

Bosnia and Herzegovina



2016.

## Monitoring Matrix on Enabling Environment for Civil Society Development in BiH



*This project is funded by the European Union through the EU Instrument for Pre-accession Assistance (IPA) Civil Society Facility (CSF)*

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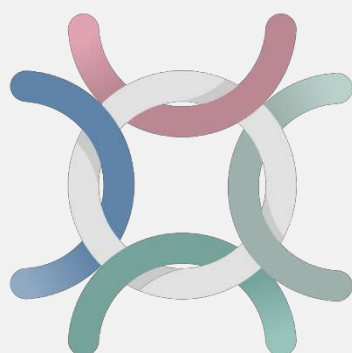


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**Balkan Civil Society Acquis  
Strengthening the Advocacy and  
Monitoring Potential and Capacities of CSOs**

**Monitoring Matrix on Enabling Environment for  
Civil Society Development**

**COUNTRY REPORT FOR BOSNIA AND HERZEGOVINA 2016**



# Table of Contents

List of Abbreviations .....	4
I. Executive Summary.....	5
1. Civil Society and Civil Society Development in Bosnia & Herzegovina .....	5
2. Key Findings .....	6
3. Key Policy Recommendations .....	7
4. About the project and the Monitoring Matrix.....	8
II. Introduction .....	9
1. About the Monitoring Report .....	9
2. The Monitoring Matrix on Enabling Environment for Civil Society Development.....	9
3. Civil Society and Civil Society Development (CSDDev) in Bosnia and Herzegovina .....	11
4. Specific features and challenges in applying the Matrix in Bosnia and Herzegovina .....	12
5. Acknowledgements.....	12
III. Methodology.....	13
1. Overview of the methodological approach .....	13
2. Participation of the CSO community.....	14
3. Lessons-learnt .....	14
IV. Findings and Recommendations.....	15
Area 1: Basic Legal Guarantees of Freedoms.....	15
Sub-area 1.1.: Freedom of Association .....	15
Sub-area 1.2.: Related Freedoms .....	20
Area 2: Framework for CSO Financial Viability and Sustainability.....	25
Sub-area 2.1.: Tax/fiscal Treatment of CSOs and Their Donors.....	25
Sub-area 2.2.: State Support.....	28
Sub-area 2.3.: Human resources .....	32
Area 3: Government-CSO Relationship.....	34
Sub-area 3.1.: Framework and Practices for Cooperation .....	34
Sub-area 3.2.: Involvement in Policy- and Decision-Making Processes .....	36
Sub-area 3.3.: Collaboration in Social Provision.....	41
Used Resources and Useful Links.....	43
Laws Analyzed .....	43
Online sources.....	44
Annexes.....	47

Annex A: List of Interviewees.....	47
Annex B: List of participants on focus group 20.10.2016 .....	47
Annex C: List of CSOs which participated in consultations .....	47
Annex D: Results from the 23 answered questionnaires.....	50

# List of Abbreviations

<b>BCSDN</b>	Balkan Civil Society Development Network
<b>BD</b>	Brčko District
<b>BiH</b>	Bosnia and Herzegovina
<b>CBGI</b>	Capacity Building of Government Institutions project
<b>CCSP</b>	Center for Civil Society Promotion
<b>CSO</b>	Civil society organization
<b>CSDev</b>	Civil society development
<b>DEI</b>	Directorate for European Integration
<b>EC</b>	European Commission
<b>EU</b>	European Union
<b>ECNL</b>	European Center for Not-for-Profit Law
<b>FBiH</b>	Federation of Bosnia and Herzegovina
<b>IBHI</b>	International Bureau for Humanitarian Issues
<b>IPA</b>	Instrument for Pre-accession Assistance
<b>LOD</b>	Reinforcement of Local Democracy
<b>MHRR</b>	Ministry for Human Rights and Refugees
<b>MoJ</b>	Ministry of Justice
<b>NGO</b>	Non-governmental organization
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>RS</b>	Republika Srpska
<b>SAA</b>	Stabilization and Association Agreement
<b>TA</b>	Technical Assistance
<b>TACSO</b>	Technical Assistance to Civil Society Organizations
<b>TI</b>	Transparency International
<b>USAID</b>	United States Agency for International Development

# I. Executive Summary

## 1. Civil Society and Civil Society Development in Bosnia & Herzegovina

The year 2016 in Bosnia and Herzegovina (BiH) was marked by a number of crucial political developments – the publication of the census data collected in 2013, municipal elections, referendum in Republika Srpska (RS) and the acceptance of BiH application for accession to the European Union (EU). Thereafter, little room was left for the creation of an enabling environment for the civil society development. In fact, the legislative framework remained stable, with little improvements in its practical implementation.

The area of **basic legal guarantees of freedoms** remained generally stable. Regarding *freedom of association*, the Draft Law on Associations and Foundations BiH has been withdrawn from the parliamentary procedure several times and finally passed the first reading in the BiH Parliament on October 19<sup>th</sup> 2016. The existing legal framework however is still not entirely harmonized with international standards and best practices, and its practical implementation continued to be on an unsatisfactory level. *Freedom of peaceful assembly* continued to be guaranteed, with numerous assemblies on various issues taking place throughout the year. Concerning, *freedom of expression*, a novelty is the amendment of the Anti-Discrimination Law and its further alignment with EU laws.

The area of **financial viability and sustainability** of CSOs did not undergo changes too. Entity *tax laws* continued to provide different legislative solutions for the same issue in certain areas, and are not harmonized with laws on associations and foundations. Tax exemptions for CSOs and incentives for charitable donations remain insufficient, and therefore insignificant, whereas social responsibility of businesses is still not encouraged. *State funding* of CSOs is still focused on supporting as much number of CSOs as possible rather than allocating funds for CSOs programs. State financial support to CSOs is additionally thwarted with the non-transparent and unfair distribution mechanisms, but also the deficiency of regular monitoring and evaluation procedures of the funded CSOs. *Employment* in CSOs remained unchained, with no incentives or regular statistics on employees in CSOs being kept. Issues related to *volunteering* have still not been resolved with the recommendations regarding harmonization of laws being still salient.

The situation with **state – CSOs relationship** has also not been subject to major changes during the year. Amid the existence of a Cooperation Agreement between the BiH Council of Ministers and CSOs signed in 2007, there are still no *practices for cooperation* that would genuinely improve the relations between the state institutions and CSOs. Although involvement of CSOs in *policy and decision-making processes* is legally regulated and binding to state institutions, its implementation happens sporadically. With regards to *service provision*, CSOs remain to be predominantly active in providing social services, yet, they are still not recognized as valuable partners to the state.

There are many challenges with regards to the creation of a more enabling environment for civil society development, including but not limited to development of genuine partnership between CSOs and governments both at state and entity levels; creation of a Strategy for Development of Civil Society; proper implementation of the Rules on Consultations in Legislative Drafting by all ministries and all levels of government in BiH, and recognition of CSOs as reliable and valuable partners in providing social services.

## 2. Key Findings

Similarly to 2015, the environment for civil society development in BiH remains to be partially enabling, with the legislation satisfying the monitoring matrix standards to a certain extent, and the practice still posing obstacles to CSOs operations.

No	Top 6 findings from the report	Reference to the Monitoring Matrix		Reference to EU CS Guidelines	
		Area		Objective	No.1
1	Civil society organizations have not been involved in the process of amending the Law on Associations and Foundations.	Sub-Area	1.1.	Result	No. 1.1.b
2	Current mechanisms for distribution of state funds are not unified and depend on the level of authority and the institution allocating them. Procedures vary and state funding is not sufficiently transparent.	Area	2	Objective	No.2
		Sub-Area	2.2.	Result	No. 2.4.b
3	Ministries of justice and agencies for statistics on the state and entity levels still do not have accurate data on the number of CSOs in the country which provides space for manipulation of numbers.	Area	2	Objective	No.1
		Sub-Area	2.3.	Result	No. 1.2.c
4	There is no functional mechanism for state-CSO cooperation. The Agreement of cooperation between the Council of ministers and CSOs, signed nine years ago established a general framework for cooperation and dialogue but its implementation failed.	Area	3	Objective	No.3
		Sub-Area	3.1	Result	No. 3.1.b
5	Most ministries do not use the Rules on Consultations in Legislative Drafting and they are still not fully implemented. The Council of Ministers on the state level launched an e-consultations platform.	Area	3	Objective	No. 3
		Sub-Area	3.2.	Result	No. 3.1.a.
6	There is a lack of an efficient social care system in BiH.	Area	3	Objective	N/A
		Sub-area	3.3.	Result	N/A

### 3. Key Policy Recommendations

The key recommendations have been derived from the most pressing issues that need to be addressed currently.

No	Top 6 recommendations for reform	Reference to the Monitoring Matrix		Reference to the EU CS Guidelines	
		Area		Objective	
1	Amend the Laws on Associations and Foundations at all levels in order to enhance control of the flow of money in the sector in accordance with Moneyval's recommendations.	Area	1	Objective	1
		Sub-Area	1.1.	Result	1.1.b
2	Simplify procedures for CSOs closing.	Area	1	Objective	1
		Sub-Area	1.1.	Result	1.1.a
3	Establish mechanisms for transparent funding of CSOs for funds received from applying on public calls for application.	Area	2	Objective	2
		Sub-Area	2.2.	Result	2.4.b
4	Establish an accurate database on the number of registered CSOs and thereafter start collecting data on CSOs economic value systematically.	Area	2	Objective	1
		Sub-Area	2.3.	Result	1.2.c
5	Enhance the implementation of the Rules on consultations in Legislative Drafting of the Council of ministers of BiH, which are legally binding to all ministries in practice.	Area	3.	Objective	3
		Sub-Area	3.2	Result	3.1.a
6	Develop state policies in accordance with the needs as the base for provision of social services on all levels.	Area	3	Objective	N/A
		Sub-Area	3.3.	Result	N/A



## 4. About the project and the Monitoring Matrix

This Monitoring Report is part of the activities of the “Balkan Civil Society Acquis-Strengthening the Advocacy and Monitoring Potential and Capacities of CSOs” project funded by the European Union (EU) and the Balkan Trust for Democracy (BTD). This Monitoring Report is the first of this kind and is published on a yearly basis since 2013. The monitoring is based on the Monitoring Matrix on Enabling Environment for Civil Society Development (CSDev) developed by BCSDN and ECNL. It is part of a series of country reports covering 7 countries in the Western Balkans and Turkey<sup>1</sup>. A Regional Monitoring Report is also available summarizing findings and recommendations for all countries and a web platform offering access to monitoring data per country and sub-area at [www.monitoringmatrix.net](http://www.monitoringmatrix.net).

The Monitoring Matrix presents the main principles and standards that have been identified as crucial to exist in order for the legal environment to be considered as supportive and enabling for the operations of CSOs. The Matrix is organized around three areas, each divided by sub-areas: (1) Basic Legal Guarantees of Freedoms; (2) Framework for CSOs’ Financial Viability and Sustainability; (3) Government – CSO Relationship. The principles, standards and indicators have been formulated with consideration of the current state of development of and diversity in the countries of the Western Balkans and Turkey. They rely on the internationally guaranteed freedoms and 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 which can be followed and implemented by public authorities. Having in mind that the main challenges lay in implementation, the indicators are defined to monitor the situation on level of legal framework and its practical application.

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<sup>1</sup>Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, Serbia and Turkey.

## II. Introduction

### 1. About the Monitoring Report

The monitoring report for Bosnia and Herzegovina provides an overview of the enabling environment for civil society development. It encompasses both the legislation and practice in which CSOs in BiH work, providing findings and recommendations based on findings for the year 2016. The monitoring is concluded with 1<sup>st</sup> November 2016.

### 2. The Monitoring Matrix on Enabling Environment for Civil Society Development

The overall objective of the project is to strengthen the foundations for monitoring and advocacy on issues related to enabling environment and sustainability of civil society at regional and country level and to strengthen structures for CSO integration and participation in EU policy and accession process on European and country level.<sup>1</sup>

This Monitoring Report is part of the activities of the “Balkan Civil Society Acquis-Strengthening the Advocacy and Monitoring Potential and Capacities of CSOs” project funded by the EU and the Balkan Trust for Democracy (BTD). This Monitoring Report is the first of this kind and published on yearly basis since 2013. The monitoring is based on the Monitoring Matrix on Enabling Environment for Civil Society Development (CSDev). It is part of a series of country reports covering 7 countries in the Western Balkans and Turkey<sup>2</sup>. A Regional Monitoring Report is also available summarizing findings and recommendations for all countries and a web platform offering access to monitoring data per country and sub-area at [www.monitoringmatrix.net](http://www.monitoringmatrix.net).

The Monitoring Matrix presents the main principles and standards that have been identified as crucial to exist in order for the legal environment to be considered as supportive and enabling for the operations of CSOs. It underscores the fact that enabling environment is a complex concept, which includes various areas and depends on several factors and phases of development of the society and the civil society sector.

This Matrix does not aim to embrace all enabling environment issues rather it highlights those that the experts have found to be most important for the countries which they operate in. Therefore, the standards and indicators have been formulated with consideration of the current state of development of and diversity in the countries of the Western Balkans and Turkey. They have been drawn from the experiences of the CSOs in the countries in terms of

the legal environment as well as the practice and challenges with its implementation. The development of the principles, standards and indicators have been done with consideration of the internationally guaranteed freedoms and rights and best regulatory practices at the European Union level and in European countries.

The Matrix is organized around three areas, each divided by sub-areas:

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

The areas are defined by key principles which are further elaborated by specific standards. In

<sup>2</sup>Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, Serbia and Turkey.

order to enable local CSOs, donors or other interested parties to review and monitor the legal environment and practices of its application, the standards are further explained through indicators. The full Matrix is available at [www.monitoringmatrix.net](http://www.monitoringmatrix.net).

The development of the Monitoring Matrix on enabling environment for CSDev was part of a collective effort of CSO experts and practitioners from the BCSDN network of members and partners and with expert and strategic support by ECNL. The 11-member expert team spanned a variety of non-profit and CSO specific knowledge and experience, both legal and practical, and included experts from 10 Balkan countries. The work on the Matrix included working meetings and on-line work by experts, which was then scrutinized via stakeholder focus group and public consultations. The work on the development of the Matrix was supported by USAID, Pact. Inc, and ICNL within the Legal Enabling Environment Program (LEEP)/Legal Innovation Grant and Balkan Trust for Democracy (BTD).

In addition to in-depth and qualitative monitoring, the 2015 introduced the 5-grade scale “traffic light” codes ranging from (1)-fully disabling environment to (5)-fully enabling environment code and (0)-No data available/Missing.

Category/code	Legislation	Practice	Score
<b>Fully disabling environment</b>	<i>Legislation is fully restrictive and against MM standards<sup>3</sup>. It is restrictive to the operation of CSOs and their representatives and seriously obstructs or hampers their work.</i>	<i>In practice, MM standards are severely restricted or violated and the operation of CSOs and the work of their representatives are hampered. Malpractices and restrictions are common, threats to CSOs/their representatives exist and are heavily affecting their work.</i>	1
<b>Disabling environment</b>	<i>Legislation is restrictive and not in line with MM standards. It is hampering, making difficult the operation of CSOs and the work of their representatives, but still allow some space for operation of CSOs and work of their representatives.</i>	<i>In practice, MM standards are not met/not satisfied. CSOs are hampered; face substantial challenges and obstacles in their operation, but despite serious difficulties CSOs and their representatives can still operate.</i>	2
<b>Partially enabling environment</b>	<i>Legislation partially meets/satisfies MM standards, and there are still some minor legal restrictions or issues which are not regulated.</i>	<i>In practice, MM standards are partially met / satisfied. Severe violations are not common but minor restrictions and difficulties in the work of CSO/representatives are reported.</i>	3
<b>Enabling environment</b>	<i>Legislation is in line with MM standards.</i>	<i>In practice, MM standards are respected/satisfied. No or very few cases of smaller breaches, restrictions or hampering of the operation of CSOs/their representatives have been reported.</i>	4
<b>Fully enabling environment</b>	<i>Legislation is fully in line with MM standards. There can even be cases of legislation surpassing standards and principles enshrined in the MM.</i>	<i>In practice, MM standards are fully respected/satisfied, and implementation of the legislation is a routine process from all parties involved. There are cases of best practices which surpass the standards and principles enshrined in MM standards.</i>	5

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 CSDev on the level of standards across countries and years. This system does not replace,

<sup>3</sup> Monitoring Matrix standards are developed with consideration of internationally guaranteed freedoms and rights as enshrined in international law and best regulatory practices at the regional level.

but complements the qualitative assessment, as the narrative country reports are the basis on which the categorization is conducted. Furthermore, the introduction of the categorization system enables standardization of quality of the Country and Regional Reports and contributes to more effective evaluation of indicators with the Monitoring Matrix Tool-kit. While quantitative elements are used in order to make aggregations of scores technically possible, the visual representation of all is provided only with descriptive category labels. Table 1 presents the categories with the descriptive category labels and scores assigned for each, both for legislation and practice.

### **3. Civil Society and Civil Society Development (CSDev) in Bosnia and Herzegovina**

2016 has been quite a tempestuous year in BiH with numerous political developments taking place. On the local elections in the BiH municipalities, nationalist parties won. A referendum was held in RS on whether January 9<sup>th</sup> shall be celebrated as annual Statehood Holiday, with citizens voting overwhelmingly in favor. Finally, the application of BiH on its accession to the EU has been accepted and the Commissioner for European Neighborhood Policy and Enlargement Negotiations Johannes Han handled the Questionnaire of the European Commission to the Chairman of the BiH Council of Ministers Denis Zvizdić to prepare the opinion on the application for membership of BiH in the EU.

