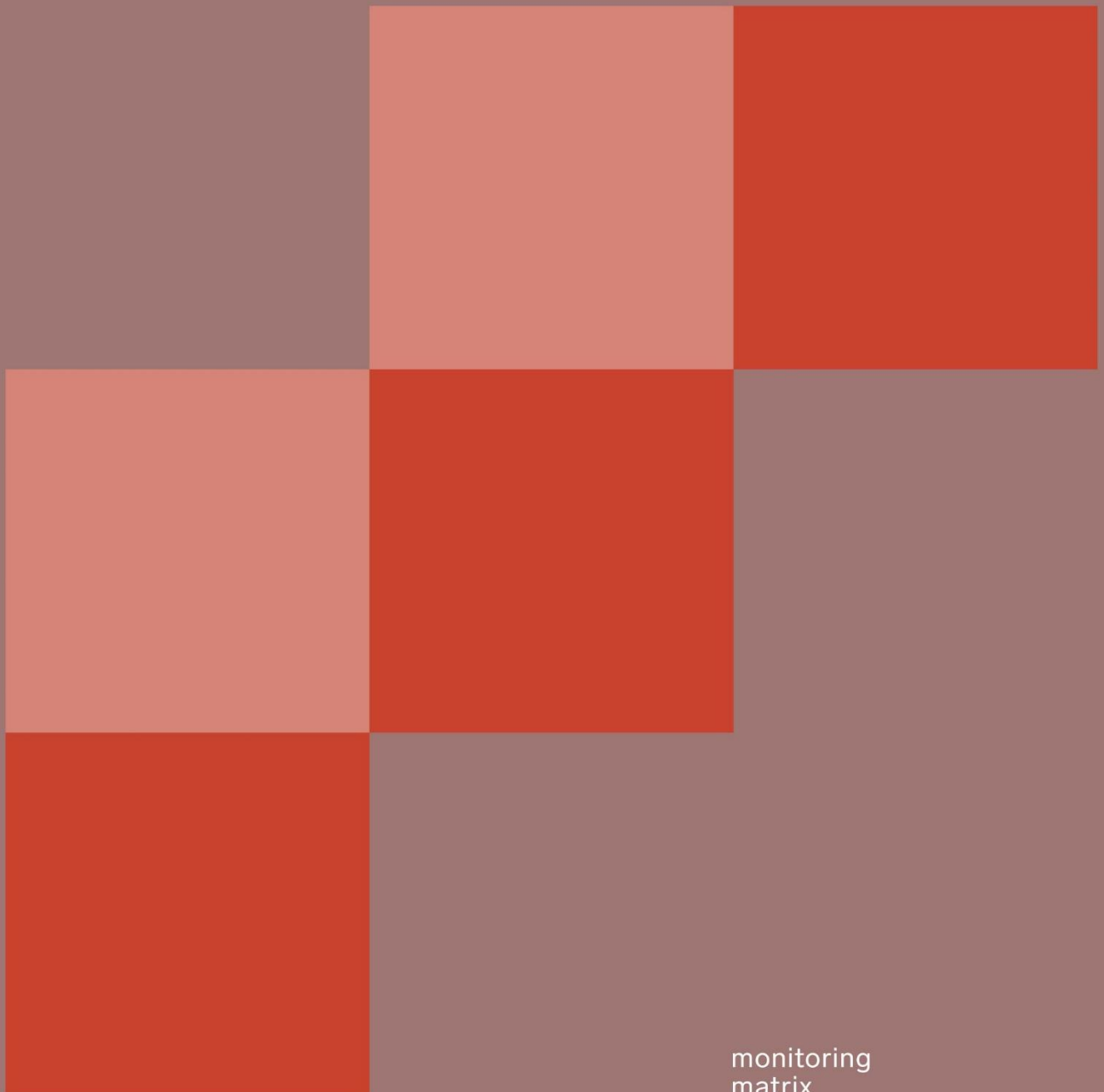


# Monitoring Matrix on Enabling Environment for Civil Society Development

Country Report:  
Bosnia and Herzegovina  
2020



monitoring  
matrix



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

## **Country Report for Bosnia and Herzegovina 2020**

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# List of abbreviations

<b>BCSDN</b>	Balkan Civil Society Development Network
<b>CCSP</b>	Center for Civil Society Promotion
<b>CSO</b>	Civil Society Organization
<b>CoM</b>	Council of Ministers
<b>EU</b>	European Union
<b>FBiH</b>	Federation of Bosnia and Herzegovina
<b>ICT</b>	Information and Communication Technology
<b>MM</b>	Monitoring Matrix
<b>RS</b>	Republika Srpska
<b>UN</b>	United Nations

# Introduction

The Center for Civil Society Promotion (CCSP) and the Balkan Civil Society Development Network (BCSDN) are pleased to present the eighth edition of the *Monitoring Matrix on Enabling Environment for Civil Society Development*, covering developments in Bosnia and Herzegovina for 2020.

This report is part of a series of country reports covering six countries in the Western Balkans: Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Montenegro and Serbia. A Regional Report is also available summarizing findings and recommendations for all countries and a web platform offering access to monitoring data per country<sup>1</sup>.

The Monitoring Matrix, developed in 2013 by BCSDN, with the support of its members and partners, sets the main principles and standards crucial for the legal environment to be considered supportive both for the operations and for development of CSOs. The Monitoring Matrix is organized around three main 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 rely on internationally guaranteed freedoms and rights and best regulatory practices at the European Union level and in European countries. The Matrix aims to define the optimum situation for effective operation and development of civil society, as well as set a realistic framework that can be implemented by public authorities. Having in mind that the main challenges lay in implementation, the indicators have been defined to monitor the situation by taking into consideration both the legal framework and its practical use.

The research undertaken with the Monitoring Matrix aims to provide evidence on the enabling environment for civil society development and to influence the support of governments, the European Union<sup>2</sup> and other donors towards more sustainable and strategic development of the sector.

<sup>1</sup> [www.monitoringmatrix.net](http://www.monitoringmatrix.net)

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

# Acknowledgments

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

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



# Background | Country Overview

Bosnia and Herzegovina (BiH) is a politically decentralized country with an extensive number of political jurisdictions (1 national, 2 entity, 1 district and 10 cantons and 147 local) without the vertical power-decision making authorities. This means that lower-level governments have strong autonomy opposing the requirement to have a political consensus on national policies. The political will to make a consensus is small and thus, the ruling ethno-nationalist political parties block progressive policies as the current system enables patronage, clientelism and corruption that in return keep them in power. The extreme decentralization obscures transparency, openness, and access. Consequently, the whole state apparatus is captured by the ruling political parties. Policies and procedures are not citizen-oriented. In fact, socio-economic rights of citizens have significantly deteriorated due to increased poverty and mismanagement.

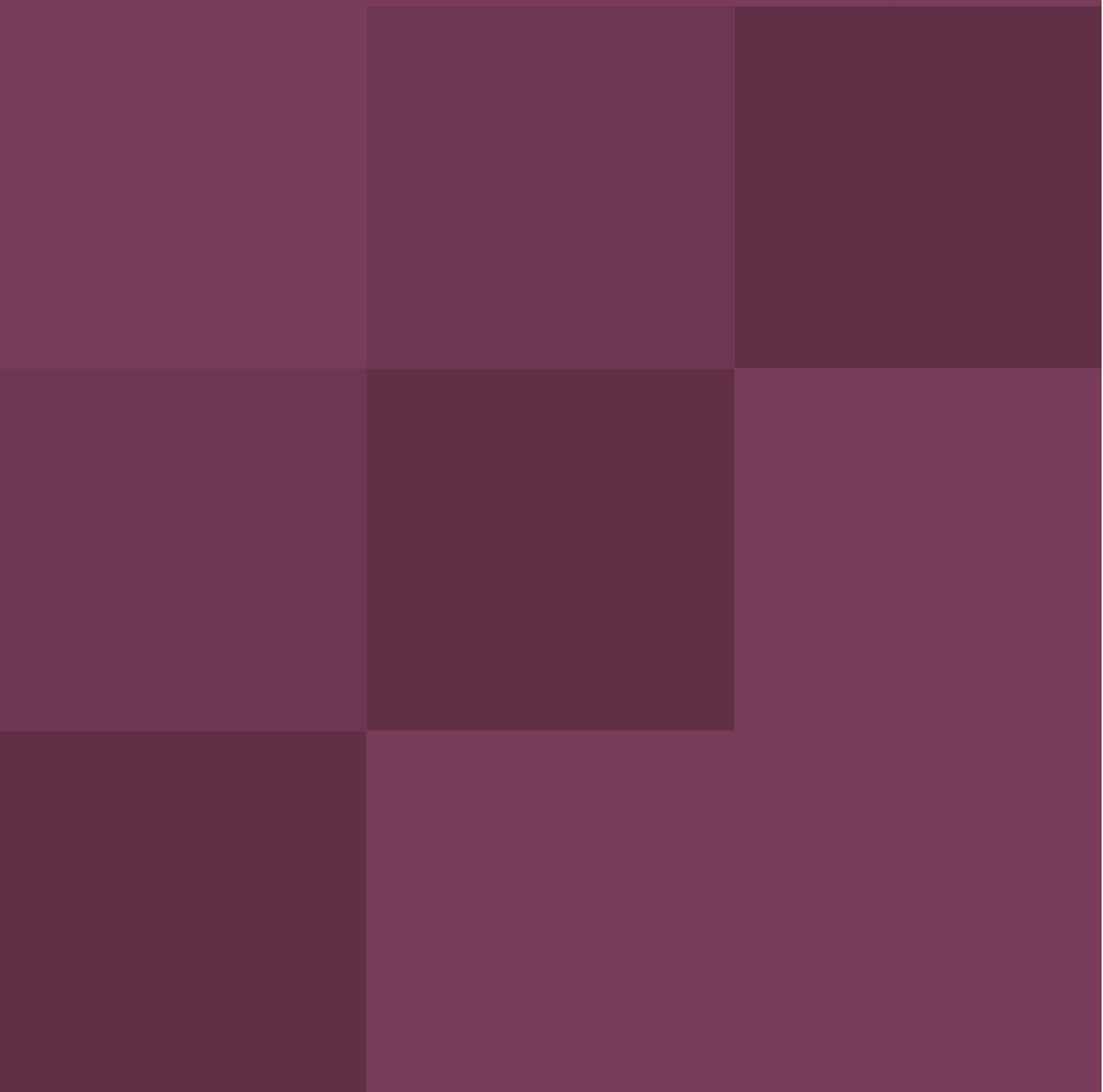
The current political framework emerged out of the conflict in the early 1990s. The post-conflict transition that followed was coupled with the free market policies. This was a deadly combination resulting in enrichment of war profiteers and organized crime landlords. Both transition processes – the post-conflict reconciliation and the market reforms – were led by the international community, which still has strong presence in the country. The High Representative Office (OHR) has decreased the number of involved representatives but the European Union (UN) has taken strong foothold in the country's political agenda. The international community has invested enormous amounts of development aid and assistance in the country that has been channelled predominantly in the public administration. Although their efforts did result in making the Bosnian peace agreements long-term and lasting, the incentives for politicians were not in place to change the track of BiH towards a substantive democracy and sustainable economy. Recognizing this fact, the international community has turned more towards the civil society investing additional aid and support in the civil society organizations (CSOs), businesses and local communities.

The development of the civil society in BiH is shaped by these strongest two stakeholders in the country: the political elites and the international community. In fact, these two are the main sources of funding of CSOs. As such, grassroots activism does exist but it is oftentimes ambushed by the forces exerted by political parties and international organizations. This is important for several reasons. Firstly, the civil society in BiH oftentimes acts along the existing political positions of other stakeholders instead of

generating their own. Secondly, the financial dependency on external funding threatens CSOs' independence and oftentimes leads to self-censorship. Thirdly, the civil society is polarized, fragmented and project oriented.

The year 2020 did not mark a significant shift in the civil society arena. The Advisory Body for Cooperation with Non-Governmental Organizations was finally established at the end of year, three years after the Cooperation Agreement with the Council of Ministers (CoM) – the national government – was signed. Results of its work are yet to be seen. The COVID-19 epidemic affected all parts of life, as in the rest of the world, profoundly. The resulting health and economic crises have exuberated the deficiencies of the existing system.

