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Enabling Environment for Civil Society Development & EC Enlargement Strategy Paper and Progress Reports 2012

BACKGROUND

This document presents an analysis of the European Commission 2012 Progress Reports for the countries of Western Balkans and Turkey the Enlargement Strategy Paper for 2012 in view of the enabling environment for civil society development (CSDev).

With the Enlargement Strategy Paper in 2007, the European Commission for the first time identified civil society development (CSDev) and civil society dialogue as a core priority of the Enlargement process. Since then, this priority has been translated into specific benchmarks under the Political criteria for most of the Enlargement countries. The yearly publications of the Enlargement Strategy Paper and the Progress Reports enable the Commission to also note the progress or the stagnations of the countries in this area, which serves as a basis for BCSDN's background analysis since 2009^{1 2}. The main challenge and debate is about how useful and effective are the specific benchmarks; whether they provide effective support to the existing efforts of local civil society in advancing civil society dialogue and development and finally, how much emphasis and priority is given to fulfillment of these benchmarks.

In 2012, BCSDN has started to develop the 1st monitoring matrix on enabling environment for civil society development (CSDev)³. Recognizing that one of the main problems for civil society in the Enlargement countries is to lay its foundation in society and transpose critical views in fragile democracies, the matrix provides for consensus-building around standards that need to be in place for civil society to be able to play its role. Thus, the matrix provides an effective monitoring and advocacy tool, bringing about consolidated legislation and especially creating an enabling environment for developing a vibrant, effective and organised civil society sector in the Enlargement countries.⁴ It is from the perspective of the matrix that the Background analysis of the 2012 Progress Reports analyses the Commission's approach and assesses the situations in the respective countries.

ASSESSMENT

The Analysis notes that overall, the Commission has maintained its focus on the issues pertinent to involvement of civil society in policy and decision making, administrative capacity of state institutions

¹ All previous analysis are available at <http://balkancsd.net/policy-research-analysis/monitoring-eu-a-national-policies-on-civil-society/ec-progress-report>

² This year the EC published a Feasibility Study for a Stabilisation and Association Agreement with Kosovo not dealing with civil society as the standard Progress Reports do, and the Main Findings of the Comprehensive monitoring report on Croatia's accession preparations, marking the end of the negotiation process. This analysis takes into account these reports but does not deal with them in the same manner as for the other countries due to their specifics.

³ http://www.balkancsd.net/images/112-3_Draft_Monitoring_Matrix_24th_Oct_for_BCSDN.pdf

⁴ The groundbreaking work has been undertaken by 10 CSO practitioners/experts from the Balkans in partnership and support by the European Center for Non-profit Law (ECNL). The expert work on the matrix has been supported by the project "Cross-Sector Regional Partnership for Enabling Legal Environment for CSDev" supported by USAID and ICNL under the Legal Innovation Fund.

to draft and adopt quality legislation through an inclusive process, and on the mechanisms that stimulate funding of CSOs. However, the most crucial areas for consolidating the enabling environment for CSDev in the mid-term, such as tax regime, state support and human resources issues, are insufficiently addressed.

Generally, the Commission concluded that *“civil society activities are essential for a mature democracy, the respect for human rights and the rule of law”*. In some cases, it has observed that the *“culture of acceptance of CSOs needs to be better nurtured, and a more enabling environment and the conditions for improved policy dialogue put in place”*. These last is a novelty, stemming from the Commission Communication *“The roots of democracy and sustainable development: Europe’s engagement with Civil Society in external relations”*⁵ published on 12th September, which for the first time since the Enlargement Strategy 2007 recognizes the need to combine both financial (IPA CSF) and political means (monitoring via Progress Reports) to tackle CSDev.

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

The assessments on country level are not equally detailed and concrete and there is no coherent approach to this issue in all country Reports. According to the Commission, **freedom of association** is guaranteed and generally respected in all Western Balkan countries and *progress has been noted* in this area. But, narrowing of space via implementation of related freedoms, such as freedom of assembly and expression, has been noted in some of the countries this year.

According to the Progress Report, in Turkey, CSOs have faced obstacles in exercising the **freedom of assembly**.

“Many court cases were launched against human rights defenders and civil society representatives who exercised their right to peaceful assembly.” ... “CSOs continued to face fines, closure proceedings and administrative obstacles to their operation”. The Commission has also reported that two foreign CSOs were refused the right to establish in the county. The Commission also stressed *“a need to revise the law on demonstrations and meetings”* in the country.

Concerning the **freedom of expression**, the Commission has expressed concerns in a number of countries, also in terms of CSOs’ work. For example, in Macedonia, concerns are raised to the constitutionality and proportionality of the law on lustration, which also includes members of CSOs and thus opening a possibility to exert pressure on CSOs critical of the Government.