During 2016, BiH continued not to have an official number of CSOs at all levels. Even more, when numbers are provided, they include CSOs registered multiple times on multiple levels on the one hand, and all CSOs ever registered regardless of whether they are still operational on the other hand. As a response, Center for Civil Society Promotion (CCSP) managed to obtain the numbers of CSOs on entity level. At the same time, within the EU Capacity Building of Government Institutions Project (CBGI) “Strengthening Capacities of Government Institutions for Participation in Political Dialogue with Civil Society”, the process of cleaning of the registries has been initiated with suggestions to relevant authorities to improve the registries by dividing CSOs into categories by their missions and areas of work so that it would be possible for one to make classifications of CSOs by main types of activities easily. Still, the number of active CSOs remains unknown and unaddressed.

A study published in 2016, found that there are 22,601 civil society organizations (CSOs) in BiH<sup>4</sup>. Although it was previously thought that the number is due to CSOs being registered multiple times at different levels, it appears that there are only 28 CSOs with double registrations, 20 of which in the area of Sarajevo. These data are yet to be officially accepted by the government. Majority of the registered CSOs work in the area of sports and recreation – 28,81%, promotion of social and economic rights - 21,55%, and professional associations make up for 9, 21%. 56,4% of all registered CSOs are not active. 71,04% of CSOs operate in FBiH and 26,56% in RS while 2, 40% operate in Brčko District. The most common CSOs legal forms are associations and foundations, while there are also centers and institutes. The majority of CSOs are grass roots organizations working on the local level and the largest number of CSOs are registered in Sarajevo, Banja Luka, Mostar and Bihać.<sup>5</sup>

Few events supported the development of a more enabling environment for CSOs operations. On the one hand, the Council of Ministers adopted the Information of the Working Group on revision of the 2017 Agreement for Cooperation between the Council of Ministers and Civil Society in BiH, mandating the Ministry of Justice (MoJ) to propose measures for further activities on this issue. On the other hand, the Council of Ministers adopted a Decision with which an

<sup>4</sup>Žeravčić, Mapping study of CSOs, 2016.

<sup>5</sup>Žeravčić, 2016, pg.52.

Advisory Council composed of representatives both of the government and CSOs for the Open Government Partnership has been founded, with the Advisory Council taking the coordinative role.

What impedes CSOs development nevertheless, is that majority of the CSOs in BiH do not have enough financial resources so as to build their public image. Furthermore, political party cleavages within media outlets further hamper CSOs development as their work is barely of interest and part of the media mainstream agendas, leaving their activities uncovered and therefore, unknown to the wider public.

#### **4. Specific features and challenges in applying the Matrix in Bosnia and Herzegovina**

The Monitoring Matrix is evidently an excellent tool for the creation and development of evidence-based advocacy on issues related to enabling environment for civil society development in BiH. The main challenge still remains to be the data collection especially having in mind the complex constitutional and administrative arrangement and therefore the lack of significant changes over the years and the disinterest of CSOs to dedicate their time to a survey that is one of the key data collection techniques for the report. Thankfully, CCSP had the support of a wide range of partners and network members who provided the information during the preparation of the Monitoring Matrix for 2016.

#### **5. Acknowledgements**

The monitoring report was produced with the joint effort of CCSP and experts and individuals from the CSOs community. CCSP would like to thank Ms. Amila Dedić from Institute for youth development "KULT", Mr. Slaviša Prorok from CCSP, Ms. Snežana Šešlija from Association "Topper", Ms. Marisa Marić from Association "DON" Prijedor, Mr. Jugoslav Jevdić from Association "OKC", Ms. Una Alikadić from Association "BH Journalists", Ms. Pavlina Vujović from Association "IPAK" and Mr. Vildan Hadžihasanović from Ministry of Justice of BiH.

CCSP would like to thank the Balkan Civil Society Network and the European Center for Non-for-profit Law (ECNL) for developing the Matrix as a tool and for developing guidelines for the application of it and defining the format for reporting. This way a regional comparability of the reports is enabled and in the same time county specifics are taken into consideration.

CCSP would also like to thank our donors, the EU and Balkan Trust for Democracy, for their financial support of the regional project, Balkan Civil Society Acquis – Strengthening the Advocacy and Monitoring Potential and Capacities of CSOs.

# III. Methodology

## 1. Overview of the methodological approach

The MM exercise for 2016 in BiH has been carried out for the period January 1<sup>st</sup> 2016 – November 1<sup>st</sup> 2016 by combining primary and secondary data. With regards to the former, relevant legislation, decisions and other documents of interest, as well as relevant online sources of information were used. With regards to the latter, experts' consultations, interviews, survey, focus group and wide consultations with CSOs and representatives of relevant state institutions across the country have taken place. A lack of interest however on the side of CSOs in answering the survey is being noted for the fourth monitoring in a row.

While the full monitoring exercise has been completed for 2015, the monitoring for 2016 has covered the 12 core standards, namely:

- Standard 1.1.2: CSOs operate freely without unwarranted state interference in their internal governance and activities;
- Standard 1.1.3: CSOs can freely seek and secure financial resources from various domestic and foreign sources to support their activities;
- Standard 1.2.1: CSO representatives, individually or through their organizations, enjoy freedom of peaceful assembly;
- Standard 2.1.1: Tax benefits are available on various income sources of CSOs;
- Standard 2.2.1: Public funding is available for institutional development of CSOs, project support and co-financing of EU and other grants;
- Standard 2.2.2: Public funding is distributed in a prescribed and transparent manner;
- Standard 2.3.1: CSOs are treated in an equal manner to other employers;
- Standard 2.3.2: There are enabling volunteering policies and laws;
- Standard 3.1.2: The state recognizes, through the operation of its institutions, the importance of the development of and cooperation with the sector;
- Standard 3.2.1: There are standards enabling CSO involvement in decision-making, which allow for CSO input in a timely manner;
- Standard 3.2.3: CSO representatives are equal partners in cross-sector bodies and are selected through clearly defined criteria and processes; and
- Standard 3.3.1: CSOs are engaged in different services and compete for state contracts on an equal basis to other providers.

In addition to the core standards, CCSP deemed important and followed the following selected standards:

- Standard 1.1.1: All individuals and legal entities can freely establish and participate in informal and/or registered organizations offline and online;
- Standard 1.2.2: CSO representatives, individually or through their organizations enjoy freedom of expression;
- Standard 1.2.3: Civil society representatives individually or through their organizations, have the right to safely receive and impart information through any media; and
- Standard 2.1.2: Incentives are provided for individual and corporate giving.

Furthermore, during the reporting period, CCSP alongside with 71 partner CSOs which form the coalition "Civil dialogue" worked on advocacy campaigns focused both on revising the Agreement between the Council of Ministers and CSOs and on the need for adoption of transparent mechanisms of CSO funding from budgets which are the following initiatives:



- Initiative for establishing an efficient mechanism for financing CSOs from the budget of FBiH;
- Initiative for a transparent and efficient mechanism of financing CSOs on the level of Council of Ministers.

In addition, the lists of interviewees, participants in focus group and CSOs that provided their input for the 2016 report, can be found in **Annexes**.

## 2. Participation of the CSO community

The poor experience when conducting surveys for the monitoring matrix exercise continued in the preparation of 2016 monitoring report. CCSP staff received 23 answered questionnaires<sup>6</sup>. The participation of CSO community was achieved by extensive meetings with CSOs' representatives who shared their stories and experiences, face to face interviews and focus groups.

## 3. Lessons-learnt

The Monitoring Matrix confirmed to be an excellent and comprehensive tool for monitoring the state of the enabling environment for CSO development, as it considers critical indicators organized around three areas. Its methodological relevance has been noted by interested CSOs, as well as experts conducting the survey. Nonetheless, the applications of the Matrix, with the specific administrative structure of BiH in mind, should be further reviewed in order to meet the specific constitutional arrangements of BiH (its political-administrative structure). This particularly applies to competencies and responsibilities of lower levels of the state government, regarding the promotion and development of civil society.

The selection and inclusion of participants should be more focused at the issues but complete CSO environment has to be more mature in order to use the Matrix as a base for their advocacy campaigns. The CSOs' experts, as long-term partners of CCSP, also gave their contribution in the acquisition of data and information. Greater participation of CSOs and government institutions is vital to the production of an effective report, in terms of exact findings and salient recommendations, as well as awareness-raising regarding potential improvements to the enabling environment for CSO development. CCSP encourages CSOs to use this report as a starting point for their advocacy campaigns.

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<sup>6</sup>The charts are represented in the annex of this report.

# IV. Findings and Recommendations

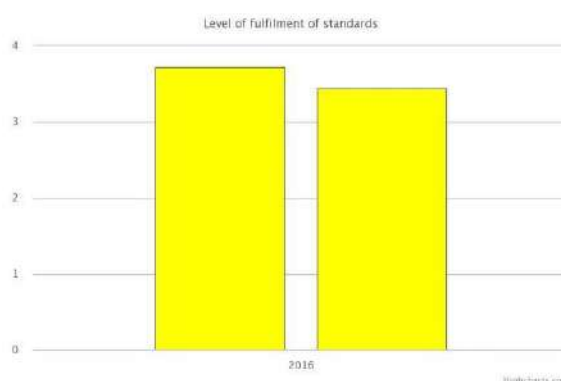
## Area 1: Basic Legal Guarantees of Freedoms

### Sub-area 1.1.: Freedom of Association

#### 1.1.1. Establishment of and Participation in CSOs

##### Legislation

The Constitution of BiH, provides the general legal framework for the protection of human rights, and directly applies the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, with supremacy over all other laws in BiH. Article 11 of the ECHR stipulates that “Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of their interests”.



Freedom of association continues to be guaranteed with the Constitution of BiH (Annex IV of the Dayton Agreement), the constitutions of the BiH entities and the Brčko District (BD) Statute, with further development and functionality being provided through the state and entity laws on associations and foundations<sup>7</sup>, and by the Law on Associations and Foundations in BD. According to the laws, any person or legal entity enjoys the freedom to establish and join associations and foundations. The endowments as such, are not legally regulated in BiH, nonetheless, according to the Law on Association and Foundation at the levels of BiH, FBiH, RS and relevant laws in Brčko District, endowments may be established within foundations. In that event, endowments are considered foundations' property and are managed in accordance with the procedures applicable to foundations. In addition to associations and foundations, humanitarian organizations in FBiH also function in accordance to the Law on Humanitarian Agencies and Humanitarian Organization.<sup>8</sup> The Law on Humanitarian Organizations at the state level was not adopted on the Parliamentary session on May 11<sup>th</sup> 2016. No one knows however the exact reason why it was not adopted since it passed the Constitutional-Legal Commission of the Parliament in March 2016 and reached the House of Peoples. According to the Parliament interviewee, there is “no logical reason for this kind of behavior by the legislative branch”. In RS and at state level there are no laws regulating the status of humanitarian organizations.<sup>9</sup> There is no discrimination against any group or CSO intended to work in accordance to the positive legislation and procedures. The objectives of registered CSOs cannot include engagement or funding of political parties or pre-election campaign candidates, nor fundraising on their behalf. The freedom of association through internet is allowed and initiatives sometimes get the public verification. The laws allow CSOs in BiH to

<sup>7</sup>Law on Association of Citizens and Foundations (Official Gazette of BiH, 32/01), Law on Associations and Foundations (Official Gazette of RS, No. 52/01), Law on Association of Citizens and Foundations in the FBiH (Official Gazette of FBiH, 43/02), Law on Association of Citizens and Foundations of BD, BiH(Official Gazette of BD, BiH, No.12/02).

<sup>8</sup> The Law on Association and Foundations in FBiH (2001) has put the Law on Humanitarian Agencies and Organizations out of force (Official Gazette of FBiH, 35/98), except for Articles 2, 5, 11, 12, 22 (2), 26, 27, 29 (2), 30 (1), 34, and 35. It is stipulated that humanitarian organizations shall be established to pursue humanitarian actions in the capacity of legal entity, established as non-governmental organizations pursuing their activities based on the principles of humanity, impartiality, independence and voluntariness.

<sup>9</sup> Pursuant to the RS Law on Income Tax, humanitarian organizations shall be exempted from income taxation, although there is no law specifically defining the status of humanitarian organization.



establish networks or other forms of collaboration in-country and abroad so as to promote the same rights and interests without any prior notification needed.

Registration of CSOs is not mandatory but voluntary, e.g. if citizens, as informal groups, want to act as ad hoc initiative. When it comes to the registration process, the procedure for acquiring legal status is clearly prescribed with the laws. Associations can be established by at least three physical persons of Bosnian decent or with declared residence in BiH, or three legal entities – criteria that are not in line with international standards. Foundations can be established by at least one physical person of Bosnian decent, or one legal entity, whereas, the Executive Board of a foundation must have at least three members. For the establishment of a foundation at state level or in FBiH, the initial capital for registration is 2000BAM (1000 EUR), while in RS the initial capital is not legally predetermined, rather a foundation must hold certain financial assets or ownership of property. The registration costs 200BAM (100EUR) and is being completed within the prescribed 30 days, after which CSOs acquire a status of legal entity. Still, the option of online registration does not exist at any level.

Registered CSOs have the opportunity to gain the public benefit status (PBO) to serve a purpose of public interest. In spite of this possibility, the discrepancy between lists of permitted activities on state and entity levels still remain unadjusted and harmonization of the regulation is more the necessary.<sup>10</sup> More so, not only is the process for obtaining PBO status varying between several levels in BiH, resulting into small number of CSOs deciding to pursue it, but also the decision on granting PBO status in FBiH is absolutely at the discretionary power of the Government. At the level of Republika Srpska, application for PBO status is conducted through public call. CSOs unsatisfied from the decisions of the relevant authorities regarding the registration procedures have the right to appeal to the court and claim for Ministry procedure.

### Practice

In practice, CSOs can freely function on the entire territory, regardless of where they have been registered.

Registry office	No. of CSOs	Percent
Ministry of Justice, Administration and Local Self-Governance of the Herzegovina-Neretva Canton	1966	8,70%
Ministry of Justice and Administration of the Canton 10	565	2,50%
Ministry of Justice and Administration of the West Herzegovina Canton	721	3,19%
Ministry of Justice and Administration of the Zenica-Doboj Canton	2033	9,00%
Ministry of Justice, Administration and Labor Relations of the Bosnia-Podrinje Canton	207	0,92%
Ministry of Justice and Administration of the Una-Sana Canton	1621	7,17%
Ministry of Justice and Administration of the Sarajevo Canton	1933	8,55%
Ministry of Justice and Administration of the Tuzla Canton	2364	10,46%
Ministry of Justice and Administration of the Middle Bosnia Canton	1592	7,04%
Ministry of Justice and Administration of the Posavina Canton	0	0,00%
Ministry of Justice of FBiH	1638	7,25%
Basic Court of the District of Brčko	503	2,23%
Ministry of Justice of BiH	1634	7,23%
District Court Banja Luka	3062	13,55%
District Court Bijeljina	873	3,86%
District Court Doboj	937	4,15%
District Court Sokolac	573	2,54%
District Court Trebinje	379	1,68%
<b>TOTAL</b>	<b>22 601</b>	

<sup>10</sup> Conclusions from the workshop organized by CSPC on 15 January 2014

The issues arise when it comes to the fact that there is still no unique register of CSOs. Associations and foundations are entered into the relevant registers at state, entity or cantonal level, classified by the scope of their activities as provided by the statute.<sup>11</sup> The registries are public and some of them are accessible online<sup>12</sup>. That notwithstanding, the data in registries are covering only name, address, and authorized person but no other relevant information which could be used for various purposes. The lack of a single registry or database is a serious shortcoming in the overall legislative framework, allowing space for the misuse and constant undermining of the civil society sector's contribution and relevance. According to the latest information provided by Goran Žeravčić in 2016<sup>13</sup>, there are 22 601 CSOs in BiH. Although it was previously thought that the number is due to CSOs being registered multiple times at different levels, it appears that there are only 28 CSOs with double registrations, 20 of which in the area of Sarajevo. Based on a study with a representative sampling procedure with 1000 registered CSOs, 56.4% of them are not active.<sup>14</sup> In addition, during 2016 8 associations have gained PBO status in RS, adding to a total of 29 PBOs in RS.<sup>15</sup>

Unregistered associations and groups can freely operate. For instance, the Bosnian Association for Promotion of Neuro-Linguistic Programming (BHNLN) worked for a year without being registered, received no sanctions for not registering and registered only after it decided to for foreign funds which demanded the certificate of registration provided by the competent authority.

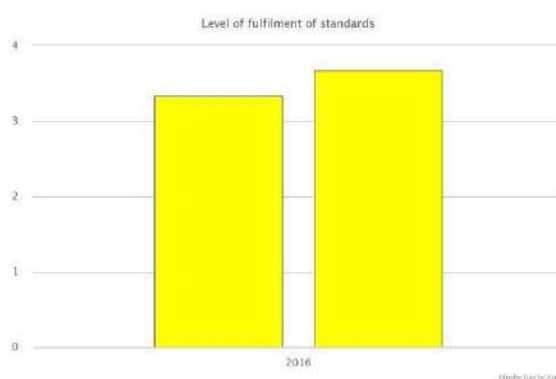
Generally, registration is truly accessible within the legally prescribed deadlines, while the authorities decide on cases in non-subjective and apolitical manner. There have also been cases whereby administrative institutions intervene too much into CSOs founding documents as the statute, CSOs objectives, goals and activities. Public servants are considered to interpret the laws too narrowly, leading to more bureaucracy in founding acts of CSOs without any clear criteria<sup>16</sup>. To illustrate, the Foundation Mahir and Aleksa faced numerous challenges during the registration process within the Ministry of Justice of BiH, and were required to make changes in its statute and founding documents. The founders of Mahir and Aleksa consider the BiH MoJ to be interpreting the laws as they deem fit.