# Executive Summary



## Civil Society Overview

	2018	2019	2020
Number of registered organizations	25.495 (2.894 newly registered)	27.195 (1.734 newly registered)	27.432
Main civil society laws	The Law on Association and Foundation at levels of BiH, FBiH, RS and DB	The Law on Association and Foundation at levels of BiH, FBiH, RS and DB	The Law on Association and Foundation at levels of BiH, FBiH, RS and DB
Relevant changes in legal framework	n/a	n/a	
State funding (for the previous year) (key bodies and amounts)	n/a	n/a	
Human resources (employees)	1.895 FBiH 1.044 RS	2.064 FBiH (31.12.) 1.050 RS (30.9.)	2.085 FBiH (31.12.) 997 RS
CSO-Government Cooperation	Advisory Board of the Council of Ministers BiH (5 members)	Advisory Board of the Council of Minister BiH (7 members)	Advisory Board of the Council of Minister BiH (7 members)
Other key challenges	Different and not harmonized methods of managing data (e.g. financial support, grants, employment, engagement of volunteers etc.)	Different and not harmonized methods of managing data (e.g. financial support, grants, employment, engagement of volunteers etc.)	Existence of the legal framework used to ensure legal compliance without actual substantial forms of democratic decision-making

## Key findings

Year 2020 brought an immense challenge to the BiH – the COVID-19 epidemic – that affected all pores of social life. As in many other parts of the world, the resulting health crisis spilled into an economic crisis. In BiH, this crisis brought up to the surface all underlying systemic social problems: political corruption, lack of capacities of governmental institutions, and the neglect and general underfunding of the healthcare, educational and social welfare systems. Majority of citizens have to rely on their personal, family and other social safety nets in order to manage their health and income.

After the initial shock and lockdown, grassroots associations started to self-organize and support their membership base in any way they could offering masks, supplies, and food for those in need. Media alongside organizations working on human rights, democracy and anti-corruption continued to call for social accountability for fraud. Even during the worst months, public officials misused their positions and bought inadequate respirators (e.g. the “Srebrena malina” scandal).

In terms of freedoms and the overall framework for civil society and its development, one word describes the work of public authorities: stagnation. Although the Advisory Body of the Council of Ministers of BiH for Cooperation with Non-Governmental Organizations was established at the end of year, its constitution is three years late. However, the real-life situation for media and trade unions has significantly worsened. Considering the increased economic loss and uncertainty, lots of people lost their jobs or had their wages and other benefits cut. In general, the crisis had the most severe impact on the most vulnerable populations.

The findings of this report, as well as the epidemic, make it clear that the civil society cannot and should not wait for governments in BiH to change its course. Despite having 14 governments, nothing seems to work. Although the civil society organizations have been vocal and persistent about the necessary reforms, alongside the funding and pressure of the international community, only small and slow victories have been won. The country is plagued with numerous problems being divided into many jurisdictions hindering joint action. These issues were particularly evident during the 2014 protests and the follow up plenums organized throughout the country.

The legislative-institutional framework for the civil society in Bosnia and Herzegovina guarantees freedoms for citizens to freely associate and operate in areas they find relevant. However, the civil society has been regularly misappropriated by political parties for their informal electoral campaigns and activities on one side, and by occasional (but not so infrequent) fraudulent embezzlement of donations by so called humanitarian organizations and associations. Political influence of CSOs and fraud within the sector are

serious long-term problems affecting the civil sector. Although these issues have not been at the forefront of public deliberation, citizens and civil society actors are widely aware of these. In general, these practices have diminished the overall public trust in the civil sector. The unwillingness of CSOs to raise these issues openly stems out of fear that countermeasures might include limitation of existing freedoms and rights and further tarnish the image of CSOs. Although such risks exist, the future of the civil society in BiH depends on its willingness to scrutinize its own practices and develop measures in how to systematically address political interference and fraud.

<b>Key findings of the report</b>	
1.	Stagnation is the main word that describes the work of public authorities in creating a favourable environment for civil society development.
2.	In practice, the situation worsened for media and trade unions. Threats and attacks on journalists and small independent media continued and even worsened in 2020 compared to the previous two years.
3.	The ongoing health and economic crisis that emerged out of the COVID-19 epidemic has exacerbated the deficiencies of the current political system.
4.	Different civil society stakeholders tend to act separately and in isolation. Civic solidarity is sporadic and usually grows out of specific incidents but does not keep its momentum for long.

## Key recommendations

Considering the fact that earlier Monitoring Matrix reports focused on the role of public authorities and the recommendations that were directed at them still stand, since they were not implemented, this year's recommendations are directed at the civil society.

The civil society is not a unified field of action. Although having different perspectives, discord and dialogue is beneficial for the civil deliberation and action. In BiH's circumstances, the leading CSOs in the country should join action with smaller grassroots organizations in local communities, informal initiatives on one side, and form alliances with independent media and trade unions on the other.

The first step in this process is creation of a long-term communication and networking mechanism (that can be built on the existing ones) and inclusion of media and trade unions. Aside sharing information and fostering mutual dialogue, the mechanism should serve as reference point of joint action and social movement formation.

Furthermore, the mechanism can serve as a tool through which self-regulation and correction of civil society actors takes place through forms of monitoring, evaluation and development of accountability measures. Another potential role for the mechanism, but quite important one, is to generate priorities for action. Finding few key targets for government action on which the civil society will work and advocate for means identifying a social core that will leverage incentives for more profound social change.

Finally, civil society needs to clean up its own front. Without strengthening its own base, civil society will be side-lined into politicization. More importantly, this action should help the sector generate bigger interest and trust of citizens and build strong democratic pressure on political actors.

### Key recommendations of the report

1.	Strengthen the networking, cooperation and joint action between CSOs, media and independent trade unions.
2.	Address and scrutinize issues in the civil sector and call for social accountability by addressing vulnerabilities and deficiencies in the existing system.
3.	Develop mechanisms of self-regulation in the civil society.
4.	Define key priorities for government action, generate wide social consensus in the civil society and advocate jointly for their implementation.

# Findings

## Area 1: Basic Legal Guarantees of Freedoms

### Sub-area 1.1. Freedom of association

#### 1.1.1. Establishment and Participation of CSOs

With regards to the legal framework, there are four laws governing freedom of association in Bosnia and Herzegovina. The state-level Law on Associations and Foundations was amended in November 2016 and Brčko District in October 2020, to reflect the requirements and recommendations of the MONEYVAL Committee and the Financial Action Task Force (FATF), while the laws in both entities remained unchanged.

At least three natural persons who are citizens of Bosnia and Herzegovina and foreigners with residency permit in the country can establish an association (udruženje), while foundation (fondacija) can be established by any natural or legal entity without any citizenship or residency requirement. Although citizens can associate informally, access to tax status, benefits and public funding require a formal registration. Legal entities, including businesses and public bodies, can also establish an association or foundation.<sup>3</sup>

Since the current legislative framework recognizes only two types of civil society organizations (CSOs) – associations and foundations - different types of CSOs register under the same law, such as associations or membership-based organizations, humanitarian organizations, foundations, professional associations, and trade unions. While such approach might be useful in certain instances, in some it creates legal uncertainties, especially around humanitarian organizations, as they have to include humanitarian activities in their bylaws in order to be granted such status by the authorities when receiving tax benefits or public funding since special law on humanitarian activities and donations does not exist. Due to several scandals revolving around misuse of donations, there has been a public call for greater scrutiny of humanitarian organizations, including a better overview of their registration process, status and financial operations.

<sup>3</sup> <https://advokat-prnjavorac.com/zakoni/Zakon-o-udruzenjima-i-fondacijama-BiH.pdf>



Although associations and foundations usually do not face significant problems pertaining to the freedom of association, workers attempting to collectively organize and establish trade unions face immense obstacles, harassments, threats and usually eventually give up on registering it. This issue particularly pertains to the private sector, although in some cases workers in the public sector, especially those working in state enterprises have faced similar problems. Although independent trade unions have brought up this problem to the entity and cantonal ministries of work and social affairs, where they also register, and to the International Labor Organization (ILO), nothing changed in reality. Many existing trade unions are controlled by political and corporate stakeholders by appointing trade union management themselves.

CSOs in Bosnia and Herzegovina can register on state, entity (Federation of BiH<sup>4</sup> or Republika Srpska), district (Brcko District) or cantonal level in Federation of BiH (10 cantons). They can register only in one territorial unit depending on the location of their office.<sup>5</sup> While organizations established on the entity and lower levels of government can operate on the territory of the whole country, some administrative and financial consequences and obstacles emerge, such as employment of territorial non-resident staff members due to tax and social benefit regulation, or access to public funding as governments require CSOs to be located on their territory to be eligible for their funding.

This regulatory approach reflects the country's asymmetrical decentralized political system. Since 2018, when the online Unified E-Register of Associations and Foundations of Bosnia and Herzegovina<sup>6</sup> was developed, it has been updated by the Ministry of Justice. A list of CSOs is publicly available alongside their residency, registration number and name of the legal representative. However, the E-Register is not updated regularly since all 18 points of registration do not submit regularly their data. This poses a risk for the Register to become useless very soon, after only two years of its creation.

The registration process is fairly simple and similar at all levels of government. It requires from organizations to adopt their statutory acts described in the legislation and complete several forms. Considering the high number of registered associations and foundations in the country, the registration process does not create substantial obstacles to the right on freedom of association. The registration process differs slightly on the national and entity levels (Federation of BiH and Republika Srpska) as well on Brcko District or cantonal levels. Consequently, registration costs slightly differ too, while on the national level and in Federation of BiH the main registration fee is 200,00 KM (cca 100,00EUR), in Republika Srpska fee is higher (300,00 KM (cca 150,00EUR) with an obligation to pay an additional

<sup>4</sup> <https://www.fmp.gov.ba/bs/upis-u-registar-udruzenja.html>

<sup>5</sup> <http://www.balkancsd.net/civil-dialogue/bosnia-and-herzegovina/legal-framework-law-on-freedom-of-association-incl-foundations-and-its-regulation/>

<sup>6</sup> <http://zbirniregistri.gov.ba/Home>

150,00KM (75,00EUR) for registration of organization's legal representative. The registration process takes one to two months of time with variances between different public bodies where registration is taking place. Beside the registration fee, to register a foundation on the national or in Federation of BiH one need to invest at least 2000,00KM (cca 1000,00EUR) in the foundation and has to submit proof of such investment as part of the registration documentation,<sup>7</sup>

However, in some instances, public authorities subjectively misinterpret the law in relation to the CSOs' status treating them as business entities, and nowadays CSOs, when changing their official address, are asked to submit a lease agreement or registration of housing units in which the association operates, as business premises, which automatically increases the amount of their monthly utility costs.

In order to uphold the CSO status, organizations have to annually submit their financial statements to the entity tax department office. Organizations registered on the state level have an additional obligation to submit a copy of their financial and performance report to the national Ministry of Justice, which publishes this information on its website. This obligation was adopted in 2016 as part of international anti-money laundering and counterterrorism measures.

Organizations can freely establish networks and coalitions with other organizations, businesses and public bodies inside and outside the country. Registration of networks of civil society organizations is the same as for registration of regular organization, i.e. networks are registered associations or foundations. In practice there have not been cases where such right has been granted. In fact, CSOs in Bosnia and Herzegovina have created or are part of an extensive number of formal and informal networks on local, regional, national or international level. Therefore, CSOs can form coalitions, initiatives and networks freely. However, for eligibility to apply for public funding (and oftentimes, from international agencies too), such networks should be formally registered. In practice, networks rarely formally register but rather an organization on behalf of a group of organizations acts as network's secretariat.

In 2020, 455 CSOs were deleted from the official register ex officio and 404 upon request. In 2021, according to the online Unified E-Register of Associations and Foundations of Bosnia and Herzegovina, currently there are 25,646 active CSOs which are registered, with 578 CSOs in the process of termination of their registration, and 1,763 CSOs which have been deleted from registers in the country.<sup>8</sup>

<sup>7</sup>[http://www.mpr.gov.ba/organizacija\\_nadleznosti/uprava/registracije/fondacije/osnivanje/default.aspx?id=2082&langTag=bs-BA](http://www.mpr.gov.ba/organizacija_nadleznosti/uprava/registracije/fondacije/osnivanje/default.aspx?id=2082&langTag=bs-BA) ; <https://pravosudje.ba/vstvfo/S/80/article/64892> ; <https://www.fmp.gov.ba/bs/upis-u-registar-udruzenja.html>

<sup>8</sup> <http://zborniregistri.gov.ba/Home>

### 1.1.2. State Interference

The interference of public bodies in establishment and operations of CSOs is legally guaranteed and upheld in practice. The legislative rules do not include any requirements in terms of activities which organizations can pursue, advance approval from governments for their work, Board membership appointment, or inclusion of public officials in CSO's activities.