Area 1: Basic Legal Guarantees to Freedoms	
PRINCIPLE	STANDARDS/BENCHMARKS
Sub-area 1.1.: Freedom of association	
Freedom of association is guaranteed to everybody	1. All individuals and legal entities can freely establish, join and participate in non-formal and/or registered organizations
	2. CSOs operate freely without unwarranted state interference in their internal governance and activities
	3. CSOs can freely seek and secure financial resources from various domestic and foreign sources to support their activities
Sub-area 1.2.: Related-freedoms	
Freedoms of assembly and expression are guaranteed to everybody	1. CSO representatives, individually or through their organizations, enjoy freedom of peaceful assembly
	2. CSO representatives, individually or through their organizations enjoy freedom of expression
	3. CSOs can communicate and cooperate with others within and outside their home countries through any media, incl. internet and ICT

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0492:FIN:EN:PDF>

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

Although the tax regime, the allocation of state support, and esp. public funding and non-equal treatment in employment policies remain a crucial area to be tackled, the Commission tackles these issues only in a few countries.

Area 2: Framework for CSOs' Financial Viability and Sustainability	
PRINCIPLE	STANDARDS/BENCHMARKS
Sub-area 2.1: Tax/fiscal treatment for CSOs and their donors	
CSOs and donors enjoy favorable tax treatment	1. Tax benefits are available for various income sources of CSOs
	2. Givings by private individuals and corporations are stimulated
	3. Legal environment is supportive of endowment building
Sub-area 2.2.: State support	
Available state support to CSOs is provided in transparent and spent in accountable manner	1. Public funding is available for institutional development of CSOs, project support and co-financing of EU and other donors' grants
	2. Public funding is distributed in a prescribed and transparent manner
	3. There is a clear system of accountability, monitoring and evaluation of public funding
	4. CSO representatives participate in all phases of the public funding cycle under clear processes and with consideration of conflict of interest policies
	5. Non-financial support is available from the state
Sub-area 2.3: Human resources	
The state policies and legal environment stimulate and facilitate employment and volunteering in CSOs	1. CSOs are treated in employment policies and measures in an equal manner as other employers
	2. There are enabling volunteering policies and laws
	3. Educational system promotes civic engagement

The issue of **tax regime** is tackled in the Macedonian Report, which states that the tax legislation in the country is still not in conformity with the 2010 Law on Associations and Foundations, which prevents access to tax benefits and certain types of economic activity. Moreover, the Commission reports that the *“Government Commission for Public Benefit Status, set up in September 2011, has yet to become fully operational”*. The Commission has reported that in Albania no progress was made in improving the overall fiscal environment for CSOs.

In terms of **state support, esp. public funding**, the Commission has noted that in the Enlargement countries of the Western Balkans region, the funding of CSOs still remains an issue, including the government support and sustainability. According to several Reports, the majority of CSOs largely

depend on foreign funding, including EU funds, while the local government units lack capacity to finance local CSOs. In Bosnia and Herzegovina, the Commission has observed a lack of transparency in allocation of funds for CSOs and has concluded that this situation needs to be improved. Similarly, in Turkey, the Commission underlined the need of revision of the legislation on fundraising for CSOs. In Macedonia, the system for allocating state financing to civil society organisations needs to be improved and standardized. The first noted signs of this improvement are in managing the IPA funding, where *“under DIS, civil society is involved in monitoring the implementation of EU aid, particularly the assistance given under the Transition and Institution Building Component, via participation in biannual IPA Monitoring Meetings”*. With regards to Albania, the Commission assessed that the capacity of civil society for advocacy and networking is facing obstacles due to difficult access to funding, particularly affecting small organisations in rural areas. The Commission has noted that some services provided by CSOs in Albania, such as social assistance and community-based services, face a lack of public funding. Finally, *“the Commission notes that the Agency for Support to Civil Society published its third call for proposals in November 2011 with a relatively short deadline for applicants to acquire and prepare the necessary documentation.”*

In terms of **the human resources in the sector**, the Commission has observed this issue only in one case – Albania, noting that “*no progress has been made in alleviating the conditions for voluntary activities in NGOs.*” The issues of equal treatment in employment policies and measures, as well as the promotion of civic engagement as one of main ways to develop a democratic culture, are not treated at all.

Government-CSO Relationship: Frameworks, Consultation & Service Provision

As regards the **Government-CSO Relationship**, the general observation of the Commission is that the region is characterised by a further improvement of the government policy-making. Overall, the Reports seem more focused on the role and the participation of civil society in policy and decision making at national level. These issues were treated with greater detail in every Enlargement country.