Individuals and CSOs can form and participate in networks and coalitions, both within and outside their home countries. There are more than 50 networks or coalitions of CSOs in BiH of different size. Some of them work on issues related to environment for civil society development, consist of more than 300 members and are always open for new ones.

### 1.1.2. State Interference [Core Standard]

#### Legislation

The legal framework continued to provide guarantees against state interference in the internal matters of associations and foundations. State interference is mandated to a competent administrative body, and involves monitoring the situation as it relates to association or foundation activities. With the changes



<sup>11</sup> Registers are administered by authorized ministries, specifically the BiH Ministry of Justice, the FBiH Ministry of Justice, the RS Ministry of Administration and Local Self-Administration, and cantonal ministries of justice.

<sup>12</sup> [http://www.mpr.gov.ba/organizacija\\_nadleznosti/uprava/registracije/udruženja/RU\\_06\\_01\\_15.pdf](http://www.mpr.gov.ba/organizacija_nadleznosti/uprava/registracije/udruženja/RU_06_01_15.pdf)

<sup>13</sup> <http://www.cbgi.ba/>; CBGI project.

<sup>14</sup> Žeravčić, 2016, p. 52

<sup>15</sup> <http://www.6yka.com/novost/98933/rezervisano-za-organizacije-bliske-vlasti-milion-maraka-bez-kriterijuma-i-po-direktivi->

<sup>16</sup> It was reported in 2016 that an organisation took 3 months of consultations with the administration in the process of registration, while the process itself, after the submitting of documents, took 30 days.

of the Law on Associations and Foundations BiH was adopted on the 36<sup>th</sup> Session<sup>17</sup> of the BiH Parliament, Ministry of Justice is allowed to oversee the work of CSOs, more precisely, timely notice to the relevant authorities on changes made and reports submitted, holding of regular assembly meetings, as well as carrying activities in accordance with the law. In that manner, inspectors are authorized to order removal of irregularities in a period of time; to give a misdemeanor warrant; and to notify the State Investigation and Protection Agency<sup>18</sup> in the case of doubt of the felony of money laundry or financing terrorism. Protection from interference by third parties when exercising freedom of association however is still not legally regulated. Registered CSOs are obliged to comply with entity laws and regulations on accounting, as prescribed by the International Accounting Standards, and are required to send annual financial reports in standardized forms to the entity level Agencies for Finance and Informatics Services. The forms vary between entities however any information that is requested has to be provided in the standardized format. The specific nature of CSOs in the process of reporting is taken into consideration. Most CSOs are categorized as small legal entities, and thus are not subject to the statutory audit of financial statements. Most of the registered associations and foundations do not provide their yearly financial reports to the state agencies APIF and AFIP, which creates confusion for any serious research attempt. The sanctions for breaching legal requirements are based on applicable legislation and they are following the principle of proportionality. Associations and foundations can be terminated voluntary, or by the force of the laws.

### Practice

While CSOs generally operate without state interference, the assistant Minister of Justice of FBiH announced earlier in 2016 that 24 000 CSOs will be put under surveillance as a part of anti-money-laundering procedure so as to prevent from illegal activities<sup>19</sup>, a statement that CSOs considered to be a threat to the entire sector and a way to put the blame on CSOs for any wrongdoing. No cases of invasive oversight or burdensome reporting requirements and/or harsh sanctions to CSOs have been recorded during 2016. Similarly, no cases of sanctions being applied have been recorded. One of the respondent CSOs did state that there have been sanctions however it did not provide an explanation. With regards to dissolution of CSOs, from 2178 CSOs in the Registry of Associations and Foundation of Canton Sarajevo<sup>20</sup>, 22<sup>21</sup> decisions on discontinuation of their work were made in 2016 on CSOs' request, adding to the total of 152 CSOs deleted from the registry as of 1997.<sup>22</sup> From consultations done with CSOs in Tuzla, Sarajevo and Zenica<sup>23</sup> the trend of closure of CSOs on a voluntary basis, even when it comes to CSOs working form more than 20 years, is a result of the lack of finances and impossibility for CSOs to fulfill their mission.

### **1.1.3. Securing Financial Resources [Core Standard]**

#### Legislation

CSOs in BiH are allowed carrying out economic activities only if the primary purpose of such activities is achieving the goals established by statute. Regarding funding, CSOs are allowed to secure funds from membership fees, public funds, private and public sponsorships, grants in money or in kind, interests, dividends and other investment revenues, as well as from selling of services and products,

<sup>17</sup> 19th October 2016.

<sup>18</sup> SIPA; <http://www.sipa.gov.ba/>

<sup>19</sup> <http://www.avaz.ba/clanak/240831/taletovic-pod-nazorom-drzave-bit-ce-24-000-nevladinih-organizacija?url=clanak%2F240831%2Ftaletovic-pod-nazorom-drzave-bit-ce-24-000-nevladinih-organizacija>

<sup>20</sup> <http://mpu.ks.gov.ba/udruzenja>

<sup>21</sup> Information concluded with the date September 26th 2016; <http://mpu.ks.gov.ba/aktuelno/obavjestenja/registar-udruzenja-koji-se-vodi-kod-ministarstva-pravde-i-uprave-kantona>

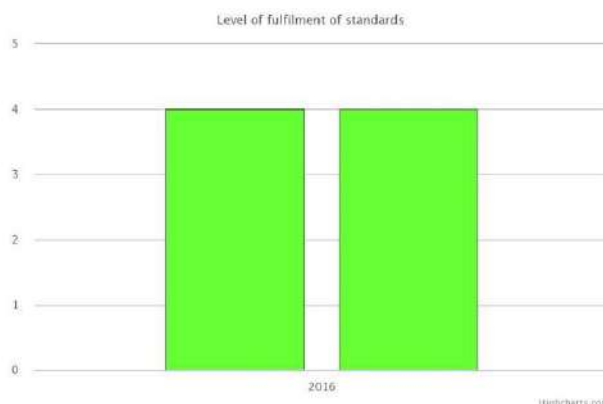
<sup>22</sup> Amila Selimović, Ministry of justice and administration, Canton Sarajevo, October 2016.

<sup>23</sup> 125 organisations- consultations with CSOs in BiH.

and all of these may be either domestic or foreign. More so, in RS,<sup>24</sup> they may also acquire funding from real estate revenues, and asset sales or transfers, excluding assets that are or were used for conducting for-profit activities.

### Practice

Legislation on CSOs engaging in economic activities is implemented and CSOs engage in economic activities mainly to earn money for the fulfillment of the goals established in their statutes. The legislation is not burdensome for CSOs, however many of them do not perform economic activities. In fact 89% of the respondent CSOs said that they do not engage in economic activities. Some CSOs however, reported that in an attempt to start performing economic activities, they have received a document from the BiH MoJ that performing some of the activities is not in line with the CSOs' statutes, and therefore they are better off launching a profit entity, which is in line with the Law on Associations and Foundations and justifiable according to this law.



There are no restrictions, be it administrative or financial burdens, preapprovals, or channeling such funds via specific bodies on CSOs to receive foreign funding. In fact, CSOs in BiH receive funds from numerous foreign donors including but not limited to EU, SIDA and USAID.

Receipt of funding from individuals, corporations and other sources is easy, effective and without any unnecessary cost or administrative burden. For example, DM company has supported multiple projects of CSOs in 2016 such as Growing together<sup>25</sup> as part of their campaign DM for a better tomorrow and the procedure for this is very simple and easy. The organizations only need to sign contracts with this company after which they receive the funds needed through their bank accounts.

### Main recommendations for action:

- ⇒ Unify and shorten registration procedure with lower expenses at all levels of government in BiH and simplify procedures for closing associations and foundations.
- ⇒ Establish an online CSO registry with visible basic information and easy access to data on CSOs in BiH.
- ⇒ Regulate the status of humanitarian organizations with clear criteria and transparent procedures for awarding this status to CSOs.

### **Sub area 1.1., reflects also the assessment of the following indicators of the EU CS Guidelines 2014-2020<sup>26</sup>**

#### **1.1.a. Quality assessment of existing legislation and policy framework**

- Legislative framework for activities of non-governmental organizations in BiH is defined by the state and the entity laws on associations and foundations;
- All gaps in national legislation and policy framework on registration of CSOs are identified (being registered at the several levels at the same time creates confusion and cause certain

<sup>24</sup> In FBiH property tax is under the control of cantonal jurisdiction, resulting in divergent legislative solutions.

<sup>25</sup> [http://www.dm-drogeriemarkt.ba/linkableblob/ba\\_homepage/913350/data/zenica-2-saopstenje-data.pdf?v=1478677457000](http://www.dm-drogeriemarkt.ba/linkableblob/ba_homepage/913350/data/zenica-2-saopstenje-data.pdf?v=1478677457000)

<sup>26</sup> [http://ec.europa.eu/enlargement/pdf/civil\\_society/doc\\_guidelines\\_cs\\_support.pdf](http://ec.europa.eu/enlargement/pdf/civil_society/doc_guidelines_cs_support.pdf)

- problems, fairly high taxes of 200 BAM (100 EUR) for registration and reregistration;
- The producers for registration are not harmonized and there are several levels for registration – state, entities and cantons. Length of registration processes is within 30 days;
- Unique register of CSOs is not established.

#### **1.1.b. Progress with the adoption and implementation of relevant legislation**

- Ministry of Justice (MoJ) initiated and Council of Ministers of BiH had forwarded the changes of the Law on associations and foundations in the Parliamentary procedure where it has passed in the first reading.

#### **1.3.a. Quality of the enabling environment for grass-roots organizations**

- Grass-roots organizations are also affected by the gaps and improvements in legal framework on enabling environment for CSOs and are not recognized in legislation as separate entity.

#### **2.1.a. CSOs perception of the ease and effectiveness of financial rules and reporting requirements (disaggregated by type / size of CSO)**

- Registered CSOs are obliged to comply with entity laws and regulations on accounting, as prescribed by the International Accounting Standards, and are required to send annual financial reports in standardized forms to the entity level agencies for Finance and Informatics Services. The most organization are aware of their obligations and do not have problems with financial aspect of their functioning.

#### **2.1.b. Quality assessment of financial rules (with the focus on built-in mechanisms that financial rules and obligations change as the turn-over and non-commercial activities change)**

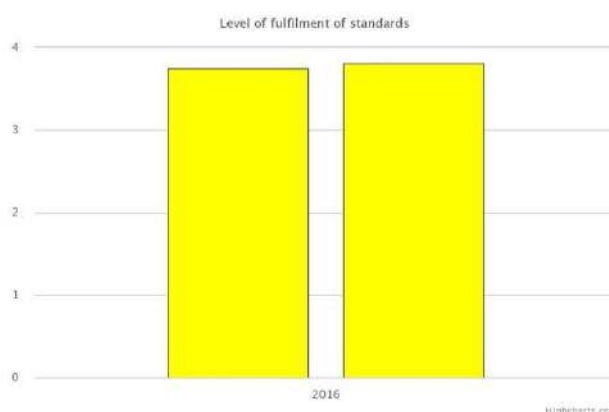
- The reporting forms vary between entities, regarding which aspects of the specific nature of CSOs are taken into consideration but all of organizations have to provide requested information as the same format. The most of the registered associations and foundations do not provide their yearly financial reports to the state agencies AFIP and AFIP, without any sanctions. Most CSOs are categorized as small legal entities, and thus are not subject to the statutory audit of financial statements. The financial and tax regulations are stable and clear.

## **Sub-area 1.2.: Related Freedoms**

### **1.2.1. Freedom of Peaceful Assembly [Core Standard]**

#### Legislation

Freedom of peaceful assembly in BiH is guaranteed by the constitution and the laws on assemblies. A public assembly of citizens is defined as any organized assembly of citizens, including foreigners, 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. Pursuant to the RS Law on Public Assembly, a space appropriate for public assemblies is an accessible public space, adequate for the gathering of people. It is defined as such in the Law, as well as in the official documents of local self-governments and municipalities.<sup>27</sup> The provision stipulating that peaceful assemblies cannot be held “in the vicinity of specially secured facilities, to a distance of at least 50 meters” gives rise to the possibility of misuse. More strikingly, according to decisions by local self-government units in RS, associations are obliged to pay a fee for using a public space, even though the laws prescribe fees when public space is used for economic gain only. Freedom of peaceful assembly is however restricted by the RS Law on Public Assembly (2008), the cantonal Laws on Public Assembly in FBiH, and the Law on Public Assembly of BD (2012). Furthermore, albeit generally in line with international standards, the laws tend to overregulate conditions for exercising the constitutionally guaranteed right of assembly. For instance, even after the recommendations provided in the Joint Opinion on the Act on Public Assembly of the Sarajevo Canton by the Venice Commission and OSCE/ODIHR (2010), which emphasizes that “Th[is] Act should also regulate in less detail the conditions for exercising the constitutionally guaranteed right of assembly, especially where its exercise would pose no threat to public order and where necessity does not in fact demand state intervention,”<sup>28</sup> the recommendations remained on paper only.

The Laws recognize and do not restrict spontaneous, simultaneous and counter-assemblies.<sup>29</sup> However, the laws on assemblies in BiH still do not contain presumptions in favor of holding assemblies.

Organizers, i.e. representatives of peaceful assemblies are obliged to submit an application to hold assemblies at least 5 days before the scheduled beginning of the assembly. According to RS Law on Public Assembly, a peaceful assembly may be prohibited if it is not duly reported to the authorities within the stipulated timeframe. Finally, the organizers of peaceful assembly may file complaints against a decision prohibiting a peaceful assembly.<sup>30</sup>

### Practice

There are no cases of encroachment of the freedom of assembly, and any group of people can assemble at desired place and time, unless such assembly is not in line with the legal provisions. CSOs practice freedom of assembly, especially the ones dealing with veterans' rights and many assemblies took place in 2016 by associations representing veterans, in some cases even simultaneously throughout BiH such as the protest from the 19<sup>th</sup> May which took place in Stolac, Zenica, Živinice, Sarajevo and Zavidovići.<sup>31</sup>

Restrictions are justified with explanation of the reason for each restriction, which is promptly communicated in writing to the organizer to guarantee the possibility of appeal. For instance, a CSO from the Herzegovina region – The Forgotten Defenders of Herzegovina, reported that in 2016 they encountered limitation in organizing an assembly with authorities not allowing them to do so stating it

<sup>27</sup> Except for spaces determined in the official acts of the city and municipality, peaceful assemblies may not be held in the vicinity of: hospitals; kindergartens and primary schools; national parks and protected national parks; or cultural monuments. They are also prohibited, on main, regional and local roads if they endanger traffic safety, or within 50 meters of specially protected facilities.

<sup>28</sup> Venice Commission and OSCE/ODIHR, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (BiH), CDLAD(2010)036, Venice, June 2010, p.3.

<sup>29</sup> Association “Zdravo da ste” reported that in 2016, it encountered limitation when it comes to organizing peaceful assembly, specifically related to the place where the assembly was held stating that it was misused by the police who raised criminal charges against protesters for „crossing the street on an unmarked place“.

<sup>30</sup> The authorized body is obliged to forward the complaint and attached documentation to the Ministry of Internal Affairs. The decision on the complaint must be issued and delivered to the organizer within 24 hours of the receipt of the complaint. Immediately upon the receipt of the decision prohibiting public assembly, the organizer shall inform the public accordingly, and if possible remove publicly propounded notifications about the peaceful assembly. It is permitted to appeal this decision before the competent court.

<sup>31</sup> <http://www.krupljani.ba/bih/demobilisani-borci-fbih-na-protestima-ozbiljno-shvatite-naicasnije-heroje-ove-drzave.html>

would endanger the public if they protest on the main roads and border crossings. Another defender's association, called Forgotten Defenders and Fighters from Živinice, was denied to organize an assembly on the main highway in Tuzla Canton because of the same reason, and the police told them that they could face consequences if anything was to happen during these protests. The CSO organized the protest anyway and enjoyed no police protection.

Simultaneous, spontaneous and counter-assemblies can take place, and the state facilitates and protects groups to exercise their right against people who aim to prevent or disrupt the assembly. In 2016, only the political parties in RS organized counter assemblies, and they are not subject to this analysis. There are cases of freedom of assembly practiced by CSOs (individually or through their organizations) without prior authorization although the laws oblige the organizers of assemblies to submit an application to hold assemblies at least 5 days before the scheduled beginning of the assembly. The CSO Youth Center from RS reported that they organize assemblies each year without prior reporting it, but also warning from the municipal inspector that they will receive a fine for it. No cases of excessive use of force being exercised by law enforcement bodies, including pre-emptive detentions of organizers and participants, have been recorded during 2016.

