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Monitoring Matrix on Enabling Environment for Civil Society Development

Country Report:
Bosnia and Herzegovina
2019



monitoring
matrix



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Country Report for Bosnia and Herzegovina 2020

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List of abbreviations

BCSDN - Balkan Civil Society Development Network
CSO - Civil Society Organization
CB - Capacity Building
CI - Civic Initiatives
CMR - Country Monitoring Report
CSD - Civil Society Development
CSO(s) - Civil society organization(s)
CSR - Corporate Social Responsibility
ECNL - European Center for Non-Profit Law
EU - The European Union
FATF - Financial Action Task Force
FoI - Freedom of Information
HJC - the High Judicial Council
LoA - Law on Associations
LOD - Reinforcement of Local Democracy
LoE&F - Law on Endowments and Foundations
LoV - Law on Volunteering
LSG - Local Self-Government
MM - Monitoring Matrix
OGP - Open Government Partnership
TACSO - Technical Assistance for Civil Society Organizations
USAID - United States Agency for International Development
VAT - Value-added Tax
WBT - West Balkan and Turkey
WG - Working group

Introduction

The Center for Civil Society Promotion (CCSP) and the Balkan Civil Society Development Network are pleased to present the fifth report of the *Monitoring Matrix on Enabling Environment for Civil Society Development*, about developments in Bosnia and Herzegovina throughout 2019.

This report is part of series of country reports including seven countries in the Western Balkans and Turkey: Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Montenegro, Serbia and Turkey. A Regional report is also available summarizing outputs and recommendations for countries included and a web platform offering access to monitoring data per each country at following link: www.monitoringmatrix.net

The Monitoring Matrix, developed in 2013 by BCSDN with support of its members, partners, ICNL and ECNL, presents the main principles and standards that have been identified as crucial for the legal environment to be considered as a supportive for the operations of CSOs. The Matrix is organized within three areas, each divided by sub-areas¹:

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

The principles, standards and indicators rely on the internationally guaranteed freedom, rights and best regulatory practices at the European Union level and in European countries. The Matrix aims to define an optimum situation desired for civil society to function and develop effectively and at the same time, it aims to set a realistic framework that can be followed and implemented by public authorities. Having in mind that the main challenges in implementation, are the indicators defined to monitor the situation on level of legal framework and its practical application².

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

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

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

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

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The Center for Civil Society Promotion (CCSP) would like to thank the Balkan Civil Society Development Network for the engagement in the preparation of the Monitoring Matrix on Enabling Environment for Civil Society Development in Bosnia and Herzegovina as well as the numerous CSOs experts, civil activists and individuals who contributed and supported the joint efforts in production of this report.

CCSP would like to express its gratitude to all the CSOs and representatives of public institutions, media, academia, the business sector, international organizations, and intellectuals who provided us with valuable opinion about civil society, and took the time to participate in our survey (through interviews, focus groups and questionnaires, FOAI). Due to the relevance of civil society activities in B&H, this input was crucial for a comprehensive and effective report.

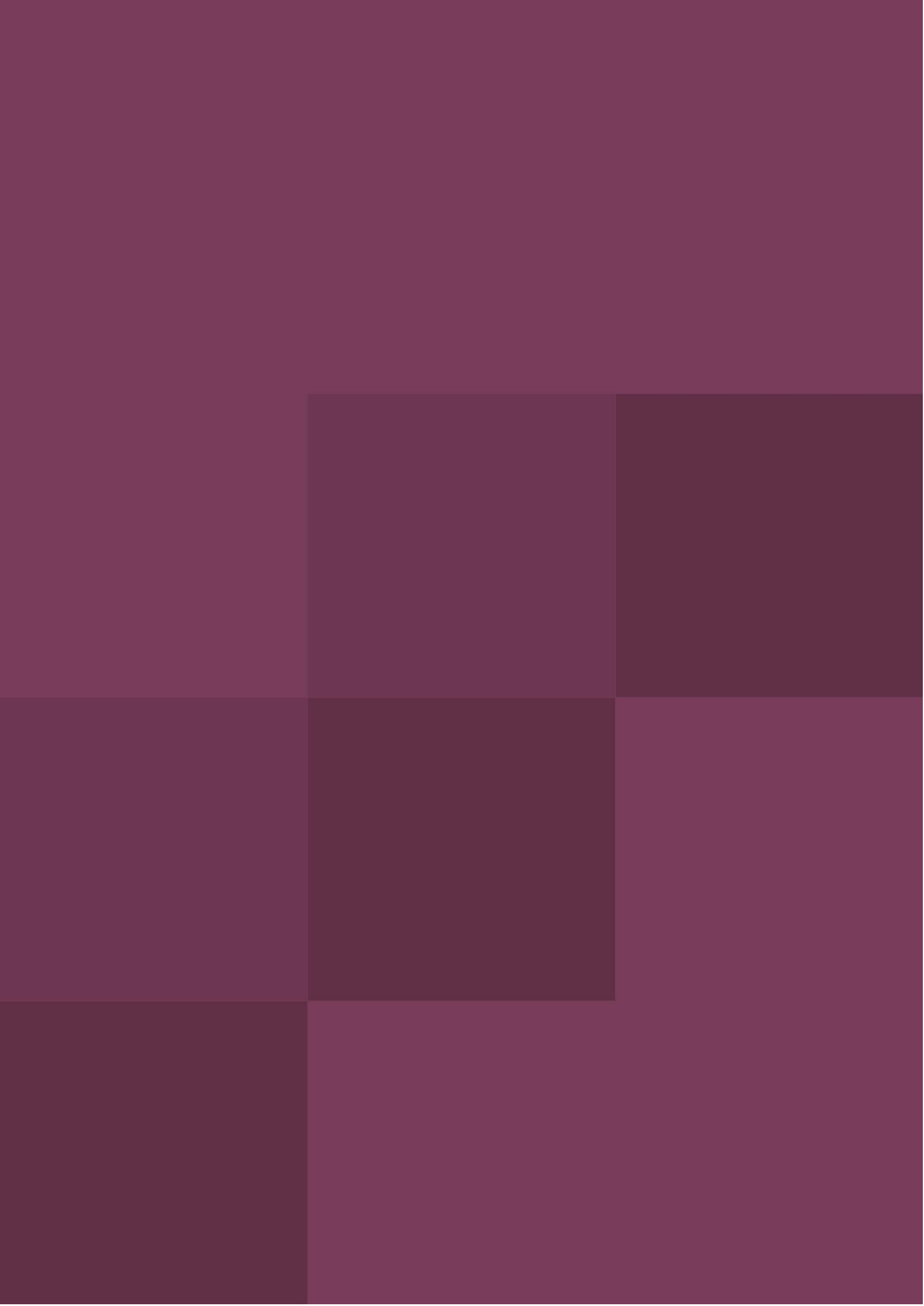
Background - Country overview

Bosnia and Herzegovina is the country under supervision of the High Representative Office (OHR) even though they have domestic actors to take their roles and responsibilities in order to develop the state system in terms of rule of law and respecting human rights and freedom. However, in practice there are a lot of procedures and decisions that are confronted with the Constitutional Court decisions and lower juridical institutions. Courts and Prosecutor's Office are under political control, people are not equal throughout B&H in several aspects – to elect and to be elected, to have the equal chance for employment in order to become officials in the State administration. At the other hand economy is under pressure of criminal privatization, Unions are weak and mostly controlled by political parties. The level of corruption is enormously high and takes last position out of 180 world-wide countries and last in the region. Entire environment reflects the State of “captured country” even though the elections are supposed to be regularly organized, in Mostar held after 12 years of absence.

The development of civil society in B&H during 2019 stagnated, mostly due to the political deadlock. Results of the General elections in 2018 are not entirely implemented. The B&H Parliament has not been working properly due to the decision of the representatives from Republika Srpska who block it until the Council of Ministers forms, by rejecting the NATO Annual National Plan. On the other side, representatives of the main Croatian party HDZ, blocked the work due to their requests regarding the changes in the Election Law. The third side representing Bosnians rejected some of the candidates of the Serbs, due to conflict of interest and incompetence of the proposed candidates. The Government of Federation B&H still consists by structure from the elections in 2014. The Parliament of Republika Srpska is struggling and is burdened by the death of young David Dragičević, which involved the police forces and people with political influence.

The politics as well as decentralization of the State structure, had a significant impact on the ability of registered CSOs to carry out planned and budgeted activities and projects, as the Ministries are not entirely operating. Difficult situation remains with data gathering and information seeking from the State institutions.

