

A STAR IS BORN... BUT THE REGION IS NOT SHINING

This is BCSDN 10th analysis of the annual Commission Enlargement Reports and its assessment of the progress made in the area of civil society development and dialogue with public institutions. The analysis is set against BCSDN's Monitoring Matrix on Enabling Environment for Civil Society Development.

The European Commission has published its annual Enlargement Package 2019, assessing progress done by the countries aspiring to become members and laying down the next steps in Enlargement policy. The 2019 package, along with the progress reports, consists of a Communication on EU Enlargement Policy (instead of Enlargement Strategy) which reflects on the progress in the implementation of the 2015 medium-term strategy of this Commission for EU enlargement policy and the European Commission's Western Balkans Strategy of February 2018.

The country reports follow the form of the previous years, except for the case of Bosnia and Herzegovina for which the European Commission has published detailed Analytical Report accompanying the Opinion on the country's application for membership.

The Communication opens with a remarkably positive tone, noting that the EU's enhanced engagement and commitment to the region has yielded significant results: a historic agreement on a 27-year long dispute achieved by the country now called North Macedonia, and significant and profound reforms in the area of rule of law in North Macedonia, as well as in Albania.

With a clear and firm rhetoric, the EC recommends opening of accession negotiations for both countries and urges EU institutions "to live up to its commitments and give credit where credit is due". It also gives a fair warning that "failure to reward objective progress by moving to the next stage of the European path would damage the EU's credibility throughout the region and beyond".

The Communication points out however, that the other countries have stagnated in their efforts, in particular in the crucial areas of the rule of law and fundamental rights, highlighting that these shortcomings "often correlate with a lack of political will, institutional resistance and an **increasingly hostile environment for civil society**".

Bosnia and Herzegovina is for the first time urged to reform its constitutional framework in order to ensure the functionality of its institutions and be able to take over EU obligations. Taking note of the June 2018 Council Decision, the Communication acknowledges that accession negotiations with Turkey have come to a standstill due to the serious backsliding in the areas of rule of law and fundamental rights and that no further chapters can be considered for opening or closing.

OVERVIEW: CIVIL SOCIETY

The Civil Society, as one of the 4 pillars of Democracy, continues to be a separate section within the Political Criteria for EU accession in each country report. However, their length, depth and structure vary. There are also obvious differences from one report to another in the extent to which they refer to the Guidelines for EU Support to Civil Society in Enlargement Countries, 2014-2020, which should have been the framework for tracking the progress (or a lack of it) in the development of civil society and its enabling environment.

The Communication points out that there is increasingly hostile environment for civil society and obstacles to civil society operations are reported in almost all country reports. Increasing threats to basic freedom are reported in almost all of the countries, with most serious deteriorations continuing in Turkey.

Need for (further) improving the consultation process with civil society and its meaningful involvement in policy and decision-making processes are common to all reports.

Improvement in the legal, institutional and financial environment are noted in Montenegro, but a special praise this year was given to North Macedonia for “continuous improvement” in the civil society enabling environment.

For the first time, the statement which was common in all previous reports: “empowered civil society is a crucial component of any democratic system and should be treated as such by state institutions” is now modified for North Macedonia to “...**is recognized as such...**” The civil society assessment on North Macedonia is unusually short though, and fails to provide a more detailed look into the progress made in the civil society enabling environment to sufficiently substantiate this statement.

Civil society’s involvement and role in the key policy areas and Acquis Chapter is mentioned in all reports. Without an exception, civil society involvement is noted in all country reports in the area of fundamental rights, rule of law and justice and security. Civil society is mentioned in the following chapters in more than one report: Chapter 19 – Social Policy and employment, Chapter 27 – Environment and climate change and Chapter 28 – Health protection.

