

Anja Bosilkova- Antovska

From: Tina Divjak <tina.divjak@civos.si>
Sent: 08 March 2019 11:11
To: Ilina Neshikj
Cc: BCSDN Board
Subject: Re: RBF Response and Statute issues

Dear all,

as we have different viewpoints and as this is, indeed, an important issue, I suggest we move the debate to Belgarde. The best scenario would be, if the board agrees for a proposal for the ACM, but if not, we can also say, that we are not unanimous and would like to have further discussion. The council is the one that decides on the statutory changes anyway, but I think that politically it'd be much better if the Board has its position. But let's cross this bridge when we get there.

Best, Tina

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Tina Divjak
Vodja zagovorništv / Head of Advocacy

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V V čet., 7. mar. 2019 ob 15:38 je oseba Ilina Neshikj <ins@balkanicsd.net> napisala:

Dear all,

Coming back to the Board discussion (the mailing list is accessible only to Board members, so Slavisha you have missed the previous mail):

RBF has notified us that they will confirm our grant with the explanation provided, they still recommend that if possible we should change the provision in the Statute (but it is left to BCSDN discretion).

Having in mind the discussion that has been raised and the future due diligence processes that we will have, we could continue this discussion at the ACM?

Please let me know if you would agree to have this issue raised in Belgrade and whether it should be discussed at the ACM with the members or should we have a Board recommendation?

Best regards,

Ilina

From: Emina Nuredinoska <enr@mcms.mk>
Sent: Thursday, March 7, 2019 2:53 PM
To: partners albania <ktavani@partnersalbania.org>; tina divjak <tina.divjak@civos.si>; Aleksandar K <akr@mcms.mk>
Cc: Ilina Neshikj <ins@balkancsd.net>; ana novakovic <ana.novakovic@crnvo.me>; BCSDN Board <bcsdnboard@balkancsd.net>
Subject: Re: Additional issues and support

Dear Klotilda, dear all,

I have followed the discussion, considered all arguments and now would like to comment few issues.

1. All of us are familiar with the main legislation for CSOs, basic principles and recommendation from international organisations (Primary CoE). Thus, I am pretty sure that we all know what is the main meaning of the not-for-profit principles. We can easily conclude that, yes all of us, including BCSDN is a non profit organisation, with values and principles that leads to public interest.
2. What we are not agreeing, or have misunderstanding is how we read the second paragraph of Article 53, and does it and how violate the non-profit principle. In my opinion, this does not mean profit in any sense, but just return of initial (establishing) fund that according to Macedonian law is compulsory for foundation. BCSDN is registered as foundation. Deleting this article just like that, without internal debate is at least not correct for MCIC. To remind all, MCIC provided this initial fund of 5.000 euro, this is not donation, this is not earned income, this fund is legal basis for registration of the BCSDN (according to Macedonian legislation). Thus, I can not fully agree with Tina, that this amount makes you (MCIC in this case) as a shareholder. Other issue is if this fund increase its value in the meantime and if we asking to have it back with the gain interest (increased value).
3. Also, I think that we are mixing two different issues: distribution and use of earned incomes during the operation/regular work of the organisations, and use of the assets after dissolution. Also, the non profit principle is mainly related to the natural persons, individuals who can benefit, but not to (legal entities) CSOs that can use the funds for not profit purposes related to their statutes, etc.,
4. And to be clear, we are not expecting this amount to be returned to us (MCIC), not at all, but also we do not expect to immediately erase it from the history of BCSDN just because some donor asked for. We would like to have this clearly stated in the archive of BCSDN that the founding amount was provided by MCIC.
5. Related to the previous points, I am proposing discussion for this issue during the next meeting of the Board and Council. Just for our internal purposes of common understanding of the situation. One possible solution could be clear provision that this establishing fund will be used by BCSDN for its regular purposes (daily operations), no need to be returned to MCIC or to other organisations. In case of termination, this amount could be seen as a part of the assets of BCSDN. Maybe with this last point we will come to the decision of deleting this provision, but please wait for the response from RFB first, and brother internal consultation.

