developments have been observed in Albania regarding the long-awaited volunteering law. In April 2016, the Albanian parliament finally adopted the Law on Volunteering which defines the main principles, conditions and criteria for conducting voluntary work and contractual relationships, aiming to regulate volunteering and increase citizens' non-profit activities for the wellbeing of another individual or the wider public. The law, however, fails to regulate fiscal issues on volunteering. Finally, official data available on the number of employees and volunteers engaged in CSOs continue to be lacking in all Enlargement countries.

Government – CSO Relationship

This area focuses on the relationship between CSOs and the government – framework and practices for cooperation, involvement in policy- and decision-making processes and

collaboration in service provision – and appears to be the most challenging one, as it depends considerably on the attitude of public authorities towards civil society. Framework and practices for cooperation deals with the recognition of the civil society sector through the development of policies and strategies, as well as through the operation of its institutions. Involvement in policy- and decision-making processes addresses CSO involvement in these processes, the opportunity for them to access drafts and provide input in a timely manner, and the designation of CSO representatives as equal partners in discussions in cross-sector bodies. Collaboration in service provision tackles CSOs' engagement in different services, procedures for contracting and funding for such services, as well as systems of accountability, monitoring and evaluation of service provision.

CSO-state relationships are regulated by the legal and/or policy documents in all the countries; however state-CSO relationships remain to be underdeveloped and not meaningful enough. The latter is mainly due to insufficient implementation of the mechanisms and cooperation documents and lack of political will to cooperate and respect the established measures. CSOs are also not sufficiently involved in the provision of services on behalf of the state, with the exception of social services. Throughout 2016, there has been improvement in the legal framework in some countries, yet deterioration in the involvement of CSOs in the decision-making processes in practice.

With regards to **framework and practices for cooperation**, in Kosovo a working group for drafting a new Strategy for cooperation with civil society was formed, and in Bosnia and Herzegovina a new agreement between CSOs and the Council is in preparation. In Serbia, the Office for Cooperation with Civil Society can continue its work since an acting Director was finally appointed, a year after the dismissal of the previous one and following an open letter sent to the Government by 70 CSOs. In



Albania, the National Council for Civil Society was established in June 2016; albeit the legal requirement, there has been only one meeting of the Council. In Macedonia, the long-awaited establishment of the Council for Cooperation between the Government and civil society was controversially concluded - only 2 working days after the Government presented the Decision to CSOs, without any possibility for additional comments from civil society. Despite a reaction to the Government signed by 93 CSOs, the procedure for the establishment of the Council continued with selection of CSO representatives (supported by CSOs close to the government) whose profile and portfolio do not correspond to the area they represent, nor have sufficient experience. In Montenegro, CSO representatives with seats in the Council for Cooperation with NGOs froze their membership due to dissatisfaction with the way the opinions of the Council have been presented to the Government by its President and required resignation.

Within the sub-area **involvement in policy- and decision-making processes**, amid positive changes with regards to the legal framework, genuine CSOs' involvement and political commitment remain to be an issue in all countries of the region. In Bosnia and Herzegovina, the Ministry of Justice launched an online platform for e-consultations in 2016, enabling citizens and CSOs to directly participate in legislative drafting at lower costs, and has committed to make changes to the Rules of Consultations in Legislative Drafting so as to include compulsory mid-term and long-term consultative planning. In Kosovo, the Regulation on Minimum Standards for Public Consultations has been approved based on a proposal by civil society, providing basis for public consultation from agenda-setting, to experts' involvement, to general public consultations, with specific requirements for each of the steps. While a training module on Minimum Standards for Public Consultation was designed and 100 civil servants passed several trainings, it was not included in the formal curriculum of the Kosovar Institute for Public Administration, despite being obliged to do so by the Strategy for cooperation with civil society 2013-2017. In Montenegro, training of 64 public officials on public consultations with civil society was conducted via Technical Assistance project. In Macedonia the lack of involvement of civil society in policy making was significant in 2016 as out of the 338 draft laws, for which there is an obligation for consultation, 238 draft laws (76%) were adopted in a shortened procedure. Only 21 of the draft-laws (5%) of the 453 reviewed were published for electronic consultation, and for the majority of them (16 out of 21), the minimum deadline of 10 days was not respected.