Significant aspect of the entire environment is the enormous pressure of migrants and refugees particularly concentrated in Sarajevo, Mostar, Tuzla and Bihać, lacking of the adequate reaction by the B&H Ministry of Security. The numbers of asylum seekers and migrants coming to Bosnia increased significantly in 2019. In September 2019 there was one state-managed asylum center and six temporary accommodation centers with total capacity of about 4,000 people, so that thousands of them were not able to access shelter and basic services. The local CSOs played the important role in overcoming the unacceptable treatment of migrants.



Executive summary

Civil Society Overview

	2018	2019
Number of registered organizations (per type) (+ how many have registered in 2019)	25.495 2.894 in 2018	27.195 1.734 in 2019
Main civil society laws	The Law on Association and Foundation at levels of BiH, FBiH, RS and DB	The Law on Association and Foundation at levels of BiH, FBiH, RS and DB
Relevant changes in legal framework	n/a	n/a
State funding (for the previous year) (key bodies and amounts)	n/a	n/a
Human resources (employees and volunteers)	1.895 FBiH 1.044 RS	2.064 FBiH (31.12.) 1.050 RS (30.9.)
CSO-Government Cooperation (relevant and new body: consultation mechanism)	Advisory Board of the Council of Ministers BiH (5 members)	Advisory Board of the Council of Minister BiH (7 members)
Other key challenges	Different and not harmonized methods of managing data (e.g. financial support, grants, employment, engagement of volunteers etc.)	Different and not harmonized methods of managing data (e.g. financial support, grants, employment, engagement of volunteers etc.)

Key findings

In December 2019, there were in total 27,195 legal organizations, comprising associations and foundations, in the mutual register of CSOs maintained by BiH Ministry of Justice. The register still records only organizations names, registration numbers, addresses, and authorized persons, but it does not provide any additional contact information that would allow others to communicate with these CSOs.

The financial situation in civil society is not favorable even though the significant funds have been allocated every year to CSOs without adequate transparency as well as the proper public procedures. The main problem is that distribution of funds is closely connected with political affiliation but not under competencies of organizations. At the other side international donors provide reduced frame of small grants and the large ones are not appropriate for the grass-roots organizations and not adequate as the small CSOs are highest in number. Inadequate practice remains within international organizations such as UN agencies; OSCE, GIZ, etc. can apply and absorb high financial assets for their administration costs, while the local organizations implement the project activities with limited sources. There is a positive example that should be replicated or unified such as LOD methodology by UNDP programs even though it is relatively complicated particularly for the local grass-route organizations.

The international community insists on better regulation of CSOs functioning particularly regarding financial procedures stipulated by Associations Law and Foundations in order to prevent money laundering and financing of terrorism. It is conditioned by Money Val and FATF recommendations. Bosnia and Herzegovina is positioned on black/grey list.

Public is not adequately informed and involved in the decision-making processes and positive practice of e-Consultation platform at the Council of Ministers. BiH should be adjusted and incorporated at the Municipal Authorities. The most of legislation at entities levels and cantons have been formally adopted without any consultation with public or specific opinions provided by external experts or CSOs.

The problems that affected citizens do not reach adequately CSOs or their networks partly because the respective funds are not corresponding with their needs, as well as that civil society doesn't have the capacities strengths. At the other side the public don't see civil sector as the actors for changes in BiH.

Key findings of the report

- | | |
|----|--|
| 1. | There is no unified mechanism for allocation of public funds to CSO – current mechanisms depend on the level of authority and the institution allocating funds. Procedures can vary significantly in terms of clarity and CSO participation in all phases of the funding cycle. The funding is still insufficiently transparent. |
| 2. | Lack of harmonization of the Associations and Foundation Law in accordance to the MONEYVAL and FATF recommendations and absence of legislation on volunteers at the level of BiH |

3.	The Rules of Consultation formally provide CSOs with timely access to the draft documents and participation in the preparation of given legal documents, but this is substantially different in practice. There is no broad and systematic use of the Rules of Consultation except on the level of BiH Council of Ministers.
4.	Political pressure and intimidation of journalists continued, including physical and verbal attacks. Cases involving intimidation and threats to journalists (including those reporting on the ICTY decision on Prlić and others), verbal and physical attacks, hacking of websites, political, institutional and economic pressure and defamation continued to be reported. Draft Law on Public Gathering in the RS was withdrawn after pressure CSO and the international community, in April 2019. This Law draft was very restrictive modeled on dictatorial regimes. Experiences of different CSOs says that the political climate further limits freedom of assembly, primarily in Republika Srpska due to protests by the "Justice for David" group

Key recommendations

Associations and Foundations Law in FBiH and RS government need to be harmonized but also to be in accordance with other laws which dictate anti-money laundering policies which include MONEYVAL and FATF recommendations stipulating best practices. The implementation of the procedures for closing of CSOs should eventually lead to decreasing of the number of inactive organizations and present the better overview of the CSO sector.

The forms and mechanisms of organization of citizens' participation in decision-making processes are primarily a responsibility of the government. Therefore, adopting decisions for establishing units for cooperation with CSOs at all levels of Governments, monitoring and assisting their work as well as involving them in decision-making in a timely manner, should be priority and importance for policy-makers.

Key recommendations of the report

1.	Establish a unified mechanism for transparent funding of CSO programmes and projects from the budget that would incorporate rules on the required stages of the funding cycle into administrative by-laws (funding criteria, monitoring, reporting forms, evaluation, and audit reports).
2.	Revise Associations and Foundation Law in FBiH, RS, and Brčko Distrikt as well as harmonize them mutually with the law at the BiH level. Coordinate and adopt the law on Volunteering at the level of BiH.
3.	Incorporate and implement the e-consultation system, already established at the Council of Ministers BiH, at all lower levels of FBiH, RS and Cantons, in order to provide better participation of citizens and general public.
4.	In cooperation with CSOs, produce the Strategy for Creation of an Enabling Environment for the Development and Sustainability of Civil Society, along with a State-level Action plan for its implementation, monitoring & evaluation, and impact assessment.

Findings

Area 1: Basic Legal Guarantees of Freedoms

Sub-area 1.1. Freedom of association

1.1.1. Establishment of and Participation in CSOs

Associations and Foundations Law (LAF) provides the legislative framework for activities of non-governmental organizations. This law exists on the State level (2016) and entities (FBiH 2002; RS 2001) as well as in Brčko District (2002). Since the law defines CSOs as citizens' associations and foundations, any person or legal entity can form an association or foundation for a purpose in accordance with the Constitution and legislation.

The Law on Associations and Foundations was amended in November 2016 to reflect requirements and recommendations of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and the Financial Action Task Force (FATF). The amendments require updates to the registries to make them more accurate, require CSOs to provide more detailed financial reporting to State agencies, and allow any legal entity, including State bodies, to establish non-profit organizations. These new requirements are expected to increase the transparency of CSOs, without hindering CSO operations or placing onerous reporting requirements from CSOs. In particular, associations and foundations are required, according to the latest amendments to the law, to submit to the Ministry of Justice of BiH a financial and performance report, which the Ministry will publish on their website.

Since then, according to the Entity Laws, all CSOs are already obliged to submit financial reports to entity financial agencies, the new regulation at the State level is just an additional complication of the administrative procedure. The problem could be solved by coordination between the Ministry of Justice of BiH and the entity financial agencies. Furthermore, this makes a kind of discrimination against CSOs registered at Ministry of Justice at State level, since CSOs that are registered at other levels do not have this obligation.

The new law introduces the category of "public interest" for programs and projects that can be proposed by all CSOs. According to the changes, the institutions of Bosnia and Herzegovina, based on a public call or competition, conclude contracts with associations and/or foundations for the implementation of programs or projects of public interest. Activities of public interest of the association and/or foundations in particular are the activities that contribute the promotion of: human rights, rights of persons with disabilities, protection of children with disabilities, rights of national minorities, equality in combating discrimination, protection against violence, activities of children and young people, combating various forms of addiction, developing volunteering,

humanitarian activities, social protection, environmental protection, nature protection, human health protection, arts, education, culture and all other activities which by their nature may be considered to be activities of public interest.

However, research shows that not all CSOs support this solution. The public interest as such is subject to change and therefore it would be better if it is defined by by-laws or by Tax Laws than by LAF itself. Among the public interests listed in the Law on Associations and Foundations of BiH, most segments are not within the jurisdiction of the state level of government at all, which makes the law unenforceable. On the other hand, the tax benefits that the CSOs can realize by implementing activities of public interest are not at the BiH Council of Ministers' jurisdiction, but the exclusive competence of the entities, so the question of the appropriateness of this legal provision is raised.