6. And last but not least, just a hypothetical situation (that maybe can help or make more confusion to the definition of the non profit principle), if we decided for example that all assets after termination of BCSDN be given to other organisation with related purposes, for example Foundation open Society Macedonia (not MCIC, not CNVOS, not Partners Albania, or any other member of BCSDN that have related purposes), will be this seen as violation of the non-profit principle or not? What is the difference? Will be this assets seen as profit for FOSM? Or it is not our issue, we just have to be clear that in any case the founders of the network (foundation according to Macedonian law) do not have any organisational benefit? Please be sure that the second paragraph of article 53 is completely in line to the national legislation, without any intention for any kind of benefit for MCIC. So please, lets discuss officially in the meeting where we can exchange our arguments and can propose the most appropriate solution.

Best wishes,

Emina

From: Klotilda Tavani <ktavani@partnersalbania.org>

Date: Tuesday, March 5, 2019 at 4:08 PM

To: 'Tina Divjak' <tina.divjak@cnvos.si>, Aleksandar Krzalovski <akr@mcms.mk>

Cc: ilina nesik <ins@balkancsd.net>, Ana Novakovic <ana.novakovic@crnvo.me>, 'BCSDN Board' <bcsdnboard@balkancsd.net>, Emina Nuredinoska <enr@mcms.mk>

Subject: RE: Additional issues and support

Dear all,

Regarding the issue related with the statute, after consulting also the Albanian legislation on this regards and PA statute, and following the detailed explanation of Tina (thank you Tina!) I think that we definitively should change the statute and delete Paragraph 2 of Article 53 whatever is the response from RBF. I think this is an issue that will come up even in the future with other donors (I think that the other donors so far have not read the statute) as it is indeed an issue that is against the no-profit principles and the distribution of assets to the persons that are subject of the statute of the establishment act, being them private or non-profit. I am citing the Albanian Law on non-for-profit "In no case is distribution or disposition in favor of the members or other persons who are subjects of the charter or the establishment act of the organization or their relatives permitted".

Best regards,

Klodi

Klotilda Kosta

Director of Programs

Tel/Fax: +355 4 2254881

ktavani@partnersalbania.org

<http://www.partnersalbania.org>



OUR OFFICE HAS RELOCATED!

From March 6th we will move to the new office in

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Please consider the environment before printing this email.

From: Tina Divjak [<mailto:tina.divjak@cnavos.si>]

Sent: Friday, March 01, 2019 10:11 PM

To: Aleksandar Krzalovski

Cc: ilina nesik; Ana Novakovic; BCSDN Board; Emina Nuredinoska

Subject: Re: Additional issues and support

Dear all,

I agree with Cikle that changes to the statutes should not be made easily and without thoughtful consideration and especially not because of some donor request. However, in this case, as I already said, I think that the article is indeed problematic. As I explained, complete and absolute implementation of the not-for-profit principle means not only that the profit is re-invested in the organisation (and not distributed among founders, members, trustees, etc.), but that the assets upon termination should transfer to non-profit organisation with similar purpose. The whole remaining assets, including founding assets.

Many laws on NGOs (including associations, foundations, PBOs...) already have such a definition, including Slovenia (quick google translation: A non-profit organization is an entity that, on the basis of a law or act in which it has defined its purpose, activities and method of governance (hereinafter: the founding act), profits or surpluses of revenues over expenditure are used solely to achieve their purpose or objectives, among its founders, members or other persons, and in the event of termination after the settlement of all obligations, its assets are transferred to another non-governmental organization with the same or similar purpose, or a non-profit-making legal entity governed by public law.). I have provide a list of these laws on Monday, I don't have the energy for this at the moment :-). It doesn't actually matter that our law already contains such article, what I'm saying is that this is a standard definition of a not-for-profit entity and we shouldn't neglect this. although Macedonian legislation at the moment contains only the narrow interpretation, we should think about how the broader public, decision-makers, donors and other

stakeholders perceive BCSDN (even though, except of those really checking the statutes for donation purposes, it's not very likely that someone will notice this).