Representatives of media generally have had access to assemblies which were organized in BiH in 2016. During the protests organized by civil society organizations which represent the veterans in April, May and December of 2016, different media outlets both public and private had full access to them and reported about the developments.<sup>32</sup>

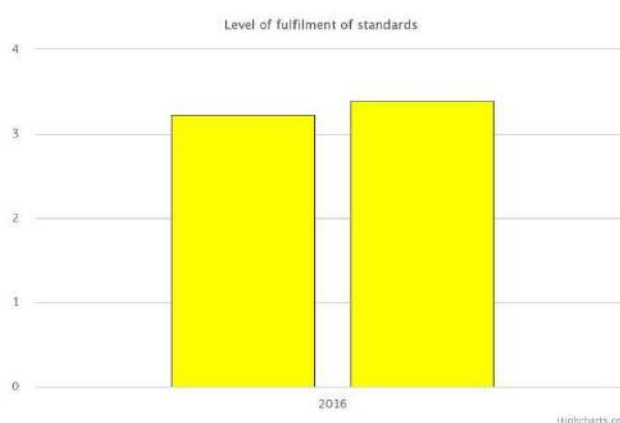
#### Main recommendations for action:

- ⇒ Do an in depth analysis of the existing laws on public assemblies on all level with special regards to its implementation with international standards being taken into account.
- ⇒ Develop monitoring activities which would keep track of public assemblies and respecting of international standards in that context in BiH.

### **1.2.2. Freedom of Expression**

#### Legislation

The right to freedom of expression – collection and distribution of information, is guaranteed by the Constitution, ECHR (Article 10), laws and international documents recognized by BiH. While the legislative framework prohibits hate speech<sup>33</sup>, it does not categorically or comprehensively define it, or the means of protection against it. Existing criminal laws do not encompass the positive obligations of Article 10 of the ECHR, and are not in compliance with international standards. In amendments to the criminal laws of RS and BD, hate crime is defined as exclusive or partial motive for commission of crimes. Various forms of open and concealed pressure are obstructing the work of journalists and CSOs. In the Criminal law of RS in 2013, this regulation was changed, and the



<sup>32</sup> <https://www.klix.ba/vijesti/bih/zavrzeni-protesti-demobilisanih-boraca-u-fbih-vlada-obecala-uvajanje-rezolucije/160519093>; <http://ba.n1info.com/a92591/Vijesti/Vijesti/Protesti-boraca.html>

<sup>33</sup> The Law on Prohibition of Discrimination (2009) prohibits any advocacy of national, racial or religious hatred (Article 4, Paragraph 6). It remains unclear how this ban can be implemented in practice.

Criminal law explicitly defines the term of hate crimes. It is predicted that the court, in cases where the crime was committed out of hate, to take that into account as an aggravating circumstance and weigh greater punishment unless the law does not provide for heavier punishment for the qualified form of the crime. As of April 2016, FBiH Criminal law<sup>34</sup> defines hate crimes as any criminal offense committed on the basis of race, skin color, religious beliefs, national or ethnic origin, language, disability, gender, sexual orientation or gender identity of another person. The law also stipulates that such action can be taken as an aggravating circumstance if this law is not expressly provided for harder punishment for the qualified form of a criminal offense committed out of hate. BiH was the first Western Balkans country to decriminalize slander, resulting in the elimination of possible criminal sanctions against individuals for publicly expressed opinions, and encouragement of the professional activities of journalists and CSOs. CSO representatives, especially those from human rights and watch dog organizations enjoy the right to freedom of expression on matters they support and they are critical of.

### Practice

CSO representatives, especially those from human rights and watch dog organizations generally enjoy the right to freedom of expression on matters they support and they are critical of. However, as of November 2016, 46 cases of violations of freedom of expression of media workers have been recorded. Investigations on these cases were not professional and efficient, nor have been properly processed mostly due to the fact that violations were conducted by high-ranking officials as the President of RS, Minister of Security, MPs, media owners, police officers, and religious officials. According to research made by the Association of BiH Journalists, in 2016 only 15% of the crimes committed against journalists received final court epilogue, while the highest number of cases passed without any reaction of the judicial institutions. An association from RS that asked to remain anonymous reported that their critical talk on government's work ended up with their family members being intimidated and some even got fired from their jobs. CSOs working predominantly in the area of LGBTQ rights are victims of hate speech and verbal attacks. For example, the organizers of the Festival "Merlinka" were verbally and physically attacked in May 2016 in the Art Cinema Kriterion. The police came, saw what the attackers were doing, arrested them but they were later released from custody. There are no reported cases in 2016 where individuals, including CSO representatives would be persecuted for critical speech, in public or private. There are no cases of sanctions being imposed for critical speech, in public or private, under the penal code registered during the reporting period.

### Main recommendations for action:

- ⇒ Establish a CSO cross-sectoral lobby group for the protection and public defense of the right to freedom of expression.
- ⇒ Organizations should work closely to prevent hate crimes as recognized by the OSCE in the "Prevention and responding to hate crimes".
- ⇒ Data should be collected and the situation regarding hate speech in BiH monitored which would eventually serve to give recommendations and improve capacities of law enforcement to recognize them.

### **1.2.3. Access to Information**

#### Legislation

The existing legal framework guarantees the freedom of access to information to everybody, that is, the freedom to receive, collect and distribute information. According to state and entity laws on

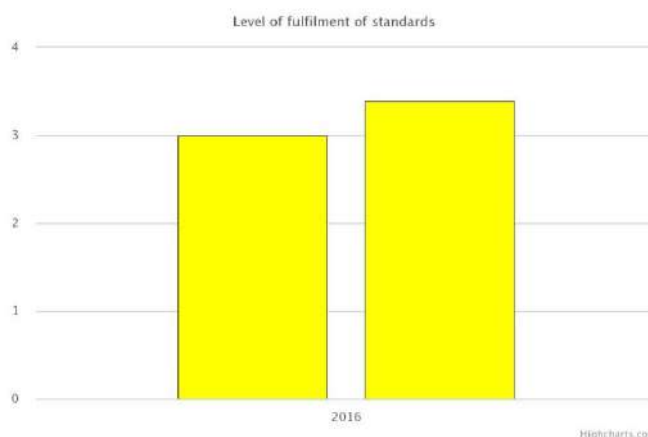
<sup>34</sup> Criminal Law of Federation of BiH; Official Gazette of FBiH broj:46/16 ; 15<sup>th</sup> June 2016



freedom of access to information, disclosure is the rule, and non-disclosure is its exception. Furthermore, the legal framework prohibits unjustified monitoring of communication channels, including Internet and ICT, or collecting users' information by the authorities. The criteria on which communication channels may be subjected to special surveillance by police and security-intelligence agencies in BiH are regulated by law.

### Practice

There are no cases in practice where restrictions are imposed on accessing any source of information, including the Internet or ICT. There are approximately 290 media outlets and 2.28 million internet users. This influences the strengthening of pluralism of information and opinion, and the diversification of citizens' information sources. There is not, however, distinctive or sustained presentation and promotion of CSOs' results, nor is there appropriate public evaluation of their actions, through the media and other public communication channels which would enhanced the role of CSOs in public life and their efforts of problems solving. Internet access is cheap and technically available for all. According to the report of the Communication Regulatory Agency, in 2015, there was 73% coverage of BiH households<sup>35</sup>. There is no practice or cases of unjustified monitoring by the authorities of communication channels, including the Internet or ICT, or of collecting users' information. The police of Brčko District said that they do monitor social media and act accordingly if there are any cases of hate speech or insulting but that the law protects the citizens and members of social media groups and their freedoms at the same time allowing the police to maintain security and peace.<sup>36</sup> There are no cases of police harassment of members of social network groups.



### Main recommendations for action:

- ⇒ Harmonize relevant laws with the Law on freedom of access to information.
- ⇒ Prosecute cases of threats made to journalists and establish mechanisms which allow for faster identification of those who make threats against them.
- ⇒ Involve civil society when choosing persons who work with public media services.

### **Sub area 1.2., reflects also the assessment of the following indicators of the EU CS Guidelines 2014-2020.**

#### **1.1.a. Quality assessment of existing legislation and policy framework**

- Freedom of peaceful assembly is guaranteed by the Constitution and positive regulations, both in accordance with international documents. However, it is restricted by the RS Law on Public Assembly (2008), the cantonal Laws on Public Assembly in FBiH, and the Law on Public Assembly of assembly. But it also depends on relevant level. There are also imposed restrictions regarding determined places of speech is guaranteed by Constitution, Art.2.

#### **1.1.b. Progress with the adoption and implementation of relevant legislation**

- As of April 2016, FBiH Criminal law defines hate crimes as any criminal offense committed on

<sup>35</sup> <http://rak.ba/bos/index.php?uid=1272548129>

<sup>36</sup> <http://www.infobrcko.com/vijesti/item/878-nakon-pravog-facebook-profila-ugasen-i-lazni-profil-gradonacelnika-distrikta-ante-domic.html>

the basis of race, skin color, religious beliefs, national or ethnic origin, language, disability, gender, sexual orientation or gender identity of another person. The law also stipulates that such action can be taken as an aggravating circumstance if this law is not expressly provided for harder punishment for the qualified form of a criminal offense committed out of hate;

— There are numerous cases of LGBT gatherings and individual violence acts.

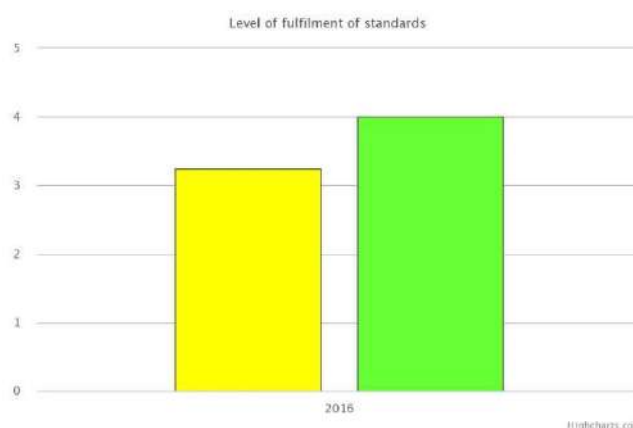
## Area 2: Framework for CSO Financial Viability and Sustainability

### Sub-area 2.1.: Tax/fiscal Treatment of CSOs and Their Donors

#### 2.1.1. Tax Benefits [Core Standard]

##### Legislation

The financial aspects of CSOs' operations are regulated with the entity laws in BiH. Entity laws provide CSOs performing non-profit activities for which they were established, to be exempted from profit and income taxes. CSOs are not exempt from paying tax for performing business activities and since 2017 CSOs will be obliged to pay 10% tax on profit made. Profit tax laws in RS and FBiH exempt CSOs from paying income tax on donations received from public funds, sponsorship, or donations in cash or kind. Previously, humanitarian organizations were eligible for such benefits only. CSOs in both FBiH & RS are tax payers to funds coming from foreign sources except IPA funds excluded from VAT and some other sources like USAID and EU grants with procedure of VAT return. Issues arise when it comes to small suppliers, as they do have not established adequate system of fiscal bills with exempted VAT to which they are obliged to. CSOs are not required to pay VAT on goods or services received in this manner, nor do they pay VAT on their further management.<sup>37</sup> The law does not explicitly state the time limit for utilization of such grants, nor does it stipulate the percentage of the share of such grants that may be applied for covering administrative costs. In addition, donations from government institutions to CSOs are not taxable at any administrative level.



The law provides CSOs to generate income through economic activities. CSOs are exempt from paying VAT on income earned through the provision of services, up to 50,000 BAM (25.564 EUR). Associations and foundations can undertake economic activities that are not directly related to the achievement of their goals only by establishing separate commercial legal entities. In that case, the total profit from unrelated activities must not exceed one-third of the CSOs' total annual budget, or 10,000 BAM (5.112 EUR), whichever is higher. Profit generated from unrelated economic activities can only be used to further CSOs' stated purpose.

Passive investments are planned and managed within foundations, as well as controlled and regulated with the foundations' statutes and internal acts. Endowments as such, are not legally

<sup>37</sup> Apart for exceptional cases, when CSOs should also register for VAT. Even in this case, such a requirement would still exist if the CSO's taxable turnover, conducted as a business activity and in competition with the private sector, would exceed 50,000 BAM (25.565 EUR) annually.

regulated in BiH, nonetheless, according to the Law on Associations and Foundations at the levels of BiH, FBiH, RS and relevant Laws in Brčko District, endowments may be established within foundations. In that event, endowments are considered foundations' property and are managed in accordance with the procedures applicable to foundations.

### Practice

Throughout 2016, no direct or indirect (hidden) taxes on grants have been reported. An association from Bihać stated that the majority of their funding comes from receiving funding from abroad both by individuals and other organizations, and since this is considered to be in a form of humanitarian donations, no taxes are being paid.

Tax benefits for economic activities of CSOs are effective and support the operation of CSOs. Profit generated from unrelated economic activities can only be used to further CSOs' stated purpose. For instance, Center Fenix from Sanski Most which works in the area of providing help to pregnant women, generates income from unrelated economic activities such as agricultural activities, and by doing so, they produce and sell products to cooperatives. The money they earn in such a manner is used for enhancing project activities and the work of the association itself.

CSOs use passive investments which are utilized, managed and planned by foundations and there are no reported sanctions for doing so in 2016. All passive investments are regulated by CSOs internal and management acts.

In practice endowments are easily established as properties of foundations by filling the administrative papers and without major procedural difficulties, and the fee for doing so is 200 BAM the same as the fee for establishing associations and foundations and is generally not seen as high.

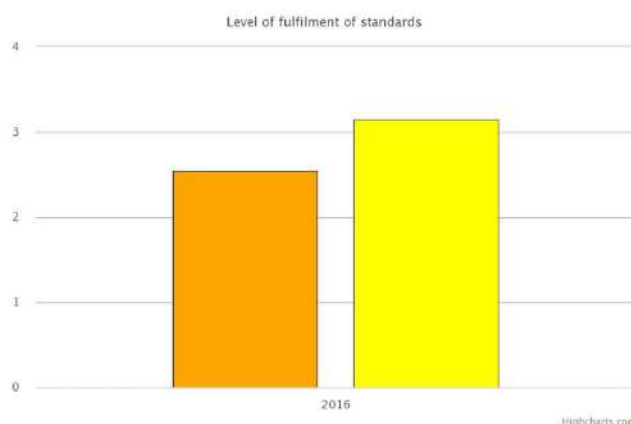
### Main recommendations for action:

- ⇒ Tax law should clearly stipulate the share of donations which can be used for covering administrative costs.
- ⇒ Legally regulate endowments in BiH with a special document.

## **2.1.2. Incentives for Individual/Corporate Giving**

### Legislation

Tax deductions for individual and corporate donations to CSOs are regulated with laws. The Profit Tax Law in RS provides them with deductions up to 3% of their total income for donations to CSOs offering humanitarian, cultural, sports, and social service activities, and 2% for sponsorship expenses. According to the Income Tax Law in the FBiH, in-kind, material, and financial donations for cultural, educational, scientific, health, humanitarian, sports, and religious purposes are tax-deductible up to 0.5 percent of income earned in the previous year, but only if natural person is self-employed. The same treatment is for BiH citizens and foreigners too. CSR is not adequately regulated in BiH and there are no state policies regarding CSR which consider the needs of CSOs



and include them in their programs. There is no special law which regulates this area but there are rather laws which deal with parts of CSR such as environmental laws.

### Practice

There is a functional procedure in place to claim tax deductions for individual and corporate donations but since the percentage of tax deductions on the entire profit a company has in a fiscal year is not high enough, both the companies and CSOs believe that the existing framework is not very stimulating. HIFA group provided the Center for Elderly in Sanski Most with the donation of 10 000 BAM in flour which was then used for baking bread at the Center for eight months which is significant to this organization because their monthly expenses for this matter are high. HIFA did not give them money probably because of the inadequate regulation of CSR, and since according to CSOs tax deductions only apply on money donations HIFA did not receive any tax deductions for providing them with a non-monetary donation. Regarding CSR, the public and private enterprises do provide some funds nevertheless most BiH companies and businesses do not see CSR as their interest or as favorable to the public. Despite the inadequate regulation of CSR, there are some examples of very positive practice by companies such as Coca Cola, BiH Telecom, Podravka, Klas, Mistral, and Academy 387, but also the Ministry of Programming. For instance, CCSP and a number of companies run the project "Hour of Code" every year. The project aims to educate children in programming, whereas companies, regardless of whether they work in this area, provide financial support for hiring teachers to educate the children, involve their experts and make social media advertising. Coca Cola Company regularly supports the activity of sports trainings for youth organized by the Workers Sports Association in Tuzla's Center for teenagers with the goal of promoting healthy life styles. The 2016 event is also used to show the significance of companies and CSOs working together on projects which are important for the community. CSOs working in the main areas of public interest, including human rights and watchdog organizations, effectively enjoy tax deductible donations, if the donations come from abroad as humanitarian donations they are not subjected to taxations nor are any other types of donations.

### Main recommendations for action:

- ⇒ Entity tax laws should be harmonized and revised when it comes to donations.
- ⇒ Harmonize the treatment of those who give donations to CSOs when it comes to tax deductions (Law on income Tax).
- ⇒ Determine legally whether received donations must be used in the calendar year in which they are received.

#### **Sub area 2.1., reflects also the assessment of the following indicators of the EU CS Guidelines 2014-2020.**

##### **2.2.a. Quality and applicability/practice of the legal framework for individual and corporate Giving**

- 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;
- According to the Income Tax Law in Federation of BiH, in-kind, material, and financial donations for cultural, educational, scientific, health, humanitarian, sports, and religious purposes are tax-deductible up to 0.5 percent of income earned in the previous year, but only if natural person is self-employed. The Profit Tax Law in RS provides donors with deductions up to 3 percent of their total income for donations to organizations offering humanitarian, cultural, sports, and social service activities, and 2 percent for sponsorship expenses.