Registered organizations can pursue any legitimate activity as long as they are not aimed at destroying the constitutional order of Bosnia and Herzegovina and its entities, violating guaranteed human rights or provoking and encouraging inequality, hatred and intolerance based on racial, national, religious or any other affiliation. Also, organizations cannot engage in political activities, such as participation in the election campaigns, raising funds for political candidates or parties.

While public bodies do not directly interfere with operations of CSOs, for past two decades an evident nexus has been in place between the ruling political parties, their representatives in public offices and CSOs. Political activities by CSOs are banned by the law, but political affiliations of these organizations - particularly of associations of war veterans, civil victims of war and trade unions - has been a substantial problem in the country creating anti-democratic trends. Many CSOs from these groups have been either formed or indirectly controlled by political parties and its members in public bodies. Aside access to public funding, such CSOs benefit from getting public jobs for their members and receiving access to public services and similar. Moreover, many CSOs have been misused for diversion of public funds for private interests of politically affiliated officials. Municipalities, cities and cantonal governments are the biggest donor of CSOs in the country. Unfortunately, majority of this funding ends up in private hands.

Because of weak financial monitoring and overall accountability mechanisms for CSOs, such activities have not been sanctioned or reduced. CSOs are obliged to submit their annual financial reports to the relevant tax authorities. Their misuse of funds is rarely discovered or prosecuted, and generally, there is little scrutiny in this instance. The financial reporting is the same for CSOs as for businesses and other legal entities. Therefore, the sanctions and fines are the same for all legal entities. Reporting requirements are the same for small and large organizations, even for those that did not operate or have any funds in that given year.

Due to the requirements and recommendations of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and the Financial Action Task Force (FATF), BiH adopted changes to its national Law on Associations and Foundations in 2016, obliging all organizations registered on the national level to submit their financial report to the Ministry of Justice

as well. However, laws on lower levels of governments are not harmonized with the MONEYVAL and FATF recommendations. In terms of financial accountability, CSOs are treated like other legal entities in the country and are obliged to submit their annual financial statement prepared by a certified accountant to the relevant tax authority.

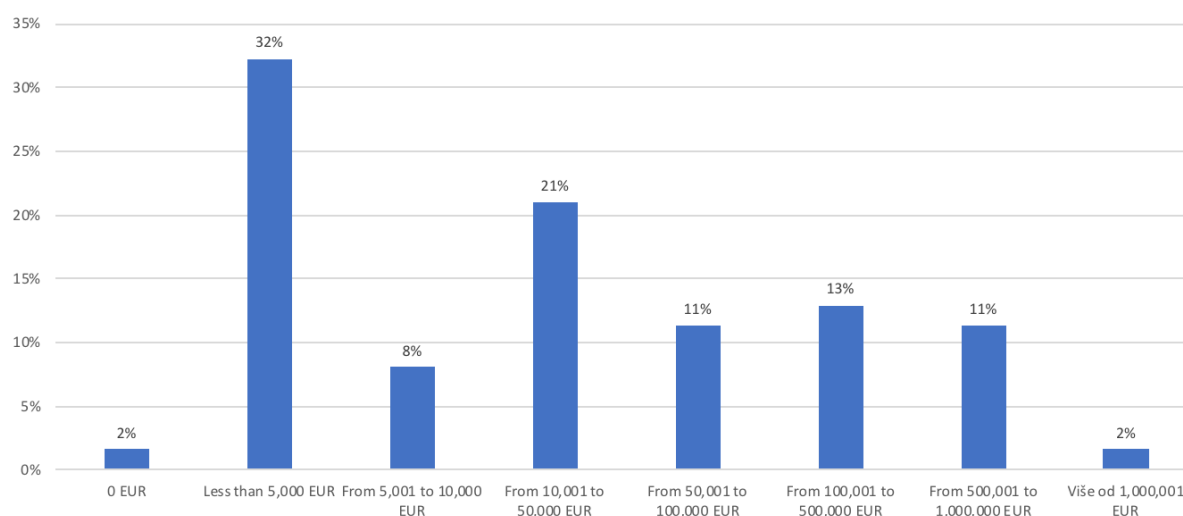
### 1.1.3 CSOs can freely seek and secure financial resources

Year 2020 was particularly troublesome for the financial operations of CSOs due to the COVID-19 impact on implementation of civil society projects and work. Many organizations lost their funding and had to dismiss employees. Despite this fact, the authorities did not treat the civil society sector as a segment that needs economic and tax assistance. Although amendments were submitted by several associations and political parties to the draft Law on Mitigation of Negative Economic Consequences in the Federation of BiH for support measures for CSOs to be included, the FBiH Government ignored these requests. The Government of Republika Srpska had more understanding and, after several meetings with representatives of the sector, helped CSOs as well. Despite the mentioned difficulties, many associations, mostly those with larger IT capacities, have adapted to the situation and organized activities online.

CSOs in Bosnia and Herzegovina are allowed to receive funding from foreign and local sources, raise their own funds, engage in economic activities, and participate in public calls for grants and services. While the legislation provides freedom in these areas, in practice administrative and tax rules, alongside corruption, create a non-favourable financial environment for the civic sector.

Based on the data we collected through a national survey, one third of active organizations have small annual budgets (less than 5000,00EUR), second third have budgets from 5000,00 to 50,000 EUR and about 37% of organizations have annual budgets with more than 50,000 EUR (see Figure 1. below).

Figure 1: CSOs Annual Budget Size (based on the national survey)



In cases when an organization engages in economic activities, it can only do so when they are directly related to its mission stated in the organization's bylaws. Otherwise, the organization would have to establish and register a separate commercial entity. Profits made in such instances can be only used for purposes aligned with the mission and objectives of the organization. Founders, members, members of management bodies, representatives, employees or donors of associations and foundations can only receive salaries and reimbursement of expenses and cannot directly or indirectly gain any other form of profit or receive other material benefits from organization's activities. Although such provisions have been in place on all levels of government, there is little scrutiny of actual CSOs' practices. The excessive number of registered CSOs in the country implies profitability of this sector. This should not be surprising considering the high amount of public funds allocated to non-profits and big international community and development funding for the post-conflict transition. Like in other sectors, informality and illegality do not bypass the civic sector.

Although there are no legal obstacles for organizations to apply and receive foreign funding, tax and custom regulations create unfavourable incentives and obstacles especially for donations in goods and services.

CSOs are allowed to raise funds from any private or commercial person, the state, local authorities, foundations or other legal entities, agencies, etc. They can also participate in public procurement tenders or calls for grants or service provision issued by the public bodies. Due to the lack of legislation on online crowdfunding, such donations are banned. Although participation in public procurement or public calls for funding is usually made through open calls, due to corruptive practices, allocation and distribution of funds is not transparent and efficient making it difficult for CSOs to participate in these kinds of bids.

### **Box 1: EU Guidelines assessment**

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

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

CSOs in Bosnia and Herzegovina enjoy the freedom of association – a right which is usually not hampered when applied in practice. However, trade unions, when established in companies or in certain sectors have been faced with obstacles in formal association and registration. Authorities rarely protect trade unionists from such pressures and issues. Any natural or legal person can establish a civil society organization (CSO), which is registered either as an association of citizens or a foundation. Registration process can take place from national to entity (Federation of BiH and Republika Srpska), Brcko District or cantonal level (only in Federation of BiH). Registration processes are not complex and not extensively lengthy or expensive. CSOs are free from interference of public authorities. However, in practice, oftentimes public funding is used as a measure to control or use certain associations for political benefits or even personal gain. Such practice has been widespread in the past two decades and it is difficult to have it eliminated despite adoption of practice of publishing public calls for CSO funding and creation of selection committees.

## **Sub-area 1.2. Related-freedoms**

### **1.2.1. Freedom of Peaceful Assembly**

Bosnia and Herzegovina constitutionally assure the freedom of peaceful assembly. However, this right is subject of many laws on public assembly, which create various administrative limitations for protests and other forms of citizens' gatherings. After 2014 - following the protests that took place throughout the country - public authorities have become more repressive in granting this right to groups. Governments of Federation of BiH and Brcko District have made recent proposals that have been challenged by the international community, the Institution of Ombudsmen for Human Rights of BiH and CSOs as several provisions are not aligned with international standards.<sup>9</sup>

The right on freedom of peaceful assembly is primarily regulated by the laws on public

<sup>9</sup> [https://www.legislationline.org/download/id/8522/file/360\\_FOA\\_BiH\\_9Dec2019\\_ba.pdf](https://www.legislationline.org/download/id/8522/file/360_FOA_BiH_9Dec2019_ba.pdf)

assembly, which distinguish three forms of public assemblies: 1) peaceful gatherings and public protests, 2) public events and 3) other forms of public gatherings - without a reference to the actual right they are protecting. Majority of these laws permit the static form of gatherings, not recognizing gatherings in movement, and even when they do so, they are defined as continuous movements from their starting to their finishing point.

Furthermore, majority of laws stipulate the locations where public assemblies can take place, such as those that are easily accessible and suitable for gatherings of undetermined number of citizens and where gatherings does not endanger the rights and freedoms of others, public morality, human health and safety of people, property, nor to obstruction of public transport. The laws on public gatherings of the Republika Srpska, Brčko District of BiH and Herzegovina-Neretva Canton state that the space suitable for public gatherings is determined by an act of the city or municipality, then by a decision of the mayor on the proposal of the Chief of Police. In addition, most laws include long lists where public assemblies cannot take place: near hospitals, schools, national parks, cultural monuments, border crossings, on roads in a way that endangers traffic safety, and near facilities that are specially secured.

Spontaneous peaceful assemblies are not fully legally recognized. In practice, only in Tuzla Canton one does not need to submit a report to the relevant authorities for this type of gathering. Spontaneous gatherings are either subjects of the obligation to register or there is a ban on holding gatherings that are not registered in a timely and orderly manner. In some instances, sanctions for organizers in cases of untimely and irregular registration are included too. Simultaneous and counter-assemblies are not specially addressed, however, in case authorities assume that public security could be jeopardized gatherings would not receive a permit or could be disbanded.

Therefore, legislation on public gatherings in BiH prescribe the obligation of the organizers to submit an application for holding a public assembly, which entails the approval procedure. This application must contain information about the gathering's organizers, including their personal data and measures they will use which should ensure the peace and order is preserved. Moreover, some laws oblige organizers to hire an agency for the protection of people and property, and in some instances, organizers have to obtain a prior approval of the competent authority for traffic safety in the event that a public gathering takes place on a public road, which would cause traffic to be suspended or obstructed.

In most laws on public gatherings in BiH, the obligation of the public authorities, particularly the police, is to prevent obstruction of a peaceful assembly and to ensure public order and peace. On the other hand, responsibilities of organizers of public gatherings are more numerous: to report public gatherings; to be responsible for damage caused by participants; to maintain public order and peace; to provide

appropriate medical and fire protection measures; to ensure that participants are not armed and do not cause damage; to protect participants and property in the area where the public gathering is held; to give information on persons who violated public order and peace to the police; to control and inspect persons entering the area where the public gathering is held; to remove a person who violates public order and peace; to immediately report or detain potentially suspicious or dangerous participants in a public gathering and immediately hand them over to a police officer.<sup>10</sup> Although these rules differ by location, they create high level of public responsibility for organizers of public assemblies. In Central Bosnia Canton protest organizers are also obliged to clean the gathering place within 24 hours, i.e. restore and repair all damage.