Having said this, I really think that we should delete paragraph 2 of the Article 53. Not because of the RBF, but because this is the legally correct way to do it. Another point, in this regard, it is not relevant whether or not the founding members are NPOs themselves. If they get the founding asset back, they are in the similar position as shareholders, for example.

As to the Civicus, first of all, I don't have even the smallest wish to participate in their board :-). And as Ilina as an individual (not the whole BCSDN, if I understood correctly) has the support of GSI, I'd say that we go with the strongest candidate. We all remember, how we talked about that lobbying for Venera is necessary the last time. We didn't do enough then and I sincerely doubt that we will do more this time. So I'm counting on GSI to be more active :-)

Have a great great weekend!

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Tina Divjak
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V V pet., 1. mar. 2019 ob 18:29 je oseba Aleksandar Krzalovski <akr@mcms.mk> napisala:

Dear all,

Greetings from Krushevo (not Barabakan unfortunately :-)) or opposite - as I have time to see the mails after long workshop).

Well, I have rather different opinion!

First I think Ilina was right to respond like she did: tell them that founders are indeed non-profit organisations and to ask clarification for the other option.

Second, about the mentioned article - intention (and indeed its actual formulation) is that in case of termination of BCSDN, their assets end up in other non-profits, i.e. not in any private hands. In that

sense, I'm pretty sure RBF will conclude the same with Iliana's explanation and there will be no need to change the Statute.

Further, of course BCSDN is founded as non-profit and by law (and also the Statute) it can not make profit, i.e. can not distribute the surplus of revenues over expenditures. Those may be used just for further funding of the organisation itself and its programmes. And BCSDN does that (we discussed that "carry over" fund during the Board meeting).

Therefore I don't see any problem in the Statute.

Even if RBF still finds Iliana's explanation as problematic, I don't think we should change the Statute. At least not that easily nor just for that. Even more, such a move looks to me much more as "profit-making behavior" (quickly adapting to the donor/market needs), rather than as cause-based organisation which sticks to its values (enshrined among other places also in its Statute).

So, let's wait first RBF response and then see what to do - fight with further arguments like this; or take the other option (expenditure responsibility); and only if none of that works - start considering change of the Statute.

While on option 2 - I don't know what that expenditure responsibility means, but from the further text in Iliana's mail I read that it is not considered a burden for neither RBF nor BCSDN unless we regrant part of their fund - and I'm pretty sure we don't plan to do so - therefore, no problem to choose that option (and not change the Statute).

Even if we come to the option 3, I would not like to go through it this easy, but with rather proper debate whether and why to do that. I'm now curious what is written in your Statutes for the case of termination. Even more curious to read RBF article about that :-).

I don't want to go in more details about this now... neither there is a need, until we get RBF response to Iliana's answers.

As for the other issue, I'm OK that we try to get on Civicus Board, but would prefer to nominate current Board leaders (as we did earlier with Venera), Tina or Ana!

You see... why after-work party is important on Friday's afternoons :-) (otherwise you get mails like this :- D)

All the best (including nice evening and even better weekend),

Cikle

PS. Emina in CC as I've consulted her

Александар Кржаловски (од мобилен)

From: Ana Novakovic <ana.novakovic@crnvo.me>

Sent: Friday, March 1, 2019 1:06:07 PM

To: ilina nesik

Cc: BCSDN Board

Subject: Re: Additional issues and support

Dear all,

I'm also for changes of the Statute

Best,

Ana

On Fri, Mar 1, 2019 at 12:15 PM Ilina Neshikj <ins@balkancsd.net> wrote:

Dear all,

Just a reminder for Ana, Cikle and Klodi, and if you think we should change this article we should do it before the ACM and approve the new Statute there.