The registration process has been implemented at 18 levels (State, FBiH, 5 Regional Courts in RS, District Brčko and 10 Cantons) independently from each other. The Ministry of Justice BiH established the Integrated e-Register the all registered associations and foundations with basic information about them – name and acronym, address, responsible person, registration number and place of registration. In practice, associations are free to work at the whole territory of BiH wherever they have been registered. The exceptions are that some local communities insist that only associations, with offices at their territory, can be awarded from the local sources for grants in order to develop local civil society. Such statement is noted in most of the local Agreements between Mayors and CSOs.

In accordance with CSOs statements as well as FOAI statements there are no cases within the registration process where freedom of association was banned or limited. The main remark for registration is that Ministry of Justice BiH is very strict in requesting the appropriate and full application, comprising the all necessary documents, properly filled in and created. At the lower levels the registration is going smoothly, without any complaints from the CSOs.

1.1.2. State Interference

Control over the legality of association or foundation activities is administered by the competent administrative State body and involves monitoring the situation around these activities. Sanctions that CSOs potentially can incur are mostly based on legal provisions, for example, the obligation of the organization to organize associations assemblies in terms stipulated by statutes, providing yearly financial report, etc., but they are rarely, if ever, enforced.

Under the Associations and Foundations Law, the authorities may close a CSO that fails to comply with the provisions governing its work. During 2019, 623 (560 in 2018) CSOs were dissolved or suspended, 385 (316 in 2018) of which were dissolved by official request and 218 (238 in 2018) by decisions of the CSOs' executive bodies.

1.1.3. Securing Financial Resources

Associations and foundations are free to carry out economic activities whose purpose is the pursuit their defined goals. An association and a foundation may undertake economic activities which are not directly related to the achievement of its goals only by establishing a separate commercial legal entity; in such a case, the total profit from unrelated activities must not exceed one third of the organizations total annual budget, or 10,000 BAM (approx. EUR 5,000), whichever amount is higher. In 2019, 257 CSOs were registered in the Federation of BiH, and 565 CSOs in Republika Srpska, whose income exceeds BAM 50,000 (\$ 30,000).

Assessment vis-à-vis the EU Guidelines

Result 1.1.1. In 2019, freedom of assembly and other related freedoms remain to be legally guaranteed. The Entities Laws on Association and Foundation are still not harmonized and still under pressure of Money Val and FATF to adjust procedures with requested standards.

Result 1.1.2. Sanctions are applied in rare/extreme cases, they are proportional and are subject to a judicial review. Generally speaking CSOs are working freely without any pressure even they breach legal procedures and institutional requests

Result 1.1.3. Legislation on CSOs engaging in economic activities is sometimes burdensome and limited the most of CSOs do not have enough capacities and skills to survive at the market. In the most cases of project support as starting input after closing the project budget the economic activities have been also finished

Sub-area 1.2. Related-freedoms

1.2.1. Freedom of Peaceful Assembly

Freedom of peaceful assembly is guaranteed by the Constitution, positive regulations and international documents. It may be restricted only by law, specifically the RS law on Public Assembly (2008), the cantonal Public Assembly Law in FBiH, and the law on Public Assembly of BD (2012). A public assembly of citizens is defined as any organized assembly of citizens taking place at an appropriate place, whose number and identity is not determined in advance and which does not endanger: the rights of others; public morality; security of people and property; the health of persons involved or implicated; or obstruction of public traffic. The most common type of public assembly is that of peaceful assembly and public protest, although other types like street actions, performances, are also covered in the term "freedom of assembly".

Ongoing social and economic crisis in BiH has inevitably led to a wave of public protests; organized by spontaneous crowds of citizens. The unexplained deaths of two young men in 2016 and 2018 triggered significant civil movements in Sarajevo and Banja Luka in 2018 that brought together large numbers of citizens, including the support of more than 200,000 people on social networks. Protesters accused authorities of covering up the killings and called for an end to the alleged government corruption and negligence. This was the first time since 2014 that BiH has seen massive public mobilizations. At the end of 2018, police engaged violent measures including beatings, arrests, and imprisonment to prevent protesters from gathering daily in Banja Luka's central square. Three activists were sentenced to crimes against public order, carrying a maximum sentence of up to twelve years.

Following the protests, a new and very restrictive Draft of Law on Public Gathering in the RS was introduced, modeled on dictatorial regimes, including provisions such as bans on organized gathering or participating, sentenced up to 2 years large fines for organizers and participants, prohibits on photographing police in any situation, etc. This implies very serious and dangerous intentions of the RS Government, which had its consequences in practice visible during 2019. The draft law was withdrawn after pressure of CSO and the international community in April 2019.

In terms of practical implementation, the competent institutions have difficulty in understanding of the difference between announcement and registration of a public gathering, between a public gathering and public events, etc. In accordance with the statement of Ministry of Interior of Republika Srpska there were 353 announcements of public gatherings during 2019. while 6 of them were banned (without specific explanation – “due to various reasons”). There are no cases of prohibited gathering in Federation BiH.

There were several gatherings in 2019 regarding protection of environment and stopping the building of micro hydro power stations, solid waste sites, first BiH LGBT Pride, lesbian, gay, bisexual, and transgender people etc.

1.2.2. Freedom of Expression

The Freedom of Expression is regulated by Constitutional laws at levels of Bosnia and Herzegovina, Federation of BiH, Republika Srpska and District Brčko as well as by Defamation laws at Federation BiH³, Republika Srpska⁴, and District Brčko⁵.

The prevailing view of CSOs' representatives is that freedom of expression is violated in practice, although protected by both the constitution and the convention on human rights and freedoms. Legal provisions guaranteeing freedom of expression are in place. However, political and ethnic lines continue to divide the public sphere and drive the development of legislative proposals in the media sector. According to the European Commission Report from 2018⁶, political pressure and intimidation of journalists

³ Službene novine Federacije BiH, broj: 59/02)

⁴ objavljen u Službenom glasniku Republike Srpske, broj: 37/01

⁵ Službeni glasnik Distrikta Brčko, broj 0-02-022-213/03

⁶ European Commission, EU Enlargement Package 2018: Freedom of Expression – Information, Society and Media; available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/freedom_of_expression_info_society_and_media_2018_0.pdf

continued, including physical and verbal attacks. Best example that indicates the situation in Banja Luka is the Dragičević case.

Journalists continued to face interference with their work. Cases involving intimidation and threats to journalists (including those reporting on the ICTY decision on Prlić and others), verbal and physical attacks, hacking of websites, political, institutional and economic pressure and defamation continued to be reported. Authorities do not collect data on threats and attacks against journalists and media workers, and swift investigations and prosecution of perpetrators is not always ensured.

In August 2019, the BiH journalists' association "BH Novinari" recorded 41 violations of journalists' rights, including 3 verbal threats, 8 instances of political pressure, 6 physical assaults, and 5 death threats⁷. Most of the cases were reported to police and 15 cases were at the relevant prosecutor's office. Although the number of solved cases has not significantly increased, "BH Novinari" reported that police was more engaged and proactive with cases than it was in the past, as well as that the other relevant State institutions communicated better regarding attacks on journalists. In January, the owner of the portal Visoko.co.ba received threats after publishing articles about nepotism. Photo journalist Adi Kebo was attacked and his camera was damaged in March by a politician. The both cases were with the relevant prosecutor's office. By August 2019, there were 4 court convictions for attacks on journalists, including a four-year sentence for Marko Čolić for the attempted murder of journalist Vladimir Kovačević in 2018. The USAID-funded Independent Media Empowerment Project (IMEP) provides support for legal representation for media organizations and journalists targeted by politically motivated defamation lawsuits. During 2019, in two cases, the final decisions are enacted in favor of "Start" and "Info Radar", both from Sarajevo. Additional available info is in the footnotes.

A positive development is the adoption of the Rulebook on the Automatic Case Management System in the Prosecutor's Offices (TCMS)⁸ adopted by the High Judicial and Prosecutorial Council. According to the Rulebook, defendants and claimants in defamation acts will be registered in the CMS system in the future, which will increase transparency in these cases.

The Ombudsman offices reported that they don't have the evidence of regular procedures for collecting cases of violation freedom of expression. However, they received several complaints regarding such cases and misdemeanor penalties against journalists and citizens, but their office did not officially react on any of these cases.