Considering the fact that after organizers submit their application for holding peaceful gatherings, in most instances they have to wait for the permission from relevant public authorities. Although the regulation varies on different levels of government, but usually organizers of protests need to submit their application 48 hours before gathering will take place. During this period, the authorities need to issue a permit. In cases when authorities will forbid the gathering, they need to issue their permit 48 or 24 hours before gathering was scheduled to occur. In fact, public authorities might prohibit a gathering. The Institution of Ombudsmen for Human Rights of BiH received and 17 complaints related to the right to freedom of peaceful assembly in BiH in the 2015-2019 period. Majority of these complaints are related to the protests organized as part of the “Pravda za Davida” movement and restrictions on their protests and arrests, fines and judicial prosecution of their activists by the Republika Srpska authorities, as well as restrictions on gatherings imposed by Sarajevo Center Municipality and Cantonal Sarajevo Police to the Sarajevo Pride parade.<sup>11</sup>

During the COVID-19 pandemic, both entity governments adopted their own measures in response to the crisis, limiting freedom of movement and assembly until an unspecified date using emergency procedures.<sup>12</sup> These measures included restrictions on movement; curfews (particularly for those under 18 and over 65), the banning of social gatherings, immediate closure of schools, public facilities, and shopping malls; and the limiting of access to public services. While these measures were strict at the begging of the epidemic, they were completely or partially lifted later and then again reinstated, depending on the epidemiological situation. Movement of citizens was completely banned after 10 p.m. until 5 a.m. (periods vary). During the COVID-19 pandemic special restrictions were given for number of people who can peacefully gather in open spaces, for example, in FBiH initially it was 30 and later up to 100 people that can gather in open

<sup>10</sup> <https://soc.ba/sloboda-okupljanja-pravna-zastita-organizatora-i-obaveza-drzave-da-osigura-mirno-okupljanje/>

<sup>11</sup> [https://www.ombudsmen.gov.ba/documents/obudsmen\\_doc2020022808504462bos.pdf](https://www.ombudsmen.gov.ba/documents/obudsmen_doc2020022808504462bos.pdf)

<sup>12</sup> [https://www.ombudsmen.gov.ba/documents/obudsmen\\_doc2020050812314379eng.pdf](https://www.ombudsmen.gov.ba/documents/obudsmen_doc2020050812314379eng.pdf)



spaces. In general, public gatherings are discouraged and not recommended. However, during the COVID-19 pandemic many protests still took place, including those that railed against pandemic measures (by taxi drivers, small business owners, and similar). Organizers did not face serious problems.

### 1.2.2. Freedom of Expression

Although the national and entity constitutions in BiH ensure the freedom of expression and thought, journalists and civil society activists that scrutinize and criticize political elites oftentimes face political pressure, intimidation, and attacks.<sup>13</sup> The Free Media Help Line and BH Journalists Association, which map attacks on journalists and run a gender-based database, during 2020, recorded 69 different cases of violations of the right to freedom of expression and safety of journalists (an increase of around 25% since 2019) and 11 public reactions related to COVID-19 and treatment of journalists by local authorities.<sup>14</sup>

Attacks are oftentimes directed at women journalists and take on gendered forms of violence. According to the Free Media Help Line and BH Journalists Association, the violation of female journalists' rights and gender-based violence in the offline and online spheres (including harassment cases through social networks) is on the rise. These cases include verbal threats, death threats, physical assaults, misogyny, harassment, discrimination, mobbing within media outlets and violation of labor rights, and even age discrimination. In period January – November 2020, 14 cases of gender base violence against female journalists in BiH were reported.<sup>15</sup>

Under the MM research, several cases of attacks were recorded. Foundation for Creative Development reported political attacks on its media activities by the SDA political party the Islamic Community of BiH which threatened their staff and editors of the TV show Hayd u Park broadcasted on the public media FTV. The show was moved to unpopular timeslot. They also received online threats and assaults on the Facebook page Konjske vijesti (Horse news).

Journalists are not ensured appropriate judicial follow-up and protection to the cases of threats and violence against them and other media workers.<sup>16</sup> Considering the increase in attacks on journalist alongside the weak judicial protection, the trend of self-censorship

<sup>13</sup> <https://slobodanarodu.ba/status-ljudskih-prava-u-2020-godini-bosna-i-hercegovina/>

<sup>14</sup> The Free Media Help Line and BH Journalists Association in 2020 recorded: 23 threats and pressures, 3 political pressures, 4 physical attacks, 9 death threats, 2 cases of censorship, 1 case of hacker attack on web media, 5 defamation lawsuits, 6 cases of mobbing and violation of labor rights, 5 cases of defamation, 12 cases of violation of the right to access information.

<sup>15</sup> <https://bhnovinari.ba/bs/saopcenja-za-javnost/>

<sup>16</sup> <https://bhnovinari.ba/bs/2020/11/01/velika-analiza-bh-novinara-istrage-i-procesuiranje-napada-na-novinare-i-medijske-radnike-u-bosni-i-hercegovini/>

has been on the rise. A particular problem is the high impunity of violence against female journalists - there are no effective investigations into these attacks by the police or legal measures taken by the judiciary to sanction them. According to the records of BH Journalists, only 30% of violence against journalists in BiH (including men and women) is resolved in an effective manner for the benefit of journalists.<sup>17</sup>

Furthermore, media in general is not free from political interference. Firstly, the Law on the Public Broadcasting System is only partially implemented since entity laws on broadcasting are not harmonized with it. This makes the three public broadcasting services exposed to political influence, particularly through politically controlled executive boards. The public broadcasting system is not financially independent and sustainable as collection of fees is not efficient. Local public broadcasters are not included in the public broadcasting system and are funded through public budgets of local governments making them directly subjected to political pressure and risks of political influence.<sup>18</sup> These factors contribute to an underdeveloped market conducive to media clientelism due to the overall financial insecurity in media and poor job conditions for media workers.<sup>19</sup>

Political influence, financial dependence of media and job insecurity negatively impact media professionalism and integrity. Although all the biggest media have committed to Press and Online Media Code developed and monitored by the Press Council, adherence to this form of self-regulation is partial. In fact, hate speech remains one of the most prevalent ethical and legal infringements of peoples' rights in traditional and online media. Predominantly, these violations are made by politically motivated individuals, oftentimes politicians and their supporters. During the election period, online hate speech significantly rises.<sup>20</sup> Prosecutions for hate speech is limited to offences of inciting religious and ethnic hatred through the internet. LBGTQ+ community has oftentimes been subjected to hate speech, even by politicians. Such attacks have not resulted in indictments. While hate speech is implied in four criminal codes in BiH, it is not directly named as such and legislation does not include specific types of offences. Furthermore, this crime is described in different manner in the criminal codes: "Inciting national, racial and religious hatred, discord and intolerance" is stipulated in criminal codes of BiH, FBiH and the Brčko District; "Unauthorized possession or endangerment of public order

<sup>17</sup> BHnovinari, "Violence against female journalists", The Free Media Help Line and BH Journalists Association Map, 2020.

<sup>18</sup> <https://bhnovinari.ba/wp-content/uploads/2020/11/Lokalni-mediji-%E2%80%93-kvalitet-medijskih-sadr%C5%BEaja-i-informacija-za-gra%C4%91ane-pluralizam-mi%C5%A1ljenja-i-razli%C4%8Ditost-izvora-informacija.pdf>

<sup>19</sup> [https://bhnovinari.ba/wp-content/uploads/2020/07/Anketa-sa-vlasnicima-medija\\_-COVID-19-i-ekomske-posljedice-na-medije-u-BiH-BHS.pdf](https://bhnovinari.ba/wp-content/uploads/2020/07/Anketa-sa-vlasnicima-medija_-COVID-19-i-ekomske-posljedice-na-medije-u-BiH-BHS.pdf)

<sup>20</sup> <https://www.media.ba/bs/magazin-novinarstvo/govor-mrznje-u-komentarima-na-portalima-intenzivira-se-u-izbornoj-godini>

through a radio or television station" is FBiH and the Brcko District, and "Public provocation and incitement to violence and hatred" and "Violent behaviour at a sports event or public gathering" is in the Criminal Code of the Republika Srpska.

During the COVID-19 epidemic the levels of disinformation increased alongside hate speech and attacks on media and information freedoms.<sup>21</sup> The major sources of disinformation are anonymous websites and media, however, oftentimes elected officials spread the disinformation in their statements, and the disinformation content can be directly linked to ethno-nationalist and geopolitical political agendas. Reports were made that two entity governments arrested around 25 people for sharing COVID-19-related disinformation, including cases of sharing social media posts.<sup>22</sup> Republika Srpska on 19 March 2020 adopted regulation on prohibiting the sharing of information that may cause panic or severely violate public peace and order.<sup>23</sup> This rule was lifted a month later due to the pressure of civil society<sup>24</sup> and international community since it presented a form of attack on freedom of expression as it leads to the risk of self-censorship.<sup>25</sup>

While hate speech remains poorly prosecuted, legislation on defamation has been effectively enforced. Since its adoption in 2002, the defamation laws have been used by politicians to intimidate journalists through civil suits.

### 1.2.3. Access to Information

The national and entity Freedom of Access Information (FOAI) laws ensure that CSOs, media, and citizens can request access to publicly held information and materials. Despite the existing legal framework, the public authorities have been using diverse methods to limit this right in practice.<sup>26</sup> Such disregard to adhere to the law is possible due to weak enforcement mechanisms, including sanctions. In its 2019 special report on the FOAI in BiH, the Institution of Ombudsmen for Human Rights in BiH found that public authorities oftentimes meet formal requirements in their responses but in practice they do not grant the access to requested data. Moreover, majority of public authorities on all levels of government are not conducting the public interest test, and in general, are making decisions that do not contain all the elements prescribed by the law.<sup>27</sup>

Adoption of the Law on Protection of Personal Data in 2006 particularly challenged the

<sup>21</sup> <https://www.osce.org/files/f/documents/7/7/470667.pdf>

<sup>22</sup> <https://detektor.ba/2020/03/30/podneseno-pet-prijava-za-sirenje-panike-na-internetu-u-federaciji/>

<sup>23</sup> <https://balkaninsight.com/2020/03/19/bosnias-republika-srpska-imposes-fines-for-coronavirus-fake-news/>

<sup>24</sup> <https://bhnovinari.ba/bs/2020/04/29/nakon-uredbe-o-zabrani-izazivanja-panike-mup-rs-obustavlja-prekrsajne-postupke-protiv-18-osoba/>

<sup>25</sup> <https://balkaninsight.com/2020/04/08/bosnia-trying-to-censor-information-about-pandemic-journalists-say/>

<sup>26</sup> Interview with Emsad Dizdarevic, 5 January 2021.

<sup>27</sup> [https://www.ombudsmen.gov.ba/documents/obudsmen\\_doc2020020515415139bos.pdf](https://www.ombudsmen.gov.ba/documents/obudsmen_doc2020020515415139bos.pdf)

implementation of the FOAI as the former legislation has been used to protect private rather than public interests. Political leadership uses the personal data protection rules to withhold access to public information. Moreover, reversed censorship of previously publicly published materials has been in place although such practice is not justified by the regulation, such in cases of public indictments and court decisions, which have been anonymized even in cases of high public interest, such as war crimes and corruption.

In general, public institutions do not adhere to practices of proactive transparency.<sup>28</sup> Such obligation is mentioned in various legal acts but has not been posed as an obligation at any level of government. The national Public Administration Reform Coordinator's Office (PARCO) has initiated adoption of the Policy and Standards on Proactive Transparency in Public Administration in collaboration with several other national-level institutions and CSOs, and has been monitoring their implementation in BiH institutions. Reports indicate significant differences in actual practices of institutions pointing to the institutional leadership as one of the key factors in fostering openness and transparency.

Finally, open data policies are non-existent and majority of public records remain unavailable to the public. Public institutions do not publish data in open machine-readable formats and use different systems for their public records making the process of their integration quite complicated. However, the Agency for Statistics of BiH has made visible progress in publication and dissemination of its statistical data by revising its online platform and data in more user-friendly formats. In 2020, the GIZ (German Development Agency) in cooperation with PARCO, Transparency International BiH, and other partners, conducted an assessment on the readiness for open data in BiH which offers valuable insights into the way forward in this area.<sup>29</sup> PARCO is working on open data policies that should be developed in the coming years.

Association "Center for Critical Thinking" Mostar reported that their media investigators regularly face obstruction by public officials during their investigations on corruption by limiting their access to information without any justification. Public relations offices and even international organization UNDP does not share information upon their request. Their media website tacno.net was hacked and they receive online attacks on their Facebook page. Association of mountain rescue services in BiH was denied access to information and received threats of prosecution against their authors for public criticism of state bodies in the media.