### 2.3.a. Quality of the system of tax benefits for the CSOs' operational and economic activities

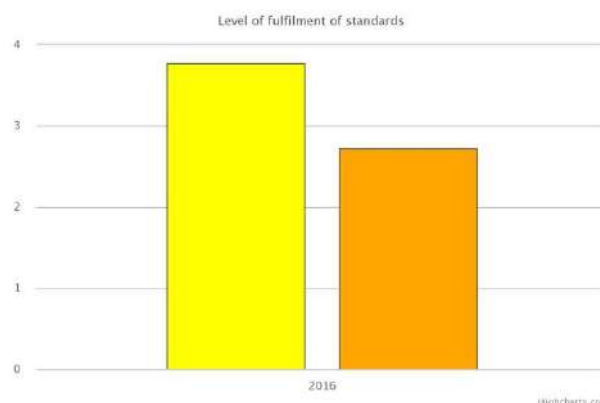
- CSOs are exempt from paying VAT on income earned through the provision of services, up to 50.000 BAM (25.564 EUR);
- Associations and foundations can undertake economic activities that are not directly related to the achievement of their goals only by establishing separate commercial legal entities. In that case, the total profit from unrelated activities must not exceed one-third of the organization's total annual budget, or 10.000 BAM (5.112 EUR), whichever is higher. Profit generated from unrelated economic activities can only be used to further the organization's stated purpose.

## Sub-area 2.2.: State Support

### 2.2.1. Public Funding Availability [Core Standard]

#### Legislation

Financial support in BiH is regulated with the laws on budgets created at entity levels as well as for each separate municipality and canton, including state support for institutional development for CSOs, project support and co-financing of EU funded projects. In BiH, there is a national level mechanism for decentralized distribution of public funds to CSOs, with the distribution depending on the level of authority and on the particular institution allocating public funds. Hence, Ministries and Mayors are mandated for the distribution of public funds. In a similar vein, the amount of public funding planned to be allocated for distribution to CSOs is done on the levels of authority. The part of funds collected by lotteries is distributed to humanitarian purposes. The procedures for CSOs' participation in all phases of the public funding cycle are not clear, transparent and are implemented sporadically.



#### Practice

In practice, available public funding does not respond to the needs of the CSO sector, and a key shortcoming with the distribution of public funds lies in the distribution of funds by sector and the domains of work and activities of CSOs that the funding is targeted to. Most calls for funding proposals lack a clear field and type of focus activity, resulting in numerous applications from diverse CSOs, making it hard to establish and apply unified project evaluation criteria. This leads to the awarding of small sums to a large number of CSOs, usually insufficient for adequate implementation of projects and program activities. In the final instance, public funding of CSOs is not serving its purpose, hence to be complementary to public policies and services.<sup>38</sup>

There are government bodies with a clear mandate for distribution and/or monitoring of the distribution of state funding however ministries, formal and informal centers of political power have too much discretion when announcing the amount of grants to be awarded to CSOs. For instance, in Lukavac (Tuzla Canton), CSOs reported that there is lack of criteria when distributing the amounts of grants to CSOs and that no monitoring on the grants awarded exists.

<sup>38</sup>Milan Mrđa, CPCD Arena II, 31st May 2016.



The total financial state support to CSOs is not predictable and according to the opinions of CSOs has been decreasing, nonetheless, there is no available and accurate data on this in the past several years, only estimations so no one knows for sure. Over the course of the last several years and the trend is on its way to reach the lowest level ever. In 2012 the state funding reached 100,006,470.48 BAM (51,132.496,20 EUR)<sup>39</sup> with allocation in percentages per levels 51% local, 25% entities, 23% cantons, 1% state level. In Brčko District, there are more than 500 CSOs registered receiving approximately 8 million BAM (4.090.335 EUR) every year.<sup>40</sup>

Level	Allocated funds in 2013	Allocated funds in 2014	Allocated funds in 2015	Allocated funds in 2016
BiH	3.358.550,76 BAM	3.372.141,90 BAM	Estimated: 80.000.000,00 BAM/ 40.903.350,50 EUR	*Data not available at this time <sup>41</sup>
FBiH	26.080.062,96 BAM	24.470.506,44 BAM		
RS	11.157.244,76 BAM	9.869.523,36 BAM		
District of Brčko	4.370.126,02 BAM	3.886.554,00 BAM		
<b>TOTAL</b>				

More so, the administrative level representatives, heads of parliaments and presidents in BiH have discretion in allocating funds to CSOs. The table below presents information on the amount of financial support that was publicly available for 2016 and CSOs stated that these funds are mainly distributed to pro-government CSOs. For example, the members of the BiH state presidency distributed 20 000 EUR in October 2016 to CSOs using 'intervention funds' from the budget based on the members of the presidency discretion rights to do so. The receivers of the money are not obliged to report on how they have spent the money.<sup>42</sup>

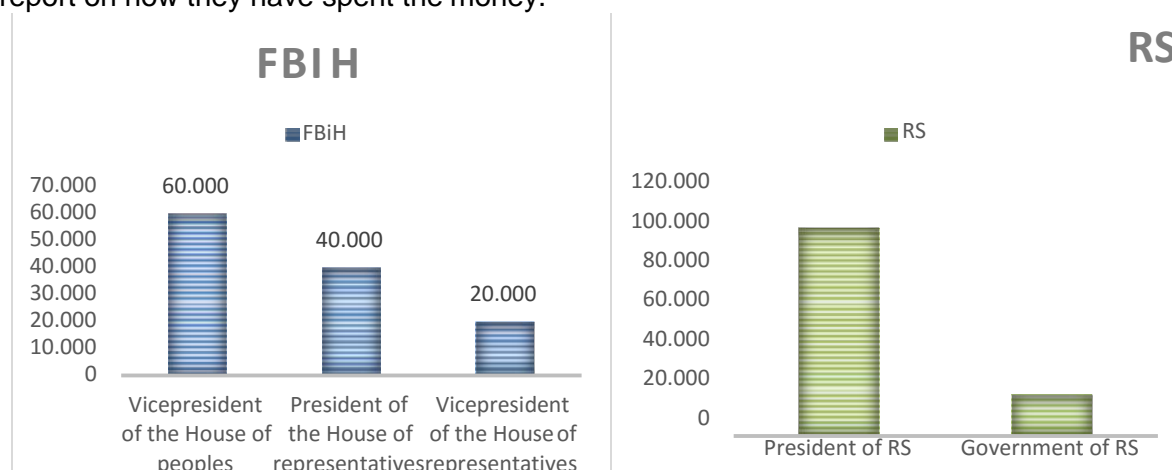


Table: Funds at disposal of government officials for CSOs in BAM for 2016 (total for both entities: 120 000 EUR)

CSOs participation in the public funding cycle is sporadic and not enough transparent and meaningful. CSOs believe that neither CSOs nor governments are fully aware of the benefits from jointly planning

<sup>39</sup> The data obtained through research implemented by the Foundation for Social Inclusion in BiH in cooperation with the CSPC in 2012, are published in the publication 'Heads-or-Tails: Government Sector Allocations for the Non-Governmental Sector in BiH for 2012'. Of 309 governmental institutions, 303 participated in the survey, which made it possible to obtain a clear picture and accurate data on: government support for CSO activities by levels of government; CSO sectors and activities; funding mechanisms; and the transparency of the entire process.

<sup>40</sup> <http://civilnodrustvo.ba/cpcd/cpcd-novosti/odr%C5%BEana-javna-rasprava-i-konsultacije-o-prednacrtu-sporazuma-o-saradnji-vlade-br%C4%8Dko-distrikta-i-nvo/>

<sup>41</sup> The data could be available in 2017, after all of the reports from all levels of government are going to be available for 2016 when it could be possible to either extrapolate the data or to do research on this topic.

<sup>42</sup> <http://www.avaz.ba/clanak/260122/kome-su-clanovi-predsjednistva-bih-u-oktobru-dali-42-700-km-iz-budzeta?url=clanak/260122/kome-su-clanovi-predsjednistva-bih-u-oktobru-dali-42-700-km-iz-budzeta>

the public funding cycle. For example, the Coordination of Serbian associations in Mostar actively advocated for their involvement in the budgetary planning in 2016 and the local government in Mostar did not seem too keen on involving them in the process.<sup>43</sup> The ruling opinion on this is that the government still does not recognize the importance of CSO's regular involvement in the public funding cycle which leaves much room for speculations on whether the process of adopting budgets is transparent.

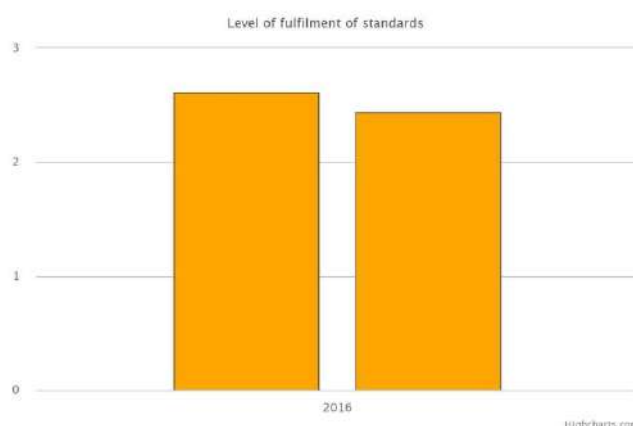
#### Main recommendations for action:

- ⇒ Harmonize mechanisms and establish for the transparent funding of CSO programs and projects from state budgets.
- ⇒ Harmonize the laws on conflict of interest, with increase of the sanctions and supervision of the parliamentary assemblies on its implementation.
- ⇒ Do more on involving CSOs in budget planning activities.

### **2.2.2. Public Funding Distribution [Core Standard]**

#### Legislation

The procedures for distribution of public funds are legally binding, yet partially transparent, varying between levels, as well as depending on the particular local community or canton. RS adopted a methodology for allocating funds to CSOs in 2015 and all its Ministries were ordered to follow it during 2016. Similarly, FBiH entity has a decision on financing of CSOs which is based on LOD methodology nonetheless 25 out of 40 municipalities have adopted it, but still carry it out differently.<sup>44</sup> There are also clear criteria for selection as well as clear procedures that addressing issues of conflict of interest in decision-making.<sup>45</sup>



#### Practice

Generally, institutions involved in the process of funding CSOs make the calls and the selected CSOs public. However, there is no access to the process of project proposal selection, and specific reasons and explanations as to why certain projects have been selected or rejected. Whereas there are institutions that follow the procedures for public funds distribution in a harmonized way, there are also institutions which do not follow the procedures. For instance, a CSOs based in Tuzla hosted an event funded by the government, yet received the financial support only a year after the completion of its project. An association from Ustikolina, organized a fair as a part of a project that was about to be partially sponsored by the local government, yet received the funds two month after the completion of the project, making the founder of the association use their own money for organizing the fair. There are a lot different approaches in distribution and decision making for allocation. Funds for CSOs are most often awarded through public calls for funding proposals, inclusion in regular budgets or through public procurements. A CSO from Tuzla reported that they have received the money for their activities after speaking with the city's major, while and another CSO from Zenica reported that one day, they

<sup>43</sup> [https://www.cafe.ba/vijesti/204198\\_Srbi-traze-ukljucivanje-u-pregovore-o-uredjenju-Mostara.html](https://www.cafe.ba/vijesti/204198_Srbi-traze-ukljucivanje-u-pregovore-o-uredjenju-Mostara.html)

<sup>44</sup> S. Osmanagić-Agović, CPCD Arena II, 31st May 2016.

<sup>45</sup> Pursuant to the state and entity laws on Freedom of Access to Information, the BiH Law on Public Procurement, and the state and entity laws on Conflict of Interest in Government Institutions.

have checked their bank account and found 5000 BAM there which came from the local authorities in the city they lived in. Since they have thought this was a mistake they called the authorities which said that this was no mistake and that they will receive one more installment in the same amount for their work. This was done without any procedure or public call, leaving the association not knowing how it spent the money and how to report about it. The application requirements for the public/budgetary funds, if exists and implemented, are not too burdensome for CSOs. CSOs are usually required to submit their registration documents, yearly income statements and project proposals. The procedures for applying for public funds are generally seen as not burdensome but an association from Livno stated that since they have only two people working in the association, that sometimes it is difficult for them to collect and stamp all the documents required by the public call on time because they have many beneficiaries and the time is crucial especially if they found out late about the public call itself. In 2016, CSOs reported that the Ministry of Internally Displaced Persons and Refugees opened a public call in which, besides the general requirements, it also asked for special requirements from CSOs that appear to be burdensome as: evidence on the size of the space in which CSOs operate, evidence of successful completion of projects a particular CSO has implemented by far, financial plan of the CSO in 2016 with a projection of the help needed for completion of projects and expected results of the project which have to be stamped by the public notary in a form of a Statement. There are also cases of direct funding the activities of CSOs without calls for proposals. For instance, while CSOs regularly compete on calls for proposals, some CSOs, mostly veteran CSOs, war victims and specific ethnic groups as associations Preporod, Napredak, Prosvejtta and Benevolencija are planned for funding in the annual budgets. While the initial idea was to grant CSOs of demobilized soldiers who are still entities with a special status in BiH, this is not the case as these CSOs are pro-government CSOs. Finally, sanctions for misuse or conflict of interests in decision making on allocation of funds are not recognized in practice so far.

**Main recommendations for action:**

- ⇒ Establish transparent funding mechanisms for CSOs programs and projects from state and FBiH budget which is in accordance with EU best practices.
- ⇒ Publish information on CSOs such as date and place of registration, registration level, implemented projects, and donors, their annual and financial reports.

**Sub area 2.2., reflects also the assessment of the following indicators of the EU CS Guidelines 2014-2020.**

**2.4.a. Increase of public funding for CSOs**

- There is a decreasing trend of BiH governments' support to the non-government sector from 2006, whereas an estimate is that in 2015 there was approx. 80.000.000 BAM (40.000.000 EUR) support from the public funds. The last exact figure is dated in 2012 and amount to 100.006.470,48 BAM (51.132.496,20 EUR) For 2016 the data are not available;
- There is not information regarding percentage of state funding for implementation of the public policies for which the CSOs are identifies as key actor.

**2.4.b. Quality of state funding frameworks for civil society organizations (focusing on procedural document)**

- Perception of CSOs is that public funding cycle is not transparent and that public funding is mainly under control of political parties relevant to certain funding level. There are a lot different approaches in decision making for allocation while the sanction for misuse or conflict of interest in decision making on allocation of funds are not recognized in practice so far;
- The legal framework for public funding includes provisions for inclusion of beneficiaries in programming of the tenders, clear criteria published in advance, deadlines for decision, merit decision with arguments, monitoring and evaluation.



## Sub-area 2.3.: Human resources

### 2.3.1. Employment in CSOs [Core Standard]

#### Legislation

The BiH Labor Law treats CSOs equally to other employers. Special provisions apply only to the associations of employers and unions which however are not subject to this analysis.

#### Practice

No employment incentives related to CSOs specifically exist. There are incentives provided by agencies for employment at all levels for all legal entities which fulfill their legal obligations (such as paying taxes) and therefore, according to these criteria, nothing stops CSOs from applying to these competitions. Entity Employment Services do not keep records on numbers of CSO employees. This information can be obtained from the entity Agencies for Financial, Information and Intermediary Services (AFIP) however not free of charge. RS Tax Administration Office and FBiH Agency of Statistics do keep records on the numbers of CSOs employees but only in membership based CSOs. Accordingly, there are 1653 people employed in RS membership-based CSOs in 2016, and 1341 employed in FBiH<sup>46</sup> membership-based CSOs in 2016.

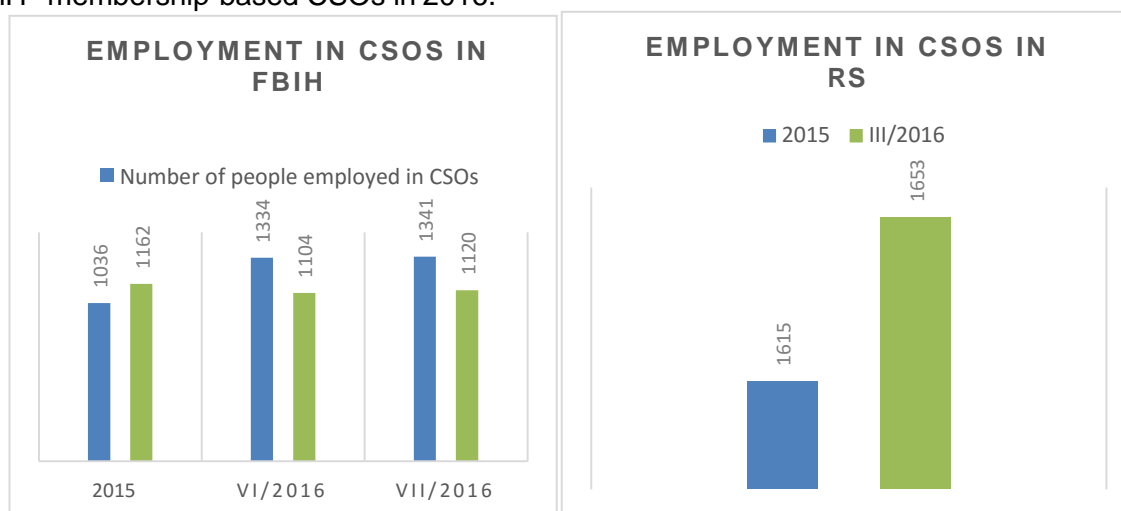
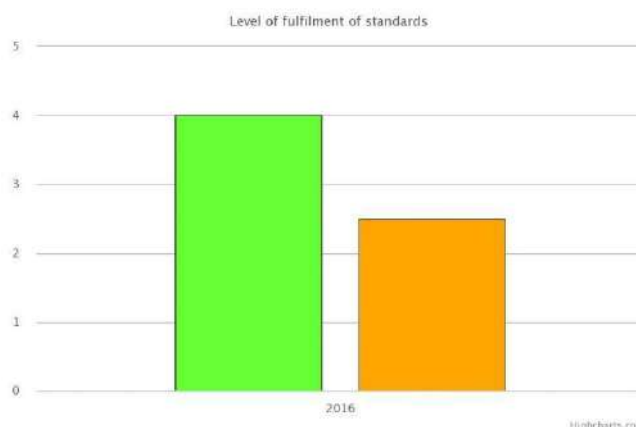


Table 3. Employment in CSOs on entity level in BiH

### 2.3.2. Volunteering in CSOs [Core Standard]

#### Legislation

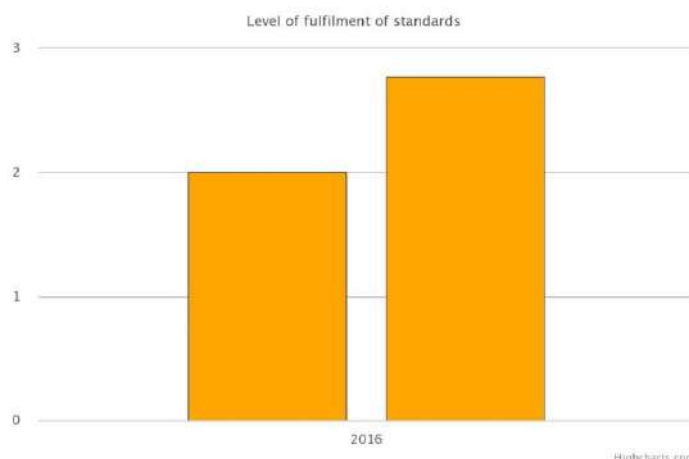
Volunteering is regulated on entities' level – the RS Law on Volunteering (2008)<sup>47</sup> and the FBiH Law

<sup>46</sup>Žeravčić, 2016, p.55.