1.2.3. Access to Information

The existing legal framework is not restrictive, and it guarantees the Freedom of access of information (FOAI) to everybody, including the freedom of CSO employees and activists to receive, collect and distribute information. According to State and entity laws on freedom of access to information, disclosure is the rule, and non-disclosure its

⁷ <http://www.portal-udar.net/bh-novinari-linija-za-pomoc-predstavlja-kon>;
<https://www.klix.ba/vijesti/bih/state-department-ljudska-prava-u-bih-n>;
https://ba.usembassy.gov/wp-content/uploads/sites/270/HRR_2019.pdf (pgs. 7,8 i 9.);
<https://bhnovinari.ba/bs/2020/05/03/bh-novinari-odbacujemo-cestitke-ho>;

⁸ Official Gazette BiH 04/16, 37/16, 84/16 i 40/17; available at:
https://www.pravosudje.ba/vstv/faces/docServlet?p_id_doc=27187

exception. Non-disclosure is exception in cases of specific commercial information, protection of private data and specific public interest. The regular term is a 15 days and can be prolonged by previous cases of non-disclosure. The sanctions are going from 500 to 7.500 EUR for institution and 500 – 5.000 EUR for officials. However, entity laws are not in compliance with State law regarding sanctions because breaching of provision FOAI at entities are regulated by other laws – criminal laws, misdemeanor law, administration laws and etc.

Various forms of violations were recorded in practice, such as the impossibility of determining accountability of public officials and the lack of adequate sanctions for withholding information, all underlining the necessity of harmonizing entity and State laws. With respect to intervention/interference from public authorities current practice still shows inconsistencies between laws at different authority levels.

Following the CSO campaign adoption of amendments to the BiH law on Freedom of Access to Information is postponed as well as harmonization of Entities laws with BiH law in terms of time limits, methods of communication with those who request information, sanctioning the public body and the responsible person in the event of non-compliance. The harmonization of other relevant laws with the Law on Freedom of Access to Information is also recommended.

Assessment vis-à-vis the EU CS Guidelines

Result 1.2.1. Prohibited, limited and controlled gathering.

There are numerous cases of such approach in 2019. particularly regarding gatherings in Banja Luka (case of David Dragičević) as well as cases regarding solid waste location, building of mini hydro-power stations, violation of workers' rights, etc.

Result 1.2.2. Steady pressure and threat media.

The numerous attacks and violation of journalist rights are everyday practice of politicians, business and criminal groups

Result 1.2.3. The law on FOAI is still in procedure.

The procedure for creation and adoption of the law on FOAI is postponed due to numerous complaints and proposals made by CSOs in the moment of finalizing the document at Ministry of Justice BiH

Area 2: Framework for CSO Financial Viability and Sustainability

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

2.1.1. Tax Benefits

Tax treatment of CSOs is defined by Laws at the State and Entity level which are not harmonized, particularly regarding level of different stipulated rate of taxes for the same purposes. CSOs in both entities do not have to pay income tax on donations from budgets or other public funds, sponsorships or donations in cash and in tangible assets. Entity laws in BiH regulate the financial aspects of CSO operations. According to these laws, associations and foundations which perform non-profit economic activities for the purposes they were established are exempted from profit and income taxes. The Tax Law in RS was amended, and it now includes the regulations that associations and foundations no longer have to pay income taxes on donations received from public funds, sponsorships or donations in cash or in-kind. Donations from government institutions to CSOs are also not taxable. Before the law was amended, these benefits applied only to humanitarian organizations. IPA funds and funds from the US government (USAID and such) are excluded from VAT which is not the case with all foreign sources. CSOs can generate income through performing economic activities. If CSOs earn up to 50.000 BAM (app. EUR 25.000) for service provision they are excluded from paying VAT. In 2019, only 242 registered CSOs in FBiH and 543 registered CSOs in RS had income exceeding this amount. In January 2018, the government of RS adopted the *Platform for Development of Social Entrepreneurship*, which provides a rationale for the development, promotion, and support of social entrepreneurship. CSOs are also legally permitted to compete for government contracts at all State and entity levels.

The CSOs are excluded from charging VAT (payable at the standard rate of 17%) on goods and services directly related to the achievement of their statutory objectives, which they offer to their members as a means of paying membership, as long as the exemption does not cause unfair advantage within the wider market. In effect, this allows the CSOs to provide its core services free of VAT to the general public. The CSOs pay VAT on goods and services they themselves receive. The threshold for registering for VAT is an annual turnover of over EUR 25,000. As the majority of the CSOs have revenues lower than this amount, they are not in the VAT system and are therefore not able to claim VAT refunds.

There are just few endowments like Mr. Adil Zulfikarpašić, or religious orientated organizations. The CSOs are aware of this but there are no depositors motivated to invest in CSOs activities, beside medical and social care. Practically speaking, BiH in this instance is underdeveloped.

Tax treatment of CSOs is defined by Laws at the State and Entity level which are not harmonized. CSOs in both entities do not have to pay income tax on donations from budgets or other public funds, sponsorships or donations in cash and in tangible assets.

2.1.2. Incentives for Individual/Corporate Giving

CSR still suffers from inadequate regulations and is still underdeveloped in BiH. The companies, whether private or public do offer some funds in a form of sponsorships of programs and projects. The possible sponsors are not stimulated to support the work of CSOs through the entities Laws on profit and Laws on income which are not mutually harmonized.

Taxpayer donations to legal entities in the Republic Srpska are credited with expenditures of up to 3% of the total annual income from donations to organizations providing humanitarian, cultural, sports and social services and 2% for sponsorship expenses. In the Federation of BiH, expenditures for donations for humanitarian, cultural, educational, scientific and sporting purposes, that are given to legal entities or individuals who have no other income are recognized as tax-deductible expenditure up to 3% of total income in the taxable period for profits while sponsorship expenses are up to 3%.

In the case of individual philanthropy in the Federation of BiH donations of up to 0.5% of the income generated in the previous year given in goods, items or money allocated for cultural, educational, scientific, health, humanitarian, sports and religious purposes, to the associations and other entities carrying out the activity in accordance with special regulations are recognized as an expense. Exceptionally, a donation above the prescribed amount is fully recognized, provided that it is made on the basis of decisions of the competent ministries on the implementation and financing of special programs and actions for the general social interest, but not for the regular activity of the recipient (namely gifts).

In RS, deductible expenditures represent sponsorship and donations of up to 2% of total income in that tax year. In both cases the expenditure is recognized only for self-employed persons.

In accordance to Catalyst report the total number of donations in 2019 is going up to 2.400 individual donations and the total will be announced in the middle of 2020. In 2018 it was 3.302 individual instances which resulted totaling 7,9 million EUR. The average donation per individual is 2,3 EUR indicating increase of 33,1% in relation to 2017.⁹

The relationship between CSOs and for-profit sector remained weak in 2019 due to CSOs' limited capacities and the poor economic situation for profit sector.

⁹ <https://www.slideshare.net/CatalystBalkans/annual-report-on-the-state-of-philanthropy-bosnia-and-herzegovina-2018-quick-facts>

Assessment vis-à-vis the EU CS Guidelines

- **Result 2.1.1.** Tax benefits for economic activities of CSOs are not effective and don't support the operation of CSOs. According to the Profit Tax Law in RS and FBiH, associations and foundations no longer have to pay income tax on donations received from public funds, sponsorship, or donations in cash or kind. Previously, only humanitarian organizations were eligible for such benefits.
- **Result 2.1.2.** CSR still suffers from inadequate regulations and is still underdeveloped in BiH due to CSOs' limited capacities and the poor economic situation the for-profit sector continued to face.

Sub-area 2.2. State support

2.2.1. Public Funding Availability

In BiH there is a law on budgets which regulates financial support of the State. Each Canton as well as entities and State have laws on financial support. The municipalities are also anticipating the funding for CSOs in their budgets. The ratio of the total budgeting for CSOs in accordance to previous research is from 62% from local level, 22% from entities, 25 from Cantons, and 6% from State level.¹⁰ The support to institutional development of CSOs project support and co-financing of EU funded projects is regulated by law on Budgets. There is a national level mechanism for distribution of public funds for CSOs which is decentralized through all ministries with separate procedures.

Government institutions' that supports funding of non-governmental organizations are most often awarded through public calls for funding proposals including them in regular budgets or through public procurements. All three manners of funding are used at all levels of government. The ministries that allocate funds for such purposes publish the requirements for their allocation through public announcements for CSOs. The legal framework enables timely, informative, transparent and fair allocation procedures. In practice it is far from such approach and mostly depends on concrete institution and leading political power.

Most calls for funding proposals lack a clear field and type of focus activity, resulting in numerous applications from diverse organizations, making it hard to establish and apply unified project evaluation criteria. This leads to awarding of small sums to a large number of organizations, usually insufficient for adequate implementation of projects and program activities. On the other hand public calls for funding proposals that include the areas and activities to be supported randomly reflects on needs of civil society. This means that there is not a clear understanding or assessment of needs to serve as the basis for development of these calls.