Due to the aforementioned and other inadequate solutions, the FOAI laws in BiH need to be revised in accordance with best international and European standards.<sup>30</sup> At the time

<sup>28</sup> <https://istokrs.com/bih/samo-4-institucije-na-nivo-bih-ispunile-sve-standarde-proaktivne-transparentnosti/>

<sup>29</sup> [https://parco.gov.ba/wp-content/uploads/2020/12/Procjena-spremnosti-za-otvorene-podatke\\_BS.pdf](https://parco.gov.ba/wp-content/uploads/2020/12/Procjena-spremnosti-za-otvorene-podatke_BS.pdf)

<sup>30</sup> <https://ec.europa.eu/neighbourhood->

of writing of this report, the new national FOAI is subject of public consultations. It was in development for several years through broad involvement of the international community, experts, public authorities and prominent CSOs. Entity level laws should be harmonized with the national law after its adoption.

Another issue that has been particularly evident during the COVID-19 epidemic is the lack of digitalization and informatization of the BiH society. When services and operations switched to the digital space, it became apparent that the country is lagging behind global trends and has not sufficiently invested in development and use of e-government services which hinders access to public information and services. BiH's national Information Society Policy 2017-2021 envisions development and investments in ICTs alongside adoption of regulation that would instigate EU approximation. However, the Policy's measures are broadly defined without clear responsibilities and secured funding. Unsurprisingly, to date, little progress has been noted in this area. Adoption of the Strategy for development of information society and the Law on Electronic Communications and Electronic Media should provide important ground for developments in this area but remains unfinished task for the past several years.

#### **Box 2: EU Guidelines assessment**

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

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

The freedom of peaceful assembly as well as the freedoms which are subjects of this section are constitutionally guaranteed and legislation is in place to safeguard those rights. While extensive neglect of these freedoms does not exist, however, occasions when the break of the law does take place are rarely sanctioned. Furthermore, administrative regulation oftentimes hinders full implementations of these freedoms as administrative laws are not fully harmonized with legislation that guarantees freedoms and particularly the right to access to information. Future reforms in public administration needs to account for this problem and revise administrative procedures that will not hinder rights but enable them.

[enlargement/sites/near/files/bosnia\\_and\\_herzegovina\\_report\\_2020.pdf](#)

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

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

#### 2.1.1. Tax Benefits

CSOs and other legal entities do not have to pay the national VAT on donations received or given in cash. However, donations in goods and services are subject to the VAT. In case donations are made from abroad additional custom fees have to be paid by the receiving organization. When donation in goods and services is made on the territory of BiH, the donor has to pay the VAT. Humanitarian organizations can get excluded from paying the VAT and fees but have to apply for an exemption which entails cumbersome bureaucracy, whereas the humanitarian status is recognized through types of humanitarian activities listed in organization's bylaws during its registration processes.

CSOs can also request return of VAT on goods and services they paid on projects that were funded by the US Government and the EU Instrument for Pre-Accession (IPA) programs. However, such benefits are limited to these programs. Humanitarian, charitable, disability and similar organizations do not have pay VAT on services and goods they provide to their members for membership fees. In spite of this, in 2020 the Administration for Indirect Taxation of BiH (AIT) attempted to collect VAT on all grants of Association Nahla that were implemented in the past five years. Thanks to the prompt reaction of the wider civil society and hired lawyers, the AIT abandoned its intention, but the situation has not been legally completed. This incident showcases how public authorities interpret subjectively the law, which creates legal uncertainty and can be a potential major threat to the sector.

In terms of entity-level profit taxes, CSOs are exempt from paying them on their non-profit activities and revenues received through public funds, donations, sponsorships, membership fees and sale of their goods and services on a non-market basis. Sale of goods and services on a non-market basis is considered, by the law, any or all revenues made by CSO that does not exceed 25,000.00 EUR. Therefore, up to this amount CSOs can offer their services and goods free of VAT to other legal entities and the public.

Creation and support for passive investments and endowment funds (zadužbine) is not a widespread practice. However, several foundations have made use of such instruments. Legislation does not entail special scrutinizing rules for such funds.

CSOs in Republika Srpska received certain financial and tax benefits during the health

crisis as other legal entities. The measures included the payment of the minimum wage per employee for months while there was a total closure and restriction of movement. Such measures were not implemented in the Federation of BiH.

### 2.1.2. Incentives for Individual/ Corporate Giving

**Legal entities**, in particular companies, registered in both entities can receive a tax-deductible expense up to 3% of total their profit for donations they made for humanitarian, cultural, educational, scientific, and sport purposes. For sponsorships, legal entities can receive a tax-deductible expense up to 3% in FBiH and up to 2% in Republika Srpska for their expenditures that support social events or projects that are not directly related to their business activities, with or without reciprocity in advertising.

In FBiH, **individuals** who are self-employed are eligible for a tax-deductible expenditure only up to 0.5% of their income in the previous year for donations given for cultural, educational, scientific, health, humanitarian, sports and religious purposes to specially registered associations and other legal entities. In Republika Srpska, the tax-deductible expenditure amounts to 2% of a person's income. In this entity, any form of social and humanitarian aid is exempt from the tax payment obligation, while in FBiH such exemption is only possible for social assistance and on donations for health treatments that are not covered by the public health insurance. This means that individuals cannot receive non-taxable donations in cash or goods unless they are registered in centres for social work. Scholarships are not taxable up to 75% of the average net salary.

Donors and receiving organizations are not obliged to pay VAT taxes on donations in money but are obliged to pay VAT (and customs) on donations in goods and services. Donation recipient is obliged to pay VAT if such donation is made from outside the country, while donor has to pay the VAT in case the donation is made within the country and donor is not exempt from paying VAT. Exemption to this rule are goods and services directly related to services provided by political, trade union, humanitarian, charitable, disability and similar organizations to their members for membership fees, in accordance with the regulations governing these activities. Many organizations complain that such regulation hinders philanthropy and humanitarian action in the country. Namely, taxes (and customs in case donations are made from abroad) are to be paid on food, water, medical equipment, medicine, and other similar donations even during a natural disaster, such as floods that occurred in 2014. However, during the COVID epidemic, the national government adopted special regulation lifting this rule for medical equipment and medicine that was donated to public institutions for the purpose of addressing the epidemic.<sup>31</sup> This rule does not apply for donations to the civil society organizations.

Evidently, tax benefits are available solely for humanitarian and similar purposes. Such approach is not beneficial for philanthropic endeavours that aim to foster social development or supportive of organizations working on protection of human rights and democracy. Corporate social responsibility is in its infancy phase in BiH. Few large foundations connected to the corporate sector have been established. However, BiH does not have law on philanthropy or donations and humanitarian activities that would systematically support individual or corporate giving. State enterprises also give out large donations with limited visibility of how these funds are distributed and to who.

According to the Catalyst Balkans Foundation data for 2020, philanthropic donations in Bosnia and Herzegovina increased significantly in 2020 with estimated value of donations of 38.5 million EUR, which is almost three times more than the previous year. Like in previous years, citizens have been the most active donors, mainly through mass donations for appeals and campaigns. But in 2020, the corporate sector took almost half of all philanthropic actions and donated one-third of the recorded amount. The country's diaspora donated 10% share of the total donated value, directing two-thirds of that amount to COVID-19-related topics. As expected, COVID-19 was the most important topic for donors, accounting for 1/3 of all donations and 60% of the total donated amount.<sup>32</sup>

### **Box 3: EU Guidelines assessment**

#### **2.2.a. Number and kind of donations to CSOs from individual and corporate donors**

#### **2.2.b. Quality and applicability/ 'implement ability' of deductibles for individual and corporate giving stipulated by legislations and regulations**

Considering the fact that access to financial aspects of CSOs operations is not available through public records, such information is based on data collection conducted by the Catalyst Balkans Foundation. According to its research, out of total amount of donations for 2020 in BiH - 38,588,187.2 EUR estimated value of donations (or 21,820,143.0 EUR recorded amount) – CSOs received 19.8% of the value of giving. Almost 50% of these donations were for individuals and families through campaigns organized by the Pomozi.ba Association. Deductions for individual and corporate giving are within European practices and aligned with rates in the region. However, considering the constant increase in poverty, the state could lower or implement 0 VAT rate for food donations. This issue was raised by a group of foundations in the country and the region.

<sup>32</sup> Annual Report on the State of Philanthropy in Bosnia and Herzegovina for 2020, Catalyst Balkans Foundation, October 2021.



## Sub-area 2.2. State support

### 1.2.1. Public Funding Availability

All levels of government provide and allocate public funding to CSOs. Although legal frameworks, including bylaws, are adopted for such purpose, their application is rather formal than substantial. This means that public authorities formally respect procedures, open public calls and similar, but in reality, make decisions on distribution of these funds rather informally. In fact, majority of public funds allocated for the civil society ends up in hands of affiliates of the ruling political parties.<sup>33</sup> Moreover, oftentimes division of funds is beforehand agreed between public officials, politicians and CSOs. These funds are not negligible, having in mind that public institutions, particularly cities and municipalities, are the largest CSO donors in the country.

A framework for transparent funding of civil society is needed across the country. Although the Rulebook on conditions and criteria for financing and co-financing of programmes and projects of public interest implemented by associations and foundations<sup>34</sup> was adopted in 2020, in practice, it is not applied. For each budget year, governments, especially local authorities, plan and assign funds usually for religious communities, humanitarian organizations, one-time assistance to people in social need, etc. Although CSO funding is planned and allocated in public budgets, it is distributed through numerous public institutions (cca. 3,000 public institutions in the country of 3.5 million citizens). Aside limiting transparency, such approach does not enable development of independent, open and sustainable civil society. Moreover, since public funds are dispersed over numerous organizations, funding is granted for short-term activities with limited impact.

Finally, data on public funding is not transparent and easily accessible. Since numerous institutions provide grants to CSOs, it is difficult to track and map funding allocated to the non-profit sector. Oftentimes, beside the standard giving to the non-profit sector, public institutions give grants in other donation cycles and programs. Due to such practices it is further more difficult to access information on public funds given to CSOs. Tax authorities collect data on earnings and spending of CSOs for all legal persons collectively. These facts make financial aspects of CSO work not transparent.

### 2.2.2. Public Funding Distribution

Majority of public bodies that allocate funds to CSOs have adopted procedures and forms

<sup>33</sup> <https://www.slobodnaevropa.org/a/boracka-udruzenja-budzet-bih-borci/29359517.html> ,  
<https://www.klix.ba/vijesti/bih/kome-idu-novci-iz-budzeta-veca-transparentnost-kroz-uspostavu-registra-grantova-za-nvo/180706092>

<sup>34</sup> <http://www.sluzbenilist.ba/page/akt/bNGOer2aQw4=>

for application and selection of civil projects. Aside project-related materials, public bodies usually request an official registration document and annual financial statement for the previous year. In case CSOs have been previously funded by the public bodies, in order to receive future funding, they have to be in good standing, meaning they have submitted an implementation report and completed activities they have been given funds for. Usually, making a complaint on results is administratively possible but oftentimes does not result in a fairer procedure or complete revision of the distribution of funds.

Calls for applications usually open at the same during the year and are published on websites of public institutions. In additions, some CSOs, such as CPCD and Mreža mira, are acting as resource centres for other organizations in the country and publish such calls for public funding on their platforms making them more visible. Calls are open from up to 15 days to a month and include selection criteria. However, such criteria are often generally defined. Selection results with clear points given to applications are rarely prepared or publicly published.<sup>35</sup>

Although the use of open calls for allocation of public funds has emerged as a more widespread practice, it did not result in more substantially transparent and efficient funding of CSOs.

The laws on conflict of interest and other public sector legislation clearly prohibits engagement in activities that are conflict of interests for public officials participating in the committees for selection of CSOs for public funding, but in reality, these procedures are rarely scrutinized.<sup>36</sup> In some occasions this might happen if a CSO raises concerns or files a formal complaint. However, disciplinary or other measures usually are not taken upon.