<sup>47</sup><https://advokat-prnjavorac.com/zakoni/Zakon-o-volontiranju-RS.pdf>

on Volunteering (2012)<sup>48</sup>, which define basic terms and principles of volunteering, contractual relationships, rights and obligations of volunteers and organizers of volunteer work, as well as overseeing applications. Brčko District does not have a law specifically applicable to the area of volunteering. Incentives and state supported programs for development and promotion of volunteering do not exist. Volunteering engagement can take place in any form and there is no information about complaints of restrictions on volunteering.

Nonetheless, contractual relationships with volunteers of special categories as children, persons with disabilities, the elderly, people with special needs, people fully or partially deprived of working capacities, was not abolished completely. Simultaneously, organizers of volunteering are obliged to submit reports on realization of volunteering activities to the competent ministry.



### Practice

In practice, as there are no policy or strategic documents promoting volunteering, no programs are implemented. Only in RS there are annual events whereby 'Volunteer of the Year' is being announced. More so, the application of the volunteering laws when it comes to organizers of volunteering work is still not at a satisfactory level. To become organizers of long-term volunteering, CSOs are required to submit an application, amid no official form existing, to the Ministry of Justice, upon which CSOs receive accreditation for 5 years. In 2016, 50 CSOs in FBiH received accreditation, and 0 in RS. For other types of volunteering, no such procedures exist. Approval of voluntary working hours as verified service length is not recognized besides stipulations in the Law on Volunteering of FBiH<sup>49</sup>. There are not sanctions against CSOs for non-implementing regulations. Furthermore, the position of 'volunteer-intern' is defines in the Labor Laws of both entities and in BD legislation, but refers to volunteering as *de facto* unpaid work, rather than socially useful employment. The misuse of the notion of volunteering in this context has caused huge damage to volunteering engagements throughout BiH, due to incorrect interpretations by the media, institutions, and the public. Finally, some CSOs stated that they organize spontaneous volunteering work only as the long term volunteering is too burdensome a process. In 2016, the number of volunteers that have signed long-term volunteering contracts was 252 and 150 in FBiH and RS respectively, whereas there are no records on other types of volunteering.

Volunteering can take place in any form and no cases of complaints of restrictions on volunteering have been registered during 2016. Volunteering actions are generally organized via social media as through Facebook by many CSOs. For instance, the association "One less" from Sarajevo regularly organizes volunteering actions via Facebook. Similarly, volunteering is organized via web sites and there are a few in BiH whereby CSOs regularly post about volunteering actions taking place such as Volontiraj.ba and Hocu.ba. More so, an organization ArTZ production organized a volunteering action for cultural events they have done in 2016 via web sites and social media.

### Main recommendations for action:

- ⇒ Demand establishing of CSOs as a special category in statistical reports made by Agencies for statistics which needs to regularly gather data on the number of employees and salaries.

<sup>48</sup><http://www.fbihvlada.gov.ba/bosanski/zakoni/2012/zakoni/37hrv.html>

<sup>49</sup><http://www.scribd.com/doc/118216561/Zakon-o-Volontiranju-FBiH-SI-novine-Br-110-12#scribd>

- ⇒ Adopt the Law on volunteering on the state and District Brčko levels.<sup>50</sup>
- ⇒ Collect data on all types of volunteers (long and short term) which are engaged in CSO activities and their contribution to country's GDP.

**Sub area 2.3., reflects also the assessment of the following indicators of the EU CS Guidelines 2014-2020.**

**1.2.a. Number of employees in CSO (permanent and part-time)**

- The Entity Employment Services do not keep records on numbers of CSO employees. This information can be partly obtained from the entity Agencies for Financial, Information, and Intermediary services (AFIP), but is not free of charge as well as the data are not complete and comparable among each other. So, the total number of employees that work within the sector is not known precisely.

**1.2.b. Number of volunteers in CSOs per type of CSO/sector**

- There are no official data on the number of all volunteers engaged in CSOs activities (but rather the ones included in the long-term volunteering) and therefore the contribution of volunteers to GDP in % cannot be established;
- The Law on Volunteering in the Brčko district has not yet been passed as well as the Law on Volunteering on the state level.

**1.2.c. Quality of legislative framework**

- Throughout BiH, CSOs have the same legal treatment as other employees. RS, FBiH and BD labor laws do not contain specific provision in respect to CSOs. The laws of associations and foundations do not contain any specific provision related to the employment of individuals in CSOs, specific producers for employment, not specific rights for CSO workers;
- There are not discriminatory articles for CSOs in labor legislation;
- The legislation does not enable tax-free reimbursement of travel expenses and per diems to volunteers.

## **Area 3: Government-CSO Relationship**

### **Sub-area 3.1.: Framework and Practices for Cooperation**

#### ***3.1.2. Institutions and Mechanisms for Development of and Cooperation with Civil Society [Core Standard]***

##### Legislation

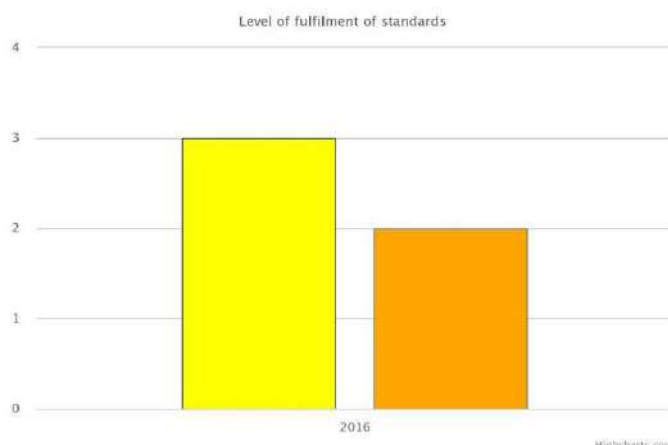
The agreement signed in 2007 for furthering state-CSOs cooperation, envisioned, among other things, the establishment of an Office for Cooperation with Civil Society Sector as a specialized and advisory body of the BiH Council of Ministers; Civil Society Council in BiH composed of government and civil society representatives; and the creation of the Civil Society Board on behalf of CSO representatives. Due date however these were not established. In place of the Office for Cooperation with Civil Society, a Sector for Civil Society was established within the BiH MoJ in 2008. Due to the

<sup>50</sup> Currently, the Laws on volunteering are on entity levels. The Law on volunteering on the state level has been with drowned multiple times from the Parliamentary procedure because the Republika Srpska representatives see it as a way for transferring this entity's competence onto state level.

\*Ministry of family, youth and sports of Republika Srpska.

staff not being competent in adequately implementing the assigned activities<sup>51</sup>, it was transformed into the Sector for Legal Aid<sup>52</sup> of the BiH Ministry of Justice. In fact, upon the Council of Ministers 94<sup>th</sup> Session on May 9<sup>th</sup>, 2014 which concluded that a working group shall be established with representatives of Council of Ministers Chair office, MoJ, Government of RS, Government of Federation BiH, and Government of BD, and after the general elections 2014, the working group was not completed with the new members, and therefore is still inactive. Thereafter, the FBiH Ministry of Justice and the RS Ministry of

Public Administration and Local Self-Government have been entrusted to further state – CSOs cooperation on entity levels. The BiH MoJ in its Rulebook of consultations further developed its provisions on the involvement of CSOs in the decisions taken by this institution, adding an article (article 2) which states that the MoJ will work on wide consultation processes when needed with CSOs in general and with those actively working on legal matters.<sup>53</sup>



### Practice

In practice, the aforementioned institutions have no sufficient resources and mandate for facilitating CSO-government dialogue, discussing the challenges and proposing the main policies for the development of civil society. The Council of Ministers has adopted the Information<sup>54</sup> in 2016 of the Working Group for revising the Agreement of cooperation between the Council of Ministers and CSOs in BiH, mandating the Ministry of Justice to propose measures for further activities on this issue. On December 20<sup>th</sup>, 2016 the Council of Ministers adopted new Information which stated that a new Agreement between the CSOs and the Council should be signed. The activities which will follow are wide consultation processes with CSO in the entire country as to the content of this document.

CSOs are regularly consulted and involved in processes and decisions by the competent institutions. The government of Brčko District held a public discussion with CSOs on the topic of the Preliminary Draft Agreement for cooperation between the District Brčko government and CSOs, after which, it left the Draft Agreement online and open for further comments. The administration of Prijedor City regularly consults CSOs when it comes to consumer protection policies implementation. The Association "Don" of Prijedor is regularly involved in the working groups dealing with this issue alongside representatives of the government. There were no examples in 2016 of particular level of government or government authorities explicitly refusing to cooperate with CSOs.

### Main recommendations for action:

⇒ Sign a new agreement between the Council of Ministers of BiH and CSOs.

<sup>51</sup> Although the Sector for Civil Society was conferred broad competences, the documents that should have resulted from exercising such competences were not prepared nor made available to the general public. According to the MoJ official website, the Sector had, among others, the competence to: prepare any developmental and strategic documents for the CSOs in BiH; facilitate and promote participation of CSOs in consultations of the legislative drafting process; monitor cooperation of CSOs with the lower levels of government in BiH; and monitor and prepare an annual overview of the implementation of the Cooperation Agreement between the BiH Council of Ministers and the Non-Governmental Sector in BiH. See more at: <http://www.mpr.gov.ba/ministarstvo/organizacija/default.aspx?id=436&langTag=bs-BA>.

<sup>52</sup> The Sector for Legal Aid still has a Section for Legal Aid to CSOs. For more information on the competencies of the Sector for Legal Aid, please see the Mid-term Strategic Plan of the BiH MoJ, 2012-2014, revised in January 2014.

<sup>53</sup> [http://www.mpr.gov.ba/web\\_dokumenti/Pravilnik%20za%20konzultacije%20sa%20javnoscu.pdf](http://www.mpr.gov.ba/web_dokumenti/Pravilnik%20za%20konzultacije%20sa%20javnoscu.pdf)

<sup>54</sup> The conclusions from the 62<sup>nd</sup> meeting of the Council of ministers of BiH. 06/29/2016 ;

[http://vijeceministara.gov.ba/saopštenja/sjednice/zakljucci\\_sa\\_sjednica/default.aspx?id=22952&langTag=hr-HR](http://vijeceministara.gov.ba/saopštenja/sjednice/zakljucci_sa_sjednica/default.aspx?id=22952&langTag=hr-HR)

- ⇒ Adopt similar documents of cooperation on lower levels of government in BiH when it comes to CSOs.
- ⇒ Build capacities of government bodies (ministries, sectors) in charge of the cooperation between the government and CSOs.

**Sub area 3.1., reflects also the assessment of the following indicators of the EU CS Guidelines 2014-2020.**

**3.1.b. Quality of structure and mechanisms in place for dialogue and cooperation between public institutions in terms of: - CSO representations I general, - representations of smaller/weaker CSOs, - its visibility and availability, - government perception of quality of structures and mechanisms, - CSOs perception of structure and mechanisms**

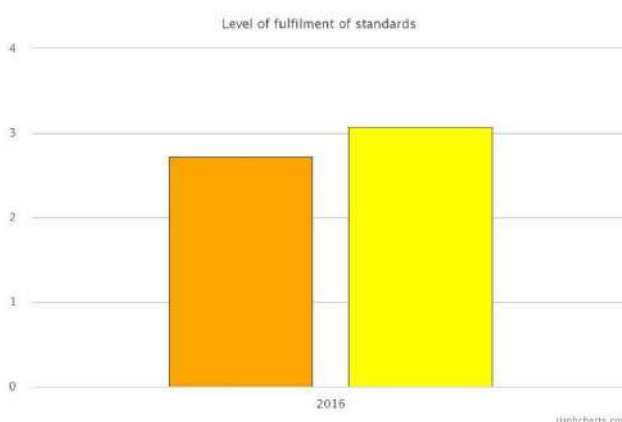
- The cooperation Agreement between the BiH Council of Ministers and the Non-Governmental Sector in BiH signed in 2007 and did not bring the intended results. On the 62nd meeting of the Council of Ministers of BiH, the Council adopted the information about the need to revise the Agreement. The Strategy and Action Plan for Creation of Enabling Environment for Civil Society Development, both initiated in 2011, are still at halt;
- There is no adequate system of communication and cooperation with CSOs, nor is there regular reporting or monitoring on the situation on civil society in BiH;
- CSOs are occasionally and selectively consulted and included in decision-making processes on behalf of institutions;
- National level institution mandated to facilitate cooperation with CSOs is the Sector for Legal Aid at the BiH MoJ, whereas institutions mandated for state – CSOs cooperation on entity levels are MoJ and Ministry of Public Administration FBiH and Local Self-Governments in RS;
- 1/3 of all ministries have contact points and regularly fulfill their obligations regarding minimum consultations regarding legislation of particular importance to the public, that is, Ministry of Communication and Transport, Ministry of Foreign Affairs, Ministry of Foreign Trade and Economic Relations, Ministry of Justice and Ministry of Security.

## **Sub-area 3.2.: Involvement in Policy- and Decision-Making Processes**

### **3.2.1. Standards for CSO Involvement [Core Standard]**

#### Legislation

At the state level, the Rules of Consultations in Legislative Drafting<sup>55</sup> as a legally binding document obliges all ministries to conduct minimum consultations on all draft legislation documents starting from the earliest stages, keep a current list of stakeholders and persons or institutions interested or affected by its legislation (Article 16) and decide on the form of the consultation. Binding documents exist at the entities level too – in FBiH there are Regulations on rules for participation of interested public in process of creation of federal legal and other



<sup>55</sup>Official gazette of BiH 81/2006 and the unofficial version from 2014.



acts<sup>56</sup>, while in RS there are Guidelines for republic organs of self-governance on public participation and consultations in creation of laws<sup>57</sup> defining under which conditions, when and who is making consultations with the public, how comments are collected and processed, and how explanation are created on whether comments are accepted or not.<sup>58</sup> Although there are no documents regulating CSOs involvement at the cantonal level, several cantons<sup>59</sup> as Brcko District do conduct consultations.<sup>60</sup> At the level of Sarajevo Canton, there is the *Regulation of procedures and methodology in preparation, designing and delivering of legal acts* stipulating necessary consultations with CSOs. Finally, the Rules for Consultation in Legislative Drafting in BiH institutions, and the Guidelines for Actions of Republic's Administrative Bodies on Public Participation in Legislative Drafting require the appointment of a coordinator to invite CSOs to participate in the consultation process.

As of April 24<sup>th</sup> 2016, the BiH Ministry of Justice launched an online platform, e-consultations, enabling citizens and CSOs to directly participate in legislative drafting.<sup>61</sup> The platform makes it easier and less costly for all interested stakeholders to be part of the policy creation process, but also provides an overview of the plan of the Council of Minister of BiH and all its institutions regarding legislative activities.

According to the Civil Service Agency of BiH, cooperation between the government and CSOs is a part of the curriculum for civil servants. That notwithstanding, existing educational and training programs are not harmonized with the needs of civil servants to actively involve CSOs in the decision-making processes. On the basis of the training programs of the Agency for Civil Service for 2016<sup>62</sup>, there is no specific training program for civil servants on the participation of CSOs in the work of public institutions.