When it comes to the national development policies and the processes of localization of the Sustainable Development Goals (SDGs) civil society's involvement varied across the region. Mechanisms for cooperation and meaningful involvement of the civil society are in place only in Montenegro, and there have been certain attempts to involve CSOs in Macedonia, Albania and Kosovo; CSOs in Bosnia and Herzegovina and Serbia were not involved in the phase of aligning national documents with SDGs. In Montenegro, there are two CSO representatives in the National Council for Sustainable Development, Climate Changes and ICZM, and CSOs were consulted in the process of translation of the SDGs into the national strategy. In Albania and Macedonia the sectoral approach to policy coordination involved besides the relevant ministries, main donors and local governments also involved CSO representatives. In Kosovo, focal points for collaboration with civil society on mainstreaming and aligning national strategies and plans with SDG targets and indicators were appointed in three key ministries.

Despite some inclusion of CSOs in the processes aimed for accomplishment of Agenda 2030 in the Western Balkans, the main challenge for their meaningful involvement is the lack of political willingness by the national authorities to predict certain roles for CSOs and to consider them as partners in these processes².

With regards to **collaboration in service provision**, noteworthy developments have been observed within the legal framework of several countries, while in practice CSOs continue to be rarely engaged in provision of any other but social services. In Albania, the Law on Social Enterprises enacted in 2016 defines social enterprise as non-profit-organizations, regulates their organization, functioning and criteria for granting such status by the responsible Ministry on Social Issues. The Law should encourage local governments to stimulate participation of social enterprises in public tenders;

² Ognenovska S., Papa A., 2017, "Meaningful Involvement of CSOs in SDGs: Are Western Balkans falling behind?" Policy Brief August 2017 http://www.horizont3000.at/wp-content/uploads/2017/08/WB_PolicyBrief_SDG.pdf

however, the recommendations provided by civil society were not adopted and the Law presents many problems. In Serbia, a final draft of the Law on Free Legal Aid has been created, which does not allow associations to provide free legal aid in cases stemming from the right to peaceful assembly and prohibits advertising of free legal aid.

3. Recommendations

► To Civil Society

Civil society in the Western Balkans can be an effective contributor to global development processes, but in order to do so it is essential that it operates in environment enabling for its development; thus it needs to constantly

advocate for its advancement. It also needs to raise awareness that it can be a valuable and reliable partner to governments and donors in the localization of the Sustainable Development Goals. The civil society organizations thus, should advocate for their **meaningful and systematic involvement in all cycles of policy making** not only in the areas of their primary concern but also in the global development processes. With aspirations of becoming EU member countries, civil society needs to be a **driver of the development cooperation agenda** and ensure proper development policy to be adopted, proper civil society involvement, advocating for strategic consultations between donors, governments and CSOs over the identification and selection of aid priorities.

It is necessary for the civil society to increase its own capacities in the area of global development policies, and advocate for increased support for this by governments and donors.

► To Donors (including EC)

Donors should recognize the need **to further develop civil society in the Western Balkans**. Besides being an instrument for building good governance, civil society assistance should provide for the **advancement and protection of democracy and human rights in the region**, making civil society reliable and much needed counter-part in addressing ambitious global concerns such as the Sustainable Development Goals.

Support to **diversification** of CSO financial resources should be a priority of the EU and other donors. Domestic support for civil society is the most viable alternative to donor funding in the long run. While levels of support for civil society vary across the region, the evidence suggests that most of it is allocated in a partial and non-transparent manner. Donors should **promote and provide assistance for reforming state funding for civil society** at the municipal and central government levels in order to increase the prospects for CSO sustainability.

► To National Governments

Government should use civil society's knowledge, experience and capacities in identifying national priorities, preparation of the strategies for development assistance and in building public awareness and support for localizing the Sustainable Development Goals. For this they should insure **environment enabling for civil society development** with **legal guarantees for freedom of association, freedom of assembly and other related freedoms** being preserved and properly implemented in practice and financial viability of the civil society to be stimulated.

The fiscal regulations on the CSO income and tax incentives for donors need to be revised to provide **supportive tax treatment** for CSOs and donors and **public funding mechanisms need to be reformed** and their rules properly implemented to ensure relevant, transparent and accountable redistribution processes. Finally, the governments need to find a way for **meaningful involvement of the civil society** making the mechanisms for CSO-state cooperation more functional through sufficient allocation of financial and human resources with adequate capacities and by systematic and regular involvement of the civil society in decision- and policy-making processes at all levels.

For effective contribution of the civil society in the implementation of the SDGs, the governments need to **recognize civil society as a valuable partner** in the process systematically and involve CSOs in particular institutional structures delegating them certain roles within the implementation process.