### 2.2.3. Accountability, Monitoring and Evaluation of Public Funding

Monitoring and evaluation of implementation of CSO projects that were funded by public bodies is rather a formal process without any or little scrutiny. Although this issue is publicly known to judicial authorities, inspectorates, auditors and media, accountability is rarely addressed. Firstly, judicial and monitoring institutions as well as the public media outlets are politically controlled. Secondly, the prevalence of such practices over a long time has made them socially acceptable as a norm. Instead of fighting such practices, CSOs have taken upon them in order to ensure their survival. Thirdly, procedures of distribution of public funding are formalized, making them difficult to question.

<sup>35</sup> [https://euresurs-api.page-services.net//Content/Documents/Transparentnost i prakse lokalnih vlasti pri dodjeli javnih prostora1604490178423.pdf](https://euresurs-api.page-services.net//Content/Documents/Transparentnost_i_prakse_lokalnih_vlasti_pri_dodjeli_javnih_prostora1604490178423.pdf)

<sup>36</sup> <https://ti-bih.org/wp-content/uploads/2011/05/Sukob-interesa-vodic-kroz-pojmove-i-zakone-u-BiH.pdf>

It is important to emphasize that although the described practice is prevalent among the public sector, positive exemptions exist and actual practices have improved over the years, but quite slowly and incrementally. Several municipalities use open and fair procedures for allocations of their funds to CSOs. Political leadership of public bodies sets the overall culture of the institution and affects its openness and transparency.

Misuse of public funding by CSOs is rarely followed up. Several recent scandals have been prominent among the civil society community involving members of prominent organizations misusing even foreign donations for their personal gain.<sup>37</sup> Although such cases have been brought up to prosecutors' offices, it is unclear if investigations or indictments have been made.

Independent auditor's offices are established on the national and entity level. Despite being fairly independent, their reports are published late and not used by the prosecution or another public authority for investigation purposes.<sup>38</sup> In 2020, a new General Auditor of BiH was appointed, Hrvoje Trvrkovic, who expressed his stance on working more on the follow up process and ensuring that auditor's recommendations are implemented by public authorities. For that purpose, a working group was established which includes aside the national Independent Auditor Office, several CSOs, the Prosecutor's Office of BiH and other public authorities.<sup>39</sup>

#### 2.2.4. Non-Financial Support

In-kind support to CSOs by public authorities entails provision of office and conference space. These resources are provided by many cities, municipalities and some cantonal governments. While some organizations, such as those representing victims of war, war veterans and socially disadvantaged populations, can receive access to public facilities free of charge, other CSOs can apply for offices that are usually given out at lower market price for rent. Unfortunately, distribution and access to these resources is not transparent as having open calls and selection criteria for office space rent is not the norm<sup>40</sup>. The aforementioned organizations are given priority due to their nature of work and political affiliations and the benefits they receive are sometimes subjects of municipal decisions and in other instances there are not. Oftentimes, local governments give out these facilities to organizations affiliated to the ruling political party. In some communities, local

<sup>37</sup> Information from an anonymous source.

<sup>38</sup> <http://www.revizija.gov.ba/Content/DownloadAttachment?Id=ae344743-e8f0-480b-8b76-5b716344ea51&langTag=bs> and <http://www.revizija.gov.ba/Content/OpenAttachment?Id=9ac3dd2a-0e15-4714-86e1-969ccb147cf2&langTag=bs>

<sup>39</sup> <https://www.klix.ba/vijesti/bih/glavni-revizor-hrvoje-tvrtkovic-oformljena-je-grupa-za-provedbu-preporuka-ukljuceno-i-tuzilastvo/201112021>

<sup>40</sup> [https://euresurs-api.page-services.net//Content/Documents/Transparentnost\\_i\\_prakse\\_lokalnih\\_vlasti\\_pri\\_dodjeli\\_javnih\\_prostora1604490178423.pdf](https://euresurs-api.page-services.net//Content/Documents/Transparentnost_i_prakse_lokalnih_vlasti_pri_dodjeli_javnih_prostora1604490178423.pdf)

governments provide a large collective space to bigger number of CSOs and they have access to shared conference rooms. Although practices differ greatly between different local governments, in majority of cases, these facilities have not been preserved and maintained properly. Sometime CSOs get inadequate office space to use and need to cover reparation and renovation costs. In general, local governments own such facilities but do not invest in them or renovate spaces to make them more accessible and collectively shared.

When CSOs receive permits to rent office space provided by local governments, usually the contracts are signed for longer period of time. In some instances, local governments cannot evict CSOs for not paying rents immediately and they are granted a grace period.

Non-financial support in form of training and consultations provided by public institutions is rare.

#### **Box 4: EU Guidelines assessment**

**Result 2.4.a. CSO's perception of the provision of funds in terms of transparency, fairness and non-discrimination**

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

Despite the increased transparency in grant giving from public authorities to CSOs, these processes have not become different in their essence. Calls for applications, selection procedures, selection committees, and other methods still do not hinder public officials to design the process and their decisions to favor organizations that they are personally or politically affiliated with. Thus, the public trust in CSOs and the civil society in general is quite low. Even in cases when public authorities give out grants without any strings attached, oftentimes they give out small amounts to everybody who applied rather than developing a good selection criterion based on prior experience, objectives, and potential results. Such practices, although appearing fair, diminish the potential of public funding to yield social impact.

## Sub-area 2.3. Human resources

### 2.3.1. Employment in CSOs

Employment regulation treats all legal entities in the same manner, including associations and foundations. This means that workers' rights of persons employed by CSOs are regulated by entity Labour Codes, which have been subject to complete revision and adoption in 2015-2016. These revisions entailed greater labour liberalization and more flexibility. Although these Labour Codes, alongside other legislation (on health insurance and social welfare), stipulate various forms of protections available to workers, in reality, their enforcement is weak. In fact, workers in Bosnia and Herzegovina have been subjected to various forms of labour misuse and discrimination, particularly mobbing, informal employment without proper contracts, and unfair compensation and dismissals. Although these practices have been noted in the CSO sector as well, they are not severe as such as in the commercial sector. Particularly CSOs that receive foreign funding adhere to better working standards and conditions for their staff.

There are no workers unions active in the CSO sector. Recently, the national Trade Union of Commerce and Services of BiH conducted an online survey on working conditions in the CSOs and is mapping possibilities and interest of collective organizing for the civil society. In general, cooperation between CSOs and trade unions remains weak and has been established by notable examples, such as the national Trade Union of Commerce and Services of BiH or the Solidarity Trade Union.

Entity and cantonal governments develop and fund active employment programs through which employment of unemployed persons and people with disabilities is fostered and subsidized. Usually, such programs are focused on businesses but recently, in certain programs, CSOs have been included in the scheme alongside public entities, such as municipalities and state enterprises. Unfortunately, these programs have achieved limited success as most workers do not get long-term employment after the program funding ends. Certain irregularities in employment processes have been noted as employers make special "deals" with vulnerable populations, oftentimes taking part of their reimbursement. Active employment programs are implemented by extensive number of governments on all levels and lack a unified strategic approach and targeted deliverables. The civil sector has not benefited from such subsidies.

### 2.3.2. Volunteering in CSOs

Entities and Brcko District have adopted laws on volunteering for almost a decade now. Organizations that want to hire volunteers should register with the FBiH Ministry of Justice or the RS Volunteer Service as a volunteer point; afterwards they need to register their volunteers at the same institutions. These institutions issue volunteer cards for

registered volunteers and, according to them, reports must be submitted on volunteering hours and type of work done. New volunteers must get registered and those who are no longer engaged must be deregistered. Through volunteering contracts, a small fee can be provided for volunteers, which is non-taxable in order to cover their basic costs (transportation, food, telephone, etc.). The entity laws on volunteering aim to protect volunteers by defining what volunteering entails, who and under what conditions is engaged, etc. For this reason, volunteering excludes work in the business sector.

CSOs report that they are not clear when contracts on volunteering should be signed in cases when they are hiring young people. In practice, they sign scholarship or short-term work contracts more often as these provide better benefits to the persons they hire and they know better how to administratively handle other contracts compared to contracts on volunteering.<sup>41</sup> The Law on Volunteering in the Federation of BiH was not functional for a long period of time, but the organization KULT worked and advocated for changes and better implementation of the Law. However, a volunteer experience does not count as official working experience, only as informal working experience if a volunteer worked minimum of 250 working days.

Organizations that work with youth and religious charities oftentimes attract large numbers of youth that volunteers usually for humanitarian, educative or other socially beneficial purposes. However, these initiatives are not fully formalized, i.e., they do not entail signing of volunteering contracts and recording of volunteering hours in cards. In terms of actual support to volunteering through public programs, Republika Srpska has made significant efforts in this instance through its Volunteering Service attracting 10.000 members, mostly high schoolers and students. However, formalized volunteering has not taken up. In 2020, only 75 (35 in 2019) long-term volunteer contracts were signed in the FBiH, and 20 in the Republika Srpska (29 in 2019).

This form of formalized volunteering does not hinder existence of spontaneous volunteer work. In reality, individuals volunteer often but majority of this work remains invisible and not widely recognized. Nevertheless, the culture values volunteering, such as helping neighbours in need, taking care of the elderly, the poor, and the abandoned animals. In fact, during humanitarian crises, CSOs and people tend to self-organize and quickly provide assistance to those in needs. While such actions have become more visible thanks to social media, they still lack large social visibility and greater recognition.

### 2.3.3. Non-Formal Education

While adult education legislation has been adopted in the past ten years throughout the

<sup>41</sup> <https://euresurs-api.page-services.net//Content/Documents/Volonterizam - Nedovoljno iskorišten potencijal u OCD u BiH1604932833172.pdf>

country, in Republika Srpska (2008, 2012) and cantons of Federation of BiH, validation of non-formal education as form of adult learning has taken stronger stance only in the fast few years.<sup>42</sup> This legal framework has given impetus for establishment of institutes and centres for adult education which provide programs and trainings to thousands of participants. Majority of these programs focus on skills necessary for people to acquire new skills desired on the labour market in order to improve their chances of getting a job and not on civic development and engagement. As such they provide training, secondary vocational education and retraining opportunities. Due to the decentralized approach to policies, adult learning programs, including their availability, costs, etc. vary on the ground in different jurisdictions. Aside public institutes, adult education centres can be registered but fees that are related to this procedure significantly differ, while in some jurisdictions is free in other it entails a bigger cost.

When it comes to adult secondary education, programs are implemented in secondary schools that are registered for adult education programs. For example, in Sarajevo Canton there are seven secondary schools for adult education, as well as two faculties, namely the Faculty of Sports and Physical Education and the Faculty of Education, which offer various educational programs. In Republika Srpska, the Institute for Adult Education has been established that provides education to cca. 1,192 participants each year in areas of health, traffic, economy, law and trade, and several other fields.<sup>43</sup> Such programs are based on Republika Srpska's and cantonal employment strategies and action plans that include non-formal education measures as mechanisms that should foster education and entrance to the job market. They do not focus on civic knowledge or skills. In addition, employment bureaus develop and finance retraining, training, secondary vocational education and additional training. However, that funding would need to be significantly increased in order to generate greater impact.

Aside these programs, many CSOs, religious communities and political parties offer many non-formal and informal learning opportunities in forms of workshops, trainings, academies, etc. that foster civic engagement. However, in those instances, a validation of the learning outcomes is rarely included and certificates are rarely given out. Therefore, qualifications or credits are not awarded at the end of the learning period. That would require official registration of the education provider through the aforementioned law. Also, lecturers would need to be validated in some way as well. Nevertheless, value of these non-formal education opportunities is immense, especially for the youth.

Education on democracy, human rights and civil society is part of the curriculum in primary and secondary schools in BiH in the form of extracurricular activities or units

<sup>42</sup> [https://epale.ec.europa.eu/sites/default/files/harmonizacija\\_politika\\_oo\\_u\\_bih.pdf](https://epale.ec.europa.eu/sites/default/files/harmonizacija_politika_oo_u_bih.pdf)

<sup>43</sup> <https://www.klix.ba/vijesti/bih/obrazovanje-odraslih-postaje-stratesko-u-bih-put-do-vise-zaposlenih-i-manje-nepismenih/191016082>

within other subjects. The Agency for preschool, primary and secondary education has developed a Common Core Curriculum for civic education defining learning outcomes as a basis for improving the existing curriculum in BiH.