Organizations that receive funding from different levels of government may be grouped

¹⁰ <http://civilnodrustvo.ba/media/26210/pismo-glava-izdvajanja-vladinog-sektora-za-nevladin-sektor-u-bosni-i-hercegovini-za-2012-godinu.pdf>

as follows: sports clubs/organizations (40%), associations for the protection of veterans and the disabled (15 %), CSOs for social services/social care (10 %) and other types of CSOs (35 %). For nearly all categories the highest share of allocation occurs at a municipal level which has improved its methodology for allocation increasingly.

The general problem in BiH is collecting information from the public institutions and particularly it is visible for research the public funds sources having in mind that it is a way for ruling parties to finance their political affiliates. First due to State decentralization there are more than 350 institutions who allocate the funds for CSOs in their own budgets (156 Municipalities and Towns, 10 Cantons with more than 150 Ministries, 3 Governments of Entities – Federation BiH, Republika Srpska, Brčko Distrikt with more than 30 Ministries and Council of Ministers BiH with 9 Ministries and Agencies). Many of them are not ready to provide information based on FoAI, approx. it is up to 50% without any fear for some consequences. Secondly in such scheme the collected info regarding 50% of the mixed levels is without any value for the report. Thirdly the received data are not treated at the same methodology as the used budget codes – category of grants are esteemed differently from institution to institution i.e. the category of grants are differently perceived - sometimes only as support to CSOs and sometimes for covering support for any kind of activities out of public interest. Our research in 2018 lasted more than 6 months and the result have not exceeded 70% of the collected data. Having in mind such experiences we concluded that methodology in the current survey does not fit for the collection data regarding public funding availability.

In accordance with Entity laws on lotteries 50% of revenue generated from fees paid by lottery organizers is set aside for funding/co-funding CSOs projects and programs. In FBiH this is budgeted revenue paid by the BiH Lottery as a public company while in RS the Lottery and organizers of other games of chance contribute to funds for these purposes. The funds raised in this manner are distributed to competent entity ministries through the entity Ministry of Finance (through a special account) in FBiH and the Directorate for Gambling of RS is further distributed through open calls. It is important to note that the new FBiH law on Lottery and Games of Chance is procedurally identical (in relation to CSO funding) to that of RS in other words, fees should be collected from organizers of all games of chance not just from the BiH Lottery which is a public company. This would increase existing allocations by approximately 2,000,000 BAM per year.

The procedure of CSOs participation in all phases of the public funding cycle are still not clear or transparent and are still implemented randomly.

2.2.2. Public Funding Distribution

The distribution of funds depends on the level of authority and on the particular institution allocating public funds. The amount of funding which is planned to be allocated to CSOs is done by the level of authority- ministries and municipality mayors are mandated for their distribution. The main issue for public funding distribution is following procedures of the funds collected by lotteries and being distributed for humanitarian purposes.

Results that come from the conducted FOAI survey, interviews and desk research has shown the key shortcoming when it comes to distribution of funds the distributions by

sector and the domains of work and activities of CSOs that the funding is targeted to. Calls for funding lack a clear field or type of focus activities. This leads to more quantity than quality in resource distribution- awarding more small amounts of money to larger number of CSOs which are then insufficient for carrying out project activities.

Some government bodies have a clear decision for distribution of funds and/or monitoring of the distribution of State funding. The procedure for distributions of public funding are partially transparent and legally binding. Criteria for selection of applications have to be clear and published in advance as procedures need to address issues of conflict of interest in decision-making. Funds from government institutions are most often awarded through public calls for funding included in regular budgets and public procurements. However, the most of information on the funded projects are not available and they are not following any procedures against conflict of interest. The procedures are generally simple while the most difficult application is one using the LOD methodology implemented by the municipalities under UNDPs LOD project i.e. used by half of the municipalities in Bosnia and Herzegovina.

The Rulebook on Financing and Co-financing of Projects in the Public Interest of Associations and Foundations which was adopted has to be respected by all institutions of the Council of Ministers. The Rulebook prescribes the general principles, criteria, procedure for fund allocations and contracting of funds from the budget of BiH for projects in the areas of public interest implemented by associations and foundations. Control over the use of allocated budget funds and other issues of importance for the planning, financing and co-financing of projects in areas of public interest carried out by associations and foundations is not implementing properly by the relevant institutions.

There is no practice of publishing the results of evaluation of project applications either the publishing of results based on which the projects and organizations received funding. According to data gathered¹¹ by CCSP throughout the previous years from municipalities, as well as the conducted interviews and communication with officials in 2019, there is a practice of awarding a small amounts of funds to CSO on the principle "everybody gets something", which leaves everyone involved unsatisfied and complaining about the distribution of funds. With the rewarding of small funds, the government doesn't ask the applicants to change the original project proposal in accordance with the funds received. It is noticed that the funds come late, sometimes after the project ended.

¹¹ N.B. The general problem in BiH is collecting information from the public institutions and particularly it is visible for research of public funds sources having in mind this is a way for rolling parties to finance their political affiliates. First due to State decentralization there are more than 350 institutions who allocate the funds for CSOs in their own budgets (156 Municipalities and Towns, 10 Cantons with more than 150 Ministries, 3 Governments of Entities – Federation BiH, Republika Srpska, Brčko Distrikt with more than 30 Ministries, and Council of Ministers BiH with 9 Ministries and Agencies). Many of them are not ready to provide information based on FoAI, approx. up to 50% without any fear for the consequences. Secondly in such scheme collected information regarding 50% of the mixed levels is without any value for the report. Thirdly the received data are not treated by the same methodology i.e. the category of grants are differently perceived - sometimes only as support to CSOs and sometimes for covering support for any kind of activities out of public interest.

2.2.3. Accountability, Monitoring and Evaluation of Public Funding

Administrative procedures of the civil service regulate the accountability for the monitoring and evaluation of awarded public funds. This does not apply to monitoring and evaluation of funded projects or programs. Lack of trained staff, inadequate resources, low levels of awarded funds, lack of rulebooks and regulations are some of the reasons for that. Since the methods and type of reporting vary between institutions there is no possibility for a standardized reporting system.

One of the possible mechanisms for monitoring and evaluation of project activities could be done by field visits which government institutions aren't implementing. The public is not informed about the project outcomes financed through public calls since there is no evaluation of project results.

Republika Srpska has adopted a methodology for assigning funds to CSOs in 2015 and all Ministries in this entity were asked to follow this methodology furtherly. Federation of BiH has a Decision on financing of CSOs which is based on LOD methodology but still hasn't been carried out properly. On the local level more than 70 municipalities and cities out of which 45 in FBiH have adopted LOD methodology and carries it out differently on a larger or smaller scale. The existing system of financing of associations and foundations from the budget of FBiH is inefficient and also based on LOD merely non-transparent and leaves room for doubt in the legality of money since the funds are constantly decreasing. Public funding of CSOs is not serving their purpose which should be complementary to public policies and services. The criteria for awarding public funds are vague or too general with the question of scoring. There is a need for the government and CSOs to cooperate in the segment of public funding of CSOs as well as in the establishment of institutional mechanisms for cooperation.

2.2.4. Non-Financial Support

All three laws on associations and foundations in the articles that treat assets of associations and foundations stipulate among other things that non-financial support may consist of income and gifts from physical and legal persons, rent revenues, passive revenues (interest and dividends), and of other revenues pursuant to the law. The form of grants in-kind is prominent while various levels of government often provide premises for CSO operations. Officials are not devoted to support development of CSOs but rather to have instrument for collecting information and get involved in promotion activities for elections or public debates, consultations, etc.

A basic form of this support is through permitting use of premises for the organization of various events (presentations, conferences and competitions) without compensation, although in some cases CSOs were asked to pay VAT for the use of certain premises. Regarding longer-term use of premises for daily CSO operations it's noticed that when this type of support is extended the treatment of different civil society organizations varies. Preference is generally given to organizations of significance for the ruling circles and those whose target groups constitute a considerable part of the electorate such as organizations of veterans and disabled veterans, or organizations with loyalty or affiliation to a certain political party. There is a widespread view that certain organizations enjoy greater sympathy and protection than others including access to governmental institutions and discussions about this type of support. Non-financial assistance in the form of information, training and education, although it is of great

importance is extended only on very rare occasions.

Assessment vis-à-vis the EU CS Guidelines

Result 2.2.1. Allocated funds are not responding to the needs of the CSO sector due to various reasons – donor driven approach, non-transparent distribution, decrease of domestic and international funds, large scale grants reachable only for stable CSOs.