Also I wanted to inform you that both KCSF and TUSEV are initially in for TACSO, so we wait of the EC approval and the ToR now.

Best

Ilina

From: Slavisa Prorok [mailto:Slavisa.Prorok@cpcd.ba]

Sent: Thursday, February 28, 2019 1:03 PM

To: tina divjak <tina.divjak@civos.si>; Ilina Neshikj <ins@balkancsd.net>

Cc: BCSDN Board <bcsdnboard@balkancsd.net>

Subject: RE: Additional issues and support

Dear all,

I share Tina's opinion.

CCSP had similar situation with Statute provisions long time ago, and we had to redefine the Statute article.

In my experience it will have to be done, no matter what explanation is provided. We need to think of quick change in line to Statute procedure.

Best

From: Tina Divjak [<mailto:tina.divjak@cnvos.si>]
Sent: Thursday, February 28, 2019 11:43 AM
To: Ilina Neshikj <ins@balkanicsd.net>
Cc: BCSDN Board <bcstdnboard@balkanicsd.net>
Subject: Re: Additional issues and support

Dear all,

that is a surprise, I didn't realise that the statute has such an article. Yes, I know, I should. This article is problematic from many points of view, the most "dangerous" one is not-for-profit nature. For the organisation to be truly non-profit, the statutes should not only regulate that the profit should be re-invested in the development of its programmes, but also that the profit should not be distributed in case of termination. And here, it doesn't matter, whether the founders are legal or physical persons. So, I strongly support the change of the state in this article. Also looking comparatively, more and more laws defining CSOs or their different types include such a demand. The change is not, therefore, needed only because of RBF, but in general, to secure the non-profit nature of BCSDN as such.

Civicus - sure, why not, especially if you think that this time we have a bit more odds to actually be elected.

Best, T

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Tina Divjak
Vodja zagovorništva / Head of Advocacy

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V V čet., 28. feb. 2019 ob 10:42 je oseba Ilina Neshikj <ins@balkanbsd.net> napisala:

Dear all,

Since yesterday two new issues came up that I would need your advice and support on:

RBF Core grant

While processing our grant RBF came with this issue:

The statute of BCSDN directs that the founding assets will be returned to the founders upon dissolution, which would disqualify BCSDN from being equivalent to a U.S. charity. Due to this, we would have some funding implications. Therefore, we have a couple questions from our corporate secretary's office:

- would it be possible for BCSDN to amend the statute and to change Article 53, which notes that founding assets are to be returned to investing founders. The remaining sentence in Article 53 is what we need for equivalency- it notes that in the case of termination, the assets will be distributed to a nonprofit entity. Typically, we strongly encourage grantees to go through the steps necessary for equivalency determinations, as it is helpful to them if you wish to seek funds from other U.S. foundations as well.

- However if BCSDN does not wish to amend their statute, we could just exercise expenditure responsibility on the grant. Exercising expenditure responsibility should not be a burden for you or for us unless you would wish to regrant any of the RBF's funds. In that case, we would have to exercise expenditure responsibility on each subgrant, which would be a burden.

I have wrote to them that BCSDN founders are not individuals and are non-profit entities and requested more information on the expenditure responsibility. I am waiting for the final recommendation, but meanwhile I wanted to ask whether some of **you have had this kind of experience and should advise me on how to proceed.**

CIVICUS BOARD:

CIVICUS has Board elections again at the moment.

The Global standard project would like to nominate me as a candidate if BCSDN is also fine with that, that would mean that my candidature is backed by both BCSDN and the GS Initiative.

I think it is a good idea as the leadership in CIVICUS has changed and we would like to still continue our good relationship with the new director and the different initiatives that were quite helpful in us getting new contacts, support and funds. With all our involvement in CIVICUS and the ICSW, the Global Standard and CPDE and most of the active members knowing me I think that I can get elected. If you are not against I would accept the offer and prepare the necessary documents. Please let me know by tomorrow as the **deadline is the 4th of March**.

Best

Ilina