### Practice

In practice, public institutions do not invite routinely all interested CSOs to comment on policy/legal initiatives at an early stage. Damar omladine, an association from Visoko was involved in the planning of the Youth strategy from an early stage and have great cooperation with the government representatives when it comes to building policies concerning young people. On the other hand, there are cases reported whereby CSOs working for more than a decade in a certain area are not invited by the authorities to work on policies because they are seen as fit to do it because of disputes which arose with some members of the government. This was a case in Tuzla. In addition, in its plans for 2017<sup>63</sup>, the BiH Ministry of Justice has committed to have a Revised Agreement between the Council of Ministers and CSOs, an operational Advisory Body, changes of the Rules of Consultations in Legislative Drafting so as to include obligatory<sup>64</sup> midterm and long-term planning in BiH institutions and creation of legal documents based on the assessment of their effects. It is also envisaged that upon 2016, an analysis on how much easier have the e-consultations made it for the institutions in following the Rules of Consultations in Legislative Drafting will be conducted. The Council of Ministers

<sup>56</sup>Based on article 19.subpart 1.of Law on the Government of the Federation of Bosnia and Herzegovina ("Official Gazette of the Federation of BiH", no. 1/94, 8/95, 58/02, 19/03, 2/06, 7/06), the Government of the Federation of Bosnia and Herzegovina, at its 53<sup>rd</sup> session held on June 4, 2012.

<sup>57</sup>Official Gazette of Republika Srpska" no. 123/08 i 73/12

<sup>58</sup> The Government of the RS and all contributors to the law are indeed following the Guidelines and laws are passing process of consultation with public, according to an interview with representative of Republic's Secretariat for legislation (example, Ministry of Industry, Energy and Mining, <http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mper/Pages/default.aspx>).

<sup>59</sup>Ministry of Justice of Una –Sana Canton, Ministry of Justice, Governance and local self-governance of HNK

<sup>60</sup>Public Consultation of Justice Commission of District Brcko,"Draft of Rules and regulations on type and conditions to execute criminal sanctions of work for public good while on freedom"24/3/2011.

<sup>61</sup>04/21/2016 <http://www.mpr.gov.ba/aktuelnosti/propisi/konsultacije/default.aspx?id=2444&langTag=bs-BA>

<sup>62</sup><https://www.ilearn.gov.ba/>

<sup>63</sup><https://ekonsultacije.gov.ba/legislativeactivities/details/51->

<sup>64</sup><https://ekonsultacije.gov.ba/legislativeactivities/details/35-izmjene-i-dopune-jedinstvenih-pravila-u-iz>

in future will demand that every legal document is followed by a proof of consultations done with the public, CSOs and other interested parties like academia, with their opinions elaborated and the reason for adopting or rejecting it very clearly stated.

CSOs are not always provided with adequate information on the content of the draft documents and details of the consultation with sufficient time to respond. This could change with e-consultation being operational on the state level, but on the entity level, CSOs feel that there is not always enough time neither proper information for consultations nor that the government considers consultations to be always adequate. The best example for this is in RS where not all CSOs felt that there was enough time not information for a constructive discussion regarding the new Labor Law and its implications probably because it is seen as bad for the economy and the government did not want to cause more harm if CSOs are too familiar with these implications.

Institution	Completed consultations	No. of registered for consultations	No. of consultations' participants	No. of received comments	No. of received suggests	No. of accepted suggests
Ministry of Justice	7	32	5 15.63 %	24	11	1 9.09 %
Agency for IDs	2	7	1 14.29 %	0	4	0 0.00 %
Veterinary Unit	2	5	0 0.00 %	0	0	0 0.00 %
Food Safety Agency	0	0	0 0.00 %	0	0	0 0.00 %
Institute for Intellectual Property	2	2	0 0.00 %	0	0	0 0.00 %
Institute for Standardization	0	0	0 0.00 %	0	0	0 0.00 %
Agency for Civil Service	0	0	0 0.00 %	0	0	0 0.00 %
Ministry of Civil Affairs	0	1	0 0.00 %	0	0	0 0.00 %
Ministry of Safety BiH	2	2	0 0.00 %	0	0	0 0.00 %
<b>Total Council of Ministers:</b>	<b>15</b>	<b>49</b>	<b>6 12.24 %</b>	<b>24</b>	<b>15</b>	<b>1 6.67 %</b>

Furthermore, consultations are carried through a web platform whereby CSOs are provided with adequate information on the content of the draft documents and details of the consultation with sufficient time to respond. However not all documents are posted on the platform and in the early stage. Not all institutions post their documents on the platform because mostly due to the fact that the platform is rather new and they do not have the habit of doing so. The drafts which are posted on the platform are considered as important for the public, leaving a large portion of documents not being consulted. Ministries and Agencies on the level of Council of ministries post drafts of the legal documents online along with the contacts of the persons in charge of the process who can be contacted in cases that there are questions about the documents.

Written feedback on the results of consultations is made publicly available by public institutions, including reasons why some recommendations were not included. That notwithstanding, taken altogether, CSOs do not consider that feedback is provided frequently and not by all institutions. An association from Sarajevo submitted a document as part of consultations to one ministry in the FBiH

government and never heard from them again. Up till this day, they have never received a feedback and the particular document passed parliamentary procedure. In minority of cases written feedback on the results of consultations is made publicly available including reasons why some recommendations were not included.

The web platform made consultations easier but it is still rather a new tool and maybe not the most advertised one. At the end of 2016 the MoJ will start making an assessment and see how useful the platform has been so far and what needs to be done to improve it. In the table below are the numbers on the consultations done so far and that big of an interest was not recorded.

There is no information available on whether civil servants in charge of drafting public policies have successfully completed the necessary educational programs/training. In practice, neither the representatives of government nor CSOs are on the opinion that all officers in charge with coordination and monitoring of the process of public consultations have sufficient capacity to do so.

#### Main recommendations for action:

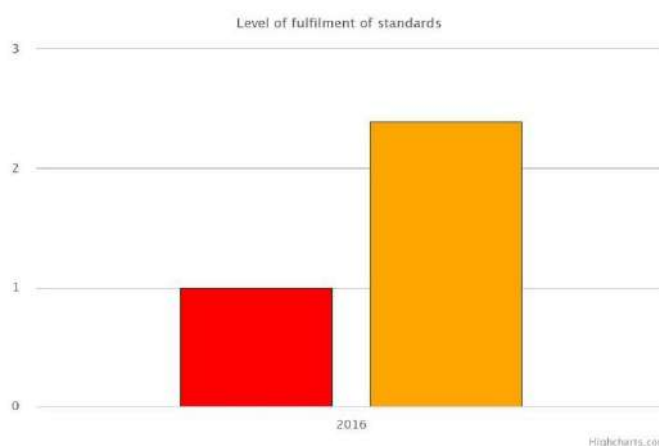
- ⇒ Create online systems of doing public consultations on the levels of FBiH and RS which would follow the work done at the level of Council of ministers.
- ⇒ Provide special training for officers in charge for coordination and monitoring of the process of public consultations.
- ⇒ Work on detailing procedures which ensure the article 75 of the Rules for consultations in legislative drafting in institutions of BiH which demand consultations with interested public in legislative drafting is respected.

### **3.2.3. CSOs' Representation in Cross-Sector Bodies [Core Standard]**

#### Legislation

The Rules of Consultations in Legislative Drafting regulate participation of CSOs in different decision-making and advisory bodies (Article 10) however the provisions are not binding to relevant institutions.

There are some guidelines in article 6 of these Rules on how to ensure appropriate representation from civil society in the process of legislative drafting but the criteria are not clear but state rather vaguely who should be consulted such as 'the public and organizations from article 2 of this document'. The involvement of CSOs in advisory and decision-making bodies is not clear and does not happen through a public procedure. Inclusion of experts from outside of institutions regardless of whether of individuals or representatives of CSOs is seen as a last resort when it comes to forming advisory bodies.<sup>65</sup>



#### Practice

Decision-making and advisory bodies on issues and policies relevant for civil society generally do not

<sup>65</sup>[http://www.cbgi.ba/images/dokumenti/UNAPREDJENJE\\_PROCESA\\_KONSULTACIJA\\_SA\\_ZAINTERESIRANOM\\_JAVNO\\_SCU\\_NA\\_RAZINI\\_BIH.pdf](http://www.cbgi.ba/images/dokumenti/UNAPREDJENJE_PROCESA_KONSULTACIJA_SA_ZAINTERESIRANOM_JAVNO_SCU_NA_RAZINI_BIH.pdf) ; pg 12.



include CSO representatives. In fact, inclusion in decision-making and advisory bodies applies to those CSOs that have the resources or connections to stay close to the government. For instance, on its 13<sup>th</sup> session, the Council of Ministers adopted a decision on the establishment of Advisory Council as part of the Open Government Partnership initiative, upon which a public call for CSOs will be announced. Similarly, CSOs are consulted in the process of revising the Agreement between the Council of Ministers and CSOs which directly affects them.

While participating in advisory bodies, representatives of civil society organizations can clearly present their ideas and suggestions. For doing so, no application of sanctions against CSOs has been reported by CSOs in 2016. Ministries seek to include networks that bring together a larger number of CSOs considering them as credible, professional and having expertise.

Even though CSOs participate in the work of advisory bodies this does not prevent them from using alternative ways of promoting their own standpoints in terms of advocacy. Open government initiative is the best example, because it represents the coalition of CSOs who work with the government on government reforms but organizations within this coalition continue to advocate for on citizen's and CSO participation in battling corruption and advocating for the improvement of services provided by the public administration.

#### Main recommendations for action:

- ⇒ Council of Ministers should put pressure on institutions to begin implementation of Article 5 of the Rules for consultation.
- ⇒ Regulate the involvement of NGOs in advisory and decision-making bodies not as a last resort strategy, but for the further development of public policies.
- ⇒ Establish a clear system which involves the largest number of CSOs or their representatives possible in the cross sector bodies with predetermined selection criteria.

#### **Sub area 3.2., reflects also the assessment of the following indicators of the EU CS Guidelines 2014-2020.**

##### **3.1.a. Percentage of law/bylaws, strategies and policy reforms effectively consulted with CSOs in terms of: - adequate access to information; - sufficient time to comment; - selection and representativeness / diversity of working groups; - acknowledgement of input; - degree to which input of taken into account; . Feedback / publication of consultation results.**

- Council of Ministers of BiH started with 'E-Consultations', enabling citizens and CSOs to directly participate in legislative drafting through an online platform;
- The most of institutions employees do not consider the Rules obligatory therefore, educating civil servants is crucial for implementation of the Rules. The current practices do not recognize sanctions for non-implementation consultation process;
- Unacceptable number of draft Laws are passing the adoption process as urgent procedure, without obligatory consultation, even there are not emergency cases;
- Existing educational and training programs are not harmonized with the needs of civil servants to actively involve civil society organizations in the decision-making process;
- At the level of federation, Regulation on rules for participation of interested public in process of creation of federal legal and other acts has been adopted. In comparison with years 2012-2014, there is progress in implementation of the Rules by certain number of federal ministries which provide the proper consultation with interested public in preparation of the documents;
- The Government of the RS has its Guidelines for republic organs of self-governance on public participation and consultations in creation of laws defined under which conditions,

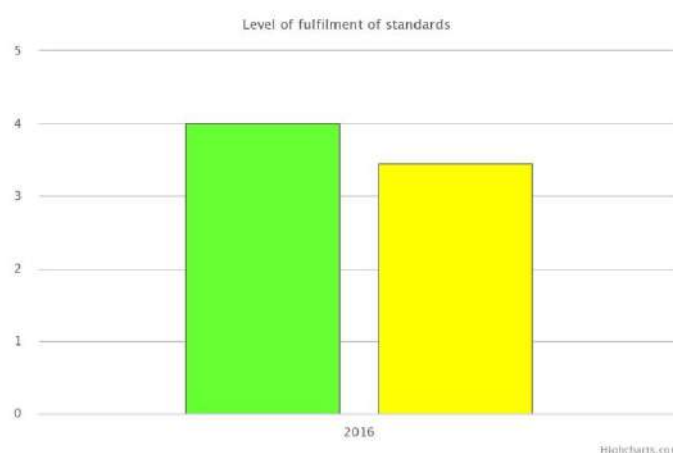
- when and how explanation are created on whether comments are accepted or not;
- The Governments coordinators rarely inform CSOs of whether their comments were accepted, abridged or rejected;
- Participation of CSO representatives in working groups for legislative drafting is not covered by any regulation, but there have been sporadic cases of CSOs being directly involved in working groups for the development of given regulations/document.

## Sub-area 3.3.: Collaboration in Social Provision

### 3.3.1. CSO Engagement in Service Provision and Competition for State Contracts [Core Standard]

#### Legislation

Service provision by CSOs in BiH revolves mostly around the area of social services. The legal framework for service provision in the field of social protection is regulated with BD law, as well as entity<sup>66</sup> and cantonal laws. Article 8 of the RS Law on Social Protection (2012) stipulates the right to social protection provided by: a social welfare institution; a CSO; a religious community; or any other person who meets the requirements provided in the Law. In RS, obligations of social protection are allocated to the entity government and local self-governments (municipalities). Article 4 of the FBiH Law on Social Protection, Protection of Civilian



Victims of War and Protection of Families with Children, allows humanitarian organizations, CSOs, religious communities and organizations established by individuals or legal entities, to perform activities pertaining to these areas, alongside existing social institutions. Contrary to the laws in RS, those in FBiH do not offer incentive mechanisms for making of service providers.<sup>67</sup> To obtain the status of “institution”, certain legal conditions must be fulfilled. Once this has taken place, the new institution is entered into the Register of Institutions for Social Protection. Conditions for providing these social services and procedures are prescribed in bylaws (rules for regulations, decisions and instructions). Services that fall outside CSOs’ registered activities, and whose main objective is financial profit, can be provided only through a separate legal entity. There are no obstacles for health and educational institutions that provide services related to their primary activities. Operation of CSOs is equivalent to that of other legal entities. It is important to emphasize that in line with the principle of equal opportunity, and in order to reduce social exclusion, entity laws on professional rehabilitation, training and employment of persons with disabilities have been passed.<sup>68</sup> The social services can include daily centers, safe houses, SOS/counseling telephone line for children, psychological support, etc. When prior registration/licensing is required, the procedure for obtaining that is not overly burdensome, however the problem arises in that the competition with the public providers is not fair.

<sup>66</sup> The Law on Social Protection, Protection of Civilian Victims of War, and Protection of Families with Children (Official Gazette FBiH 36/99,54/04,39/06, 14/09), The RS Law on Social Protection (RS Official Gazette 37/12), The RS Law on the Protection of Children (RS Official Gazette 4/02, 17/08, 1/09).

<sup>67</sup> SeCOs, Comparative Analysis on Role of CSOs in Social Provision in WB countries, Belgrade: November 2013, available at: [http://www.slideshare.net/saskazek/baseline-study-csf-eng?from\\_search=1](http://www.slideshare.net/saskazek/baseline-study-csf-eng?from_search=1)

<sup>68</sup> The Law on Professional Rehabilitation, Training and Employment of Persons with Disabilities (Official Gazette FBiH 2/10), The Law on Professional Rehabilitation, Training and Employment of Persons with Disabilities (Official Gazette RS 59/09-revised text).

### Practice

CSOs are able to obtain contracts in competition with other providers and are engaged in various services. State authorities award money to CSOs for performing social services according to their field of work such as in the case of CEI Nahla, an organization which provides educational services to women. This organization is awarded funds for performing educational activities by the Institute for employment.

CSOs are not included in all stages of developing and providing services because they are still seen as the ones who provide auxiliary services since the government only hires them to that for which the government itself lacks capacity to do. The best example for this are safe houses for women, which operate because the government cannot respond to domestic abuse situations without CSOs who open safe houses, but these CSOs are not included in the stages of the planning of providing these services which leads them to be underfunded. It is still seen that the state does not recognize CSOs as valuable service providers and that more needs to be done on providing support to CSOs as service providers either through incentives or similar.

When prior registration is required, the procedure for obtaining that is burdensome as CSOs reported many administrative demands for them, as approvals from different ministries, institutes and agencies all depending on the type of service they want to provide. Other service providers are already registered for performing certain services. These are not the kind of obstacles other service providers face such as health care institutions or those which provide educational services, because that is their primary activity. Especially the competition with public providers is not seen as fair and CSOs only get short or mid-term contracts with the state institutions.

### Main recommendations for action:

- ⇒ Create possibilities for CSOs to take over provision of some services that have previously been in the exclusive competence of government institutions or the private sector.
- ⇒ Conduct research as a way of establishing the effectiveness and providing of comparative study of government service provisions and the ones of CSOs.
- ⇒ Monitor and evaluate state authorities when it comes to service provisions by CSOs.