Result 2.2.2. Procedures of CSOs participation in all phases of the public funding cycle are still not clear or transparent and are still implemented sporadically. The relevant institutions from Municipalities up to Council of Ministers BiH are managing public funding cycle in accordance with their own opinion to present it in public.

Result 2.2.3. Procedures are not applying monitoring and evaluation of funded projects or programs. There are rare cases of the proper M&E as well as impact assessment procedures applied in cases that the awarded funds are misused. It is logical having in mind the fact that funding of CSOs is practice for supporting the rolling parties' affiliates.

Sub-area 2.3. Human resources

2.3.1. Employment in CSOs

Employment in CSOs is based at positive legislation of BiH. The regulation of the labor-legal relations in associations and foundations is not provided neither in Associations and Foundations Law at level of BiH, FBiH, RS or District Brčko.

Law on Labor within the Institutions of Bosnia and Herzegovina is clear and applies to the regulation of employment in institutions of BiH and its bodies, as well as of employees of public companies of BiH, associations and foundations of BiH, inter-entity corporations and other institutions for the exercise of additional competencies in BiH, unless otherwise provided by another law.¹²

According to this the law on labor in the institutions of BiH applies to associations and foundations of BiH where an institution of BiH appears as the founder, but does not apply to the associations and foundations where BiH or its institution are not the founder. The law should not apply to domestic non-profit organizations founded by individuals who have acquired legal personality by registration. If the founder of the association or foundation is not the State of Bosnia and Herzegovina, or any of the institutions of Bosnia and Herzegovina, it is legally groundless that legal framework which regulates labor relations in them is the same as the one for the institutions of Bosnia and Herzegovina and its bodies. If that would be the case, employees would

¹² Official Gazette BiH, number 26/04, 7/05, 48/05, 60/10, 32/13 i 93/17

automatically have the status of employees in the institutions and bodies of BiH, which is by no means the purpose of the law on labor in the institutions of BiH.

Labor relations are regulated by the Entity Labor Laws and applied to all legal entities (except CSO registered at State level). CSOs should be registered at the State level and Entity Laws should be applied, depending on the CSO headquarters which is the case among CSOs registered at other levels of authorities.

In accordance to the statistics there were 2.064 persons employed in CSOs, while in RS (by 30.9.2020) 1.050. During 2018 there was 1.895 in FBiH and 1.044 in RS. There is no incentive programs for employment in CSOs.

2.3.2. Volunteering in CSOs

There is no legal framework defining the respective rights and responsibilities of volunteers and volunteer-involving organizations at the State level.

BiH Ministry of Justice proposed 3 times a law on volunteering with the expert assistance and consultations from the relevant CSOs, but it hasn't been adopted. The main reason is the lack of political effort from the members of the State Parliament from the Republika Srpska to adopt laws and strategies at the State level for areas that they consider to be under Entity' jurisdiction. Since the jurisdiction over volunteering is not clearly prescribed, there is still no political effort for this Law to be adopted.

Last progress at the FBiH level has been made in 2012 when the Law on volunteering was adopted. Volunteers from the Federation of BiH have been provided with the legal solution according to which volunteering undertaken in their professional fields will be recognized as work experience. CSOs generally questioned the justification of this rule. The Law on Volunteering can by no means derogate the laws governing labor relations, which make it unenforceable.

In the RS, there were no changes from the adoption of the law on Volunteering in late October 2013, after many years of CSO proposing it. The law regulates the principles of volunteering and describes the rights and obligations of both volunteers and host organizations. In accordance with recommendations of the Council of Europe, the law does not recognize and does not support volunteering as primary tool for solving of unemployment problem, as it can lead to exploitation of volunteers as free labor. The law on Volunteering also defines unique volunteer's Identification Document for all volunteers where any volunteer work can be evaluated and officially recorded. It also regulates corporate governance and is generally considered better than the FBiH law among the civil sector. In addition, in 2018 the law on Volunteering was adopted in Brčko District. In Federation BiH the responsible institution for implementation of the law on Volunteering is Ministry of Justice FBiH while in Republika Srpska it is Voluntary Service RS. There are no any special incentives for employment of volunteers.

In practice, the law implementation has the same obstacles as in FBiH – volunteers do not sign contracts and do not insist on signing the practice volunteer's contract. The solution is offered by CSOs that manage voluntary services, such as the OKC Banja Luka who organizes volunteering.

2.3.3. Non-Formal Education

Number of international and European documents legally and/or politically oblige BiH

to respect certain standards in the field of education. The Law on Adult Education defines non-formal adult education as: “an organized process of learning and education, aimed at training, specialization and complementation of knowledge, skills and abilities, according to components of the formal education program (modules), and special programs for acquiring knowledge, skills and capabilities.” Non-formal education can be organized within educational institutions and specialized CSOs which meet the requirements of the program they perform.

In accordance with major human rights instruments, democracy and human rights issues were introduced to primary and secondary schools in BiH, and continue to be in place up to day, in the form of extracurricular activities or units within other subjects. In the last ten years, civic education has become a part of the curriculum in most primary and secondary schools due to the adoption of the framework Primary and Secondary education Law in BiH (2003), and the Common Core of Curricula for Primary Schools (2003). Although the implementation of the latter is not equally applied to all parts of the country, the test results of pupils' knowledge confirm that democracy and human rights contribute to the understanding of notions, principles, institutions and practices in the field of democracy, human rights and citizenship.

In 2019 Center for Civil Society Promotion – CCSP was approved by Ministry of Education, Science and Youth of Canton Sarajevo (NAHLA got it earlier) for informal education of elder people and started again with its Academy for EU project. The academy is intended for employees of local self-government units, ministries, cantonal public companies, institutes, institutions and other institutions, civil society organizations, business entities, as well as individuals who wish to improve their knowledge and skills in these fields. Most trainings are offered in large cities.

Assessment vis-à-vis the EU CS Guidelines

Result 2.3.1. Statistic on number of employees in non-profit sector is not harmonized among several agencies. Statistics use different code covering only part of CSOs in relation to the Tax agencies. However, the former one, use the list that are going beyond association and foundation and include political parties, religious institutions, etc.

Result 2.3.2. The BiH Law on Volunteering is still pending due to lack of political effort of representatives from Republika Srpska who are still against widening prerogatives of the State. The international standards mostly recognized unified State system in relation to participation in some common activities so BiH is very often in situation that are limited regarding international projects.

Result 2.3.3. Provision of non-formal education by CSO is not recognized enough due to several reasons like lack of CSOs' capacities to provide such services, ineffective valorization and rating of relevant diploma, as well as enormous corruption within the employment process.

Area 3: Government-CSO Relationship

Sub-area 3.1. Framework and practices for cooperation

3.1.1. State Policies and Strategies for Development of and Cooperation with Civil Society

The Agreement for cooperation between the Council of Ministers and CSO in BiH was signed in 2017. Several very clear commitments for the Council of Ministers of BiH stemmed from the Agreement: (1) establishing an advisory body for cooperation with civil society organizations, (2) strengthening the role of the Sector for Legal Aid and Development of Civil Society as a contact point of the Council of Ministers for cooperation with civil society organizations, (3) adopting a civil society development strategy, (4) ensuring transparency of funding for associations and foundations, and (5) strengthening the role of civil society in the European integration process. However, the adoption of the relevant amendments or by-laws are still in preparation phase. Commitment that has not yet been fully fulfilled is the adoption of the strategy, as the formation of an advisory body is pending. The Decision on the formation of this body has been adopted and needs to come into force officially. The body will have seven members, all of whom are from civil society, which is the only such case in the region. The appointment of these members is currently pending. The CSOs are not directly included in the implementation of the Agreement only as recommendation for transparency and establishing procedures. The most of responsibilities are on the Council of Ministers BiH. The commitments are related only for the CoMs' BiH 9 ministries and few agencies, while the whole State system below, which present more than 90% of institutions, does not depend on the signed Agreement. The other levels of authorities mostly do not have any kind of documents that regulate cooperation between the government and CSOs or, if they exist, they are either not in use or are not respected.

3.1.2. Institutions and Mechanisms for Development of and Cooperation with Civil Society

The Advisory board for cooperation with CSOs, composed of 7 distinguished persons from the sector, will have the mandate to discuss and advice Council of Ministers regarding all issues related to civil society and possible areas of improvements of cooperation. The engagement of members is on voluntary basis as well as any of their actions. The Ministry of Justice and Sector for legal support and development of civil society will be at their disposal in order to get all necessary information, prepare the meetings and communicate with the General Secretariat of Council of Ministers BiH.