**Box 5: EU Guidelines assessment**

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

**Result 1.2.f. Quality of legislative framework**

Existing figures on volunteering in CSOs does not reflect the actual practice. Formal volunteering authorities in entities have insight into a fraction of volunteers that are registered in some youth or religious or humanitarian organizations. For better insight into volunteering, research should be conducted. Although the legislative framework presents a good basis for supporting volunteering it has not been promoted and socially recognized extensively, particularly in Federation of BiH. Especially the Ministry of Justice in this entity could take more proactive role in this instance.



## Area 3: Government-CSO Relationship

### Sub-area 3.1. Framework and practices for cooperation

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

In December 2020, three years after the adoption of the national-level Agreement on Cooperation between the Council of Ministers of BiH and NGOs in Bosnia and Herzegovina, the Advisory Body for implementation of this Agreement has been finally established.

The Advisory Body of the Council of Ministers of BiH for Cooperation with Non-Governmental Organizations (Advisory Body) consists of seven members whose tasks is to create, monitor and implement public policies important for creating a stimulating legal, institutional, and financial environment for non-governmental organizations in BiH. At its constituent session in December, the Rules of Procedure of the Advisory Body have been adopted. Aida Daguda, head of CPCD, was elected as Chair of the Advisory Body, and Ilija Trninić was elected as Deputy Chair.

With the establishment of the Advisory Body, the most significant obligation from the Agreement on Cooperation between the Council of Ministers of BiH and CSOs has been realized. Furthermore, this contributes to the fulfilment of one of the 14 key priorities from the Opinion of the European Commission on the application for Bosnia and Herzegovina's membership in the European Union, which concerns the provision of a supportive environment for civil society in Bosnia and Herzegovina.

One of the first tasks of the Advisory Body in this instance is to prepare a Strategy for Creating a Stimulating Environment for the Development of Civil Society to be adopted by the Council of Ministers of BiH. This body will be in charge of monitoring, evaluating and revising the Agreement and the Strategy, once it is adopted.

The Agreement was developed in consultation with CSOs and expresses a national commitment to building a prosperous, just, open, plural and democratic society in Bosnia and Herzegovina. To date, 119 CSOs have signed the Agreement.<sup>44</sup> The national government obliges fostering of activities on further development of transparent procedures for financing programs and projects of CSOs from public budgets of national ministries and bodies of the Council of Ministers of BiH, which should contribute to more efficient preparation and implementation of public policies. In addition, the Council of

<sup>44</sup> <http://www.mpr.gov.ba/NVO/default.aspx?id=7059&langTag=bs-BA>

Ministers of BiH will continue activities on the involvement of CSOs in the process of European integration.

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

Despite the fact that 90 municipalities as well as three Cantons and the District Brčko have signed an *Agreement for Cooperation or Strategy for Development of Civil Society* in their communities this mechanism remains poorly implemented and used by local governments and CSOs. After elections, newly elected officials rarely adhere to the commitments of their predecessors. As explained earlier, cooperation between CSOs and the public authorities is not straightforward as political parties tend to exert their influence on public institutions. Consequently, entity, cantonal, and local governments have established cooperation with CSOs, but oftentimes it is based on some sort of political affiliation. Nevertheless, public authorities have become more open to support CSOs in implementation of their projects and significantly number of public partners in civic and development projects has risen. However, this type of cooperation is short-term and does not result in substantial change of public policies, but it has contributed to building trust between the public and civic sector. As a rule, openness of public institutions is directly related to personal readiness and willingness of elected officials and civil servants to engage and work with the CSOs and the public in general. They set the tone and organizational culture for communication and collaboration.

On the national level, the Ministry of Justice is in charge in civil society policies, including registration of associations, foundations and religious communities. National-level ministries do not have civil society offices but engage with CSOs directly through their officials or public relations departments. Entity, cantonal and local governments do not have established specialized departments or offices solely working on the civil society issues, rather this line of work is part of departments for social affairs and/or departments for public relations.

## **Sub-area 3.2: Involvement in policy- and decision-making processes**

### 3.2.1. Standards for CSO Involvement

All levels of government have developed rulebooks for involvement of CSOs and the general public in their decision-making processes. These rulebooks define procedures, deadlines, and modes of public consultations and other forms of civic participation in policy- and decision-making processes. These documents, as well as other legislation, list issues of public interest when the civil society and experts have to be engaged in the

policy-making. Despite the legal framework, actual involvement of CSOs in policy preparation and development remains sporadic, inconsistent and not substantial.

Reasons behind this lack of involvement vary from jurisdiction to jurisdiction, but in general these factors mainly contribute to the existing situation: 1) BiH has a large number of institutions, decision-making bodies, strategies, and policies for a fairly very small population that makes substantial and long-term involvement for CSOs and citizens an almost impossible task; 2) Earlier involvement of CSOs has not been taken into serious consideration by governments and assemblies, since oftentimes their comments and feedback on laws was not included in legislative revisions, and therefore CSOs perceive these processes as formal, time-consuming and not beneficial; 3) Serious policy decision-making processes in BiH take place through rather informal communication between political parties that provide the input and positions the public authorities will take. After such decisions are made it is a difficult and lengthy process to make a meaningful change to the proposed policy.

Educational opportunities on public consultations and cooperation with civil society for civil servants is rare and sporadic. Such trainings have been organized, but infrequently and even when such educational workshop take place, only a handful civil servants participates.

### 3.2.2. Public Access to Draft Policies and Laws

Constitutions and laws on governments as well as laws on public institutions include a clause stating that work of public bodies is public, and openness and access should be ensured. Legislative plans are adopted but oftentimes not ahead of time; Moreover, they are adopted quite late in the year since national and entity governments are formed even one year after the elections. In fact, policy and/or legislative plans for 2020 were adopted at the beginning of 2021. In some instances, these documents are published on governmental websites, but this practice is inconsistent.

CSOs and the public can access draft policies and laws of national-level institutions through the e-Konsultacije online platform.<sup>45</sup> This process pertains to public consultations before policies reach the Parliamentary Assembly of BiH, which can organize its own consultations or other forms for civic input through its committees. Ministries and agencies publish their annual legislative plans alongside majority of regulation they are adopting. This platform is a mechanism for public consultations as well. In the past two years, through this platform, national-level ministries have published a substantial amount of policies and laws. Through the platform CSOs and citizens can express their interest in work of particular institutions and get email notifications when

<sup>45</sup> <http://zborniregistri.gov.ba/Home>

some consultations are open. The Ministry of Justice monitors this platform and conducts an annual assessment of national-level public consultations in order to track involvement of other ministries, CSOs and to improve its policies. Although the existing framework has increased consultations in numbers, substantial involvement of public institutions and CSOs is missing. One of the reasons is the remoteness of national-level policies to interests of CSOs as majority of issues citizens find mostly relevant for their daily lives are adopted by entity, cantonal and local governments. Another issue is that the most important legislation is adopted without prior consultations. Namely, many important legal documents are adopted on the principle of urgent procedure, thus avoiding the envisaged process of public consultation.<sup>46</sup>

Openness and access to entity, cantonal and local level drafts policies and laws is more limited and rather sporadic. It depends on practices of different public institutions which greatly varies. At the level of the Federation of BiH, a completely unusable e-platform was created. The Regulation on Rules for Participation of the Interested Public in the Process of Preparation of Federal Legal Regulations and Other Acts is not used at all. Similar approach is used by the Republika Srpska Government. Usually, governments publish such calls on their websites in the news or announcement sections.<sup>47</sup>

Access to draft policies and laws during the public consultations in assemblies is more systematic, but at this point it is more difficult to generate impact on policies and measures being proposed. The Peoples' Assembly of Republika Srpska offers access to all materials that are considered by its committees and chambers. Transparency International finds that at the lower levels of government "consultations are practically not conducted, formally - legally there are procedures that are carried out on paper, but there is no real consultation or political will to use them as a corrective element in the decision-making process. Political parties believe that with the support of the elections, in addition to legality, they also gained the legitimacy to decide on everything without asking the citizens."<sup>48</sup>

### 3.2.3. CSOs' Representation in Cross-Sector Bodies

The legal framework for public administration in BiH provides grounds to involve CSOs and experts in working groups, advisory bodies and other forms of cross-sectoral collaboration. Unfortunately, such models of civic engagement are sporadic and rare. Primarily such involvement takes place on the national level.

As mentioned earlier, in 2020, the Advisory Body of the Council of Ministers of BiH for

<sup>46</sup> Interview with Emsad Dizdarevic, 5 January 2021.

<sup>47</sup> See for example <http://zpr.ks.gov.ba/novosti/poziv-na-ucescu-u-procesu-konsultacija-izrada-strategije-razvoja-kantona-sarajevo-2021-2027>

<sup>48</sup> Interview with Emsad Dizdarevic, 5 January 2021.

Cooperation with Non-Governmental Organizations was formed consisting of CSO and governmental representatives. Additionally, in 2020 a working group was established which includes aside the national Independent Auditor Office, several CSOs, the Prosecutor's Office of BiH and other public authorities which will be working on the follow up process of audit reports and ensuring that auditor's recommendations are implemented by public authorities.<sup>49</sup>

In addition, the Ministry of Justice and the national Public Administration Reform Coordinator's Office (PARCO) are leading the Advisory Council for the Open Government Partnership Initiative which includes four CSOs (Transparency International BiH, the Center for Investigative Journalism (CIN), the "Centre for Advocacy of Citizens' Interests" (CPI) Foundation, and the Association "Why Not") and four additional national-level institutions (the Agency for the Prevention of Corruption and Coordination against Corruption of BiH, the Agency for Statistics BiH, the Agency for Public Procurement BiH, and the Ministry of Finance and Treasury BiH). Jointly they develop a national action plan and design policies on open government, transparency, access to information and anti-corruption. Also, the process of revision of the law on civil service has incorporated consultations with CSOs.<sup>50</sup> Our research indicates that Association for Development, Environment and Culture EKO participated in the development of the Development Strategy of West-Herzegovina Canton, as in consultations on development of the Waste Management Plan and the Tourism Strategy of the same canton. Association of Nurses, Technicians and Midwives of Republika Srpska took part in consultations in preparation of the Law on professional activities.

### **Sub-area 3.3: Collaboration in service provision**

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

The legislative framework envisions special support and collaboration with public authorities for organizations whose activities are of public interest. However, the national and entity laws provide somewhat differing provisions in this instance. According to the national Law on associations and foundations, national-level institutions can sign agreements with associations and foundations for implementation of projects of public in area of human rights, rights of persons with disabilities, protection of children with disabilities, rights of national minorities, equality, the fight against discrimination, protection from violence, activities of children and youth, fight against various forms of

<sup>49</sup> <https://www.klix.ba/vijesti/bih/glavni-revizor-hrvoje-tvrtkovic-oformljena-je-grupa-za-provedbu-preporuka-ukljuceno-i-tuzilastvo/201112021>

<sup>50</sup> [https://www.dei.gov.ba/uploads/documents/finalni-izvjestaj-o-realizaciji-akcionog-plana-za-realizaciju-prioriteta-iz-analitickog-izvjestaja-evropske-komisije\\_1604657038.pdf](https://www.dei.gov.ba/uploads/documents/finalni-izvjestaj-o-realizaciji-akcionog-plana-za-realizaciju-prioriteta-iz-analitickog-izvjestaja-evropske-komisije_1604657038.pdf)

addiction, development of volunteerism, humanitarian activities, social protection, environmental protection, protection of human health, art, education, culture and all other activities which by their nature can be considered as activities of public interest. These agreements are to be signed based on open public calls and give additional tax, customs, and other benefits. Special legal acts are to be adopted that should regulate this type of cooperation. In 2020, the Council of ministers adopted a Rulebook on criteria for financing and co-financing of projects in areas of public interest implemented by associations and foundations.<sup>51</sup>

In Federation of BiH, the Law on associations and foundations only briefly stipulates that organizations registered under this law may be entrusted with the exercise of public authority within the scope of its activities. In Republika Srpska, the same clause exists, and there is an additional provision on organizations of public interest. According to this law, status of public interest can be given to associations if their activities surpass interests of its members and are intended for the public good, particularly in these areas: health, science, social protection, environmental protection, civil society, war veterans, human rights, minority rights, assistance to the poor and socially disadvantaged, assistance to the disabled, children and the elderly, tolerance, culture, amateur sports, religious freedom, assistance to victims of natural disasters, consumer associations and other areas of public interest. The status of an association of public interest is determined by the Government of the Republika Srpska at the proposal of the Ministry of Administration and Local Self-Government, whereas the procedure for granting this status and conditions for financial assistance are defined in detail in a decree.