In terms of the **Framework and Practices for Collaboration**, the reports show that the situation is different from country to country: while some countries have received positive assessments on the issue, others have been assessed as having to further improve the mechanisms for Government-CSO cooperation in order to enable an inclusive participation of CSOs in the policy and decision making. For instance, in Bosnia and Herzegovina the Commission reported that “*an institutional mechanism for cooperation with civil society has been established in the two Entities but is not fully operational yet*”, same as the situation last year. In Macedonia, the Commission reported that a new Strategy for Cooperation with Civil Society and an Action Plan were adopted in June 2012 and that their preparation was largely participatory. In Montenegro, the Commission reported the establishment of a Civil Society Joint

Consultative Committee between the EESC and the CSOs. Furthermore, the Commission has noted that civil society participates in the structures for accession negotiations and that they are involved on a regular basis in the activities of the state administration. In Serbia, the Commission has assessed the Governmental Office for Cooperation with the Civil Society as very active and enabling civil society involvement in decision-making.

In terms of the **Involvement of CSOs in policy and decision-making processes**, the Commission has treated the process of consultation and CSOs participation in every country. Overall, while the practice of consultations exists in every country, again, it varies from one policy area to another.

Area 3: Government-CSO Relationship	
PRINCIPLE	STANDARDS/BENCHMARKS
Sub-area 3.1.: Framework and practices for cooperation	
There is a strategic approach to furthering state-CSO cooperation and CSO development	1. The State recognizes, through policies and strategies, the importance of the development of and cooperation with the sector
	2. The State recognizes, through established institutions, the importance of the development and cooperation with the sector
Sub-area 3.2: Involvement in policy- and decision-making processes	
CSOs are effectively included in policy and decision-making process	1. There are standards enabling CSO involvement which are participatory and harmonized
	2. All draft policies and laws are easily accessible to the public in timely manner
	3. Policy and legal initiatives are consulted with the public and CSOs in timely manner and the feedback is considered in the further development of documents
	4. CSOs representatives are equal partners in cross-sector -bodies and selected through clearly defined criteria and processes
Sub-area 3.3: Collaboration in service provision	
The environment is supportive for CSO involvement in service provision	1. CSOs are allowed to provide different services and compete for state contracts on an equal basis as other providers
	2. The state has commitment for funding the services and the funding is predictable and available over a longer-term period
	3. The state has clearly defined procedures for contracting services which allow for transparent selection of service providers
	4. There is a clear system of accountability, monitoring and evaluation of service provision

The Commission observed that in Albania, although civil society is regularly involved in the policy development process and in legislative drafting, this is done often in a formalistic way and “*falls short of true cooperation*”. Therefore, the Commission recommends the institutional cooperation and dialogue with civil society to be further improved both at national and at local level. Overall, the Commission concluded that the Government-CSO cooperation in the country has improved. In Macedonia, the Commission has observed that civil society was consulted within the Parliamentary Committee on EU Affairs and the National Council on EU Integration as well as that CSOs were consulted, “*in an inclusive spirit*”, in the process of adoption of the road map for reforms and in its implementation review as part of the High Level Accession Dialogue of the Macedonian Government and the EU. In Montenegro, the Commission concluded that government policy making has improved but that public consultations with civil society need to be further developed. In Serbia, the EC recognized the role of CSO in the country as important players in the social, economic and political life and in promoting democratic values. The Commission has assessed the Governmental Office for Cooperation with the Civil Society as very active and enabling civil society involvement in decision-making. Finally, in Turkey, in relation to the reform of the legislative framework, in particular referring to laws on elections and on the political parties and the rules and procedures of the Parliament, the Commission has stated that the consultations with “*CSOs remain an exception rather than a rule*”. It has been noted that in Turkey, “*the judicial reform strategy needs to be revised with the participation of all stakeholders, including the Turkish legal community and civil society*”. Progress has been noted regarding the respect for women’s rights and gender equality but for instance a law on caesarean sections was adopted with insufficient preparation and consultation with civil society. The Commission has reported that certain key legislation was drafted and adopted with no appropriate consultation of the civil society actors. In general, the EC has concluded that *there is no sustainable mechanism for the participation of civil society in policy making*”.

The collaboration of civil society organisations in service provision is also an increasing area of attention of the Commission, although reporting on the situation in every country is not equally provided. In Croatia for instance, the Commission noted that “*the legal framework for free legal aid has to be improved to enable better access to legal aid and to foster the role of CSOs as legal providers*”. In Macedonia, “*social services are slowly being deinstitutionalised and civil society is slowly increasing its provision of social care services*”. Concerning the provision of legal aid, the EC reports that the legal aid budget for 2012 has doubled from last year to EUR 200, 000, while only 4 civil society organisations from Macedonia are registered to provide legal aid. The Commission notes “*a systematic reliance on civil society organisations to provide child protection services at local level*” in Albania and an insufficient involvement of local government units “*in providing critical services for Roma which are still largely provided by CSOs*”. Finally, the Commission has observed that in Turkey, “*the bar associations and other civil society organisations also contributed to citizens’ awareness of their rights in terms of access to justice*”.