There were more than 90 municipalities as well as 3 Cantons and District Brčko that signed the Agreement for Cooperation or Strategy for Development of Civil Society but practically, they are not in use mainly because the both sides do not recognize usefulness of such cooperation. On the other hand there is basic lack of mutual respect among the sectors, the both sides do not see any kind of benefit in cooperation except acquiring the fund at the side of CSOs and political support of wider public in cases of

election. In that way the non-transparent distribution becomes very visible.

Assessment vis-à-vis the EU CS Guidelines

Result 3.1.1 The Agreements of Cooperation at lower levels are still pending due to the lack of political will. There were more than 90 municipalities as well as 3 Cantons and Distrikt Brčko that signed Agreement for Cooperation or Strategy for Development of Civil Society but practically, they are not in use mainly because the both sides do not recognize usefulness of such cooperation. At the other institutions, Federation BiH, Republika Srpska, and the rest of Cantons and Municipalities, there are no interest for such cooperation.

Result 3.1.2. Consultation are regular only at level of Council of Ministers through e-Consultation while at the lower levels are still sporadic and rare. There are documents at all levels that stipulate the process, but the institutions are not respecting that obligation without any consequences.

Sub-area 3.2. Involvement in policy- and decision-making process

3.2.1. Standards for CSO Involvement

There is an obligatory document - the Rules of Consultation - which provides CSOs with the possibility for participation in the preparation of legal documents from the earliest stages through comments submitted in the consultation process. Consultations are obligatory for all ministries. All persons or institutions interested or affected by certain legislation must be involved in the minimum consultation processes on all draft legislation. In practice the situation is absolutely contrary. Except Council of Ministers BiH through e-Consultation platform all lower levels are not provide any consultation process. There is not any organization that can prof involvement in the process, in any of stages.

At the level of Council of Ministers there is document "Rules for Consultation in process of creation legal acts", in Federation BIH, there is a document "Regulation on rules for participation of interested public in process of creation of federal legal and other acts" as well as in Republic of Srpska there are "Guidelines for republic organs of self-governance on public participation and consultations in creation of laws". The education of civil servants is going through the yearly modules, which is not enough and appropriate. It is rather seen as proceeding the formal procedure to fulfilled obligation than to improve capacities. The result is that administration is still in stagnation, mutual respect depends on individual will, scope of cooperation is limited at the stipulated forms.

However, in practice the process is going well only at the level of Council of Ministers using e-Consultation platform¹³ which stipulates that any document cannot go to

¹³ <https://ekonsultacije.gov.ba/>

sessions of Council of Ministers without approval and statement of the General Secretariat that consultations have been implemented. All participants in consultation get the feedback and appropriate explanations. The levels of entities as well as cantons practically don't implement the procedures properly even though they reported that consultations have been implemented.

3.2.2. Public Access to Draft Policies and Laws

The e-Consultation platform¹⁴ enables citizens and civil society organizations to access via the Internet the complete and timely information on the legislature processes. It also provides a reliable communication channel for citizens' participation in public policy making. The ideas, suggestions and additional information collected in this way will be used for improvement of public policies under the jurisdiction of the BiH institutions. This web site is a modern and user-friendly tool for the interested public to provide their inputs to draft public policies under the jurisdiction of the BiH institutions of concern to them. However, the CSOs representatives claimed that the platform is little bit complex, particularly regarding the process of necessary steps in placing the proposals. On the other hand, even the e-platform improved the process of consultation, the most of laws and policies at level of Council of Ministers are not directly related to everyday citizens' interest.

By the end of 2019, sixty-three State institutions on the level of the Council of Ministers of BiH (up from fifty-one in 2018 and thirty-eight in 2017) registered on the platform, 539 public consultations had been held (up from 191 in 2018), and 445 reports were published (up from 151 in 2018). More than 200 individuals and organizations actively used the platform for the first time during 2019, while the total number of users was over 1,000. A similar platform has been under development in FBiH for some time but was still not functional by the end of 2019.

The consultation at the lower levels are not implemented regularly, practically both Governments, of Federation BiH and Republika Srpska, don't communicate the public in proper way and in accordance to their obligation and relevant Regulations. They don't invite representatives of CSOs, distinguished experts, or interested groups, to exchange the information in order to prepare the proper drafts. The general opinion could be that the both sides could improve the process: the government through higher interest in gathering information from the site and CSO in building its capacities to properly participate in discussion. The consultations at the cantonal level are supposed to be implemented in accordance with the documents relevant for Federation BiH.

3.2.3. CSOs' Representation in Cross-Sector Bodies

The current legislation of different levels provides possibility for cooperation between public institutions and representatives of civil society organizations at relevant levels of bodies who are engaged in decision-making.

The process of establishing the advisory body of the Council of Ministers of BiH for civil society was restructured in 2019. This body, in accordance to Agreement on Cooperation with Civil Society in BiH, is now consists of seven CSO representatives (before 5 members) and will be involved in all of the Council of Ministers' activities

¹⁴ <https://ekonsultacije.gov.ba/>

related to civil society.

At the other levels, the process is going from case to case, engaging representatives of CSOs particularly regarding their expertise and valuable contribution to the creation of some decisions or documents. There is not process of selection but direct invitation in case that some specific issues were elaborated and the evident lack of competences among civil servants in that area is obstacle to prepare material. Generally speaking, the involvement of CSOs' representatives is rare and sporadic, rather exception than a rule.

Assessment vis-à-vis the EU CS Guidelines

Result 3.2.1. Public institutions rarely invite interested CSO to comment on policy legal initiatives at an early stage. It is only the case if the special expertise is needed or some of documents are related to international request and should be communicated with CSOs' representatives.

Result 3.2.2. Public institutions mostly ignore requests and don't answer to "politically sensitive" questions. The reason of such approach is logical and based at untransparent or irregular procedures. At the other side, the problem is also that there are no consequences for such reaction.

Result 3.2.3. Decision making and advisory bodies on issues and policies relevant for civil society rarely include CSO representatives. The reasons are the same as explained before, lack of respect, untransparent or irregular procedures. Watchdog CSOs investigate many cases, provide concrete evidence of avoiding procedures, without consequences.

Sub-area 3.3. Collaboration in social provision

The level of CSO service provision did not change in 2019. and remain weak and inadequate having in mind public needs and possible space for cooperation. CSOs continued to provide the social services including safe houses, daycare centers for persons with mental disabilities and abandoned children, and training for youth and the elderly. CSO services are driven by the limited funding available, which is often focused on areas determined by government strategies and decisions rather than local needs and priorities. CSOs provide donor-funded services to beneficiaries for free. CSOs also offer services on the market in an effort to ensure their sustainability.

CSOs were the main providers of direct humanitarian assistance to migrants and refugees in 2019. CSOs were engaged both in reception centers in major cities and in areas like Una-Sana Canton, where the highest numbers of migrants were located. However, CSOs faced significant challenges related to a lack of funding (particularly long-term funding) as well as poor coordination with other organizations, whether governmental, non-governmental, national, or international organizations.

3.3.1. CSO Engagement in Service Provision and Competition for State Contracts

The Public Procurement Law in BiH contains the provisions that govern CSO service provision. In practice the government generally does not appreciate CSOs' contributions, including service provision in areas that government agencies fail to reach, engagement of individuals who are considered hard to employ or who belong to marginalized groups, and commercial activities in remote rural areas. This conclusion was made having numerous interviews during several years as well as surveys, particularly for 2019. Municipal and cantonal governments occasionally contract with CSOs, however, distributed support is often based on political connections. The engagement of CSOs in service provision is very narrow and particularly oriented at safe houses, daycare centers for persons with mental disabilities and abandoned children.

The conditions for engagement of CSOs in providing services are the same as for companies. The licenses are obligatory as well as appropriate premises for implementation of the contracted services. There are not any special difficulties in obtaining the licenses having in mind that the main requirement for that is adequate grade in education and proper space.

CSO "Cure" was engaged by Ministry of Security in research of gender component and perspectives in cases of emergency and natural disasters as important issue particularly based on experiences during enormous floods in BiH in 2014. and in period after.

3.3.2. State Funding for CSO-Provided Services

The legislation does not contain provisions regarding obligatory funding by the State of CSO-provided services. In practice CSOs continuously provide mostly social services including safe houses, daycare centers for persons with mental disabilities and abandoned children, and training for youth and the elderly. There are not any concrete numbers or percentage of engagements, nor information of engaged CSOs in migrant crisis because it happens spontaneously, practically without any organized State activity except activities of Red Cross, Merhamet, or international CSOs. CSO services are driven by the limited funding available, which is often focused on areas determined by government strategies and decisions rather than local needs and priorities.