Additionally, CSOs can participate in open calls for provision of public tenders, which are regulated by the Law on Public Procurement in BiH.

### 3.3.2. State Funding for CSO-Provided Services

In practice, Republika Srpska Government and 10 cantonal governments in Federation of BiH provide such public interests status and financial benefits to organizations that work on 1) protection of rights of war veterans and civilian victims of war, 2) social services for people with disabilities, women and children who are victims of domestic violence (safe houses), and 3) occasionally to organizations that represent youth, elderly and some other larger membership based association. Provision of services by CSOs in these areas is stipulated by relevant legislation (such as laws on protection of families and children, laws on vocational rehabilitation, training and employment of the disabled, etc.).

Each year the Ministry of Administration and Local Self-Government of Republika Srpska

<sup>51</sup> <https://www.vijeceministara.gov.ba/akti/analize/default.aspx?id=32245&langTag=hr-HR>

issues a call for associations to apply for the public interest status<sup>52</sup>, based on which the RS Government issues a decision on their financing and allocates them funds. Organizations that have such status are the Association of War Veterans of Republika Srpska, the Association of Detainees of Republika Srpska, the RS Association of Families of Captured and Killed Veterans and Missing Civilians, the Association of Organizations and Associations of War Invalids of RS, the Association of Amputators "Udas", the Association of Civilian Victims of War of RS, the Association of Dystrophic Patients, the Association of Disabled Workers of Srpska, the Association of the Deaf and Hard of Hearing, the Association of the Blind of RS, the Association of Paraplegics, Children with Paralysis and other Physically Handicapped of RS, the Association of Associations for Mentally Underdeveloped Persons, the Association of Voluntary Blood Donors of RS, the Association of Pensioners of RS, the Association "Jasenovac - Donja Gradina", the Association of Municipalities and Cities of Republika Srpska, the Serbian Educational and Cultural Association "Prosvjeta", the Association of National Minorities of Republika Srpska, the Youth Council of RS, the Consumer Movement, and the Association of Radio Amateurs of RS.<sup>53</sup>

### 3.3.3. Procedures for Contracting Services

For provision of social services that fall under the scope of work of associations with public interest status, the Republika Srpska Government, Brcko District Government, as well as cantonal governments in the Federation of BiH usually publish open calls and allocate financial resources from the public budget to associations with status of public interest, which in return provide social services. The type of organizations that get the status and funding is very similar to those in Republika Srpska given above.

In case of public tenders, CSOs can compete following the procedures for public procurement. The Agency for Public Procurement of BiH has developed a unified online public procurement platform ([www.ejn.gov.ba](http://www.ejn.gov.ba)) that is to be used by all public bodies in the country for tender calls, selection and publishing of results of bids. Although CSOs can in principle apply for tenders, their actual participation is rare.

### 3.3.4. Accountability, Monitoring and Evaluation of Service Provision

The practice of open calls for public interest status and funding for provision of social services by CSOs is more recent and still sporadic. In principle, majority of associations that receive funding through this scheme have been closely affiliated to the ruling

<sup>52</sup> <https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/muls/Documents/Јавни%20позив%20за%20дојелу%20статуса%20удружења%20од%20јавног%20интереса%20јануар%202020.452153887.pdf>

<sup>53</sup> [https://vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/muls/Servisi/Poslovanje/Pages/Imenik\\_udruzenja\\_od\\_javnog\\_interesa.aspx](https://vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/muls/Servisi/Poslovanje/Pages/Imenik_udruzenja_od_javnog_interesa.aspx)

political parties. Reports on implemented activities should be submitted by CSOs to the relevant ministry, but even when prepared these reports describe activities in general and cannot be regarded as a proper accountability and evaluation instrument.

In terms of public procurement, despite the large investments by the international community and substantial reforms in this area, it remains to be a weak point in institutional management. According to the current practice, procurements handled through direct contracts, which are contracts of low financial value below 6,000.00 KM (3,000.00 EUR), are not managed through the aforementioned e-platform. However, based on some estimates, direct contracts take up to 40% of the entire public procurement in BiH and have been used for fraud schemes. In 2020, the new Law on public procurement was proposed and adopted by the Council of Ministers and the Parliamentary Assembly.<sup>54</sup> Although initially the proposed changes in the new Law aimed to include stronger inspectorate and prosecution measures, they were deleted when the newly appointed national government took office. Therefore, the current proposal will not address existing deficiencies and it will even extend the amount for direct contract opening room for more fraud.<sup>55</sup>

<sup>54</sup> <https://rec.ba/zakon-o-izmjenama-i-dopunama-zakona-o-javnim-nabavkama-bih/31482/>

<sup>55</sup> <https://zurnal.info/novost/23796/zasto-nema-inspekcijskog-nadzora-u-zakonu-o-javnim-nabavkama> and <https://www.fokus.ba/vijesti/bih/politicke-igre-oko-novog-zakona-o-javnim-nabavkama-kome-smetaju-antikoruptivne-odredbe/1939052/>



# Conclusions and recommendations

## **Strengthen the networking, cooperation and joint action between CSOs, media and independent trade unions**

The civil society is not a unified field of action. Although having different perspectives, discord and dialogue is beneficial for the civil deliberation and action, in BiH's circumstances, the leading CSOs in the country should join action with smaller grassroots organizations in local communities, informal initiatives on one side, and form alliances with independent media and trade unions on the other. The first step in this process is creation of a long-term communication and networking mechanism (that can be built on the existing ones) and their expansion and inclusion of media and trade unions. Aside sharing information and fostering mutual dialogue, the mechanism should serve as reference point of joint action and social movement formation.

## **Scrutinize issues in the civil sector and call for social accountability by addressing vulnerabilities and deficiencies in the existing system**

The civil society needs to clean up its own front. Without strengthening its own base, the civil society will be sidelined into politicization. More importantly, this action should help the civil sector to generate bigger interest and trust of citizens and build strong democratic pressure on political actors.

## **Develop mechanisms of self-regulation in the civil society**

The mechanism can serve as a tool through which self-regulation and correction of civil society actors takes place through forms of monitoring, evaluation and development of accountability measures.

**Define key priorities for government action, generate wide social consensus in the civil society and advocate jointly for their implementation**

Another potential role for the mechanism, but quite important one, is to generate priorities for action. Finding few key targets for government action on which the civil society will work and advocate for means identifying a social core that will leverage incentives for more profound social change.

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# Annexes

## 1. Monitoring matrix methodology

### Operationalization and data collection

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

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

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

interview data, being subjective type of data, which covers smaller groups of respondents.

The primary factual data and secondary data are gathered through **desktop research**. Following the data gathering strategy, country researchers utilize three core data gathering instruments: Freedom of Information requests (FoI), survey questionnaire and interview topic guides. The questions in the data gathering instruments are tailored to match the mandatory data types (operationalised dimensions) of each practice indicator. The **Freedom of Information requests** (FoI requests) are used by researchers when public information and statistics on the state of civil society and their environment (primary factual data) are not readily and publicly available. The researchers can draw from a detailed bank of FoI questions tailored to match the operationalized practice indicators.

The **survey questionnaire** collects information on civil society organisations' experiences and perceptions on the key aspects of the enabling environment for civil society for the period 2020. The organisational survey includes 50 questions matching the mandatory data types (operationalized dimensions) on basic rights and freedoms, organisational and financial sustainability and civil society's cooperation with the state. The questionnaire dominantly consists of closed questions, and fewer follow-up open questions which require the respondents to elaborate on their experience. The same questionnaire is implemented across all countries, and only the formulation of few items is slightly adapted to the concrete country context to assure questions are understood by respondents. The survey is sent to lists of formal CSOs compiled and updated by country researchers on the basis of available registers or other alternative lists of active CSOs in the country (for more information see section on country-specific notes on methodology). The data collected from the survey is confidential and used strictly on anonymous basis. Individual responses are not connected to the organisations which answered the survey and reported only in an aggregate form.

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



## Data analysis and interpretation

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

## 2. Notes on methodology and country challenges

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

Monitoring Matrix is unique tool for creation of evidence-based foundation for the development of advocacy campaigns concerning issues related to enabling environment for civil society development. However, the process of data collection, and their mere availability, as well as short disposed time for the activities, are the main challenges in creating the Monitoring Matrix in Bosnia and Herzegovina for 2020. The additional challenges are the specific constitutional structure of BiH and its consequently fragmented legislative framework, a general lack of information and official statistics, as well as capacities of the people who are going to use the MM findings, regardless if they are from the civil or State sector. The findings give a lot of information and elaboration of the problems that are enough to enable solutions, but there is not adequate response from the both parties. Thankfully, CCSP had the support of a wide, long time range of partners and network members who provided information for Monitoring Matrix preparation, as well as the Smart Resource Center help desk database.

### 3. List of organizations and individuals that participated in the research

1. Agencija lokalne demokratije Mostar
2. Asocijacija nezavisnih intelektualaca – Krug 99
3. Association Green Ways
4. Centar za ekologiju i energiju
5. Centar za građansku suradnju Livno
6. Centar za razvoj i podršku CRP
7. Fondacija za kreativni razvoj
8. GRADSKA ORGANIZACIJA PORODICA ZAROBLJENIH I POGINULIH BORACA I NESTALIH CIVILA ZVORNIK
9. Gradski orkestar Stolac
10. Eko forum Zenica
11. HPD „Bjelašnica 1923“ Sarajevo
12. IN fondacija, fondacija za unapređenje socijalne inkluzije djece i mladih u BiH
13. Katolička obitelj
14. KKK Una-Bihać
15. KULTURNO UMJETNIČKO DRUŠTVO „KARAULA“ KARAULA
16. Majke djece sa posebnim potrebama „Radost Života“
17. NVO GEOPA
18. Omladiska organizacija „NATURA“ Istočna Ilidža
19. Omladinski klub „Pod sitim suncem“
20. Planinarsko društvo „CINCAR“ Livno
21. Planinarsko društvo Glasinac Sokolac
22. Privredna komora Ze-do kantona
23. Rafting klub „Tuzlak“
24. SAVEZ GORSKIH SLUŽBI SPAŠAVANJA U BOSNI I HERCEGOVINI
25. Savez slijepih Republike Srpske
26. Savez udruženja organskih proizvođača Federacije Bosne i Hercegovine
27. Sportski Streljački Klub „Doboj Jug“ Doboj Jug
28. Tehnički klub Univerziteta “Džemal Bijedić” - BEST Mostar
29. Udruga „Matica hrvatska u Sarajevu“
30. Udruga osoba s poteškoćama u razvoju Kuća nade
31. Udruga roditelja i djece s posebnim potrebama „Vedri osmijeh“ Mostar
32. Udruga sportskih ribolovaca Vitez
33. Udruga za razvoj, okoliš i kulturu EKO ZH
34. Udruženja „Centar za kritičko mišljenje“ Mostar
35. Udruženje „Tranzicijska pravda, odgovornost i sjećanje u BiH“

36. Udruženje građana „Nešto Više“
37. Udruženje medicinskih sestara, tehničara i babica Republike Srpske
38. Udruženje multiple skleroze regije Istočna Hercegovina
39. Udruženje Nezavisni biro za razvoj
40. Udruženje oboljelih od šećerne bolesti Bužim
41. Udruženje omladine Savjet mladih Rudo
42. Udruženje osoba sa cerebralnom paralizom i drugim onesposobljenjima Sapna
43. Udruženje PROJEKAT Zavidovići
44. Udruženje studenata elektrotehnike EESTEC LC Sarajevo
45. UDRUŽENJE U BORBI PROTIV OVISNOSTI „ RUKA RUCI“ Bihać
46. Udruženje za kulturu, podršku i edukaciju građana Okean
47. Udruženje za kulturu, podršku i edukaciju građana Okean
48. Udruženje žena „MOST“ Jablanica
49. Udruženje/Udruga za fizioterapiju Federacije BiH
50. UG Fojničani - Maglaj
51. UGMHD Tuzlanskog kantona
52. UR „Romska suza“
53. Vatrogasni savez RS
54. Vijeće mladih Federacije Bosne i Hercegovine
55. Ženski košarkaški klub Zrinjski 2010 Mostar