CIVIL SOCIETY ENABLING ENVIRONMENT

BASIC LEGAL GUARANTEES TO FREEDOMS

There is obvious shrinking of the civic space across the region with restrictions to freedoms of association, peaceful assembly and restrictions noted in the most countries. Continuous and serious backsliding in these freedoms are reported in Turkey “notably in the face of a large number of arrests of activists, including human rights defenders”. Several barriers to freedom of association in Turkey are highlighted including cumbersome provisions restricting the registration process, procedures for obtaining permits and a new regulation that makes it compulsory for all associations to register all their members (not only their board members) in the information system of the Ministry of Interior.

In regards to **freedom of association**, no restrictions have been noted except in Turkey. Positive developments have been marked in two countries: strengthening of the legal framework with five pieces of secondary legislation aimed at implementing the Law on NGOs in Montenegro, and the adoption of the new Law on Freedom of Association in Non-Governmental Organisations in Kosovo that improves the legal protection of NGOs in line with best international standards and practices. The Law reversed contentious amendments earlier adopted by the Assembly after substantial engagement of the civil society.

In regards to **freedom of assembly**, other than in Turkey, issues are noted in Albania and in Bosnia and Herzegovina. For Albania, the report points that the legal framework needs to be improved to provide clarification of the different requirements for ‘notification’ versus ‘permission’ for free assembly, to address the right to spontaneous assembly and counter assembly and to make the procedures for notification more easy to complete and more accessible.

More serious restrictions are noted in Bosnia and Herzegovina, such as excessive responsibility on assembly organisers, lack of differentiation between gatherings for commercial and non-commercial purposes and need for harmonization of the assembly laws across the county with European and international standards. The increasing attempts by authorities to restrict peaceful assemblies are also noted with a specific mention of the ‘Justice for David’ peaceful movement in Banja Luka, which in December 2018 was violently dispersed by the police after months of protests, and members of the movement have been unable to organise gatherings since.

Threats to the **freedom of expression**, authorities making negative statements and media campaigns aimed at discouraging NGO representatives have also been noted in Bosnia and Herzegovina as well as in Serbia and Montenegro. In Bosnia and Herzegovina “civil society activists dealing with sensitive issues such as war crimes and the fight against corruption, as well as human rights defenders, have being subject to threats, verbal abuse and physical attacks; women activists have received threats to their bodily integrity.”

Area 1: Basic Legal Guarantees of Freedoms	
Principle	Standard/Benchmark
Sub-area 1.1.: Freedom of association	
Freedom of association is guaranteed and exercised freely by everybody	All individual and legal entities can freely establish and participate in informal and/or registered organizations offline and online
	CSOs operate freely without unwarranted state interference in their internal governance and activities
	CSOs can freely seek and secure financial resources from various domestic and foreign sources to support their activities
Sub-area 1.2.: Related freedoms	
Freedoms of assembly and expression are guaranteed to everybody	CSO representatives, individually or through their organization, enjoy freedom of peaceful assembly
	CSO representatives, individually or through their organizations enjoy freedom of expression
	Civil society representatives, individually and through their organizations, have the rights to safely receive and impart information

FRAMEWORKS FOR CSO FINANCIAL VIABILITY

The extent to which the European Commission has paid attention to the frameworks for financial viability of civil society has varied among the reports in previous Enlargement package, and this continues to be the case this year, too. There is a concise analysis of the state of play and the progress made in all sub-areas important for ensuring CSO financial viability for Albania and Turkey and to some extent for Kosovo, and an elaborate assessment of the public funding system in Montenegro and Bosnia and Herzegovina. However, only a single obscure sentence is devoted to this area in the reports on North Macedonia and Serbia, noting the needed “to address the financial sustainability of CSOs, such as a broader tax harmonization and predictable public budgeting” and to better define and implement criteria for public financial

support in Serbia “to ensure overall transparency, especially at local level”.