CSOs have been the main providers of direct humanitarian assistance to migrants and refugees throughout Bosnia and Herzegovina. CSOs were engaged both in reception centers in major cities and in areas like Una-Sana Canton, where the highest numbers of migrants were located. However, CSOs also faced significant challenges to their efficacy related to a lack of funding (lack of long-term funding plans) as well as poor coordination with other organizations, whether governmental, non-governmental, national or international organizations. There are not any concrete numbers or percentage of engagements, nor information of engaged CSOs in migrant crisis because it happens spontaneously, practically without any organized State activity. Additionally, CSOs like Red Cross, Caritas, Merhamet or CRS use their own funding. Just half of CSOs assisting migrants and refugees have an action plan in place, practically worked at their own imagination. CSOs employees expressed an impression that authorities from the all levels were reluctant to actively cooperate on migrant and refugee issues or to become actively involved. IFS Emmaus, Vaša Prava and Red Cross had over 25 dedicated professionals working with migrants and refugees. Pomozi.ba also had more than 50 volunteers on the site. So, CSOs provide the crucial response

role, especially in establishing access to basic social services.

3.3.3. Procedures for Contracting Services

The main legal provisions governing the procedure for contracting services are Public Procurement Law in BiH. In practice, in general there are public calls for provision of services and procedures in accordance with Public Procurement Law in BiH. However, many engagements are going directly to the CSOs that are close to political parties on power, contracting without procedures, etc. There is lot of space to make the area more transparent and accessible to other CSOs.

3.3.4. Accountability, Monitoring and Evaluation of Service Provision

The legal provisions on accountability, monitoring and evaluation of service provision are mainly part of internal policy documents of the relevant institution/authority level. In practice, State officials have sufficient capacity to organize the procedures to control and make evaluation of services provided by CSOs. This is covered by legislative framework and there are clear quality standards and monitoring procedures for services. Practice shows that periodical reporting to competent institutions is still the main form of assessment of the provision of these services. Access to information on provision of services and services quality is mainly available on the websites of relevant institution.

Assessment vis-à-vis the EU CS Guidelines

Result 3.3.1. CSOs are not included in all stages of developing and providing services. There are various reasons for such approach but mostly are mutual distrust, protection of State institution benefit, lack of the appropriate care and financial resources for adequate services

Result 3.2.2. CSOs are rarely recipients of funding for services. There are several reasons for such approach: protection the public institutions, mistrust, general lack of funds, etc.

Result 3.2.3. There were not many contracted services to CSOs. As explained above the various reasons are arguments for lack of contracted services for CSOs

Result 3.2.4. Regular evaluation of quality and effects/impact of services provided is carried out and publicly available. There is sporadic control but results are not publicly available and timely provided.

Conclusions and recommendations

Improvement of transparent distribution and implementation of the public funds

The mechanisms of allocation the public fund should be more transparent and more respected by the relevant institutions having in mind that there are enormous figures whose aim is to provide better living environment for citizens. The mentioned improvements have to be focused at the whole process from the public call up to M&E and impact assessment. The selection results have to be accessible publicly at web sites of the relevant institutions as well as the list CSOs that do not perform the obligations properly.

Better inclusion of public in policy making decisions

The best practice implemented through the e-Consultation platform shows that citizens have proper interest, capacities, and experience to support the process of creation the legislation and other legal documents. The issues at the levels of local community provide the largest scope of possibilities for engagement although governments of municipalities and cantons rarely use the opportunity to ask citizen what their problems and possible solutions are. The platforms like mentioned one, would provide the lot of ideas and suggestion useful for solving the problems

Harmonization of Laws on Association and Foundation

The different and unharmonized legislation at Federation BiH, Republika Srpska, and District Brčko does not provides equal position of the same structure of civic activist at the whole territory of the country. It is necessary to create and adopt the Volunteering Law at level of Council of Ministers.

Strategy for civil society

The stagnation of civil society development is partly based on lack of strategic documents and views, action plans and resources, pathways, and ideas how to make the everyday environment more comfortable for citizens. The civil society, as one of the three main cornerstones of any society, seems more of a burden than a facility, part of a problem than a part of solution. The new established structures of Council of Ministers BiH should finish that important task.

Annexes

1. Monitoring matrix methodology

Operationalization and data collection

The Monitoring Matrix on Enabling Environment for Civil Society Development is a detailed theoretical framework based on international human rights and freedoms and regulatory practices of European countries and the EU. The framework is built around three core areas: Basic Legal Guarantees of Freedoms; Framework for CSOs' Financial Viability and Sustainability; Government – CSO Relationship, each divided in sub-areas. The areas are elaborated by standards, which are further specified through legal and practice indicators.

The **legal indicators** are measured by coding the presence or absence of rules, costs, procedures and obligations enshrined in legal regulation (primary and secondary) and policy frameworks enacted in the respective countries. To assure standardization and comparability of the data gathering process regarding the **practice indicators**, country researchers follow a methodology plan in which each of the 80 indicators are further operationalized in concrete mandatory and additional data types (i.e. operationalized dimensions of a practice indicator) to be reported across the countries. The **mandatory data** types tap into the core building blocks of a practice indicator as described in the Monitoring Matrix Toolkit. They mandate the reporting of optimal information without which one could not be able to evaluate the respective indicator. The additional data (operationalized dimensions) specified for each practice indicator are reported if country researchers want to deepen and further illustrate specific practice indicator (e.g. via case study; see next section on country-specific notes on methodology).

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

The primary factual data and secondary data are gathered through **desktop research**. Following the data gathering strategy, country researchers utilize three core data gathering instruments: Freedom of Information requests (FoI), survey questionnaire and interview topic guides. The questions in the data gathering instruments are tailored

to match the mandatory data types (operationalized dimensions) of each practice indicator. The **Freedom of Information (FoI) requests** are used by researchers when public information and statistics on the State of civil society and their environment (primary factual data) are not readily and publicly available. The researchers can draw from a detailed bank of FoI questions tailored to match the operationalized practice indicators.

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

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

Data analysis and interpretation

To analyze and interpret the data, country researchers use a unified data collection template which provides the indicators description (including the mandatory and additional data types for the practice indicators) and five category descriptions ranging from fully enabling to fully disabling environment provided under each indicator. The five category descriptions are specified for each legal and practice indicator in the Monitoring Matrix Toolkit, to enable researchers – based on the reported data – to choose one code (score) which most accurately summarizes the State of enabling environment concerning the respective indicator. In a first step, the researcher reports the required data types collected through different sources in the template box. For example, they report factual data from primary sources complemented with descriptive statistics or cross tabulations based on survey data. In a second step, they choose one of five category descriptions specified for the respective indicator which best illustrates the reported data. The categories enabled unified comparison of findings on the level of indicators across all country reports.

2. Notes on methodology and country challenges

The aim of the Monitoring report is to provide an overview of the environment for enabling development of CSOs in BiH, regarding both the legislative framework and its related practice. During the end of 2019, and beginning of 2020 extensive desk research was carried out on laws, recognized international and in country documents, strategies, and reports of work of the relevant institutions, as well as on media reports, analysis and publications. Information was furtherly collected through a survey conducted by the CCSP, in conjunction with the distinguished engaged partner CSOs and experts. We distributed questionnaire to the relevant group of CSOs and organized face-to-face interviews. Semi-structured in-depth interviews were conducted in all sub-areas, in order to obtain or confirm information. During this process, various stakeholders were interviewed including: representatives from different levels of government and business; experts from the fields of media and law and CSO representatives. Interviews were mostly conducted in person or by conference call. In addition to the questionnaires and interviews, two focus groups (in Sarajevo and Banja Luka) were organized. Participation of CSOs has been of vital importance in producing the Monitoring Report. Numerous CSOs contributed to the Report by: completing questionnaires, participating in interviews, focus groups or daily consultations; submitting comments and discussing recommendations.

Monitoring Matrix is unique tool for creation of evidence-based foundation for the development of advocacy campaigns concerning issues related to enabling environment for civil society development. However, process of data collection, existence of them at all, as well as short disposed time for the activities, are the main challenge in creating the Monitoring Matrix in Bosnia and Herzegovina for 2019. The additional challenges are the specific constitutional structure of BiH and its consequently fragmented legislative framework, a general lack of information and official statistics, as well as capacities of the people who are going to use the MM findings, regardless if they are from the civil or State sector. The findings give a lot of information and elaboration of the problems that are enough to enable solutions, but there is not adequate response from the both parties.

Thankfully, CCSP had the support of a wide, long time range of partners and network members who provided information for Monitoring Matrix preparation, as well as the Smart Resource Center help desk data base.

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