# Used Resources and Useful Links

## Laws Analyzed

Constitution of Bosnia and Herzegovina, Annex IV Dayton Peace Agreement  
Constitution of Federation of Bosnia and Herzegovina  
Constitution of Republika Srpska  
Criminal Law at administrative levels: Bosnia and Herzegovina,  
Federation of BiH and Republika Srpska. (Criminal Law of Federation of BiH; Official Gazette of FBiH No: 46/16; 15th June 2016).  
Decision on Freedom of Information and Abolition of Criminal Penalties for Insult and Defamation (1999) High Representative to Bosnia and Herzegovina (Official Gazette of BiH, 14/99)  
Election Law, Chapter 16, Media in the Election Campaign  
European Convention on Human Rights  
General Collective Agreement for RS (Official Gazette of RS, 40/10)  
General Collective Agreement for FBiH (Official Gazette of FBiH, 54/05, 62/08)  
Law on Associations and Foundations of BiH (Official Gazette of BiH, 32/01, 42/03, 63/08, 76/11)  
Law on Associations and Foundations of RS (Official Gazette of RS, 52/01, 42/05)  
Law on Associations and Foundations of FBiH (Official Gazette of FBiH, 45/02)  
Law on Association of Citizens and Foundations of BD, BiH (Official Gazette of BD, BiH, No.12/02)  
Law on Humanitarian Agencies and Organizations (Official Gazette of FBiH, 35/98)  
Labor Law of RS (Official Gazette of RS, 55/07)  
RS Law on Protection at Work (Official Gazette of RS, 1/08)  
Labor Law of FBiH (Official Gazette of FBiH, 43/99,32/00,29/03)  
Law on Protection at Work (Official Gazette of BiH, 22/90)  
Law on Accounting and Revision (Official Gazette of RS, 36/09)  
Law on Accounting and Revision (Official Gazette of FBiH, 83/09)  
Law on Child Protection (Official Gazette of RS, 4/02, 17/08, 1/09)  
Law on Communications of Bosnia and Herzegovina (Official Gazette of BiH, 21/02, 31/03, 75/06, 32/10)  
Law on Conflict of Interest in Governmental Institutions of BiH (Official Gazette of BiH, 16/02,14/03,12/04,63/08)  
Law on Conflict of Interest in Governmental Institutions of FBiH (Official Gazette of FBiH, 70/08)  
Law on Conflict of Interest in Governmental Institutions of RS (Official Gazette of RS, 73/08)  
Law on Council of Ministers (Official Gazette of BiH,30/03,42/03,81/06,76/07,81/07,24/08)  
Law on Free Access to Information (Official Gazette of FBiH, 32/01)  
<http://fmrsp.gov.ba/s/images/stories/zakoni/zakon%20o%20slobodnom%20pristupu%20informacijama.pdf>  
Law on Gender Equality (Official Gazette of BiH 16/03, 102/09 32/10)  
<http://www.arsbih.gov.ba/bhs/pravniokvir/zakon-o-jednakosti-spolova-u-bih>  
Law on the Intelligence and Security Agency (OSA) (Official Gazette of BiH, 27/04, 35/05, 49/09)<  
<http://www.ohr.int/decisions/statemattersdec/pdf/bos%20intelligence%20law.pdf>  
Law on Local Self-Government (Official Gazette of RS, 101)  
<[http://www.alvrs.com/v1/media/djcatalog/2004-11-18-SI\\_glasnik\\_br\\_101-Zakon\\_o\\_lokalnoj\\_samoupravi\\_RS.pdf](http://www.alvrs.com/v1/media/djcatalog/2004-11-18-SI_glasnik_br_101-Zakon_o_lokalnoj_samoupravi_RS.pdf)  
Law on Obligation Relations (Official Gazette of SFRY, 2  
9/78, 39/85, 57/89)  
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# Annexes

## Annex A: List of Interviewees

Ms. Amila Dedić, Association Institute "KULT", Sarajevo;  
Mr. Dževahir Babić, Association "Krajina";  
Mr. Vlado Marušić, Association "Forgotten Defenders of Herzegovina";  
Ms. Snježana Šešlija, Association "Forum for Protection of Consumers," Dobo  
Ms. Željka Katanić, Association "Leptir", Srebrenica  
Ms. Marisa Marić, Association "DON" Prijedor;  
Mr. Vildan Hadžihasanović, Ministry of Justice of BiH;  
Mr. Jugoslav Jevdjić, Association OKC Banja Luka  
Ms. Pavlina Vujović, Association "IPAK - Mladost gradi budućnost" Tuzla.  
Ms. Selma Sijerčić, USAID BiH<sup>69</sup>

## Annex B: List of participants on focus group 20.10.2016

Ms. Ranka Ninković Papić, Foundation for Social Inclusion BiH;  
Mr. Vildan Hadžihasanović, Ministry of Justice of BiH;  
Mr. Goran Bubalo, Network for Building Peace;  
Mr. Emsad Dizdarević, Transparency International;  
Ms. Selma Sijerčić, USAID;  
Mr. Milan Mirić, ICVA;  
Mr. Dario Jovanović, CCI;  
Ms. Larisa Špuren, ORBICO;  
Mr. Edin Mujačić; Center for Sustainable Development Brčko;  
Mr. Alma Šahbaz, Coca Cola;  
Mr. Nedžad Jusić, Eurorom;  
Ms. Snežana Šešlija, Topeer;  
Mr. Predrag Golubović, Ministry of Administration and Local Self-Governance, Banja Luka;  
Mr. Slaviša Prorok, CCSP;  
Ms. Leila Blćakčić, UN, Sarajevo.

## Annex C: List of CSOs which participated in consultations ZENICA, 26<sup>th</sup> October 2016

1. Associations of Dietitians Zenica
2. Association „DLAN“
3. Association „Lotos“
4. Association of Deaf People Zenica
5. Center for Social Work Zenica
6. Association „Dječija nota“
7. Association EU EKO Turist
8. Center for Health
9. Association „Ruhoma“
10. Association „Život“
11. Red Cross Zenica
12. Center for Helping Persons with Disabilities „Sumero“

<sup>69</sup>In regards to civil society development and donor strategies of CSO financing.

13. Center for Legal Aid for Women
14. Association „Bosna“
15. Public Institution for Children „Sindibad“
16. Association of Agricultural Workers ZDK
17. Association Žepče
18. Student's Union Zenica
19. Association USUNZE
20. Association for the Development of Tourism „VEDRO“
21. Citizen's Forum Zenica
22. Center for Youth „INPUT“
23. Association „Bagrem“
24. Association EU „Eko Tvrtkovac“
25. Association for Breeding Animals Zenica
26. Association of Employers Zenica
27. Center for Education and Promotion of Children and Youth „ARS Center“, Zenica

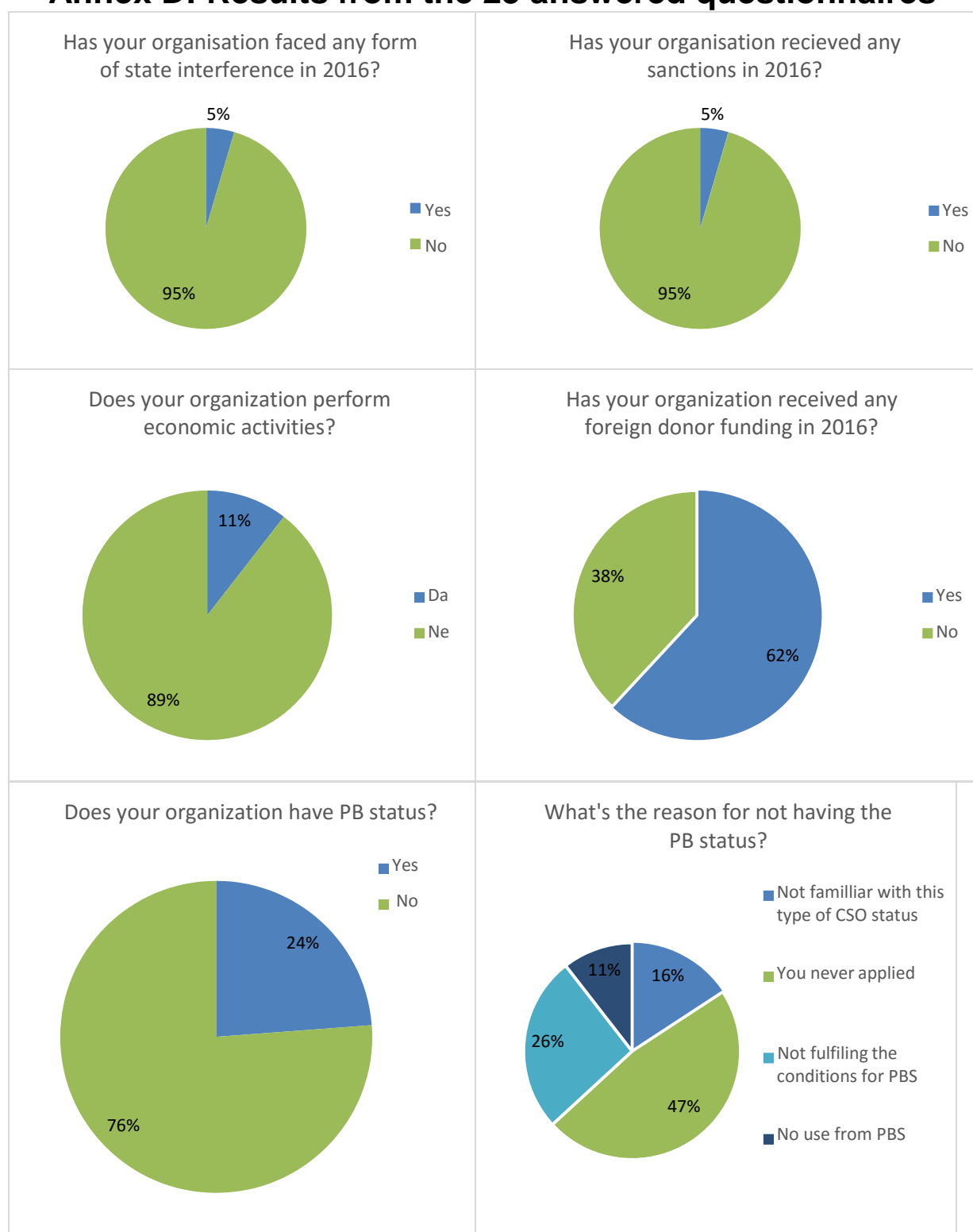
### **SARAJEVO, 25<sup>th</sup> October 2016**

1. Humanity in Action
2. Association „Neštoviše“
3. Association of Persons with b. Epidermises „Debra“
4. Association TPOS in BiH
5. Croatian People's Council in BiH (HNV BiH)
6. Jewish Municipality in Sarajevo
7. Foundation for Social Inclusion in BiH
8. Association „Radostživota“
9. Association for Transitional Justice
10. Institute for the Development of Youth „Kult“
11. CARITAS
12. USAID/SGIP
13. BAJKA
14. Association Nahla
15. Association of Women Judges in BiH
16. Forum of Left Initiative
17. Association „ČBKB“, Vareš
18. Youth Council Pale
19. CEH – Konekta
20. Association “Give us a Chance”/”Dajte nam šansu”.
21. FEA
22. Alliance of Syndicates of BiH
23. Association „ŽIR“
24. Center for Advances Studies
25. Association Pomak
26. Association of Roma and Friends, Ilijaš
27. Association of Mediators
28. SULKS
29. Association “Motivator”
30. Foundation “Pro BISTR”
31. Foundation “CURE”
32. TACSO BiH
33. The City of Sarajevo
34. Association “NARKO – NE”
35. Center for Investigative Journalism- CIN

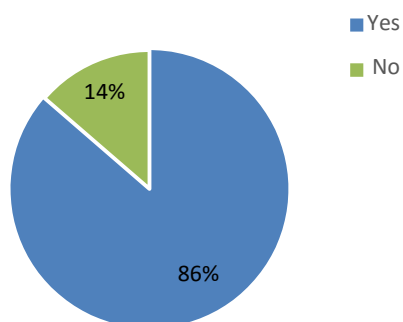
## **TUZLA, 19<sup>th</sup> October**

1. Inter-Religious Council of BiH
2. Association of Intellectuals of PODRINJE
3. Association „SNAGA ŽENE“
4. Foundation of the Community of Tuzla
5. Association “MARGINA”
6. Association of Citizens with Impaired Eye-Sight
7. Association „OSMIJEH“, GRAČANICA
8. NGO Forum, LUKAVAC
9. CENTER “NAPREDAK”, LUKAVAC
10. CMEK – KLADANJ
11. KUD PURAČIĆ, PURAČIĆ
12. Association „ROMANO DROM“, ŽIVINICE
13. Association of Innovators, LUKAVAC
14. Association “Education the Future of Youth”
15. Association ETNO KLUB „KICELJ“
16. CRP TUZLA
17. Association MRENA, ŽIVINICE
18. Association „FENIKS“
19. The Municipality of Lukavac
20. Association of Beekeepers „TUZLA“
21. Association „PIPOL“
22. Center for Education
23. Association “EURO ROM”
24. Association of Slovenians
25. Ecological Movement „EKO ZELENİ“
26. Association “ZELENE STAZE”
27. CRP
28. Association “FRONT”
29. Association for Sports TUZLA
30. SIK TUZLA
31. Association “NERDA”
32. Association „FAMILIJA“
33. Association „SRETNI ROMI“
34. Association “MIOS” TUZLA
35. Association of Breščani
36. Association “DIR” – TUZLA

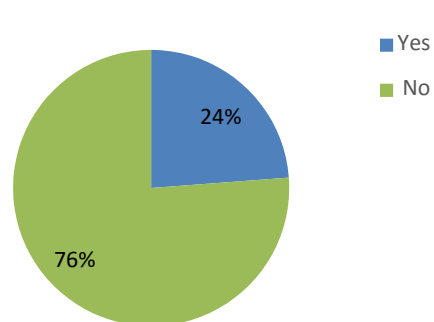
## Annex D: Results from the 23 answered questionnaires



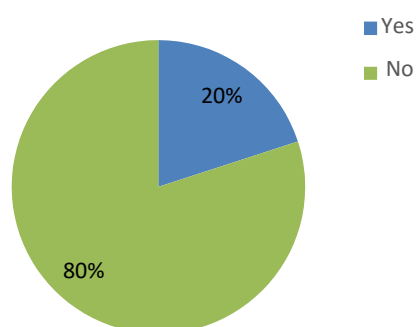
Has your organization had any experience working in a network in 2016?



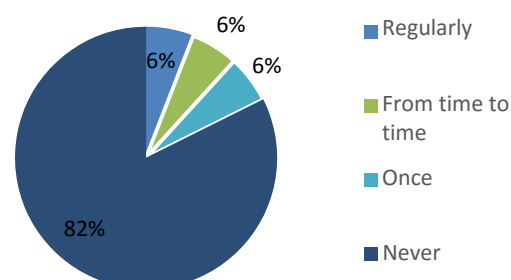
Have you or your organization's representatives participated in public assemblies in 2016?



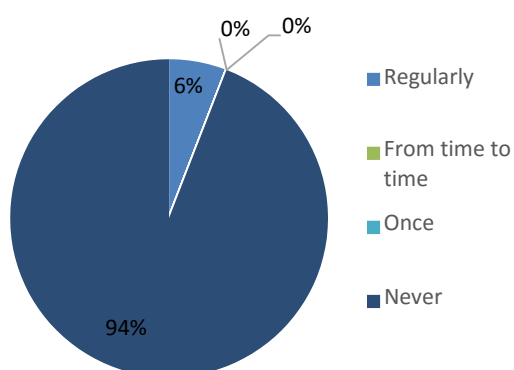
Have you or your organization organise public assemblies in 2016?



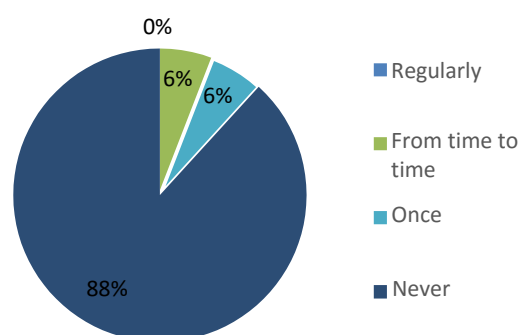
Has your organization experience any pressure for criticism of the government?



Did you experience lawsuits for critical speech?

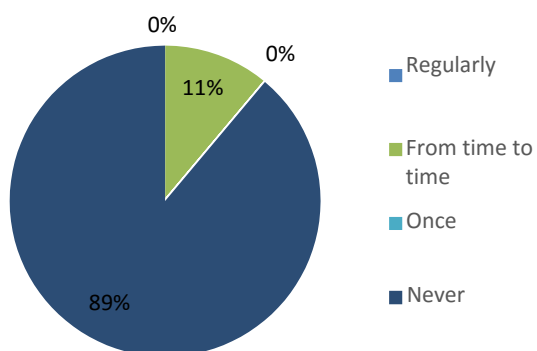


Did you experience threats for opposite views?

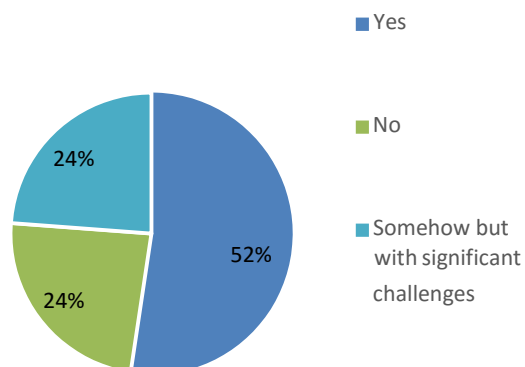




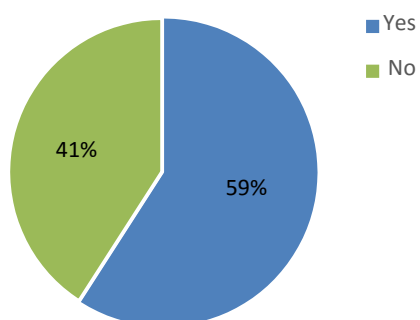
Blocking access to online channels for communication



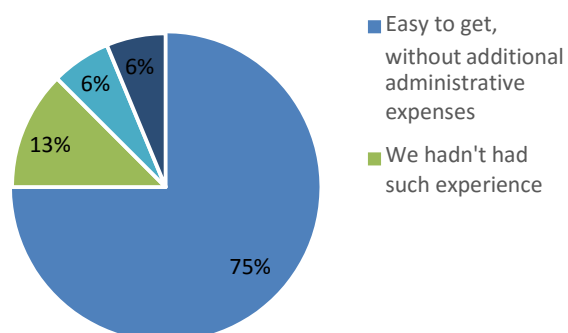
Has your organization managed to secure regular financing in 2016?



Has your organization received foreign funding in 2016?



What's your experience with receiving foreign funding?



Does Your organisation enjoy tax deduction ?