The issue of the legal and regulatory framework **of the relevant tax regime for CSOs** is only raised in the reports for Albania and Turkey making note that the lack of legal environment that supports alternative funding sources or tax incentives to promote donations to CSOs poses a challenge to CSO financial viability. In Kosovo, the legal framework for tax deductions for donations is assessed as ambiguous.

Public funding mechanisms and the need for improving their transparency is noted in all reports. Positive developments have been noted in Kosovo and in Montenegro.

In Kosovo, for the first time the government has published a report on public funding of non-governmental organisations and open calls have been conducted in accordance with legal requirements. In Montenegro, the new rules for public funding of CSOs have resulted with improved transparency of the CSO funding thanks to standardisation of state funding mechanisms, introduction of regulated mechanisms on co-financing of EU-funded projects and increase in the allocation from state budget to CSOs. The reports note that further efforts are needed in both countries to enhance monitoring and evaluation of awarded projects. Lack of sufficient public funding, especially for provision of social services is noted in Albania and Bosnia and Herzegovina.

The importance for legal environment on **human resources** that stimulate and facilitate employment, volunteering and other engagements with CSOs, this year again, has been reflected only in two reports – Albania and Montenegro, in both cases pointing to lack of conducive legal framework for volunteering.

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

PUBLIC INSTITUTIONS – CSO RELATIONS

Similarly to previous years, this area has been the main point of interest to the European Commission. Further progress has been noted in Kosovo and North Macedonia in improving cooperation between public institutions and the civil society. The need for ensuring genuine and systematic involvement in policy-making and legislative processes has been highlighted in all reports.

In the **frameworks and practices for cooperation**, the adoption of strategic documents guiding the government's cooperation with CSO in Montenegro and in North Macedonia have been positively noted. The Council for Cooperation between Government and Civil Society in North Macedonia has been praised for its functioning, but the need to improve its transparency and inclusiveness was also pointed.

There were several key remarks and recommendation noted in the reports. In Serbia, Council for civil society cooperation should be set up and a national strategy to be adopted. In Albania, revision to be done on the roadmap on an enabling environment as well as the Law on the National Council to be amended. A Strategic framework for cooperation with civil society should be established in Bosnia and Herzegovina. And systematic and inclusive mechanisms for consulting civil society in Turkey.

Some progress has been noted across the region in the civil society's **involvement in policy and decision-making processes**. The most notable ones have been the increased efforts by the government in North Macedonia to reach out to all stakeholders, and the improved consultation and the publication of annual report on the Kosovo's government public consultations. However, both for Kosovo and Albania was pointed that there is a need for more consistent

and meaningful feedback on input. The biggest criticism in this area is addressed towards Montenegro for the "controversial dismissals of prominent NGO representatives from key institutions and bodies, and the growing trend of public institutions declaring information as classified. The continued frequent use of the urgent procedure for the adoption of laws in Serbia is also noted to limit the effective inclusion of civil society in the law-making process.

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

The reports acknowledge that **civil society has an important role to play in the accession process** (in Serbia and in Montenegro) but also that more efforts are needed to make the CSO consultation genuine. In Bosnia and Herzegovina, the contribution of more than 700 CSOs providing

alternative replies to the European Commission's Questionnaire was noted.

There was no mention about any developments concerning **service provision by CSOs** in any of this year's reports.

CONCLUSIONS

The 2019 Enlargement package is aiming to reinforce the credibility and transformative power of the Enlargement policy towards the Western Balkans. By firmly setting civil society as part of the political criteria for EU accession, the European Commission sends a straightforward message about the role of civil society in the democracies of the Western Balkans and EU's commitment towards its strengthening.

The assessment of the progress each country has made in creating environment that is enabling for civil society operations is still to be uniformed in order to provide common understanding what constitutes an enabling environment for civil society. Providing clear assessment on the results of EU's own investment towards the targets set in the Guidelines for EU Support to Civil Society in Enlargement Countries, 2014-2020 will also be crucial for better planning the future EU support for civil society.

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